

TEXAS DEPARTMENT OF LICENSING AND REGULATION
Occupations Code, Chapter 51
Title 2. General Provisions Relating to Licensing
(Effective September 1, 2009)

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.001. Definitions.

In this chapter:

- (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.
- (2) "Department" means the Texas Department of Licensing and Regulation.
- (3) "License" means a license, certificate, registration, title, or permit issued by the department.
- (4) "License holder" means a person who holds a license issued by the department.
- (5) "Respondent" means a person, regardless of whether the person is a license holder, who is charged with violating a law establishing a regulatory program administered by the department or a rule adopted or order issued by the commission or executive director.
- (6) "Sanction" means an action by the executive director against a license holder or another person, including the denial, suspension, or revocation of a license, the reprimand of a license holder, or the placement of a license holder on probation.

Sec. 51.002. Application of Sunset Act.

The Texas Commission of Licensing and Regulation and the Texas Department of Licensing and Regulation are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission and the department are abolished September 1, 2015.

Sec. 51.003. Applicability.

This chapter applies to each regulatory program administered by the department, including any program under which a license is issued by the department.

SUBCHAPTER B. DEPARTMENT AND COMMISSION

Sec. 51.051. Texas Department of Licensing and Regulation.

- (a) The Texas Department of Licensing and Regulation is the primary state agency responsible for the oversight of businesses, industries, general trades, and occupations that are regulated by the state and assigned to the department by the legislature.
- (b) The department is governed by the commission.

Sec. 51.052. Appointment of Commission.

- (a) The commission consists of seven members appointed by the governor with the advice and consent of the senate.

- (b) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 51.053. Commission Membership; Eligibility.

- (a) Each member of the commission must be a representative of the general public.
- (b) A person is not eligible for appointment as a member of the commission if the person or the person's spouse:
 - (1) is regulated by the department;
 - (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the department;
 - (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the department;
 - (4) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or
 - (5) is an employee of the department.

Sec. 51.0535. Conflict of Interest.

- (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.
- (b) A person may not be a member of the commission and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:
 - (1) the person is an officer, employee, or paid consultant of a Texas trade association in a field regulated by the department; or
 - (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in a field regulated by the department.
- (c) A person may not be a member of the commission or act as the general counsel to the commission or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

Sec. 51.054. Training.

- (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

- (b) The training program must provide the person with information regarding:
 - (1) the legislation that created the department and the commission;
 - (2) the programs operated by the department;
 - (3) the role and functions of the department;
 - (4) the rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;
 - (5) the current budget for the department;
 - (6) the results of the most recent formal audit of the department;
 - (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and
 - (8) any applicable ethics policies adopted by the department or the Texas Ethics Commission.
- (c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 51.055. Terms; Vacancy.

- (a) Members of the commission serve staggered six-year terms. The terms of two or three members expire on February 1 of each odd-numbered year.
- (b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Sec. 51.056. Presiding Officer.

- (a) The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.
- (b) The presiding officer may vote on all matters before the commission as provided by Robert's Rules of Order.

Sec. 51.057. Grounds For Removal.

- (a) It is a ground for removal from the commission that a member:
 - (1) does not have at the time of taking office the qualifications required by Section 51.053;

- (2) does not maintain during service on the commission the qualifications required by Section 51.053;
 - (3) is ineligible for membership under Section 51.0535;
 - (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term, or
 - (5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.
- (b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.
- (c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 51.058. Compensation; Reimbursement.

- (a) A commission member may not receive compensation for service on the commission.
- (b) A commission member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a commission member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

Sec. 51.059. Meetings.

- (a) The commission shall meet at least once in each quarter of the fiscal year.
- (b) The commission may meet at other times at the call of the presiding officer or as provided by commission rules.

Sec. 51.060. Civil Liability.

A member of the commission is not liable in a civil action for an act performed in good faith while performing duties as a commission member.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER DEPARTMENT PERSONNEL

Sec. 51.101. Executive Director.

The commission shall appoint the executive director of the department. The executive director serves at the will of the commission.

Sec. 51.103. Executive Director Powers and Duties.

- (a) The executive director shall:

- (1) perform any duties assigned by the commission and other duties specified by law;
 - (2) administer and enforce the department's programs; and
 - (3) issue licenses authorized by the laws establishing programs regulated by the department.
- (b) The executive director may delegate any power or duty assigned to the executive director unless prohibited by statute or rule.
- (c) The executive director may:
- (1) impose sanctions and issue orders relating to a sanction as provided by Section 51.353; and
 - (2) assess an administrative penalty or issue an order relating to an administrative penalty as authorized by a law establishing a program regulated by the department or as provided by Sections 51.301 and 51.302.

