

SENATE AMENDMENTS

2nd Printing

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.

ADOPTED

MAY 06 2009

Atty Gen
Secretary of the Senate

By: Williams

H.B. No. 2310

Substitute the following for H.B. No. 2310:

By: *Elbert*

C.S. .B. No.

A BILL TO BE ENTITLED

AN ACT

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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

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 may deny, [~~shall~~] revoke, suspend, or
9 refuse to renew a license or may [~~shall~~] reprimand a license holder
10 for a violation of this chapter, a law establishing a regulatory
11 program administered by the department, or a rule or order of the
12 commission 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 for an activity
5 for which a license is required if the person's license is on
6 inactive status.

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

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

11 (2) paying the required fee; and

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

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

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

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

25 (b) Before applying for a license from the department, a
26 person may request that the department issue a letter determining
27 whether the person would be eligible for a license under Subsection

1 (a) of this section, Section 51.356, or Chapter 53. To obtain a
2 determination letter, a person must file a request on a form
3 prescribed by the department and pay the required fee.

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

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

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

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

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

20 SECTION 11. Section 51.402(c), Occupations Code, is amended
21 to read as follows:

22 (c) The department may require a testing service to:

23 (1) notify a person of the results of the person's
24 examination; or

25 (2) collect a fee for administering a license
26 examination from a person taking the examination.

27 SECTION 12. Subchapter H, Chapter 51, Occupations Code, is

1 amended by adding Sections 51.407 and 51.408 to read as follows:

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

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

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

9 (3) pays any required fees.

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

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

13 (1) this chapter;

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

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

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

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

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

24 (b) An emergency license issued under this section expires
25 on the date indicated by the executive director, but not later than
26 the 90th day after the date the license is issued. If the governor
27 declares an extended state of disaster under Section 418.014,

1 Government Code, the executive director may extend the term of an
2 emergency license to an expiration date after the 90th day after the
3 date the license was issued.

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

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

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

10 SECTION 13. (a) Except as provided by Subsection (b) of
11 this section, this Act takes effect September 1, 2009.

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

ADOPTED

MAY 06 2009

Astley Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: Whitnire

1 Amend C.S.H.B. No. 2310 (senate committee printing) by adding
2 the following appropriately numbered SECTIONS to the bill and
3 renumbering remaining SECTIONS of the bill accordingly:

4 SECTION _____. The heading to Title 4, Occupations Code, is
5 amended to read as follows:

6 TITLE 4. PROFESSIONS RELATED TO ANIMALS [~~ANIMAL HEALTH~~]

7 SECTION _____. Title 4, Occupations Code, is amended by
8 adding Chapter 802 to read as follows:

9 CHAPTER 802. COMMERCIAL DOG AND CAT BREEDERS

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 802.001. SHORT TITLE. This chapter may be cited as the
12 Commercial Dog and Cat Breeders Act.

13 Sec. 802.002. DEFINITIONS. In this chapter:

14 (1) "Adult animal" means an animal six months of age or
15 older.

16 (2) "Advisory committee" means the Dog and Cat
17 Breeders Advisory Committee.

18 (3) "Animal" means a dog or a cat.

19 (4) "Cat" means a mammal that is wholly or partly of
20 the species Felis domesticus.

21 (5) "Commercial breeder" means a person who possesses
22 11 or more adult intact female animals and is engaged in the
23 business of breeding animals for direct or indirect sale or for
24 exchange in return for consideration.

25 (6) "Commission" means the Texas Commission of
26 Licensing and Regulation.

27 (7) "Controlling person" means an individual who:

28 (A) is a partner, manager, director, officer, or
29 member of a commercial breeder;

1 (B) possesses the authority to set policy or
2 direct management of a commercial breeder; or

3 (C) possesses a direct or indirect control of 25
4 percent or more of a commercial breeder.

5 (8) "Department" means the Texas Department of
6 Licensing and Regulation.

7 (9) "Dog" means a mammal that is wholly or partly of
8 the species Canis familiaris.

9 (10) "Executive director" means the executive
10 director of the department.

11 (11) "Facility" means the premises used by a
12 commercial breeder for keeping or breeding animals. The term
13 includes all buildings, property, and confinement areas used to
14 conduct the commercial breeding business.

15 (12) "Family member" means a person's parent, spouse,
16 child, or sibling.

17 (13) "Humane society" means a nonprofit organization
18 exempt from federal taxation under Section 501(c)(3), Internal
19 Revenue Code of 1986, that has as the organization's purpose the
20 prevention of animal cruelty or the sheltering of, caring for, and
21 providing of homes for lost, stray, and abandoned animals.

22 (14) "Intact female animal" means a female animal that
23 has not been spayed and is capable of sexual reproduction.

24 (15) "Kitten" means a cat less than six months old.

