

By: Kuempel

H.B. No. 2310

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the powers and duties of the Texas Department of
3 Licensing and Regulation, including the power to issue emergency
4 orders and temporary and emergency licenses.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 51.001, Occupations Code, is amended by
7 amending Subdivision (1) and adding Subdivision (1-a) to read as
8 follows:

9 (1) "Advisory board" means a board, committee,
10 council, or other entity with multiple members that has as its
11 primary function advising the commission or department.

12 (1-a) "Commission" means the Texas Commission of
13 Licensing and Regulation.

14 SECTION 2. Subchapter D, Chapter 51, Occupations Code, is
15 amended by adding Sections 51.209 and 51.210 to read as follows:

16 Sec. 51.209. ADVISORY BOARDS; REMOVAL OF ADVISORY BOARD
17 MEMBER. (a) This section applies to any advisory board appointed
18 to advise the commission or department regarding a program subject
19 to regulation by the department.

20 (b) An advisory board member who was appointed by the
21 presiding officer of the commission with the commission's approval
22 may be removed from the advisory board by the presiding officer with
23 the commission's approval on any of the following grounds:

24 (1) the member does not have at the time of becoming a

1 member of the advisory board the qualifications required by the law
2 or rule authorizing appointment of the member;

3 (2) the member does not maintain during service on the
4 advisory board the qualifications required by the law or rule
5 authorizing appointment of the member;

6 (3) the member cannot, because of illness or
7 disability, discharge the member's duties for a substantial part of
8 the member's term;

9 (4) the member is absent from more than half of the
10 regularly scheduled advisory board meetings that the member is
11 eligible to attend during a calendar year without an excuse
12 approved by a majority vote of the advisory board; or

13 (5) the member is unfit to continue serving on the
14 advisory board.

15 (c) The validity of an action of an advisory board is not
16 affected by the fact that it is taken when a ground for removal of a
17 member exists.

18 Sec. 51.210. METHOD OF MAKING PAYMENTS. (a) The
19 commission may authorize payment of regulatory fees, fines,
20 penalties, and charges for goods and services through:

21 (1) an electronic payment method; or

22 (2) a credit card issued by a financial institution
23 chartered by a state or the United States or issued by a nationally
24 recognized credit organization approved by the commission.

25 (b) A payment by a method under this section may be made in
26 person, by telephone, or through the Internet.

27 (c) The commission may require a person who makes a payment

1 to the department through an electronic payment method or credit
2 card to pay a discount or service charge in an amount reasonable and
3 necessary to reimburse the commission for the costs involved in
4 processing the payment.

5 (d) The commission may adopt rules as necessary to implement
6 this section.

7 SECTION 3. Section 51.310, Occupations Code, is amended by
8 adding Subsection (c) to read as follows:

9 (c) The executive director by rule shall prescribe notice
10 procedures for proceedings under this subchapter that provide for
11 notice by certified mail with electronic return receipt.

12 SECTION 4. Subchapter G, Chapter 51, Occupations Code, is
13 amended by adding Sections 51.3511, 51.3512, and 51.3513 to read as
14 follows:

15 Sec. 51.3511. ISSUANCE OF EMERGENCY ORDERS. (a) If the
16 executive director determines that an emergency exists requiring
17 immediate action to protect the public health and safety, the
18 executive director may issue an emergency order to:

19 (1) suspend or revoke a license or other authorization
20 issued under a program regulated by the department; or

21 (2) halt operation of an unsafe facility or unsafe
22 equipment that is subject to regulation by the department.

23 (b) The executive director may issue an emergency order with
24 or without notice and hearing as the executive director considers
25 practicable under the circumstances.

26 (c) If an emergency order is issued under this section
27 without a hearing, the executive director shall set the time and

1 place for a hearing conducted by the State Office of Administrative
2 Hearings to affirm, modify, or set aside the emergency order not
3 later than the 10th day after the date the order was issued. The
4 order shall be affirmed to the extent that reasonable cause existed
5 to issue the order.

6 (d) The commission by rule may prescribe procedures for the
7 determination and appeal of an emergency order issued under this
8 section, including a rule allowing the commission to affirm,
9 modify, or set aside a decision made by the State Office of
10 Administrative Hearings under Subsection (c).

11 (e) A proceeding under this section is a contested case
12 under Chapter 2001, Government Code.

