

BILL ANALYSIS

H.B. 4184
By: Guillen
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 2017, the operation of court-ordered educational and intervention programs was transferred to the Texas Department of Licensing and Regulation (TDLR). However, it has been noted that the statutory provisions relating to those programs are scattered across several codes and that streamlining program regulation may improve efficiency and effectiveness of the administration of these programs. H.B. 4184 seeks to address this issue by providing for the administration, licensing, and regulation of court-ordered programs by TDLR and the Texas Commission of Licensing and Regulation under the Government Code.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1 of this bill.

ANALYSIS

H.B. 4184 amends the Government Code to provide for licensing and regulation relating to the following court-ordered programs:

- an alcohol educational program for minors placed on deferred disposition for certain alcohol-related offenses;
- a drug offense educational program for a person whose driver's license is suspended on final conviction of certain substance-related offenses;
- an intervention program for certain repeat intoxication offenders; and
- an educational program for a defendant placed on community supervision on conviction of certain intoxication offenses.

H.B. 4184 expressly does not affect a court's jurisdiction or authority to require court-ordered programs and authorizes a court to specify the type and format of the court-ordered program that must be completed by the individual.

Powers and Duties of Commission, Department, and Executive Director

H.B. 4184 requires the Texas Commission of Licensing and Regulation (TCLR), the Texas Department of Licensing and Regulation (TDLR), or the executive director of TDLR, as appropriate, to administer and enforce the bill's provisions relating to the regulation of court-ordered programs. The bill requires TDLR to prescribe license application forms, evaluate

the qualifications of applicants, and enforce minimum standards applicable to programs, program providers, and instructors.

H.B. 4184 requires TCLR to adopt rules necessary to administer and enforce the bill's provisions. The bill sets out certain topics on which TCLR is required to adopt rules and certain topics on which TCLR is authorized to adopt rules. TCLR may require different information to be reported for each type of program and may consult with other state agencies in the development of the rules.

H.B. 4184 requires TCLR by rule to set fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing the bill's provisions and authorizes TDLR or an authorized representative to collect the fees, which are not refundable. An authorized representative may charge a fee only in accordance with the terms of a contract with TDLR.

H.B. 4184 authorizes a provider to offer a court-ordered program in-person or online. The bill requires TCLR to adopt and publish a code of ethics for the holders of licenses issued under the bill's provisions.

H.B. 4184 authorizes TDLR to develop and implement procedures to electronically transmit information regarding court-ordered programs to municipal and justice courts. The bill authorizes TDLR to enter into a memorandum of understanding with specified state agencies regarding the development of rules, curricula, certificates of program completion, or certificate numbers for court-ordered programs.

Program Provider and Instructor License Requirements

H.B. 4184 prohibits a person from providing or offering to provide a court-ordered program unless the person holds a program provider license that is endorsed with one or more program classifications. The bill prohibits a license holder from providing a court-ordered program for which the person's license is not endorsed. The bill requires TCLR by rule to establish eligibility requirements and criteria for the issuance of a program provider license and to issue such a license to an applicant who meets the requirements and criteria, submits a completed application on the form prescribed by TDLR, and pays the nonrefundable application fee. The bill specifies certain factors on which eligibility requirements may be based.

H.B. 4184 prohibits a person from instructing or representing that the person is an instructor of a court-ordered program unless the person holds an instructor license with the appropriate program endorsement and from instructing a court-ordered program for which the person's license is not endorsed. The bill requires TCLR by rule to establish license eligibility requirements and authorizes TCLR by rule to establish eligibility criteria for instructors based on the type of program for which the applicant seeks an endorsement.

H.B. 4184 also requires TCLR by rule to establish requirements for an instructor training course and any applicable examinations or end-of-course tests and provides for the payment of associated fees by the applicant and administration of the course and examinations by TDLR or an authorized representative. The bill requires TDLR to issue an instructor license for a particular court-ordered program to an applicant who meets the eligibility requirements and criteria, submits a completed application on the form prescribed by TDLR, successfully completes the instructor training course and applicable examinations or end-of-course tests, and pays the application fee. The bill requires an instructor to carry the instructor license at all times while providing instruction.

Restrictions on License

H.B. 4184 establishes that a program provider or instructor license is not transferable or assignable and requires a proposed new owner to apply for a new license with applicable

endorsements not less than 30 days before the date of a change in ownership of a program provider.

License Term and Renewal

H.B. 4184 provides for one- or two-year license terms as prescribed by TCLR rule. The bill requires TCLR by rule to establish the requirements for renewing a license and the minimum number of hours of continuing education that must be completed for instructor license renewal. TCLR may require a different number of hours of continuing education for each type of program for which a license holder holds an endorsement.