25 (16) "Local animal control authority" means a
26 municipal or county animal control office with authority over the
27 premises in which an animal is kept or, in an area that does not have
28 an animal control office, the county sheriff.

29 (17) "Possess" means to have custody of or control
30 over.

31 (18) "Puppy" means a dog less than six months old.

1 (19) "Registered breeder inspector" means an
2 individual certified by the department to conduct investigations
3 and inspections under this chapter.

4 (20) "Veterinarian" means a veterinarian in good
5 standing and licensed to practice veterinary medicine in this state
6 or another state.

7 Sec. 802.003. APPLICABILITY OF CHAPTER. (a) This chapter
8 does not affect the applicability of any other law, rule, order,
9 ordinance, or other legal requirement of the federal government,
10 this state, or a political subdivision of this state.

11 (b) This chapter does not prevent a municipality or county
12 from prohibiting or further regulating by order or ordinance the
13 possession, breeding, or selling of dogs or cats.

14 (c) This chapter does not apply to an animal regulated under
15 the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

16 [Sections 802.004-802.050 reserved for expansion]

17 SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

18 Sec. 802.051. GENERAL POWERS AND DUTIES; RULES. (a) The
19 department shall administer this chapter.

20 (b) The commission shall adopt the rules necessary to
21 enforce and administer this chapter, including rules to:

22 (1) establish qualifications required for licensing
23 under this chapter; and

24 (2) establish qualifications and training for
25 registered breeder inspectors.

26 Sec. 802.052. FEES. The commission shall establish
27 reasonable and necessary fees in amounts sufficient to cover the
28 costs of administering this chapter.

29 Sec. 802.053. PERSONNEL. The department may employ
30 personnel necessary to carry out the functions and duties of the
31 department under this chapter.

1 Sec. 802.054. EXPENSES. The department may authorize
2 disbursements necessary to implement this chapter, including
3 disbursements for office expenses, equipment costs, and other
4 necessary facilities.

5 Sec. 802.055. CRIMINAL BACKGROUND CHECKS. (a) The
6 department shall conduct a criminal background check on each
7 applicant who submits an application for a license under this
8 chapter and on any controlling person of the applicant. The
9 department may examine any criminal conviction, guilty plea, or
10 deferred adjudication of an applicant for issuance or renewal of a
11 license, including by obtaining any criminal history or record
12 permitted by law.

13 (b) An applicant is not eligible for a license under this
14 chapter if the applicant or any controlling person of the applicant
15 has been convicted or received deferred adjudication for animal
16 cruelty.

17 Sec. 802.056. INSURANCE REQUIREMENTS. The department may
18 set insurance requirements for a license holder under this chapter.

19 Sec. 802.057. DIRECTORY. The department shall maintain a
20 directory of commercial breeders licensed under this chapter.

21 Sec. 802.058. CONTRACTS FOR ENFORCEMENT. The department
22 may contract with another state agency, a political subdivision of
23 this state, a local animal control authority, or a registered
24 breeder inspector to enforce this chapter and rules adopted under
25 this chapter.

26 Sec. 802.059. INSPECTIONS AND INVESTIGATIONS. (a) The
27 department at least annually shall inspect each facility of a
28 licensed commercial breeder. The inspection must be conducted
29 during the facility's normal business hours and the commercial
30 breeder or a representative of the commercial breeder may be
31 present during the inspection. The department is not required to

1 provide advance notice to the commercial breeder before arriving at
2 the facility, but must contact the commercial breeder or
3 representative on arrival at the facility and before proceeding
4 with the inspection.

5 (b) The inspector shall submit an inspection report to the
6 department not later than the 10th day after the date of the
7 inspection on a form prescribed by the department and provide a copy
8 of the report to the commercial breeder or the representative.

9 (c) The department may contract with another state agency, a
10 local animal control authority, or a registered breeder inspector
11 to conduct or assist in an inspection or investigation. The
12 commission may adopt rules to establish methods by which another
13 state agency, a local animal control authority, or a registered
14 breeder inspector may conduct or assist in an inspection or
15 investigation on behalf of the department.

16 (d) The department, a local animal control authority, or a
17 registered breeder inspector may access the facility of a
18 commercial breeder whose license has been suspended, revoked, or
19 denied to verify that the facility is not operating as a commercial
20 breeding facility.

21 (e) On receipt of a written complaint alleging a violation
22 of this chapter, the department, a local animal control authority,
23 a trained peace officer, or a registered breeder inspector
24 designated by the department shall investigate the alleged
25 violation.

26 Sec. 802.060. CONSUMER INTEREST INFORMATION. (a) The
27 department shall prepare information of consumer interest
28 describing:

29 (1) the functions performed by the department under
30 this chapter; and

31 (2) the rights of a consumer affected by this chapter.

1 (b) The information must describe the procedure by which a
2 consumer complaint is filed with and resolved by the department.

