

BILL ANALYSIS

Senate Research Center

S.B. 43
By: Zaffirini
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2013, the legislature consolidated the regulatory bodies for professional guardians, court reporters, process servers, and court interpreters into a new entity, the Judicial Branch Certification Commission (JBCC). JBCC's enabling statute imposes several inefficient administrative requirements, especially regarding disciplinary hearings and the renewal and reissuance of certifications and licenses. S.B. 43 makes numerous changes, including consolidating renewal provisions and graduated late fees, creating a procedure for reissuance of a certificate, registration, or license which has been revoked or refused renewal as a disciplinary sanction, providing new definitions for the terms "certified process server" and "process server," and applying Texas Rules of Civil Procedure to JBCC hearings. These changes would enhance the operational efficiency of JBCC and streamline regulations for those who work in these industries. (Original Author's / Sponsor's Statement of Intent)

S.B. 43 amends current law relating to the Judicial Branch Certification Commission, authorizes fees, and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Supreme Court (supreme court) is modified in SECTION 24 (Section 155.102, Government Code) of this bill.

Rulemaking authority previously granted to the supreme court is rescinded in SECTION 35 (Sections 154.108 and 156.052, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 57.002(b-1), Government Code, by changing a reference to Section 57.043(d) to Section 157.101(d).

SECTION 2. Amends Section 151.001(7), Government Code, to redefine "regulated person."

SECTION 3. Amends Sections 152.053(b), (c), and (d), Government Code, as follows:

(b) Provides that a person is not eligible for appointment as a member of the Judicial Branch Certification Commission (commission) or as a member of an advisory board or committee that serves the commission, under certain circumstances, rather than provides that a person is not eligible for appointment as a member of the commission under certain circumstances.

(c) and (d) Makes conforming and nonsustantive changes.

SECTION 4. Amends Section 152.056, Government Code, to authorize the presiding officer to designate a member of the commission to preside over a meeting of the commission in the presiding officer's absence.

SECTION 5. Amends the heading to Section 152.109, Government Code, to read as follows:

Sec. 152.109. NOTICE OF COMPLAINT PROCESS.

SECTION 6. Amends Sections 152.111(a) and (c), Government Code, as follows:

(a) Authorizes the commission to adopt a policy allowing Office of Court Administration of the Texas Judicial System (OCA) employees to dismiss a complaint that, rather than complaints that, clearly does not allege misconduct; is not within the commission's jurisdiction; or alleges misconduct taking place more than five years before the date the complaint was filed. Makes nonsubstantive changes.

(c) Authorizes a person who files a complaint that is dismissed under this section, not later than the 30th day after the date of notice of the dismissal, to request in writing that the commission reconsider the complaint, rather than authorizes a person who files a complaint that is dismissed under this section to request that the commission reconsider the complaint.

SECTION 7. Amends Section 152.201, Government Code, by adding Subsection (c-1) and amending Subsection (d), as follows:

(c-1) Provides that a passing score on an applicable examination is valid for purposes of certification, registration, or licensing for a period of two years after the date of the examination. 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.

(d) Prohibits a person from viewing a copy of the examination the person failed.

SECTION 8. Amends Subchapter E, Chapter 152, Government Code, by adding Section 152.2015, as follows:

Sec. 152.2015. CERTIFICATION, REGISTRATION, AND LICENSING FEE AND RENEWAL. (a) 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.

(b) Authorizes a regulated person who is otherwise eligible to renew a certification, registration, or license to renew an unexpired certification, registration, or license by paying the required renewal fee to the commission before the expiration date. Prohibits a regulated person whose certification, registration, or license has expired from engaging in any applicable regulated activity until the certification, registration, or license has been renewed.

(c) Authorizes a regulated person whose certification, registration, or license has been expired for 90 days or fewer to renew the certification, registration, or license by paying the commission a renewal fee equal to one and one-half times the normally required renewal fee.

(d) Authorizes a regulated person whose certification, registration, or license has been expired for more than 90 days but less than one year to renew the certification, registration, or license by paying the commission a renewal fee equal to twice the normally required renewal fee.

(e) Prohibits a person, firm, or business entity, except as provided by Subsection (f), from renewing its expired certification, registration, or license one year or more after expiration. Authorizes the person, firm, or business entity to obtain a new certification, registration, or license by complying with the requirements and procedures, including examination requirements for obtaining an original certification, registration, or license.

(f) Authorizes a person to, without examination, renew a certification, registration, or license that has been expired for one year or longer under certain conditions.

