

- SUBJECT:** Revising the regulation of certain occupations; authorizing fees
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 10 ayes — T. King, Goldman, Geren, Guillen, Harless, Hernandez, K. King, Kuempel, Paddie, S. Thompson
- 0 nays
- 1 absent — Herrero
- WITNESSES:** For — (*Registered, but did not testify:* Tchad Taormina, Texas Automotive Recyclers Association)
- Against — (*Registered, but did not testify:* Joe Cooper, Plumber and Pipefitters Local 286; Leonard Aguilar, Southwest Pipe Trade Association; Rene Lara, Texas AFL-CIO; Lee Medley, United Steelworkers District 13 Council; Russell Shelton)
- On — (*Registered, but did not testify:* Brian Francis, Texas Department of Licensing and Regulation)
- BACKGROUND:** Occupations Code sec. 2309.106 requires the Texas Department of Licensing and Regulation (TDLR) to conduct risk-based inspections on used automotive parts recyclers. The recycler is required to pay a fee for each inspection, with the amount set by the Texas Commission of Licensing and Regulation (TCLR).
- Sec. 2309.154 requires a person employed by a used automotive parts recycler to hold a license, with the requirements for issuance of the license set by TCLR.
- Sec. 605.259 allows TDLR to issue a registered orthotic technician or registered prosthetic technician certificate.

Sec. 202.6011 requires TCLR to develop a standardized penalty schedule and penalty amounts for the punishable conduct of podiatrists related to their licensed occupation.

Sec. 202.2025 requires the executive director of TDLR to develop, implement, and enforce a written policy for determining the priority of complaints against podiatrists for investigation and resolution.

DIGEST:

CSHB 2847 would prohibit political subdivisions from passing or enforcing any regulations on licensed occupations already regulated in state law. The bill also would repeal specific regulations on certain licensed occupations, make confidential the personal information of patients and certain licensed professions pertaining to complaints and investigations, revise regulations pertaining to driver education instruction licensing, and revise certain licensing display and authentication requirements.

Restrictions on local ordinances. CSHB 2847 would prohibit a political subdivision from requiring an additional license other than the state license from a licensed occupational worker. The bill also would prohibit a political subdivision from requiring any other precondition to engage in a state-licensed occupation.

Confidentiality of personal information. The bill would make confidential personal information involving a complaint or investigation concerning athletic trainers, behavior analysts, dietitians, dyslexia practitioners and dyslexia therapists, hearing instrument fitters and dispensers, massage therapists, midwives, orthotists and prosthetists, podiatrists, and speech-language pathologists and audiologists. The personal information would not be subject to disclosure under public information laws or other legal compulsion.

Information related to a complaint or investigation could be disclosed to:

- a person involved with the Texas Department of Licensing and Regulation (TDLR) in a disciplinary action;

- a respondent or the respondent's authorized representative;
- government agencies if the agency protected the identity of any examined patients;
- a professional licensing, credentialing, or disciplinary entity in another jurisdiction;
- a peer assistance program approved by the Texas Commission of Licensing and Regulation (TCLR), including those of another jurisdiction;
- a peer review committee verifying the person's application;
- a law enforcement agency; and
- a person engaged in bona fide research if all individual-identifying information is deleted.

TDLR could not be compelled to release personal information to those listed above if it had not issued a notice of alleged violation relating to the information. TDLR could temporarily withhold information if its release would jeopardize an investigation and could release information regarding a complaint or investigation at any stage of a disciplinary action.

The department would have to protect the personal information of any patient who was part of a disciplinary action against an occupational license holder unless the patient initiated the disciplinary action, was a witness, or had submitted written consent. Notices of alleged violations and final disciplinary actions, including warnings and reprimands, from TDLR, TCLR, or the executive director would not be confidential and would be subject to disclosure.

Changes to the law made by this bill would apply to a disciplinary action initiated and still pending before the effective date of this bill, as well as to disciplinary actions initiated on or after the effective date.

Driver education instruction. CSHB 2847 would remove the requirement that a driver education school operate from a physical location and would amend requirements to include adequate testing and security measures for the school's method of instruction. A driver education school would be allowed to teach in any method approved by

TDLR.

The bill would revise TCLR standards for driver education instructors and for a driver instructor to be certified as a teaching assistant, driver education teacher, or supervising teacher. Standards for each are specified in the bill. TDLR, its executive director, or TCLR could adopt different methods to determine the eligibility of an instructor.