3 (c) The department shall make the information available to
4 the public.

5 [Sections 802.061-802.100 reserved for expansion]

6 SUBCHAPTER C. DOG AND CAT BREEDERS ADVISORY COMMITTEE

7 Sec. 802.101. ADVISORY COMMITTEE MEMBERSHIP. The Dog and
8 Cat Breeders Advisory Committee consists of seven members appointed
9 by the presiding officer of the commission with the approval of the
10 commission as follows:

11 (1) two members who represent the public;

12 (2) one member who represents the interests of
13 commercial breeders;

14 (3) one member who is a licensed veterinarian whose
15 primary practice consists of the treatment of dogs and cats;

16 (4) one member who represents the American Kennel
17 Club;

18 (5) one member who represents a humane society or an
19 association of humane societies; and

20 (6) one member who represents the interests of animal
21 control authorities in this state.

22 Sec. 802.102. TERMS; VACANCY. (a) Appointed advisory
23 committee members serve staggered four-year terms. The terms of
24 three or four appointed members expire on February 1 of each
25 odd-numbered year.

26 (b) If a vacancy occurs during an appointed member's term,
27 the vacancy shall be filled for the remainder of the unexpired term
28 in the manner provided by Section 802.101.

29 Sec. 802.103. PRESIDING OFFICER. The presiding officer of
30 the commission shall designate one member of the advisory committee
31 to serve as presiding officer of the advisory committee for a

1 two-year term.

2 Sec. 802.104. COMPENSATION; REIMBURSEMENT. An advisory
3 committee member serves without compensation but is entitled to
4 reimbursement for actual and necessary expenses incurred in
5 performing functions as an advisory committee member, subject to
6 any applicable limitation on reimbursement provided by the General
7 Appropriations Act and the department's budget.

8 Sec. 802.105. MEETINGS. The advisory committee shall meet
9 at least once annually and may meet at other times at the call of the
10 presiding officer of the commission or the executive director.

11 Sec. 802.106. ADVISORY COMMITTEE DUTIES. (a) The advisory
12 committee shall advise the commission in adopting rules and in
13 administering and enforcing this chapter.

14 (b) The advisory committee shall advise the commission in
15 setting fees under this chapter.

16 Sec. 802.107. VOTE REQUIRED FOR ACTION. A decision of the
17 advisory committee is not effective unless it receives the
18 affirmative vote of at least a majority of the members present.

19 Sec. 802.108. APPLICABILITY OF OTHER LAW. Chapter 2110,
20 Government Code, does not apply to the advisory committee.

21 [Sections 802.109-802.150 reserved for expansion]

22 SUBCHAPTER D. LICENSING OF COMMERCIAL BREEDERS

23 Sec. 802.151. LICENSE REQUIRED; QUALIFICATIONS. (a) A
24 person may not act, offer to act, or hold the person out as a
25 commercial breeder in this state unless the person holds a
26 commercial breeder license under this subchapter for each facility
27 that the person owns or operates in this state.

28 (b) A commercial breeder license for a single facility may
29 cover more than one building on the same premises.

30 (c) The commission may adopt educational or training
31 qualifications required for issuance or renewal of a license under

1 this subchapter as necessary to protect the public health and
2 safety.

3 Sec. 802.152. APPLICATION. An applicant for a license
4 under this subchapter must:

5 (1) submit to the department a completed application
6 on a form prescribed by the department;

7 (2) submit to the department any other information
8 regarding the applicant's facilities and operations as required by
9 rule;

10 (3) demonstrate to the satisfaction of the department
11 the qualifications required by this chapter and rules adopted under
12 this chapter; and

13 (4) pay the application fee.

14 Sec. 802.153. INITIAL PRELICENSE INSPECTION. (a) The
15 department shall inspect a facility before an initial commercial
16 breeder license is issued for that facility.

17 (b) The department may contract with a local animal control
18 authority or a registered breeder inspector to conduct or assist in
19 an initial prelicense inspection.

20 (c) The department may not issue a commercial breeder
21 license until the department receives an initial prelicense
22 inspection report from the inspector in a format approved by the
23 department certifying that the facility meets the requirements of
24 this chapter and rules adopted under this chapter.

25 (d) Before the initial prelicense inspection may be
26 conducted, each applicant shall pay to the department a
27 nonrefundable inspection fee.

28 Sec. 802.154. ISSUANCE. The department shall issue a
29 commercial breeder license to each commercial breeder who:

30 (1) meets the requirements of this chapter and rules
31 adopted under this chapter;

1 (2) applies to the department on the form prescribed
2 by the department; and

3 (3) pays the required fee.

4 Sec. 802.155. TERM. A license issued under this subchapter
5 is valid until the first anniversary of the date of issuance and is
6 nontransferable. The department shall include the expiration date
7 on each license issued under this subchapter.