Requirements for Court-Ordered Programs

H.B. 4184 requires TDLR or its authorized representative to develop the curriculum and educational materials to be used for each court-ordered program and sets out general requirements for court-ordered programs relating to who may provide and teach them and the program format or location. A program provider may only employ or contract with an instructor who holds a license with the appropriate endorsement. The bill prohibits a program provider or instructor from discriminating against program participants based on sex, race, religion, age, national or ethnic origin, or disability.

H.B. 4184 sets out requirements for TDLR and TCLR relating to issuing or providing for the issuance of a certificate of program completion or certificate number showing completion of a court-ordered program. The bill requires a program provider to submit to TDLR information regarding programs, instructors, participants, and certificates of completion issued for each type of court-ordered program. The bill requires TCLR by rule to do the following:

- provide for the form, design, content, and distribution of certificates of program completion and certificate numbers;
- adopt a system for program providers to provide for the appropriate care, custody, and control of certificates of program completion and certificate numbers; and
- establish requirements regarding the submission of a copy of a certificate of program completion or certificate number to the appropriate court, state agency, or community supervision and corrections department.

H.B. 4184 requires TCLR by rule to establish the following:

- requirements for providers and instructors regarding the displaying or posting of a license or providing notice of a license number to a participant of a court-ordered program; and
- notification methods for providing a participant with specified TDLR contact information for the purpose of submitting a complaint regarding the court-ordered program.

The bill authorizes TCLR by rule to establish requirements regarding advertisements for providers, instructors, and court-ordered programs.

H.B. 4184 requires a program provider to maintain and make available to participants information regarding course fees, schedules, methods of course delivery, and locations, as applicable, for all provided court-ordered programs.

Prohibited Practices and Enforcement

H.B. 4184 prohibits a license holder from doing the following:

- using advertising that is false, misleading, or deceptive; or
- issuing, selling, trading, or transferring a certificate of program completion or a certificate number to a person who has not successfully completed the applicable court-ordered program or who is not otherwise authorized to possess the certificate or number.

H.B. 4184 authorizes TCLR or the executive director of TDLR to deny an application for an initial or renewal license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder who does any of the following:

- violates the bill's provisions, a rule adopted under those provisions, or an order of TCLR or TDLR's executive director;
- permits or engages in misrepresentation, fraud, or deceit regarding a court-ordered program provided or instructed by the license holder;
- engages in conduct that harms, endangers, or is likely to harm or endanger the health, welfare, or safety of a participant or the public as defined by TCLR rule;
- violates the code of ethics; or
- violates a standard of practice or conduct.

H.B. 4184 subjects a person who violates the bill's provisions or a rule adopted or order issued under those provisions to any administrative or other penalty that may be imposed against the holder of a TDLR-issued license under applicable law. The bill sets out provisions relating to the audit of providers and programs and the investigation of complaints, including an authorization for TDLR to contract with the Department of Public Safety to provide investigative assistance.

H.B. 4184 creates third degree felony offenses for a person who engages in the following conduct:

- knowingly sells, trades, issues, or otherwise transfers, or possesses with intent to sell, trade, issue, or otherwise transfer, a certificate of program completion or a certificate number to a person not authorized to possess the certificate or number; or
- knowingly possesses a certificate of program completion or a certificate number that the person is not authorized to possess.

Other Changes and Repealed Provisions

H.B. 4184 sets out certain transition provisions, including provisions relating to the renewal of instructor licenses issued prior to the bill's effective date.

H.B. 4184 amends the Alcoholic Beverage Code to establish that, for purposes of an alcohol awareness program, the court determines the residence of a juvenile defendant placed on deferred disposition for certain alcohol-related offenses if the defendant is not enrolled in public school. The bill repeals the authorization for an alcohol awareness program to be taught in languages other than English upon request.

H.B. 4184 amends the Code of Criminal Procedure to require a judge, in determining whether good cause exists to waive the educational program requirement for certain intoxication offenders, to consider whether the defendant has access to reliable Internet service sufficient to successfully complete an online educational program.

H.B. 4184 amends the Family Code, Health and Safety Code, and Transportation Code to make conforming changes.

H.B. 4184 repeals the following provisions:

- Section 106.115(b), Alcoholic Beverage Code;
- Article 42A.405, Code of Criminal Procedure; and
- Section 54.047(e), Family Code.

EFFECTIVE DATE

September 1, 2021.