

## **BILL ANALYSIS**

S.B. 43  
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Judiciary & Civil Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties contend that legislation consolidating the regulatory bodies for certain court professions into the Judicial Branch Certification Commission created certain inefficiencies. S.B. 43 seeks to revise provisions relating to the regulation of these professions by the commission to enhance the commission's operational efficiency and streamline regulations for those who work in the applicable professions.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 43 amends the Government Code to make a person ineligible for appointment or service as a member of an advisory board or committee that serves the Judicial Branch Certification Commission on the same bases that a person is made ineligible for appointment or service as a commission member. The bill authorizes the commission's presiding officer to designate a commission member to preside over a commission meeting in the absence of the presiding officer. The bill authorizes the commission to adopt a policy allowing employees of the Office of Court Administration of the Texas Judicial System to dismiss a complaint that alleges misconduct that took place more than five years before the date the complaint was filed. The bill requires the request submitted to the commission by a person who files a complaint that is dismissed seeking reconsideration of the complaint to be made in writing not later than the 30th day after the date of notice of the dismissal.

S.B. 43 establishes that a passing score on an applicable examination for a certification, registration, or license issued by the commission is valid for purposes of certification, registration, or licensing for a period of two years after the examination date and requires a person who does not apply to become certified, licensed, or registered before the expiration of the two-year period to repeat and pass the examination. The bill prohibits a person from viewing a copy of the person's failed examination.

S.B. 43 requires a person, firm, or business entity to pay the commission an initial fee and any other required fee to receive a certification, registration, or license from the commission and provides for a fee schedule and the renewal of an applicable certification, registration, or license in substantially the same manner as provided by provisions applicable to court reporters certification and shorthand reporting firms registration, which are amended and repealed by the

bill. The bill provides for the filing of a complaint with the commission against a regulated person or another person alleged to have unlawfully engaged in conduct regulated under general enforcement provisions applicable to regulated court professions in substantially the same manner as provided by a provision applicable to certified court reporters and registered shorthand reporting firms or affiliated offices registered with the commission, which is repealed by the bill.

S.B. 43 specifies that the cease and desist order the commission director may issue if the director determines that the action is necessary to prevent certain violations is a temporary order for the duration of an investigation and disciplinary action by the commission. The bill authorizes such a cease and desist order to require a person to cease and desist from committing an applicable violation or from engaging in any practice regulated by the commission as necessary to prevent the violation. The bill authorizes a person to whom the cease and desist order is issued to file a written request for a hearing before the commission not later than the 10th day after the date of receipt of the order. The bill requires the commission to conduct the hearing not later than the 30th day after the date of the hearing request.

S.B. 43 authorizes the commission, on the commission's motion or on the recommendation of commission staff, to conduct a hearing to inquire into the suspension of a certification, registration, or license. The bill authorizes the commission to revoke or take other disciplinary action against a person's certification, registration, or license if the commission determines that the person has not corrected the deficiencies that were the grounds of the suspension or has not complied with the conditions imposed by the commission.

S.B. 43 revises the commission's authority to impose an administrative penalty to authorize the commission to impose a penalty on a person who violates provisions relating to court professions regulation or a rule or standard adopted under those provisions, an order issued by the commission or commission director under those provisions, or a statute establishing a commission-administered regulatory program. The bill removes a provision applying the requirements of general enforcement provisions in relation to commission enforcement of court professions regulations to the imposition of an administrative sanction imposed in a proceeding under those provisions.

S.B. 43 requires the determination made by the committee of advisory board members appointed by the commission to review a complaint regarding whether a violation occurred to be a written determination and replaces the requirement for the committee to recommend the imposition of a penalty, a sanction, or both a penalty and a sanction for violations with a requirement for the committee to impose a penalty, a sanction, or both a penalty and a sanction for those violations. The bill requires the committee to state the committee's written determination as proposed findings of fact and conclusions of law, separately stated. The bill replaces the commission with the committee as the entity responsible for giving the person who is the subject of the reviewed complaint written notice of the determination made regarding whether a violation occurred and each penalty or sanction, if any. The bill requires the person's acceptance of the committee's determination and the imposition of the penalty or sanction to be done as an agreed order to be presented to the commission and specifies that a request made by such a person for a hearing on the occurrence of the violation, the imposition or amount of the penalty, the imposition of the sanction, or any combination, is a request for a hearing before the commission. The bill requires the commission to review the proposed agreed order of a person accepting the committee's determination and penalty or sanction and accept, revise, or reject it or remand the matter to the committee for further review. The bill requires the commission to give to the person written notice of the commission's determination and authorizes the person, if the commission revises or rejects the proposed agreed order, to accept the commission's determination, penalty, or sanction or request a hearing not later than the 20th day after the date of receiving notice of the commission's determination. The bill authorizes the commission to issue a default order to approve the committee's determination and impose or revise the committee's proposed penalty, sanction, or both if the person fails to respond to the written notice.