8 Sec. 802.156. LICENSE DENIAL. The department may deny a
9 license to an applicant who:

10 (1) fails to meet the standards of care adopted by the
11 commission under Subchapter F;

12 (2) has been convicted of or received deferred
13 adjudication for cruelty to animals under the laws of this state or
14 any other jurisdiction or, for an applicant that is a partnership,
15 corporation, or limited liability company, has a controlling person
16 who has been convicted of or received deferred adjudication for
17 cruelty to animals under the laws of this state or any other
18 jurisdiction;

19 (3) has had a similar license by a federal, state, or
20 local authority denied, revoked, or suspended;

21 (4) has falsified any material information requested
22 by the department; or

23 (5) was an owner or controlling person of a commercial
24 breeder whose license was revoked or suspended and was responsible
25 for or participated in the violation that resulted in a revocation
26 or suspension that is still in effect.

27 Sec. 802.157. LICENSE RENEWAL. (a) A license holder may
28 renew the person's license by:

29 (1) submitting a renewal application to the department
30 on the form prescribed by the department;

31 (2) complying with any other renewal requirements

1 adopted by the department; and

2 (3) paying the required fee.

3 (b) A person whose license has expired may not engage in
4 activities that require a license until the license has been
5 renewed.

6 (c) Not later than the 60th day before the expiration of the
7 person's license, the department shall send written notice of the
8 impending license expiration to the person at the person's last
9 known address according to the records of the department.

10 [Sections 802.158-802.200 reserved for expansion]

11 SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

12 Sec. 802.201. DISPLAY OF LICENSE; INCLUSION OF LICENSE
13 NUMBER AND DEPARTMENT INFORMATION. A commercial breeder shall:

14 (1) prominently display a copy of the commercial
15 breeder license at the breeder's facility;

16 (2) include the commercial breeder's license number in
17 each advertisement for the sale or transfer of an animal by the
18 commercial breeder; and

19 (3) include in each contract for the sale or transfer
20 of an animal by the commercial breeder:

21 (A) the commercial breeder's license number; and

22 (B) the following statement: "Commercial
23 breeders are regulated by the Texas Department of Licensing and
24 Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202,
25 512-463-6599" or a similar statement adopted by commission rule
26 that includes the department's name, address, and phone numbers.

27 Sec. 802.202. CHANGE IN LICENSE INFORMATION. A commercial
28 breeder shall notify the department in a manner prescribed by the
29 commission not later than the 10th day after the date any change
30 occurs in the address, name, management, substantial control, or
31 ownership of the business or operation.

1 Sec. 802.203. ANNUAL REPORT. (a) Not later than February 1
2 of each year, a commercial breeder shall submit to the department an
3 annual report on a form and in the manner prescribed by the
4 department.

5 (b) The commercial breeder shall keep a copy of the annual
6 report at the commercial breeder's facility and, on request, make
7 the report available to the department, a local animal control
8 authority, or a registered breeder inspector designated by the
9 department.

10 (c) A license holder that has more than one facility must
11 keep separate records and file a separate report for each facility.

12 Sec. 802.204. LIMIT ON NUMBER OF INTACT ANIMALS. A
13 commercial breeder may not possess more than 50 adult intact female
14 animals in a facility at any time.

15 [Sections 802.205-802.250 reserved for expansion]

16 SUBCHAPTER F. STANDARDS OF CARE AND CONFINEMENT

17 Sec. 802.251. ADOPTION OF STANDARDS. The commission, in
18 accordance with this subchapter and with the advice of the advisory
19 committee, shall adopt rules for the proper feeding, watering,
20 housing, care, including veterinary care, grooming, treatment,
21 transportation, and disposition of dogs and cats by a commercial
22 breeder to ensure the overall health and welfare of each animal in
23 the commercial breeder's facility.

24 Sec. 802.252. ADDITIONAL STANDARDS. The commission may
25 establish any additional standards considered necessary to protect
26 the public health and the welfare of animals covered under this
27 chapter.

28 Sec. 802.253. CONSIDERATION OF ANIMAL HEALTH AND WELFARE
29 STANDARDS. In adopting standards under this subchapter, the
30 commission shall consider relevant state, federal, and nationally
31 recognized standards for animal health and welfare.

1 [Sections 802.254-802.300 reserved for expansion]

2 SUBCHAPTER G. ENFORCEMENT

3 Sec. 802.301. DISCIPLINARY ACTION. A person is subject to
4 disciplinary action under Subchapter G, Chapter 51, if the person
5 violates this chapter or a rule adopted under this chapter.