(g) Requires that the commission send written notice, not later than the 30th day before the date a regulated person's certification, registration, or license is scheduled to expire, of the impending expiration to the regulated person's last known address according to the commission's records.

SECTION 9. Amends Section 152.205(c), Government Code, to require that the commission propose to the Texas Supreme Court (supreme court) a rule stating that a person who violates the code of ethics is subject to commission enforcement under Chapter 153 (Commission Enforcement), rather than subject to an administrative penalty assessed under Chapter 153.

SECTION 10. Amends Subchapter A, Chapter 153, Government Code, by adding Section 153.0001, as follows:

Sec. 153.0001. FILING COMPLAINT. (a) Requires that a person satisfy certain requirements in order to file a complaint with the commission against a regulated person or another person alleged to have unlawfully engaged in the regulated conduct.

(b) Requires the commission, on receipt of a properly executed complaint, to furnish a copy of the complaint and any attachments to the person who is the subject of the complaint.

(c) Provides that this section does not preclude the commission, an advisory board of the commission, or a court of this state from filing a complaint.

SECTION 11. Amends Section 153.003, Government Code, as follows:

Sec. 153.003. CEASE AND DESIST ORDER. (a) Creates this subsection from existing text. Authorizes the administrative director of OCA (director) to issue a temporary cease and desist order for the duration of an investigation and disciplinary action by the commission under certain circumstances.

(b) Authorizes a cease and desist order to require a person to cease and desist from committing a violation listed under Subsection (a) or from engaging in any practice regulated by the commission as necessary to prevent the violation.

(c) Authorizes a person to whom a cease and desist order is issued to file a written request for a hearing before the commission. Sets forth time limits for the person to file the hearing request and for the commission to conduct the hearing.

SECTION 12. Amends Section 153.004, Government Code, by adding Subsection (c), as follows:

(c) Authorizes the commission, on the commission's own motion, or on the recommendation of its staff, to conduct a hearing to inquire into a suspension. Authorizes the commission, if the commission determines that a person has not corrected the deficiencies that were the grounds of the suspension or has not complied with conditions imposed by the commission, to revoke or take other disciplinary action against the person's certification, registration, or license.

SECTION 13. Amends Sections 153.051, 153.053, and 153.054, Government Code, as follows:

Sec. 153.051. IMPOSITION OF PENALTY. (a) Authorizes the commission to impose an administrative penalty on a person, rather than a person regulated under this subtitle (Court Professions Regulation), who violates this subtitle, a statute establishing a regulatory program administered by the commission, a rule or standard adopted under this subtitle, or an order issued by the commission or director under this subtitle. Makes conforming and nonsubstantive changes.

(b) Deletes existing text applying the requirements of this subchapter to the imposition of administrative sanctions imposed in a proceeding under this subchapter.

Sec. 153.053. REPORT AND NOTICE OF VIOLATION, PENALTY, AND SANCTION. (a) Requires the commission to appoint a committee of advisory board members (committee) to review a complaint, make the initial written determination on whether a violation occurred, and impose, rather than recommend the imposition of, certain measures. Requires the committee to state the committee's written determination as separately stated proposed findings of fact and conclusions of law.

(b) Deletes existing Subdivision (2) and redesignates existing Subdivision (3) as Subsection (b). Requires the committee to give to the person who is the subject of the complaint reviewed under Subsection (a) written notice by certified mail of the committee's, rather than the commission's, determination on whether a violation occurred and each penalty or sanction, if any, rather than each recommended penalty or sanction, if any.

(c) Redesignates existing Subsection (b) as Subsection (c). Makes conforming changes.

Sec. 153.054. PENALTY PAID, SANCTION ACCEPTED, OR HEARING REQUESTED. (a) Authorizes a person to accept the determination of the committee appointed under Section 153.053 and the imposition of the penalty or sanction as an agreed order to be presented to the commission, or request a hearing before the commission. Makes conforming and nonsubstantive changes.

(b) Requires the commission to review the proposed agreed order and accept, revise, or reject it or remand the matter to the committee for further review, if the person accepts the determination and penalty or sanction as an agreed order. Requires the commission to give to the person written notice of the commission's determination under this subsection. Authorizes the person to take certain steps if the commission revises or rejects the proposed agreed order. Deletes existing text relating to actions the commission is required to take, by order, if the person fails to respond to the notice. Makes conforming changes.

(c) Authorizes the commission, if the person fails to respond to the notice sent under Section 153.053, to issue a default order to approve the determination of the committee and impose or revise the committee's proposed penalty, sanction, or both.