13 Sec. 51.3512. SUBPOENAS. (a) The department may issue a
14 subpoena as provided by this section.

15 (b) The department may request and, if necessary, compel by
16 subpoena:

17 (1) the production for inspection and copying of
18 records, documents, and other evidence relevant to the
19 investigation of an alleged violation of this chapter, a law
20 establishing a regulatory program administered by the department,
21 or a rule adopted or order issued by the commission or executive
22 director; and

23 (2) the attendance of a witness for examination under
24 oath.

25 (c) A subpoena under this section may be issued throughout
26 this state and may be served by any person designated by the
27 commission or the executive director.

1 (d) The department, acting through the attorney general,
2 may bring an action to enforce a subpoena issued under this section
3 against a person who fails to comply with the subpoena.

4 (e) Venue for an action brought under this section is in a
5 district court in:

6 (1) Travis County; or

7 (2) any county in which the department may hold a
8 hearing.

9 (f) The court shall order compliance with the subpoena if
10 the court finds that good cause exists to issue the subpoena.

11 Sec. 51.3513. CEASE AND DESIST ORDER. The executive
12 director may issue a cease and desist order if the executive
13 director determines that the action is necessary to prevent a
14 violation of:

15 (1) this chapter;

16 (2) a law establishing a regulatory program
17 administered by the department; or

18 (3) a rule adopted or order issued by the commission or
19 the executive director.

20 SECTION 5. Section 51.352(a), Occupations Code, is amended
21 to read as follows:

22 (a) The attorney general or the executive director may
23 institute an action for injunctive relief to restrain a violation
24 by and to collect a civil penalty from a person that appears to be in
25 violation of or threatening to violate a law establishing a
26 regulatory program administered by the department or a rule or
27 order of the commission or executive director related to the

1 regulatory program. A civil penalty assessed under this subsection
2 may not exceed \$5,000 per day for each violation.

3 SECTION 6. The heading to Section 51.353, Occupations Code,
4 is amended to read as follows:

5 Sec. 51.353. LICENSE DENIAL; ADMINISTRATIVE SANCTIONS.

6 SECTION 7. Section 51.353(a), Occupations Code, is amended
7 to read as follows:

8 (a) The commission shall deny, revoke, suspend, or refuse to
9 renew a license or shall reprimand a license holder for a violation
10 of this chapter, a law establishing a regulatory program
11 administered by the department, or a rule or order of the commission
12 or the executive director.

13 SECTION 8. Section 51.354, Occupations Code, is amended by
14 redesignating Subsection (d) as Subsection (b) and adding
15 Subsection (c) to read as follows:

16 (b) [~~(d)~~] A proceeding under this chapter to deny, suspend,
17 or revoke a license is considered to be a contested case under
18 Chapter 2001, Government Code.

19 (c) The executive director by rule shall prescribe notice
20 procedures for a contested case under this chapter that provide for
21 notice by certified mail with electronic return receipt.

22 SECTION 9. Subchapter G, Chapter 51, Occupations Code, is
23 amended by adding Sections 51.355 and 51.356 to read as follows:

24 Sec. 51.355. LICENSE ELIGIBILITY OF PERSON WHOSE LICENSE
25 HAS BEEN REVOKED. A person whose license has been revoked by order
26 of the commission or executive director is not eligible for a new
27 license until the first anniversary of the date of the revocation.

1 Sec. 51.356. DEFERRED ADJUDICATION; LICENSE SUSPENSION,
2 LICENSE REVOCATION, OR DENIAL OR REFUSAL TO RENEW LICENSE. (a) The
3 commission may deny, suspend, revoke, or refuse to renew a license
4 or other authorization issued by a program regulated by the
5 department if the commission determines that a deferred
6 adjudication makes the person holding or seeking the license unfit
7 for the license.

8 (b) In making a determination under Subsection (a), the
9 commission shall consider the factors set forth in Sections 53.022
10 and 53.023 and the guidelines issued by the department under
11 Section 53.025.

12 SECTION 10. Subchapter H, Chapter 51, Occupations Code, is
13 amended by adding Sections 51.4011 and 51.4012 to read as follows:

14 Sec. 51.4011. INACTIVE STATUS. (a) The commission may
15 adopt rules to allow a license holder to place a license issued by
16 the department on inactive status by:

17 (1) submitting, on a form prescribed by the
18 department, an application for inactive status to the department
19 not later than the expiration date of the license; and

20 (2) paying the required fee.