6 Sec. 802.302. SUSPENSION AND REVOCATION OF LICENSE; REFUSAL
7 TO RENEW LICENSE. (a) The department may suspend, revoke, or
8 refuse to renew a license for:

9 (1) a violation of this chapter or a rule adopted under
10 this chapter;

11 (2) failure to comply with an order of the commission
12 or the executive director;

13 (3) failure to pay a civil penalty under this chapter;

14 (4) failure to meet a standard of care adopted by the
15 commission under Subchapter F;

16 (5) failure to comply with any corrective action
17 required under an inspection report in the time provided by the
18 report;

19 (6) falsification of information requested by the
20 department;

21 (7) the denial, revocation, or suspension of a similar
22 license by another federal, state, or local authority; or

23 (8) conviction or deferred adjudication for animal
24 cruelty under the laws of this state or any other jurisdiction by a
25 commercial breeder or any controlling person.

26 (b) A person whose commercial breeder license is revoked may
27 not reapply for a commercial breeder license before the first
28 anniversary of the date of revocation. The department shall
29 permanently revoke a commercial breeder license if the basis for
30 the revocation was a conviction or deferred adjudication for animal
31 cruelty.

1 Sec. 802.303. ADMINISTRATIVE SANCTIONS; ADMINISTRATIVE
2 PROCEDURE. (a) The commission shall revoke, suspend, or refuse to
3 renew a license or shall reprimand a license holder for a violation
4 of this chapter or a rule or order of the commission under this
5 chapter.

6 (b) The commission may place on probation a person whose
7 license is suspended. If a license suspension is probated, the
8 commission may require the person to report regularly to the
9 department on matters that are the basis of the probation.

10 (c) A respondent is entitled to a hearing conducted by the
11 State Office of Administrative Hearings if the department proposes
12 to deny, suspend, or revoke a license.

13 (d) A proceeding under this chapter to deny, suspend, or
14 revoke a license is a contested case under Chapter 2001, Government
15 Code.

16 Sec. 802.304. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The
17 attorney general or the executive director may institute an action
18 for injunctive relief to restrain a violation by and to collect a
19 civil penalty from a person that appears to be in violation of or
20 threatening to violate this chapter or a rule or order of the
21 commission or executive director under this chapter.

22 (b) An action filed under this section must be filed in a
23 district court in Travis County.

24 (c) The attorney general and the department may recover
25 reasonable expenses incurred in obtaining injunctive relief under
26 this section including court costs, reasonable attorney's fees,
27 investigative costs, witness fees, and deposition expenses.

28 Sec. 802.305. CEASE AND DESIST; EMERGENCY ORDER. (a) The
29 executive director may issue a cease and desist order as necessary
30 to enforce this chapter if the executive director determines that
31 the action is necessary to prevent a violation of this chapter and

1 to protect public health and safety.

2 (b) The executive director may issue an emergency order as
3 necessary to enforce this chapter if the executive director
4 determines that an emergency exists requiring immediate action to
5 protect the public health and safety. The executive director may
6 issue the emergency order without notice and hearing or with any
7 notice and hearing the executive director considers practicable
8 under the circumstances. The executive director shall set the time
9 and place for a hearing to affirm, modify, or set aside an emergency
10 order that was issued without a hearing.

11 Sec. 802.306. CRIMINAL OFFENSES AND PENALTIES. (a) A
12 person commits an offense if the person violates this chapter or any
13 rule adopted under this chapter. Each animal to which a violation
14 applies and each day that violation continues constitutes a
15 separate offense. An offense under this subsection is a Class C
16 misdemeanor.

17 (b) A person commits an offense if the person knowingly
18 falsifies information in a license application, annual report, or
19 record required under this chapter. An offense under this
20 subsection is a Class C misdemeanor.

21 (c) An unlicensed commercial breeder commits an offense if
22 the breeder advertises animals for sale. An offense under this
23 subsection is a Class C misdemeanor.

24 (d) A commercial breeder commits an offense if the
25 commercial breeder interferes with, hinders, or thwarts any
26 inspection or investigation under this chapter or refuses to allow
27 an inspector full access to all areas of the facility where animals
28 are kept or cared for and all records required to be kept under this
29 chapter or any rule adopted under this chapter. An offense under
30 this subsection is a Class C misdemeanor.

31 SECTION _____. Not later than December 31, 2009, the Texas

1 Commission of Licensing and Regulation shall appoint the members of
2 the Dog and Cat Breeders Advisory Committee in accordance with
3 Chapter 802, Occupations Code, as added by this Act. In making the
4 initial appointments, the commission shall designate:

5 (1) three members for terms expiring February 1, 2011;
6 and

7 (2) four members for terms expiring February 1, 2013.

8 SECTION _____. (a) Not later than June 1, 2010, the Texas
9 Commission of Licensing and Regulation shall adopt the rules,
10 standards, procedures, and fees necessary to implement Chapter 802,
11 Occupations Code, as added by this Act, and Subsection (b) of this
12 section.

