

1-1 By: Kuempel (Senate Sponsor - Williams) H.B. No. 2310  
1-2 (In the Senate - Received from the House April 14, 2009;  
1-3 April 15, 2009, read first time and referred to Committee on  
1-4 Business and Commerce; April 24, 2009, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 7,  
1-6 Nays 0; April 24, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2310 By: Eltife

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the powers and duties of the Texas Department of  
1-11 Licensing and Regulation, including the power to issue emergency  
1-12 orders and temporary and emergency licenses.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 51.001, Occupations Code, is amended by  
1-15 amending Subdivision (1) and adding Subdivision (1-a) to read as  
1-16 follows:

1-17 (1) "Advisory board" means a board, committee,  
1-18 council, or other entity with multiple members that has as its  
1-19 primary function advising the commission or department.

1-20 (1-a) "Commission" means the Texas Commission of  
1-21 Licensing and Regulation.

1-22 SECTION 2. Subchapter D, Chapter 51, Occupations Code, is  
1-23 amended by adding Sections 51.209 and 51.210 to read as follows:

1-24 Sec. 51.209. ADVISORY BOARDS; REMOVAL OF ADVISORY BOARD  
1-25 MEMBER. (a) This section applies to any advisory board appointed  
1-26 to advise the commission or department regarding a program subject  
1-27 to regulation by the department.

1-28 (b) An advisory board member who was appointed by the  
1-29 presiding officer of the commission with the commission's approval  
1-30 may be removed from the advisory board by the presiding officer with  
1-31 the commission's approval on any of the following grounds:

1-32 (1) the member does not have at the time of becoming a  
1-33 member of the advisory board the qualifications required by the law  
1-34 or rule authorizing appointment of the member;

1-35 (2) the member does not maintain during service on the  
1-36 advisory board the qualifications required by the law or rule  
1-37 authorizing appointment of the member;

1-38 (3) the member cannot, because of illness or  
1-39 disability, discharge the member's duties for a substantial part of  
1-40 the member's term;

1-41 (4) the member is absent from more than half of the  
1-42 regularly scheduled advisory board meetings that the member is  
1-43 eligible to attend during a calendar year without an excuse  
1-44 approved by a majority vote of the advisory board; or

1-45 (5) the member is unfit to continue serving on the  
1-46 advisory board.

1-47 (c) The validity of an action of an advisory board is not  
1-48 affected by the fact that it is taken when a ground for removal of a  
1-49 member exists.

1-50 Sec. 51.210. METHOD OF MAKING PAYMENTS. (a) The  
1-51 commission may authorize payment of regulatory fees, fines,  
1-52 penalties, and charges for goods and services through:

1-53 (1) an electronic payment method; or

1-54 (2) a credit card issued by a financial institution  
1-55 chartered by a state or the United States or issued by a nationally  
1-56 recognized credit organization approved by the commission.

1-57 (b) A payment by a method under this section may be made in  
1-58 person, by telephone, or through the Internet.

1-59 (c) The commission may require a person who makes a payment  
1-60 to the department through an electronic payment method or credit  
1-61 card to pay a discount or service charge in an amount reasonable and  
1-62 necessary to reimburse the commission for the costs involved in  
1-63 processing the payment.

2-1 (d) The commission may adopt rules as necessary to implement  
2-2 this section.

2-3 SECTION 3. Section 51.310, Occupations Code, is amended by  
2-4 adding Subsection (c) to read as follows:

2-5 (c) The executive director by rule shall prescribe notice  
2-6 procedures for proceedings under this subchapter that provide for  
2-7 notice by certified mail with electronic return receipt.

2-8 SECTION 4. Subchapter G, Chapter 51, Occupations Code, is  
2-9 amended by adding Sections 51.3511, 51.3512, and 51.3513 to read as  
2-10 follows:

2-11 Sec. 51.3511. ISSUANCE OF EMERGENCY ORDERS. (a) If the  
2-12 executive director determines that an emergency exists requiring  
2-13 immediate action to protect the public health and safety, the  
2-14 executive director may issue an emergency order to:

2-15 (1) suspend or revoke a license or other authorization  
2-16 issued under a program regulated by the department; or

2-17 (2) halt operation of an unsafe facility or unsafe  
2-18 equipment that is subject to regulation by the department.

2-19 (b) The executive director may issue an emergency order with  
2-20 or without notice and hearing as the executive director considers  
2-21 practicable under the circumstances.

2-22 (c) If an emergency order is issued under this section  
2-23 without a hearing, the executive director shall set the time and  
2-24 place for a hearing conducted by the State Office of Administrative  
2-25 Hearings to affirm, modify, or set aside the emergency order not  
2-26 later than the 10th day after the date the order was issued. The  
2-27 order shall be affirmed to the extent that reasonable cause existed  
2-28 to issue the order.

2-29 (d) The commission by rule may prescribe procedures for the  
2-30 determination and appeal of an emergency order issued under this  
2-31 section, including a rule allowing the commission to affirm,  
2-32 modify, or set aside a decision made by the State Office of  
2-33 Administrative Hearings under Subsection (c).

