

SUBJECT: ALJ decisions in contested cases involving occupational licenses

COMMITTEE: Licensing and Administrative Procedures — favorable, with amendment

VOTE: 5 ayes — Wilson, Goolsby, Haggerty, Pickett, Yarbrough
0 nays
4 absent — Kubiak, Hamric, D. Jones, Torres

SENATE VOTE: On final passage, March 25 — voice vote

WITNESSES: For — Bill Dalrymple, Texas Counseling Association
Against — None

BACKGROUND : Under current procedures for contested cases involving occupational licenses, decisions rendered by administrative law judges (ALJs) are returned to the occupational licensing agency that brought the complaint against the licensee. That agency may review the decision and overturn it. An appeal of a licensing agency's revised decision can be pursued either before the governing board of that agency, if it is legally authorized to hear such appeals, or to a district court.

DIGEST: SB 332, as amended, would authorize ALJs to make final disposition of contested cases involving occupational licenses. The bill would specify that it would not affect the right of an agency or an individual who was the subject of the hearing to obtain judicial review of the ALJ's order; however, the findings of fact and conclusions of law generated by the ALJ could not be directly overturned by the occupational licensing agencies. The changes proposed by SB 332 would not affect investigations resolved through the use of stipulations, agreed settlements, or consent orders nor actions brought under the Insurance Code.

An ALJ would be required to render a final decision within 60 days of closing a hearing or the date on which all briefs or other post-hearing documents were required to be filed, whichever was later. The 60-day period could only be extended with the consent of all parties. The ALJ also

would have to decide whether the license at issue was primarily an occupational license.

Parties would have to file any rehearing motion or response with the State Office of Administrative Hearings (SOAH). SOAH would act on motions or extend a time period for decision, if appropriate, and would notify the parties of any final decision or a ruling on a rehearing motion by sending a copy of that decision to all parties, including the licensing agency.

The bill would take effect September 1, 1997.

**SUPPORTERS
SAY:**

SB 332 would improve the administrative hearing process in occupational license cases by removing an additional layer of review following issuance of a “final decision” by the ALJ. An interim study conducted by the House Committee on Licensing and Administrative Procedure examined the effectiveness of the transfer of administrative hearings from individual state agencies to SOAH and found that less than four percent of the cases decided by SOAH were modified by the licensing agencies that were parties to those cases. Because so few cases are actually changed, such review only serves to slow down the process. By removing that layer of administration, this bill would streamline and simplify the process. SB 332 would ensure that a licensee or the licensing agency could appeal the final order in state district court, thus preserving a strong safeguard of the right of appeal.

These proposed changes would empower SOAH to issue its rulings without fear that the occupational licensing agencies would constantly undercut its authority through periodic direct reversals. This change should also result in lower overall administrative costs, as an unnecessary source of delay would be removed from the process and the licensing agencies would not have to drain their internal budgets by conducting internal board hearings to review decisions already made by SOAH.

SOAH judges are divided into divisions in order to ensure that they are knowledgeable about specific subject areas. They are more than capable of assessing whether a licensee is complying with requirements or deserves to be stripped of a license.

**OPPONENTS
SAY:**

Because occupational licensing agencies overturn final decisions very infrequently, these actions are taken with strong justification. Many occupational licensing agencies have far more specialized knowledge and expertise on the matters affecting their regulated industry than the SOAH judges, and these agencies should retain the right to review and overturn those decisions that they feel are incorrect.

The proposed changes would not save administrative resources, since the judicial review option retained would still require the Office of the Attorney General to represent the agency in its appeal, and those added costs would be borne by the agency's budget.

NOTES:

The committee amendment would exempt actions brought under the Insurance Code from the bill's provisions.