13 (b) Notwithstanding Chapter 802, Occupations Code, as added
14 by this Act, a commercial breeder is not required to:

15 (1) hold a license under that chapter to act as a
16 commercial breeder before September 1, 2010; or

17 (2) comply with the standards adopted under Subchapter
18 F, Chapter 802, Occupations Code, as added by this Act, before
19 September 1, 2010.

20 SECTION _____. (a) The change in law made by this Act applies
21 only to an offense committed on or after the effective date of this
22 Act. For purposes of this section, an offense is committed before
23 the effective date of this Act if any element of the offense occurs
24 before that date.

25 (b) An offense committed before the effective date of this
26 Act is covered by the law in effect when the offense was committed,
27 and the former law is continued in effect for that purpose.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 7, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2310 by Kuempel (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.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2310, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> I	Probable Revenue Gain/ (Loss) from <i>General Revenue Fund</i> I	Change in Number of State Employees from FY 2009
2010	(\$938,153)	\$938,153	13.0
2011	(\$859,953)	\$859,953	13.0
2012	(\$859,953)	\$859,953	13.0
2013	(\$859,953)	\$859,953	13.0
2014	(\$859,953)	\$859,953	13.0

Fiscal Analysis

The bill would amend various provisions of Chapter 51 of the Occupations Code including (1) to establish a definition of an advisory board; (2) to establish rules for removing an advisory board member; (3) to authorize the Texas Department of Licensing and Regulation (TDLR) to take payments by credit card or electronic payment; (4) to authorize the executive director of TDLR to issue emergency orders, cease and desist orders, and emergency licenses; and (5) to authorize TDLR to issue subpoenas. The bill would also establish when a person whose license has been revoked may reapply for the license and regulations for an inactive status license.

The bill would require TDLR to issue a determination letter regarding an applicant's request for a

criminal history background check and the applicant's eligibility for a license. The bill would authorize TDLR to charge and collect a fee in an amount sufficient to cover the costs of the administration of this provision of the bill. The bill would also authorize TDLR to require a testing service to collect a fee for administering a license examination from a person taking the examination.

The bill would also add Chapter 802 to the Occupations Code and require TDLR to license and regulate commercial dog and cat breeders. The bill would require TDLR to establish eligibility requirements for licenses, to conduct criminal background checks on applicants, and to annually inspect each facility of a licensed commercial breeder. The bill would require TDLR to establish qualifications and training for registered breeder inspectors. The bill would also require TDLR to inspect a facility before an initial commercial breeder license is issued for the facility. The bill would authorize TDLR to set a licensing fee and a nonrefundable inspection fee.

The bill would require TDLR to maintain a directory of licensed commercial breeders to prepare information of consumer interest regarding the regulation of commercial breeders and the rights of a consumer. The bill would require TDLR to adopt, with the advice of the advisory committee, standards of care to ensure the overall health and welfare of each animal in the commercial breeder's facility. The bill would establish a civil penalty for any violation.

The bill would require TDLR to establish a Dog and Cat Advisory Committee with seven members appointed by the commissioner to advise the Department in adopting rules and in administering and enforcing the regulation of commercial breeders. The bill would authorize the reimbursement of the Advisory Committee.

The bill would take effect September 1, 2009. Sections 51.4011 and 51.4012 of the Occupations Code, which provide for inactive status licenses and require TDLR to issue determination letters, respectively, would take effect May 1, 2010. The license requirement for commercial dog and cat breeders and enforcement regulations would take effect September 1, 2010.

Methodology

With regard to the bill's provisions relating to Chapter 51, the Texas Department of Licensing and Regulation estimates that 4,000 people could potentially request a determination letter. This calculation is based on the number of licensing programs that require pre-education or an examination before license issuance, and the estimated positive criminal history hit rate for this population. TDLR estimates a fee of \$25 for processing the letter requests and implementing the criminal history background checks would cover the costs of administering the program. TDLR anticipates needing 1.5 Legal Assistant III FTEs in order to evaluate, investigate and respond to the requests. Other costs include purchasing computers, rent space, and office equipment for the additional 1.5 FTEs.

With regard to the licensing of commercial dog and cat breeders, TDLR estimates the population of commercial dog and cat breeders within the state of Texas to be 1,000 and the estimated population of certified inspectors to be 200. It is assumed that TDLR would require an additional 11.5 FTEs to license, regulate and enforce the provisions of the bill: 1.0 administrative assistant III for licensing; 1.0 program specialist V to assist in establishing regulations, standards, and oversight of the enforcement activities; 3.0 inspector IV to conduct the initial and annual inspection of facilities; 1.0 legal assistant II for complaint intake; 0.5 administrative assistant II for intake assistance; 2.0 investigator IV to investigate complaints; 1.0 attorney IV and 1.0 legal assistant III for prosecuting violations; and 1.0 general counsel III for specialized rulemaking and anticipated high levels of interest in the rulemaking.