Sec. 51.104. Personnel.

The executive director may employ persons to perform the department's work and may prescribe their duties and compensation, subject to the personnel policies adopted by the commission and the commission's approval of the budget.

Sec. 51.105. Division of Responsibilities.

The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the department.

Sec. 51.106. Information on Standards of Conduct.

The executive director or the executive director's designee shall provide to members of the commission and to department employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 51.107. Career Ladder Program; Performance Evaluations.

- (a) The executive director shall develop a career ladder program. The program must require intra-agency postings of all non-entry level positions concurrently with any public posting.
- (b) The executive director shall develop a system of employee performance evaluations. The system must require that evaluations be conducted at least annually. All merit pay for department employees must be based on the system established under this subsection.

Sec. 51.108. Equal Employment Opportunity Policy.

- (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.
- (b) The policy statement must include:

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code; and
 - (2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.
- (c) The policy statement must:
- (1) be updated annually;
 - (2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b) (1); and
 - (3) be filed with the governor's office.

Sec. 51.109 State Employee Incentive Program.

The executive director or the executive director's designee shall provide to department employees information and training on the benefits and methods of participation in the state employee incentive program.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 51.201. General Powers and Duties of Commission.

- (a) The commission shall:
- (1) supervise the executive director's administration of the department;
 - (2) formulate the policy objectives for the department; and
 - (3) approve the department's operating budget and the department's requests for legislative appropriations.
- (b) The commission:
- (1) may adopt rules as necessary for its own procedures; and
 - (2) shall adopt rules as necessary to implement this chapter.

Sec. 51.202. Fees.

- (a) The commission shall set fees, in amounts reasonable and necessary to cover the costs of administering the programs or activities, for:
- (1) licenses issued by the department;
 - (2) license renewals and late renewals;
 - (3) examinations; and
 - (4) any other program or activity administered by the department for which a fee is authorized.

- (b) The executive director by rule may provide for prorating fees for the issuance of a license, so that a person regulated by the department pays only that portion of the applicable fee that is allocable to the number of months during which the license is valid.
- (c) The executive director shall develop cost management procedures that enable the commission to determine with reasonable accuracy the cost to the department of each program and activity for which a fee is charged.

Sec. 51.203. Rules Regarding Programs Regulated by Department.

The commission shall adopt rules as necessary to implement each law establishing a program regulated by the department.

Sec. 51.204. Rules Restricting Advertising or Competitive Bidding.

- (a) The commission may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.
- (b) The commission may not include in rules to prohibit false, misleading, or deceptive practices by a license holder a rule that:
 - (1) restricts the use of any advertising medium;
 - (2) restricts the license holder's personal appearance or the use of the license holder's voice in an advertisement;
 - (3) relates to the size or duration of an advertisement; or
 - (4) restricts the use of a trade name in advertising.

Sec. 51.207. Use of Technology.

The commission shall develop and implement a policy requiring the executive director and department employees to research and propose appropriate technological solutions to improve the department's ability to perform its functions. The technological solutions must:

- (1) ensure that the public is able to easily find information about the department on the Internet;
- (2) ensure that persons who want to use the department's services are able to:
 - (A) interact with the department through the Internet; and
 - (B) access any service that can be provided effectively through the Internet; and
- (3) be cost-effective and developed through the department's planning processes.

Sec. 51.208. Negotiated Rulemaking and Alternative Dispute Resolution Procedures.

- (a) The commission shall develop and implement a policy to encourage the use of:
 - (1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of department rules; and

- (2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.
- (b) The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.
- (c) The commission shall designate a trained person to:
 - (1) coordinate the implementation of the policy adopted under Subsection (a);
 - (2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
 - (3) collect data concerning the effectiveness of those procedures, as implemented by the department.

Sec. 51.209. Advisory Boards; Removal of Advisory Board Member.

- (a) This section applies to any advisory board appointed to advise the commission or department regarding a program subject to regulation by the department.
- (b) An advisory board member who was appointed by the presiding officer of the commission with the commission's approval may be removed from the advisory board by the presiding officer with the commission's approval on any of the following grounds:
 - (1) the member does not have at the time of becoming a member of the advisory board the qualifications required by the law or rule authorizing appointment of the member;
 - (2) the member does not maintain during service on the advisory board the qualifications required by the law or rule authorizing appointment of the member;
 - (3) the member cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term;
 - (4) the member is absent from more than half of the regularly scheduled advisory board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the advisory board; or
 - (5) the member is unfit to continue serving on the advisory board.
- (c) The validity of an action of an advisory board is not affected by the fact that it is taken when a ground for removal of a member exists.