SECTION 14. Amends Sections 153.055(c), (d), (e) and (g), Government Code, as follows:

(c) Requires the commission to adopt, revise, or reject the committee's findings, rather than make findings, of fact and conclusions of law.

(d) Provides that the Texas Rules of Civil Procedure, including discovery rules, apply to the commission's hearings to the extent not inconsistent with this subchapter (Administrative Penalty, Administrative Sanction) or commission rules, and authorizes the commission to deviate from those rules as necessary for a full and fair adjudication and determination of fact or law.

(e) Authorizes the commission's presiding officer to issue orders, including scheduling orders, and to designate the discovery control plan or otherwise limit or modify discovery before a hearing.

(g) Requires at least one member of the applicable advisory board to attend the hearing to consult with the commission on the reasons for the committee's determination and proposed penalty or sanction, rather than the committee's recommendations.

SECTION 15. Amends Section 153.056, Government Code, to require a person to accept the obligation to pay the commission's penalty or accept the sanction, or file an appeal of the commission's order contesting the findings of fact, the conclusions of law, the occurrence of the violation, the imposition or amount of the penalty, the imposition of the sanction, or any combination.

SECTION 16. Amends Section 153.058(f), Government Code, by authorizing the special committee of the supreme court to uphold or reduce any other sanction, rather than any sanction, and order the imposition of the sanction.

SECTION 17. Amends Subchapter B, Chapter 153, Government Code, by adding Section 153.060, as follows:

Sec. 153.060. REISSUANCE OF CERTIFICATE, REGISTRATION, OR LICENSE. (a) Authorizes the commission to reissue a certificate, registration, or license that has been revoked or that the commissioner has refused to renew as a disciplinary sanction if the individual subject to the revocation or nonrenewal applies in writing to the commission and establishes good cause to justify reissuance of the certificate, registration, or license. Provides that the applicant has the burden of proving certain matters.

(b) Authorizes the commission to impose certain conditions on the revocation of or refusal to renew a certificate, registration, or license.

(c) Authorizes the commission to impose appropriate probationary conditions for a specified period on the practice of a person whose certificate, registration, or license is reissued.

SECTION 18. Amends Section 154.101(g), Government Code, as follows:

(g) Authorizes the commission to seek an injunction in the district court of the county in which a person not certified by the supreme court resides or in Travis County. Makes a nonsubstantive change.

SECTION 19. Amends Section 154.106(a), Government Code, to prohibit a shorthand reporting firm or an affiliate office from assuming or using certain titles or designations.

SECTION 20. Amends Sections 154.107(b) and (c), Government Code, as follows:

(b) Provides that a certification or registration expires on the last day of the month in which the second anniversary of the date on which it was issued occurs unless the certification or registration is renewed on or before that day. Deletes existing text relating to the expiration of the certification or registration. Makes a nonsubstantive change.

(c) Provides that a fee is charged on each renewal of the certification or registration. Requires a firm or affiliate office of a firm that may not renew an expired registration 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. Deletes existing text relating to a person's renewal of a certification or registration.

SECTION 21. Amends Section 154.110(a), Government Code, by requiring that a shorthand reporter's certification be impacted by a final felony or misdemeanor conviction directly related to their duties and responsibilities as a certified shorthand reporter, rather than court reporter.

SECTION 22. Amends Section 154.111(c), Government Code, by authorizing the commission to suspend a shorthand reporting firm's or affiliate office's registration for a designated period of time in accordance with Section 154.110(b) (relating to the time period the commission may suspend a certification).

SECTION 23. Amends Sections 155.001(2), (3), (5), and (7), Government Code, to redefine "corporate fiduciary," "guardian," "incapacitated person," and "ward."

SECTION 24. Amends Sections 155.102(c) and (d), Government Code, as follows:

(c) Requires that any rules adopted by the supreme court provide that a certificate expires on the last day of the month in which the second anniversary of the date the certificate was issued occurs, unless renewed on or before that day, rather than expires on the second anniversary of the date the certificate is issued.

(d) Provides that, if the requirements for issuing a certificate under this section or reissuing a certificate under Section 153.060 include passage of an examination covering guardianship education requirements, then the commission is required to fulfil, certain requirements.

SECTION 25. Amends Section 155.104, Government Code, by replacing a reference to Section 697(e), Texas Probate Code, with Section 1104.306 (Use of Names and Business Addresses), Estates Code.

SECTION 26. Amends Section 155.105(c), Government Code, by replacing a reference to Section 697(a), Texas Probate Code, with Section 1104.302 (Annual Certificate of Registration), Estates Code.

SECTION 27. Amends Section 156.001, Government Code, as follows:

Sec. 156.001. New heading: DEFINITIONS. Defines "advisory board," "certified process server," and "process server." Makes nonsubstantive changes.