TDLR anticipates receiving 1,000 complaints per year related to commercial dog and cat breeding, of which 500 complaints will be opened, and 100 will result in hearings. TDLR also anticipates conducting 1,000 pre-licensure inspections in Fiscal Year (FY) 2010, and 2,050 inspections each subsequent year for the annual inspections (1,000), complaint inspections (1,000), and 50 pre-licensure inspections.

TDLR anticipates that for each commercial breeder, there is also at least one controlling person who will also require a criminal history background check. Based on the analysis of TDLR, it is assumed criminal history checks will cost \$2,000 per year.

In addition to salary and benefit costs, other costs include \$31,671 each year in rent for space for the additional FTEs in non-state-owned buildings, \$19,000 each year in annual travel costs, \$69,350 in FY 2010 for equipment costs, and \$17,250 each year for other operating expenses.

This analysis assumes that any increased costs to the agency, which is statutorily required to generate sufficient revenue to cover its costs of operation, would be offset by an increase in fee generated revenue.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation, 302 Office of the Attorney General

LBB Staff: JOB, SD, ES, JRO, MW

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 24, 2009

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2310 by Kuempel (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.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2310, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/ (Loss) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2009
2010	(\$101,504)	\$101,504	1.5
2011	(\$93,779)	\$93,779	1.5
2012	(\$93,779)	\$93,779	1.5
2013	(\$93,779)	\$93,779	1.5
2014	(\$93,779)	\$93,779	1.5

Fiscal Analysis

The bill would amend various provisions of Chapter 51 of the Occupations Code including (1) to establish a definition of an advisory board; (2) to establish rules for removing an advisory board member; (3) to authorize the Texas Department of Licensing and Regulation (TDLR) to take payments by credit card or electronic payment; (4) to authorize the executive director of TDLR to issue emergency orders, cease and desist orders, and emergency licenses; and (5) to authorize TDLR to issue subpoenas. The bill would also establish when a person whose license has been revoked may reapply for the license and regulations for an inactive status license.

The bill would require TDLR to issue a determination letter regarding an applicant's request for a

criminal history background check and the applicant's eligibility for a license. The bill would authorize TDLR to charge and collect a fee in an amount sufficient to cover the costs of the administration of this provision of the bill. The bill would also authorize TDLR to require a testing service to collect a fee for administering a license examination from a person taking the examination.

The bill would take effect September 1, 2009, with the exceptions of Sections 51.4011 and 51.4012 of the Occupations Code, which provide for inactive status licenses and require TDLR to issue determination letters, respectively, which would take effect May 1, 2010.

Methodology

The Texas Department of Licensing and Regulation estimates that 4,000 people could potentially request a determination letter. This calculation is based on the number of licensing programs that require pre-education or an examination before license issuance, and the estimated positive criminal history hit rate for this population. TDLR estimates a fee of \$25 for processing the letter requests and implementing the criminal history background checks would cover the costs of administering the program. TDLR anticipates needing 1.5 Legal Assistant III FTEs in order to evaluate, investigate and respond to the requests.

The analysis assumes the agency would assess and collect fees for supplying the criminal history background check eligibility letter sufficient to cover the cost of implementing the provisions of the bill.

Technology

The agency anticipates purchasing two desktop computers, costing \$1,500 each, for the 1.5 FTEs required to implement the provisions of the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation, 302 Office of the Attorney General

LBB Staff: JOB, ES, JRO, MW

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 15, 2009

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2310 by Kuempel (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.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2310, As Engrossed: an impact of \$0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/ (Loss) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2009
2010	(\$101,504)	\$101,504	1.5
2011	(\$93,779)	\$93,779	1.5
2012	(\$93,779)	\$93,779	1.5
2013	(\$93,779)	\$93,779	1.5
2014	(\$93,779)	\$93,779	1.5

Fiscal Analysis

The bill would amend various provisions of Chapter 51 of the Occupations Code including (1) to establish a definition of an advisory board; (2) to establish rules for removing an advisory board member; (3) to authorize the Texas Department of Licensing and Regulation (TDLR) to take payments by credit card or electronic payment; (4) to authorize the executive director of TDLR to issue emergency orders, cease and desist orders, and emergency licenses; and (5) to authorize TDLR to issue subpoenas. The bill would also establish when a person whose license has been revoked may reapply for the license, and regulations for an inactive status license.

The bill would also require TDLR to issue a determination letter regarding an applicant's request for a

criminal history background check and the applicant's eligibility for a license. The bill would authorize TDLR to charge and collect a fee in an amount sufficient to cover the costs of the administration of this provision of the bill.

The bill would take effect September 1, 2009, with the exceptions of Sections 51.4011 and 51.4012 of the Occupations Code, which provide for inactive status licenses and require TDLR to issue determination letters, respectively, which would take effect May 1, 2010.