21 (b) Except as provided by Subsection (f), a person whose
22 license is on inactive status is not required to complete
23 continuing education required under this chapter, a law
24 establishing a program regulated by the department, or a rule
25 adopted by the commission.

26 (c) A person whose license is on inactive status may reapply
27 for inactive status before the expiration date of the license. The

1 person must pay the required fee.

2 (d) A person whose license is on inactive status may not
3 engage in any activity for which the license is required.

4 (e) A license holder may not employ a person whose license
5 is on inactive status.

6 (f) A person whose license is on inactive status may return
7 the license to active status by:

8 (1) applying to the department for active status on a
9 form prescribed by the department;

10 (2) paying the required fee; and

11 (3) providing evidence satisfactory to the department
12 that the person has completed the number of hours of continuing
13 education that would otherwise have been required for a renewal of
14 an active license for the preceding license period.

15 (g) The commission may set fees and adopt rules as necessary
16 to implement this section.

17 Sec. 51.4012. LICENSE ELIGIBILITY REQUIREMENTS REGARDING
18 APPLICANT'S BACKGROUND; DETERMINATION LETTER. (a)

19 Notwithstanding any other law, the commission may determine that a
20 person is not eligible for a license based on the person's criminal
21 history or other information that indicates that the person lacks
22 the honesty, trustworthiness, and integrity to hold a license
23 issued by the department.

24 (b) Before applying for a license from the department, a
25 person may request that the department issue a letter determining
26 whether the person would be eligible for a license under Subsection
27 (a) of this section, Section 51.356, or Chapter 53. To obtain a

1 determination letter, a person must file a request on a form
2 prescribed by the department and pay the required fee.

3 (c) Not later than the 30th day after the date the
4 department makes its determination, the department shall issue the
5 determination letter to the person.

6 (d) The department has the same powers to investigate a
7 request filed under this section as the department has to
8 investigate a person applying for a license.

9 (e) A determination letter issued under this section that is
10 adverse to a person does not prevent the person from subsequently
11 applying for a license.

12 (f) The department is not bound by its determination that
13 the person would be eligible if, after the issuance of the
14 determination letter, the department determines there has been a
15 change in a person's circumstances or discovers a previously
16 undiscovered fact.

17 (g) A determination under this section is not a contested
18 case under Chapter 2001, Government Code.

19 SECTION 11. Subchapter H, Chapter 51, Occupations Code, is
20 amended by adding Sections 51.407 and 51.408 to read as follows:

21 Sec. 51.407. TEMPORARY LICENSE. (a) The commission by rule
22 may provide for the issuance of a temporary license to an applicant
23 who:

24 (1) submits to the executive director an application
25 on a form prescribed by the executive director;

26 (2) meets preliminary qualifications established by
27 commission rule; and

1 (3) pays any required fees.

2 (b) A temporary license issued under this section expires on
3 the 21st day after the date of issuance and may not be renewed.

4 (c) A temporary license holder is subject to:

5 (1) this chapter;

6 (2) any law applicable to the activity for which the
7 license is required; and

8 (3) any rule of the commission or the executive
9 director applicable to the license.

10 Sec. 51.408. EMERGENCY LICENSE. (a) The executive
11 director may issue an emergency license to a person who meets
12 eligibility requirements provided by:

13 (1) a law establishing a regulatory program
14 administered by the department; or

15 (2) a rule adopted to implement this section.

16 (b) An emergency license issued under this section expires
17 on the date indicated by the executive director, but not later than
18 the 90th day after the date the license is issued. If the governor
19 declares an extended state of disaster under Section 418.014,
20 Government Code, the executive director may extend the term of an
21 emergency license to an expiration date after the 90th day after the
22 date the license was issued.

23 (c) The emergency license holder may engage in the
24 activities authorized by the type of license only:

25 (1) during a period in which a state of disaster has
26 been declared and the following recovery period; and

27 (2) in an area designated as a disaster area under

1 Chapter 418, Government Code.

2 SECTION 12. (a) Except as provided by Subsection (b) of
3 this section, this Act takes effect September 1, 2009.

4 (b) Sections 51.4011 and 51.4012, Occupations Code, as
5 added by this Act, take effect May 1, 2010.