SECTION 28. Amends Subchapter B, Chapter 156, Government Code, by adding Section 156.053, as follows:

Sec. 156.053. PROCESS SERVER CERTIFICATION RENEWAL; FEES. Provides that certification of a process server expires on the last day of the month in which the second anniversary of the date on which the certification was issued occurs, unless it is renewed on or before that date. Requires each process server, on renewal of certification, to pay a fee to the commission in accordance with Section 152.2015.

SECTION 29. Amends Section 157.001(2), Government Code, to redefine "licensed court interpreter."

SECTION 30. Amends Sections 157.101(a), (c), and (d), Government Code, as follows:

(a) Requires the director to issue a court interpreter license to an applicant who can interpret for an individual who can hear but has no or limited English proficiency, rather than an individual who does not comprehend or communicate in English, and passes the appropriate examination prescribed by the commission within the period specified in Section 152.201(c-1). Deletes existing text requiring passage of the examination not earlier than two years before the date the applicant's application for license is received by the director.

(c) Provides that a license issued under this chapter (Court Interpreters Licensing) expires on the last day of the month in which the second anniversary of the date on which the license was issued occurs, unless it is renewed on or before that date. Deletes existing text providing that the license is valid for one year from the date of issuance.

(d) Requires that a license issued under this chapter include at least a basic designation that permits the interpreter to interpret court proceedings in certain courts, but prohibits the designation from permitting the interpreter to interpret a proceeding before the court in which the judge is acting as a magistrate, rather than other than a proceeding before the court in which the judge is acting as a magistrate.

SECTION 31. Amends Section 157.102, Government Code, to require an individual, to qualify for a court interpreter license, to apply on a certain form and demonstrate certain proficiency in interpreting English and court proceedings for individuals who can hear but who have no or limited English proficiency, rather than individuals who do not comprehend or communicate in English.

SECTION 32. Amends the heading to Section 157.104, Government Code, to read as follows:

Sec. 157.104. COMMISSION DUTIES.

SECTION 33. Amends Section 157.105, Government Code, as follows:

Sec. 157.105. New heading: SUSPENSION, REFUSAL OF RENEWAL, AND REVOCATION OF LICENSES; REISSUANCE. (a) Requires the commission, after providing the opportunity for a hearing in accordance with Section 153.055 (Notice; Hearing), to suspend, revoke, or refuse to renew a court interpreter license on certain findings, rather than after a hearing to suspend or revoke a court interpreter license on certain findings. Makes nonsubstantive changes.

(b) Authorizes the commission, in accordance with Section 153.060, to reissue a license to an individual whose license has been revoked or refused renewal if the individual applies in writing to the Texas Department of Licensing and Regulation and shows good cause to justify reissuance of the license. Makes a nonsubstantive change.

SECTION 34. Amends Section 157.107(b), Government Code, by providing that a violator is subject to an administrative penalty assessed by the commission as provided by Chapter 153, in addition to administrative sanctions that may be imposed under Section 157.105, rather than as provided by Chapter 153.

SECTION 35. Repealers: Sections 154.107(d) (relating to renewing a certification or registration that is expired for 90 days or less by paying a fee equal to 1-1/2 times the normal fee), (e) (relating to renewing a certification or registration that is expired between 90 days and less than one year by paying a fee equal to two times the normal fee), (f) (relating to a person whose certification or registration has expired for one year or more), (g) (relating to a person who was certified, has moved to another state, and is currently certified), and (h) (relating to the required written expiration notice the commission is required to send), Government Code.

Repealers: Sections 154.108 (Staggered Renewal of Certification or Registration) and 154.109 (Complaint), Government Code.

Repealer: Section 154.110(d) (relating to the commission's hearing to inquire into a suspension), Government Code.

Repealer: Section 154.111(e) (relating to the commission's hearing to inquire into a suspension of a firm), Government Code.

Repealer: Section 156.052(b) (relating to the proration of a fee for a certification), Government Code.

SECTION 36. (a) Makes application of Section 152.053, Government Code, as amended by this Act, prospective.

(b) Makes application of Section 154.107(b), Government Code, as amended by this Act, prospective to January 1, 2018.

(c) Requires the commission, if a person's certification, registration, or license expiration date changes as a result of Sections 154.107, 155.102, or 157.101, Government Code, as amended by this Act, or Section 156.053, Government Code, as added by this Act, to

prorate the certification, registration, or license fee on a monthly basis 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.

SECTION 37. Effective date: September 1, 2017.