S.B. 43 replaces the requirement for the commission to make findings of fact and conclusions of law relating to an occurrence of a violation with a requirement for the commission to adopt, revise, or reject the committee's findings of fact and conclusions of law. The bill applies the Texas Rules of Civil Procedure to a hearing regarding an administrative penalty or sanction to the extent not inconsistent with applicable state law or commission rules, except that the commission may deviate from those rules as necessary for a full and fair adjudication and determination of fact or law. The bill authorizes the presiding officer to issue orders, including scheduling orders, and to designate the discovery control plan or otherwise limit or modify discovery before such a hearing. The bill revises the requirement for a person to pay the administrative penalty not later than the 30th day after the date the commission order imposing the penalty becomes final to require the person to accept the obligation to pay the penalty by that date.

S.B. 43 sets out provisions establishing a procedure by which the commission may reissue a certificate, registration, or license that has been revoked or that the commissioner has refused to renew as a disciplinary sanction. The bill clarifies that the commission is represented in a court action seeking an injunction against an official court reporter or deputy court reporter who is not certified by the supreme court by the attorney general, the applicable county or district attorney, or the counsel designated and empowered by the commission. The bill makes the prohibition against a shorthand reporting firm assuming or using the title or designation "court recording firm," "court reporting firm," or "shorthand reporting firm" or any abbreviation, title, designation, words, letters, sign, card, or device tending to indicate that the firm is a court reporting firm or shorthand reporting firm or against the firm offering services as a court reporting firm or shorthand reporting firm, except under certain circumstances, applicable to an affiliate office of such a firm.

S.B. 43 revises the time at which a court reporters certification or shorthand reporting firms registration expires, clarifies that a fee is charged on each renewal of a certification or registration, and requires a firm or the affiliate office of a firm that is prohibited from renewing an expired registration because of the prohibition against renewing a registration that has been expired for one year or more to pay all unpaid renewal and late fees charged for the expired registration, in addition to complying with all registration requirements and procedures, in order to obtain a new registration. These provisions apply only to the expiration of a certification or registration of a court reporter on or after January 1, 2018.

S.B. 43 changes the nature of the felony or misdemeanor for which a final conviction triggers the requirement for the commission to revoke, suspend, or refuse to renew a shorthand reporter's certification or issue a reprimand to the reporter after receiving a complaint and giving notice and an opportunity for a hearing from a final conviction of a felony or misdemeanor that directly relates to the duties and responsibilities of a certified court reporter, as determined by supreme court rules, to a final conviction of a felony or misdemeanor that directly relates to the duties and responsibility of a certified shorthand reporter, as determined by those rules. The bill specifies that the designated period for which the commission may suspend the registration of a shorthand reporting firm or affiliate office is a period that is in accordance with statutory provisions governing disciplinary actions against court reporters.

S.B. 43 changes the date on which the rules adopted by the supreme court for issuing a certificate and for renewing, suspending, or revoking a certificate for a guardian, as defined by the Estates Code, must provide for the expiration of that certificate from the second anniversary of the date on which the certification is issued to the last day of the month in which that anniversary occurs unless renewed on or before that day. The bill provides for the renewal of a process server certification, including the payment of a fee to the commission on such renewal.

S.B. 43 revises provisions relating to the licensing of court interpreters to clarify the individuals for whom such an interpreter provides interpretation service and to align the examination period,

expiration dates for such a license, and provisions relating to certain disciplinary actions taken in regard to the license with other licenses and registrations issued by the commission.

S.B. 43 requires the commission to prorate on a monthly basis the certification, registration, or license fee of a person whose certification, registration, or license expiration date changes as a result of certain bill provisions so that each certification, registration, or license holder pays only the portion of the fee that is allocable to the number of months during which the certification, registration, or license is valid.

S.B. 43 repeals the following provisions of the Government Code:

- Sections 154.107(d), (e), (f), (g), and (h)
- Sections 154.108 and 154.109
- Section 154.110(d)
- Section 154.111(e)
- Section 156.052(b)

**EFFECTIVE DATE**

September 1, 2017.