Sec. 51.210. Method of Making Payments.

- (a) The commission may authorize payment of regulatory fees, fines, penalties, and charges for goods and services through:
 - (1) an electronic payment method; or
 - (2) a credit card issued by a financial institution chartered by a state or the United States or issued by a nationally recognized credit organization approved by the commission.

- (b) A payment by a method under this section may be made in person, by telephone, or through the Internet.
- (c) The commission may require a person who makes a payment to the department through an electronic payment method or credit card to pay a discount or service charge in an amount reasonable and necessary to reimburse the commission for the costs involved in processing the payment.
- (d) The commission may adopt rules as necessary to implement this section.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 51.251. Public Interest Information.

- (a) The department shall prepare information of public interest describing the functions of the commission and department and the procedures by which complaints are filed with and resolved by the commission or executive director.
- (b) The department shall make the information available to the public and appropriate state agencies.

Sec. 51.252. Complaints.

- (a) The executive director shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department shall provide to the person filing the complaint and to each person who is a subject of the complaint information about the department's policies and procedures relating to complaint investigation and resolution.
- (b) The department shall maintain a file on each written complaint filed with the department. The file must include:
 - (1) the name of the person who filed the complaint;
 - (2) the date the complaint is received by the department;
 - (3) the subject matter of the complaint;
 - (4) the name of each person contacted in relation to the complaint;
 - (5) a summary of the results of the review or investigation of the complaint; and
 - (6) an explanation of the reason the file was closed, if the department closed the file without taking action other than to investigate the complaint.
- (c) The department, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.
- (d) The commission shall adopt a procedure for documenting complaints to the department from the time of the submission of the initial complaint to the final disposition of the complaint. The commission shall publish the procedure in the Texas Register.

Sec. 51.253. Public Participation.

- (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction.
- (b) The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the commission's programs.

SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 51.301. Imposition of Penalty.

The executive director or commission may impose an administrative penalty against a person who violates:

- (1) a law establishing a regulatory program administered by the department; or
- (2) a rule adopted or order issued by the executive director or commission.

Sec. 51.302. Amount of Penalty.

- (a) If the relevant law establishing a program regulated by the department does not state the maximum amount of an administrative penalty under that law, the amount of the penalty shall be assessed by the commission or executive director in an amount that may not exceed \$5,000 per day for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.
- (b) The amount of the penalty shall be based on:
 - (1) the seriousness of the violation;
 - (2) the respondent's history of previous violations;
 - (3) the amount necessary to deter a future violation;
 - (4) efforts made by the respondent to correct the violation; and
 - (5) any other matter that justice may require.
- (c) The commission shall by rule or by procedure published in the Texas Register establish a written enforcement plan that provides notice to license holders of the specific ranges of penalties that apply to specific alleged violations and the criteria by which the department determines the amount of a proposed administrative penalty.

Sec. 51.3025. Imposition of Sanction.

A proceeding under this subchapter imposing an administrative penalty may be combined with a proceeding to impose an administrative sanction. If a sanction is imposed in a proceeding under this subchapter, the requirements of this subchapter apply to the imposition of the sanction.

Sec. 51.303. Notice of Violation and Penalty.

If, after investigation of a possible violation and the facts surrounding the possible violation, the department determines that a violation occurred, the department shall issue to the respondent a notice of alleged violation stating:

- (1) a brief summary of the alleged violation;
- (2) the amount of the recommended administrative penalty; and
- (3) that the respondent has the right to a hearing to contest the alleged violation, the amount of the penalty, or both.

Sec. 51.304. Penalty to be Paid or Hearing Requested.

- (a) Not later than the 20th day after the date the respondent receives the notice, the respondent may:
 - (1) accept the department's determination and recommended administrative penalty; or
 - (2) make a written request for a hearing on that determination.
- (b) If the respondent accepts the department's determination, the executive director by order shall approve the determination and require the person to pay the recommended penalty.

Sec. 51.305. Hearing on Recommendations.