Methodology

The Texas Department of Licensing and Regulation estimates that 4,000 people could potentially request a determination letter. This calculation is based on the number of licensing programs that require pre-education or an examination before license issuance, and the estimated positive criminal history hit rate for this population. TDLR estimates a fee of \$25 for processing the letter requests and implementing the criminal history background checks would cover the costs of administering the program. TDLR anticipates needing 1.5 Legal Assistant III FTEs in order to evaluate, investigate and respond to the requests.

The analysis assumes the agency would assess and collect fees for supplying the criminal history background check eligibility letter sufficient to cover the cost of implementing the provisions of the bill.

Technology

The agency anticipates purchasing two desktop computers, costing \$1,500 each, for the 1.5 FTEs required to implement the provisions of the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation, 302 Office of the Attorney General

LBB Staff: JOB, ES, JRO, MW

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 29, 2009

TO: Honorable Edmund Kuempel, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2310** by Kuempel (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.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2310, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2011.

This bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund	Probable Revenue Gain/(Loss) from General Revenue Fund	Change in Number of State Employees from FY 2009
2010	(\$101,504)	\$101,504	1.5
2011	(\$93,779)	\$93,779	1.5
2012	(\$93,779)	\$93,779	1.5
2013	(\$93,779)	\$93,779	1.5
2014	(\$93,779)	\$93,779	1.5

Fiscal Analysis

The bill would amend various provisions of Chapter 51 of the Occupations Code including (1) to establish a definition of an advisory board; (2) to establish rules for removing an advisory board member; (3) to authorize the Texas Department of Licensing and Regulation (TDLR) to take payments by credit card or electronic payment; (4) to authorize the executive director of TDLR to issue emergency orders, cease and desist orders, and emergency licenses; and (5) to authorize TDLR to issue subpoenas. The bill would also establish when a person whose license has been revoked may reapply for the license, and regulations for an inactive status license.

The bill would also require TDLR to issue a determination letter regarding an applicant's request for a criminal history background check and the applicant's eligibility for a license. The bill would authorize TDLR to charge and collect a fee in an amount sufficient to cover the costs of the administration of this provision of the bill.

The bill would take effect September 1, 2009, with the exceptions of Sections 51.4011 and 51.4012 of the Occupations Code, which provide for inactive status licenses and require TDLR to issue determination letters, respectively, which would take effect May 1, 2010.

Methodology

The Texas Department of Licensing and Regulation estimates that 4,000 people could potentially request a determination letter. This calculation is based on the number of licensing programs that require pre-education or an examination before license issuance, and the estimated positive criminal history hit rate for this population. TDLR estimates a fee of \$25 for processing the letter requests and implementing the criminal history background checks would cover the costs of administering the program. TDLR anticipates needing 1.5 Legal Assistant III FTEs in order to evaluate, investigate and respond to the requests.

The analysis assumes the agency would assess and collect fees for supplying the criminal history background check eligibility letter sufficient to cover the cost of implementing the provisions of the bill.

Technology

The agency anticipates purchasing two desktop computers, costing \$1,500 each, for the 1.5 FTEs required to implement the provisions of the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation, 302 Office of the Attorney General

LBB Staff: JOB, ES, JRO, MW

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 24, 2009

TO: Honorable Edmund Kuempel, Chair, House Committee on Licensing & Administrative Procedures

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2310 by Kuempel (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.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2310, As Introduced: an impact of \$0 through the biennium ending August 31, 2011.

This bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/ (Loss) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2009
2010	(\$101,504)	\$101,504	1.5
2011	(\$93,779)	\$93,779	1.5
2012	(\$93,779)	\$93,779	1.5
2013	(\$93,779)	\$93,779	1.5
2014	(\$93,779)	\$93,779	1.5

Fiscal Analysis

The bill would amend various provisions of Chapter 51 of the Occupations Code including (1) to establish a definition of an advisory board; (2) to establish rules for removing an advisory board member; (3) to authorize the Texas Department of Licensing and Regulation (TDLR) to take payments by credit card or electronic payment; (4) to authorize the executive director of TDLR to issue emergency orders, cease and desist orders, and emergency licenses; and (5) to authorize TDLR to issue subpoenas. The bill would also establish when a person whose license has been revoked may reapply for the license, and regulations for an inactive status license.

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The bill would take effect September 1, 2009, with the exceptions of Sections 51.4011 and 51.4012 of the Occupations Code, which provide for inactive status licenses and require TDLR to issue determination letters, respectively, which would take effect May 1, 2010.

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The analysis assumes the agency would assess and collect fees for supplying the criminal history background check eligibility letter sufficient to cover the cost of implementing the provisions of the bill.

Technology

The agency anticipates purchasing two desktop computers, costing \$1,500 each, for the 1.5 FTEs required to implement the provisions of the bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 452 Department of Licensing and Regulation

LBB Staff: JOB, ES, JRO, MW