2-34 (e) A proceeding under this section is a contested case  
2-35 under Chapter 2001, Government Code.

2-36 Sec. 51.3512. SUBPOENAS. (a) The department may issue a  
2-37 subpoena as provided by this section.

2-38 (b) The department may request and, if necessary, compel by  
2-39 subpoena:

2-40 (1) the production for inspection and copying of  
2-41 records, documents, and other evidence relevant to the  
2-42 investigation of an alleged violation of this chapter, a law  
2-43 establishing a regulatory program administered by the department,  
2-44 or a rule adopted or order issued by the commission or executive  
2-45 director; and

2-46 (2) the attendance of a witness for examination under  
2-47 oath.

2-48 (c) A subpoena under this section may be issued throughout  
2-49 this state and may be served by any person designated by the  
2-50 commission or the executive director.

2-51 (d) The department, acting through the attorney general,  
2-52 may bring an action to enforce a subpoena issued under this section  
2-53 against a person who fails to comply with the subpoena.

2-54 (e) Venue for an action brought under this section is in a  
2-55 district court in:

2-56 (1) Travis County; or

2-57 (2) any county in which the department may hold a  
2-58 hearing.

2-59 (f) The court shall order compliance with the subpoena if  
2-60 the court finds that good cause exists to issue the subpoena.

2-61 Sec. 51.3513. CEASE AND DESIST ORDER. The executive  
2-62 director may issue a cease and desist order if the executive  
2-63 director determines that the action is necessary to prevent a  
2-64 violation of:

2-65 (1) this chapter;

2-66 (2) a law establishing a regulatory program  
2-67 administered by the department; or

2-68 (3) a rule adopted or order issued by the commission or  
2-69 the executive director.

3-1 SECTION 5. Section 51.352(a), Occupations Code, is amended  
3-2 to read as follows:

3-3 (a) The attorney general or the executive director may  
3-4 institute an action for injunctive relief to restrain a violation  
3-5 by and to collect a civil penalty from a person that appears to be in  
3-6 violation of or threatening to violate a law establishing a  
3-7 regulatory program administered by the department or a rule or  
3-8 order of the commission or executive director related to the  
3-9 regulatory program. A civil penalty assessed under this subsection  
3-10 may not exceed \$5,000 per day for each violation.

3-11 SECTION 6. The heading for Section 51.353, Occupations Code,  
3-12 is amended to read as follows:

3-13 Sec. 51.353. LICENSE DENIAL; ADMINISTRATIVE SANCTIONS.

3-14 SECTION 7. Section 51.353(a), Occupations Code, is amended  
3-15 to read as follows:

3-16 (a) The commission may deny, [~~shall~~] revoke, suspend, or  
3-17 refuse to renew a license or may [~~shall~~] reprimand a license holder  
3-18 for a violation of this chapter, a law establishing a regulatory  
3-19 program administered by the department, or a rule or order of the  
3-20 commission or the executive director.

3-21 SECTION 8. Section 51.354, Occupations Code, is amended by  
3-22 redesignating Subsection (d) as Subsection (b) and adding  
3-23 Subsection (c) to read as follows:

3-24 (b) [~~(d)~~] A proceeding under this chapter to deny, suspend,  
3-25 or revoke a license is considered to be a contested case under  
3-26 Chapter 2001, Government Code.

3-27 (c) The executive director by rule shall prescribe notice  
3-28 procedures for a contested case under this chapter that provide for  
3-29 notice by certified mail with electronic return receipt.

3-30 SECTION 9. Subchapter G, Chapter 51, Occupations Code, is  
3-31 amended by adding Sections 51.355 and 51.356 to read as follows:

3-32 Sec. 51.355. LICENSE ELIGIBILITY OF PERSON WHOSE LICENSE  
3-33 HAS BEEN REVOKED. A person whose license has been revoked by order  
3-34 of the commission or executive director is not eligible for a new  
3-35 license until the first anniversary of the date of the revocation.

3-36 Sec. 51.356. DEFERRED ADJUDICATION; LICENSE SUSPENSION,  
3-37 LICENSE REVOCATION, OR DENIAL OR REFUSAL TO RENEW LICENSE. (a) The  
3-38 commission may deny, suspend, revoke, or refuse to renew a license  
3-39 or other authorization issued by a program regulated by the  
3-40 department if the commission determines that a deferred  
3-41 adjudication makes the person holding or seeking the license unfit  
3-42 for the license.

3-43 (b) In making a determination under Subsection (a), the  
3-44 commission shall consider the factors set forth in Sections 53.022  
3-45 and 53.023 and the guidelines issued by the department under  
3-46 Section 53.025.

3-47 SECTION 10. Subchapter H, Chapter 51, Occupations Code, is  
3-48 amended by adding Sections 51.4011 and 51.4012 to read as follows:

3-49 Sec. 51.4011. INACTIVE STATUS. (a) The commission may  
3-50 adopt rules to allow a license holder to place a license issued by  
3-51 the department on inactive status by:

3-52 (1) submitting, on a form prescribed by the  
3-53 department, an application for inactive status to the department  
3-54 not later than the expiration date of the license; and

3-55 (2) paying the required fee.