- (a) If the respondent requests a hearing, the hearing shall be conducted by the State Office of Administrative Hearings.
- (b) The State Office of Administrative Hearings shall consider the department's applicable substantive rules and policies when conducting a hearing under this subchapter.
- (c) An administrative law judge at the State Office of Administrative Hearings shall:
 - (1) make findings of fact and conclusions of law; and
 - (2) promptly issue to the commission a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 51.306. Decision by Commission.

- (a) Based on the findings of fact, conclusions of law, and proposal for decision, the commission by order may determine that:
 - (1) a violation occurred and impose an administrative penalty; or
 - (2) a violation did not occur.
- (b) The department shall give notice of the order to the respondent.
- (c) The order under this section must include:
 - (1) separate statements of the findings of fact and conclusions of law;
 - (2) the amount of any penalty imposed;
 - (3) a statement of the right of the respondent to judicial review of the order; and

- (4) any other information required by law.

Sec. 51.307. Options Following Decision: Pay or Appeal.

- (a) Not later than the 30th day after the date the commission's order becomes final, the respondent shall:
 - (1) pay the penalty; or
 - (2) file a petition for judicial review contesting the order, and:
 - (A) forward the penalty to the department for deposit in an escrow account; or
 - (B) give the department a supersedeas bond in a form approved by the executive director that:
 - (i) is for the amount of the penalty; and
 - (ii) is effective until judicial review of the decision is final.
- (b) A respondent who is financially unable to comply with Subsection (a)(2) is entitled to judicial review if the respondent files with the court, as part of the respondent's petition for judicial review, a sworn statement that the respondent is unable to meet the requirements of that subsection.

Sec. 51.308. Collection of Penalty.

If the person on whom the administrative penalty is imposed violates Section 51.307(a), the department or the attorney general may bring an action to collect the penalty.

Sec. 51.309. Remittance of Penalty and Interest.

- (a) If, after judicial review, the administrative penalty is reduced or not imposed, the executive director shall:
 - (1) remit to the person the appropriate amount, plus accrued interest, if the person paid the amount of the penalty; or
 - (2) execute a release of the bond, if the person posted a supersedeas bond.
- (b) The interest paid under Subsection (a)(1) is accrued at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid to the department and ending on the date the penalty is remitted.

Sec. 51.310. Administrative Procedure.

- (a) The executive director by rule shall prescribe procedures for the determination and appeal of a decision to impose an administrative penalty.
- (b) A proceeding under this subchapter to impose an administrative penalty is considered to be a contested case under Chapter 2001, Government Code.
- (c) The executive director by rule shall prescribe notice procedures for proceedings under this subchapter that provide for notice by certified mail with electronic return receipt.

SUBCHAPTER G. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 51.351. Inspections and Investigations.

- (a) The department may conduct inspections or investigations as necessary to enforce the laws administered by the department.
- (b) The department, during reasonable business hours, may:
 - (1) enter the business premises of a person regulated by the department or a person suspected of being in violation of or threatening to violate a law establishing a regulatory program administered by the department or a rule or order of the commission or executive director related to a regulatory program administered by the department; and
 - (2) examine and copy records pertinent to the inspection or investigation.
- (c) A department employee may check the license, registration, or endorsement of a person regulated by the Texas State Board of Plumbing Examiners in accordance with the memorandum of understanding under Section 1301.259 and report any noncompliance to that agency.
- (d) The department shall conduct joint investigations with the Texas State Board of Plumbing Examiners as circumstances require.

Sec. 51.3511. Issuance of Emergency Orders.

- (a) If the executive director determines that an emergency exists requiring immediate action to protect the public health and safety, the executive director may issue an emergency order to:
 - (1) suspend or revoke a license or other authorization issued under a program regulated by the department; or
 - (2) halt operation of an unsafe facility or unsafe equipment that is subject to regulation by the department.
- (b) The executive director may issue an emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.
- (c) If an emergency order is issued under this section without a hearing, the executive director shall set the time and place for a hearing conducted by the State Office of Administrative Hearings to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued. The order shall be affirmed to the extent that reasonable cause existed to issue the order.
- (d) The commission by rule may prescribe procedures for the determination and appeal of an emergency order issued under this section, including a rule allowing the commission to affirm, modify, or set aside a decision made by the State Office of Administrative Hearings under Subsection (c).
- (e) A proceeding under this section is a contested case under Chapter 2001, Government Code.

Sec. 51.3512. Subpoenas.

