By: Williams S.B. No. 2057

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) an electronic payment method; or

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

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

(c) The commission may require a person who makes a payment to the department through an electronic payment method or credit card to pay a discount or service charge in an amount reasonable and

necessary to reimburse the commission for the costs involved in processing the payment.

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

SECTION 3. Subchapter G, Chapter 51, Occupations Code, is amended by adding Sections 51.3511, 51.3512, and 51.3513 to read as follows:

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

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

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

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

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

(d) The commission by rule may prescribe procedures for the determination and appeal of an emergency order issued under this

section, including a rule allowing the commission to affirm, modify, or set aside a decision made by the State Office of Administrative Hearings under Subsection (c).

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

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

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

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

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

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

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

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

(1) Travis County; or

(2) any county in which the department may hold a

hearing.

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

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

(1) this chapter;

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

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

SECTION 4. Section 51.352(a), Occupations Code, is amended to read as follows:

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

SECTION 5. The heading to Section 51.353, Occupations Code, is amended to read as follows:

Sec. 51.353. LICENSE DENIAL; ADMINISTRATIVE SANCTIONS.

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

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

SECTION 7. Subchapter G, Chapter 51, Occupations Code, is amended by adding Sections 51.355 and 51.356 to read as follows:

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

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

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

SECTION 8. Subchapter H, Chapter 51, Occupations Code, is amended by adding Sections 51.4011 and 51.4012 to read as follows:

Sec. 51.4011. INACTIVE STATUS. (a) Not later than the 10th day before the expiration date of a license issued by the department, the license holder may place the license on inactive

status by:

(1) submitting an application for inactive status to the department on a form prescribed by the department; and

(2) paying the required fee.

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

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

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

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

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

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

(2) paying the required fee; and

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

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

Sec. 51.4012. LICENSE ELIGIBILITY REQUIREMENTS REGARDING APPLICANT'S BACKGROUND; DETERMINATION LETTER. (a) Notwithstanding any other law, the commission may determine that a person is not eligible for a license based on the person's criminal history or other information that indicates that the person lacks the honesty, trustworthiness, and integrity to hold a license issued by the department.

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

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

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

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

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

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

SECTION 9. Subchapter H, Chapter 51, Occupations Code, is amended by adding Sections 51.407 and 51.408 to read as follows:

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

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

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

(3) pays any required fees.

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

(c) A temporary license holder is subject to:

(1) this chapter;

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

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

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

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

(2) a rule adopted to implement this section.

(b) An emergency license issued under this section expires

on the date indicated by the executive director, but not later than the 90th day after the date the license is issued.

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

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

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

SECTION 10. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.

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