A driver education license issued before this bill would be valid until its expiration, and a teaching assistant, driver education teacher, or supervising teacher license would be entitled for renewal if the license holder met the requirements established in this bill.

These provisions would not affect the validity of a disciplinary action or other proceeding that was initiated before the effective date of the bill and that was pending before a court or other governmental entity on the effective date.

Podiatrists. TDLR could contract with a podiatrist as an expert witness to review, investigate, or prosecute complaints. Except in cases of the witness engaging in fraud, conspiracy, or malice, the witness would be immune from liability and damages arising from the witness' duties in:

- participating in an informal conference to determine the facts of a complaint;
- evaluating evidence and offering an opinion or technical guidance on an alleged violation;
- testifying in a hearing; or
- making an evaluation, report, or recommendation on a complaint.

TCLR could not refuse admittance into an examination or issuance of a license to a podiatrist for past conviction of a felony or a crime involving moral turpitude. This would apply only to a conviction that occurred on or after the effective date of the bill.

The bill would transfer the requirements to develop a system for

monitoring compliance of orders by podiatrists from TCLR to TDLR.

The bill would repeal the 15-day time frame for TDLR to notify the subject of a complaint. This would apply only to complaints filed on or after the effective date of the bill.

CSHB 2847 would repeal the requirements for TCLR to develop a standardized penalty schedule for podiatrists and repeal the requirement for TDLR to develop and enforce a written policy for determining the priority of complaints for investigation and resolution.

Audiologists. CSHB 2847 would remove the requirement that audiologists or audiologist interns that fit and dispense hearing instruments register with TDLR or comply with a professional code in addition to state regulations. The bill would expand the required contact information in a written contract between an audiologist and the state to include an internet website address.

Orthotic and prosthetic technicians. The bill would repeal the registration certificate from TDLR for orthotic or prosthetic technicians as well as applicable TCLR rules regulating the occupation. This provision would not affect the validity of a proceeding pending before a court or other governmental entity on the bill's effective date.

Dietitians. The bill would allow TCLR to act as an alternative to TDLR, as appropriate, to regulate dietitians and would repeal the required use of an official seal by a license holder.

Cosmetologists. CSHB 2847 would update references for the specified services a licensed cosmetologist or barber could perform, limitations on specialty licenses, and limitations on services offered at an establishment for a person holding a specialty shop license.

Laser hair removal. The bill would require TCLR to establish continuing education requirements to renew certificates for laser hair removal.

Used automotive parts recyclers. CSHB 2847 would repeal a licensing requirement for used automotive parts employees and would repeal risk-based inspections and related fees for automotive parts recyclers. Relevant licenses would expire on the effective date of the bill, and TCLR would repeal the relevant regulations on used automotive parts employees. The bill would not affect any court case pending on the effective date of the bill and would apply only to an offense or other violation committed after the effective date of the bill.

Boilers. CSHB 2847 would remove the requirement that the certificate of operation for a boiler be posted under glass.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSHB 2847 would make practical updates to outdated regulations and would make prudent repeals of overly regulated licensed occupations. Simplifying and repealing needless hurdles for occupations would remove barriers to economic activity, helping both customers and workers throughout the state.

The bill would allow a driver education instruction course to be offered entirely online, without the unnecessary requirement that the program maintain a physical space as well.

CSHB 2847 also would add increased confidentiality for patient records related to complaints in the Texas Department of Licensing and Regulation's health-related regulatory programs.

**OPPONENTS
SAY:**

CSHB 2847 could prohibit city regulation of almost any business. As the bill is currently written, any licensed professional or business that must obtain a permit from the state to operate would be exempted from any further precondition, ordinance, order, rule, regulation, law or policy passed by a political subdivision within the state.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated negative impact of \$152,800 in general revenue related funds

for fiscal 2020-21.

A floor amendment by the author would add provisions related to general licensing to Occupations Code ch. 51 governing the Texas Department of Licensing and Regulation specifically, rather than Occupations Code ch. 57, which relates to general provisions for licensing.

The amendment would decrease the frequency of inspections for barbering or cosmetology shops from at least once every two years to at least once every four, except for specialty shops, which would be inspected once every two years.

The amendment also would decrease the frequency of inspections for used automotive parts recycling facilities from at least once every two years to at least once every four years.