- (a) The department may issue a subpoena as provided by this section.
- (b) The department may request and, if necessary, compel by subpoena:

- (1) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter, a law establishing a regulatory program administered by the department, or a rule adopted or order issued by the commission or executive director; and
 - (2) the attendance of a witness for examination under oath.
- (c) A subpoena under this section may be issued throughout this state and may be served by any person designated by the commission or the executive director.
- (d) The department, acting through the attorney general, may bring an action to enforce a subpoena issued under this section against a person who fails to comply with the subpoena.
- (e) Venue for an action brought under this section is in a district court in:
- (1) Travis County; or
 - (2) any county in which the department may hold a hearing.
- (f) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Sec. 51.3513. Cease and Desist Order.

The executive director may issue a cease and desist order if the executive director determines that the action is necessary to prevent a violation of:

- (1) this chapter;
- (2) a law establishing a regulatory program administered by the department; or
- (3) a rule adopted or order issued by the commission or the executive director.

Sec. 51.352. Injunctive Relief; Civil Penalty.

- (a) The attorney general or the executive director may institute an action for injunctive relief to restrain a violation by and to collect a civil penalty from a person that appears to be in violation of or threatening to violate a law establishing a regulatory program administered by the department or a rule or order of the commission or executive director related to the regulatory program. A civil penalty assessed under this subsection may not exceed \$5,000 per day for each violation.
- (b) An action filed under this section must be filed in a district court in Travis County.
- (c) The attorney general and the department may recover reasonable expenses incurred in obtaining injunctive relief under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Sec. 51.353. License Denial; Administrative Sanctions.

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

- (b) The commission may place on probation a person whose license is suspended. If a license suspension is probated, the commission may require the person to:
 - (1) report regularly to the department on matters that are the basis of the probation;
 - (2) limit practice to the areas prescribed by the commission; or
 - (3) continue or renew professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis for the probation.

Sec. 51.354. Right to Hearing; Administrative Procedure.

- (a) A respondent is entitled to a hearing conducted by the State Office of Administrative Hearings if the executive director proposes to deny, suspend, or revoke a license.
- (b) A proceeding under this chapter to deny, suspend, or revoke a license is considered to be a contested case under Chapter 2001, Government Code.
- (c) The executive director by rule shall prescribe notice procedures for a contested case under this chapter that provide for notice by certified mail with electronic return receipt.

Sec. 51.355. License Eligibility of Person Whose License has been Revoked.

A person whose license has been revoked by order of the commission or executive director is not eligible for a new license until the first anniversary of the date of the revocation.

Sec. 51.356. Deferred Adjudication; License Suspension, License Revocation, or Denial or Refusal to Renew License.

- (a) The commission may deny, suspend, revoke, or refuse to renew a license or other authorization issued by a program regulated by the department if the commission determines that a deferred adjudication makes the person holding or seeking the license unfit for the license.
- (b) In making a determination under Subsection (a), the commission shall consider the factors set forth in Sections 53.022 and 53.023 and the guidelines issued by the department under Section 53.025.

SUBCHAPTER H. LICENSE REQUIREMENTS

Sec. 51.401. License Expiration and Renewal.

- (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.
- (b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.
- (c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

- (d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.
- (e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.
- (f) Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Sec. 51.4011. Inactive Status.

- (a) The commission may adopt rules to allow a license holder to place a license issued by the department on inactive status by:
 - (1) submitting, on a form prescribed by the department, an application for inactive status to the department not later than the expiration date of the license; and
 - (2) paying the required fee.
- (b) Except as provided by Subsection (f), a person whose license is on inactive status is not required to complete continuing education required under this chapter, a law establishing a program regulated by the department, or a rule adopted by the commission.
- (c) A person whose license is on inactive status may reapply for inactive status before the expiration date of the license. The person must pay the required fee.
- (d) A person whose license is on inactive status may not engage in any activity for which the license is required.
- (e) A license holder may not employ a person for an activity for which a license is required if the person's license is on inactive status.
- (f) A person whose license is on inactive status may return the license to active status by:
 - (1) applying to the department for active status on a form prescribed by the department;
 - (2) paying the required fee; and
 - (3) providing evidence satisfactory to the department that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding license period.
- (g) The commission may set fees and adopt rules as necessary to implement this section.

NOTE: ACTS 2009, 81st LEG., HB 2310, Section 13(b) reads:

“Sections 51.4011 and 51.4012, Occupations Code, as added by this Act, take effect May 1, 2010.”

Sec. 51.4012. License Eligibility Requirements Regarding Applicant’s Background; Determination Letter.