3-56 (b) Except as provided by Subsection (f), a person whose  
3-57 license is on inactive status is not required to complete  
3-58 continuing education required under this chapter, a law  
3-59 establishing a program regulated by the department, or a rule  
3-60 adopted by the commission.

3-61 (c) A person whose license is on inactive status may reapply  
3-62 for inactive status before the expiration date of the license. The  
3-63 person must pay the required fee.

3-64 (d) A person whose license is on inactive status may not  
3-65 engage in any activity for which the license is required.

3-66 (e) A license holder may not employ a person for an activity  
3-67 for which a license is required if the person's license is on  
3-68 inactive status.

3-69 (f) A person whose license is on inactive status may return

4-1 the license to active status by:

4-2 (1) applying to the department for active status on a  
4-3 form prescribed by the department;

4-4 (2) paying the required fee; and

4-5 (3) providing evidence satisfactory to the department  
4-6 that the person has completed the number of hours of continuing  
4-7 education that would otherwise have been required for a renewal of  
4-8 an active license for the preceding license period.

4-9 (g) The commission may set fees and adopt rules as necessary  
4-10 to implement this section.

4-11 Sec. 51.4012. LICENSE ELIGIBILITY REQUIREMENTS REGARDING  
4-12 APPLICANT'S BACKGROUND; DETERMINATION LETTER. (a)

4-13 Notwithstanding any other law, the commission may determine that a  
4-14 person is not eligible for a license based on the person's criminal  
4-15 history or other information that indicates that the person lacks  
4-16 the honesty, trustworthiness, and integrity to hold a license  
4-17 issued by the department.

4-18 (b) Before applying for a license from the department, a  
4-19 person may request that the department issue a letter determining  
4-20 whether the person would be eligible for a license under Subsection  
4-21 (a) of this section, Section 51.356, or Chapter 53. To obtain a  
4-22 determination letter, a person must file a request on a form  
4-23 prescribed by the department and pay the required fee.

4-24 (c) Not later than the 30th day after the date the  
4-25 department makes its determination, the department shall issue the  
4-26 determination letter to the person.

4-27 (d) The department has the same powers to investigate a  
4-28 request filed under this section as the department has to  
4-29 investigate a person applying for a license.

4-30 (e) A determination letter issued under this section that is  
4-31 adverse to a person does not prevent the person from subsequently  
4-32 applying for a license.

4-33 (f) The department is not bound by its determination that  
4-34 the person would be eligible if, after the issuance of the  
4-35 determination letter, the department determines there has been a  
4-36 change in a person's circumstances or discovers a previously  
4-37 undiscovered fact.

4-38 (g) A determination under this section is not a contested  
4-39 case under Chapter 2001, Government Code.

4-40 SECTION 11. Section 51.402(c), Occupations Code, is amended  
4-41 to read as follows:

4-42 (c) The department may require a testing service to:

4-43 (1) notify a person of the results of the person's  
4-44 examination; or

4-45 (2) collect a fee for administering a license  
4-46 examination from a person taking the examination.

4-47 SECTION 12. Subchapter H, Chapter 51, Occupations Code, is  
4-48 amended by adding Sections 51.407 and 51.408 to read as follows:

4-49 Sec. 51.407. TEMPORARY LICENSE. (a) The commission by rule  
4-50 may provide for the issuance of a temporary license to an applicant  
4-51 who:

4-52 (1) submits to the executive director an application  
4-53 on a form prescribed by the executive director;

4-54 (2) meets preliminary qualifications established by  
4-55 commission rule; and

4-56 (3) pays any required fees.

4-57 (b) A temporary license issued under this section expires on  
4-58 the 21st day after the date of issuance and may not be renewed.

4-59 (c) A temporary license holder is subject to:

4-60 (1) this chapter;

4-61 (2) any law applicable to the activity for which the  
4-62 license is required; and

4-63 (3) any rule of the commission or the executive  
4-64 director applicable to the license.

4-65 Sec. 51.408. EMERGENCY LICENSE. (a) The executive  
4-66 director may issue an emergency license to a person who meets  
4-67 eligibility requirements provided by:

4-68 (1) a law establishing a regulatory program  
4-69 administered by the department; or

5-1 (2) a rule adopted to implement this section.

5-2 (b) An emergency license issued under this section expires  
5-3 on the date indicated by the executive director, but not later than  
5-4 the 90th day after the date the license is issued. If the governor  
5-5 declares an extended state of disaster under Section 418.014,  
5-6 Government Code, the executive director may extend the term of an  
5-7 emergency license to an expiration date after the 90th day after the  
5-8 date the license was issued.

5-9 (c) The emergency license holder may engage in the  
5-10 activities authorized by the type of license only:

5-11 (1) during a period in which a state of disaster has  
5-12 been declared and the following recovery period; and

5-13 (2) in an area designated as a disaster area under  
5-14 Chapter 418, Government Code.

5-15 SECTION 13. (a) Except as provided by Subsection (b) of  
5-16 this section, this Act takes effect September 1, 2009.

5-17 (b) Sections 51.4011 and 51.4012, Occupations Code, as  
5-18 added by this Act, take effect May 1, 2010.

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