

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 25, 2009  
Date

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

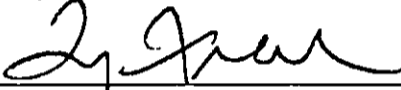
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 2310 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



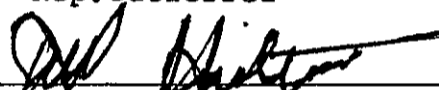
SEN. Harris



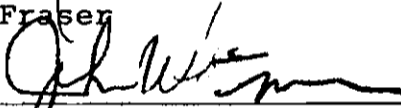
Rep. Gutierrez



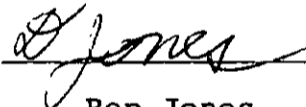
Sen. Fraser



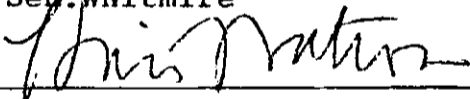
Rep. Hamilton



Sen. Whitmire



Rep. Jones



Sen. Watson



Rep. Mendez

On the part of the Senate

On the part of the House

Sen. Williams

Rep. Geren

## Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

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 commission  
19 may authorize payment of regulatory fees, fines, penalties, and  
20 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.

**House Bill 2310**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION	CONFERENCE
SECTION 1. Section 51.001, Occupations Code, is amended by amending Subdivision (1) and adding Subdivision (1-a).	Same as House version.	Same as House version.
SECTION 2. Subchapter D, Chapter 51, Occupations Code, is amended by adding Sections 51.209 and 51.210.	Same as House version.	Same as House version.
SECTION 3. Section 51.310, Occupations Code, is amended by adding Subsection (c).	Same as House version.	Same as House version.
SECTION 4. Subchapter G, Chapter 51, Occupations Code, is amended by adding Sections 51.3511, 51.3512, and 51.3513.	Same as House version.	Same as House version.
SECTION 5. Section 51.352(a), Occupations Code, is amended.	Same as House version.	Same as House version.
SECTION 6. The heading to Section 51.353, Occupations Code, is amended.	Same as House version.	Same as House version.
SECTION 7. Amends Section 51.353(a), Occupations Code, to <i>require</i> the Texas Commission of Licensing and Regulation to deny, as well as revoke, suspend, or refuse to renew a license, or to reprimand a license holder for a violation of provisions governing the Texas Department of Licensing and Regulation, a law establishing a regulatory program administered by the department, or a rule or order of the commission or the department's executive director.	Same as House version, except <i>authorizes</i> the commission to deny, as well as revoke, suspend, or refuse to renew a license or to reprimand a license holder for such a violation.	Same as Senate version.

**House Bill 2310**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION	CONFERENCE
SECTION 8. Section 51.354, Occupations Code, is amended by redesignating Subsection (d) as Subsection (b) and adding Subsection (c).	Same as House version.	Same as House version.
SECTION 9. Subchapter G, Chapter 51, Occupations Code, is amended by adding Sections 51.355 and 51.356.	Same as House version.	Same as House version.
SECTION 10. Subchapter H, Chapter 51, Occupations Code, is amended by adding Sections 51.4011 and 51.4012 as follows:	SECTION 10. Same as House version, except as follows:	
Sec. 51.4011. Among other provisions, prohibits a license holder from employing a person <i>whose license is on inactive status</i> .	Same as House version, except prohibits a license holder from employing a person <i>for an activity for which a license is required if the person's license is on inactive status</i> .	Same as Senate version.
Sec. 51.4012.	Same as House version.	Same as House version.
No equivalent provision.	SECTION 11. Section 51.402(c), Occupations Code, is amended to authorize the department to require a testing service to collect a fee for administering a license examination from a person taking the examination.	Same as Senate version.
SECTION 11. Subchapter H, Chapter 51, Occupations Code, is amended by adding Sections 51.407 and 51.408.	SECTION 12. Same as House version.	SECTION 12. Same as House version.
No equivalent provision.	SECTION __. The heading to Title 4, Occupations Code, is amended.	Same as House version.

**House Bill 2310**  
Conference Committee Report  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

SECTION \_\_. Title 4, Occupations Code, is amended by adding Chapter 802 (Sections 802.001 to 802.306), relating to the regulation of commercial dog and cat breeders by the department. Requires the commission, not later than December 31, 2009, to appoint the members of the Dog and Cat Breeders Advisory Committee and designates the initial terms for the members. Adds transition and saving provisions.

Same as House version.

SECTION 12. Effective date.

SECTION 13. Same as House version.

SECTION 13. Same as House version.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

May 30, 2009

**TO:** Honorable David Dewhurst, Lieutenant Governor, Senate  
 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.), **Conference Committee Report**

**Estimated Two-year Net Impact to General Revenue Related Funds for HB2310, Conference Committee Report:** 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, SD, MW, ES, JRO

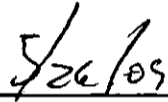
## Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 2310 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

A handwritten signature in cursive script, appearing to read "A. C. Ga", written over a horizontal line.

(name)

A handwritten date "5/26/09" written over a horizontal line.

(date)