- (a) Notwithstanding any other law, the commission may determine that a person is not eligible for a license based on the person's criminal history or other information that indicates that the person lacks the honesty, trustworthiness, and integrity to hold a license issued by the department.
- (b) Before applying for a license from the department, a person may request that the department issue a letter determining whether the person would be eligible for a license under Subsection (a) of this section, Section 51.356, or Chapter 53. To obtain a determination letter, a person must file a request on a form prescribed by the department and pay the required fee.
- (c) Not later than the 30th day after the date the department makes its determination, the department shall issue the determination letter to the person.
- (d) The department has the same powers to investigate a request filed under this section as the department has to investigate a person applying for a license.
- (e) A determination letter issued under this section that is adverse to a person does not prevent the person from subsequently applying for a license.
- (f) The department is not bound by its determination that the person would be eligible if, after the issuance of the determination letter, the department determines there has been a change in a person's circumstances or discovers a previously undiscovered fact.
- (g) A determination under this section is not a contested case under Chapter 2001, Government Code.

NOTE: ACTS 2009, 81st LEG., HB 2310, Section 13(b) reads:

“Sections 51.4011 and 51.4012, Occupations Code, as added by this Act, take effect May 1, 2010.”

Sec. 51.402. Examinations.

- (a) Not later than the 30th day after the date a person takes a license examination, the department shall notify the person of the results of the examination.
- (b) If the examination is graded or reviewed by a testing service:
 - (1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service; and
 - (2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.
- (c) The department may require a testing service to:
 - (1) notify a person of the results of the person's examination; or
 - (2) collect a fee for administering a license examination from a person taking the examination.
- (d) If requested in writing by a person who fails a license examination, the department shall furnish the person with an analysis of the person's performance on the examination.

Sec. 51.403. Examination Fee Refund.

- (a) The department may refund a license examination fee to a person who is unable to take the examination if the person:

- (1) provides reasonable advance notice to the department; or
 - (2) cannot take the examination because of an emergency.
- (b) The commission by rule shall define what constitutes reasonable notice and an emergency under this section.

Sec. 51.404. Endorsement; Reciprocity.

- (a) The commission may waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.
- (b) The commission may waive any prerequisite to obtaining a license for an applicant who holds a license issued by another jurisdiction with which this state has a reciprocity agreement. The commission may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

Sec. 51.405. Continuing Education.

The commission shall recognize, prepare, or administer continuing education programs for license holders. A license holder must participate in the programs to the extent required by the commission to keep the person's license.

Sec. 51.406. Staggered Renewal of Licenses.

The commission by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Sec. 51.407. Temporary License.

- (a) The commission by rule may provide for the issuance of a temporary license to an applicant who:
- (1) submits to the executive director an application on a form prescribed by the executive director;
 - (2) meets preliminary qualifications established by commission rule; and
 - (3) pays any required fees.
- (b) A temporary license issued under this section expires on the 21st day after the date of issuance and may not be renewed.
- (c) A temporary license holder is subject to:
- (1) this chapter;
 - (2) any law applicable to the activity for which the license is required; and
 - (3) any rule of the commission or the executive director applicable to the license.

Sec. 51.408. Emergency License.

- (a) The executive director may issue an emergency license to a person who meets eligibility requirements provided by:
 - (1) a law establishing a regulatory program administered by the department; or
 - (2) a rule adopted to implement this section.
- (b) An emergency license issued under this section expires on the date indicated by the executive director, but not later than the 90th day after the date the license is issued. If the governor declares an extended state of disaster under Section 418.014, Government Code, the executive director may extend the term of an emergency license to an expiration date after the 90th day after the date the license was issued.
- (c) The emergency license holder may engage in the activities authorized by the type of license only:
 - (1) during a period in which a state of disaster has been declared and the following recovery period; and
 - (2) in an area designated as a disaster area under Chapter 418, Government Code.

SUBCHAPTER I. TELEPHONE INFORMATION SYSTEM

Sec. 51.451. Definition.

In this subchapter, "licensing entity" means a department, commission, board, office, authority, or other agency or governmental entity of this state that issues an occupational license.

Sec. 51.452. Telephone Information System

The department shall establish and operate a toll-free telephone information system to provide assistance and referral services for persons who inquire about a program regulated by a licensing entity.

NOTE: ACTS 2009, 81st LEG., HB 2310, Section 13 reads:

- (a) *Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.*
- (b) *Sections 51.4011 and 51.4012, Occupations Code, as added by this Act, take effect May 1, 2010.*