

SUBJECT: Regulating court-ordered programs and certain other TDLR programs

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 — None

Against — Mike Marshall; (*Registered, but did not testify:* Rick Weir)

On — (*Registered, but did not testify:* Brian Francis, Texas Department of Licensing and Regulation)

BACKGROUND: The Texas Department of Licensing and Regulation (TDLR) is required to approve, administer, and certify court-ordered education programs for persons convicted of certain alcohol and drug related offenses and certain animal cruelty offenses. These programs include alcohol awareness programs, drug offense education programs, and responsible pet owner programs.

Alcoholic Beverage Code sec. 106.115 requires TDLR to administer the certification for approved alcohol awareness programs for minors placed on deferred disposition for certain alcohol-related offenses.

Under Transportation Code secs. 521.374, 521.375, and 521.376, TDLR, working jointly with the Department of Public Safety, is responsible for approving education programs that may be attended by individuals whose driver's licenses were suspended for certain drug-related offenses. TDLR must monitor, coordinate, and provide training to persons who provide these education programs.

Code of Criminal Procedure ch. 42A requires TDLR to adopt rules for educational programs that certain defendants for repeat intoxication offenses are required to attend and complete. TDLR also is responsible for the administration of the certification for approved educational programs under the chapter.

Ch. 42A also requires TDLR to approve, certify, and administer an online responsible pet owner course that defendants convicted of certain animal cruelty offenses may be required to complete.

Interested parties have called for statutory changes in line with TDLR's 2018 strategic plan, which recommended consolidating statutory requirements for court-ordered programs and removing unnecessary regulatory and licensing requirements for midwives, barbers, cosmetologists, massage therapists, and used automotive parts recyclers.

DIGEST:

CSHB 1667 would codify in statute all requirements for the Texas Department of Licensing and Regulation (TDLR) and the Texas Commission of Licensing and Regulation (TCLR) to administer court-ordered educational programs and would make it an offense to illegally transfer program certificates to an unauthorized person.

The bill also would remove the minimum fee requirement for midwife licenses and change midwife board requirements, allow joint licenses for barbering, cosmetology, and massage therapy licenses, and change inspection requirements for used automotive parts recyclers and certain cosmetology establishments.

Court-ordered educational programs. The bill would define "court-ordered program" to mean the alcohol educational program for minors, the drug offense educational program, the intervention program for intoxication, the intoxication offense educational program, or the responsible pet owner program.

Licensing and program administration. The bill would outline procedures

for TDLR and TCLR to administer court-ordered educational programs, which would include administering the application and renewal processes and fees for program provider, administrator, and instructor licenses; determining continuing education requirements for certain licenses; taking disciplinary action against licensees who violated rules or requirements; adopting and publishing a code of ethics for license holders; and other processes related to licensing as specified in the bill.

Licenses would not be transferable or assignable and would be valid only for the type of court-ordered program for which they were issued. Licenses would be valid for one or two years from the date of issuance as prescribed by TCLR.

Certificates of completion. TDLR would have to issue or provide for the issuance of a certificate of program completion or certificate number showing completion of a court-ordered program. TCLR would have to provide for the form, design, content, and distribution of certificates and adopt a system for program providers to provide for the appropriate care, custody, and control of program completion certificates and certificate numbers. TCLR also would have to establish requirements for the submission of a copy of program completion certificates or certificate numbers to the appropriate court, state agency, or community supervision and corrections department.

It would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) for a person knowingly to transfer a certificate of completion or certificate number to a person not authorized to hold it. The offense also would apply to a person who possessed a certificate with the intent to transfer it to an unauthorized person or a person who knowingly possessed a certificate without authorization.

Implementation and compliance. Effective September 1, 2020, persons without a program provider license would be prohibited from providing or offering to provide a court-ordered program, and persons without the appropriate instructor license would be prohibited from instructing or representing that they were an instructor of an alcohol- or drug-related

court-ordered program.

License holders would have to comply with all requirements and rules for the relevant court-ordered program and could provide or instruct only the program for which the license was issued. License holders would be allowed to use only the approved curriculum for the corresponding program. License holders would have to notify TDLR in writing of any change regarding the administrator of a court-ordered program or the license holder's contact information or website.

Instructors for alcohol- and drug-related programs would only be allowed to instruct for a program provider that held the appropriate license. Instructors for those programs would have to carry their license at all times while providing court-ordered program instruction.

General licensing. CSHB 2667 would allow TCLR to establish the license term length, issuance fee, and any continuing education requirement for license renewal for each program regulated by TDLR.

The bill would make permanent the requirement that TCLR only adopt new rules related to the scope of practice for certain professions, including athletic trainers, behavior analysts, dietitians, and midwives, if they were proposed by the advisory board established for the profession.

Midwives. CSHB 2667 would remove the requirement that the presiding officer of the Midwives Advisory Board be a public member but would not affect the entitlement of a board member serving as the presiding officer immediately before the effective date of the bill. TCLR requirements for basic midwifery education would have to include basic requirements for midwifery preceptors and students. The bill also would remove a provision of statute prohibiting TCLR from setting the license fee for an amount less than was charged on September 1, 1993.

Massage therapists, barbers, and cosmetologists. TDLR could issue a barbershop and massage establishment license that would allow a licensed person to own, operate, or manage a barbershop or massage establishment

in which any practice of barbering, massage therapy, or other massage services were performed.

TDLR could issue a dual shop and massage establishment license that would allow a licensed person to own, operate, or manage a shop or establishment in which any practice of barbering, cosmetology, or massage therapy or other massage services were performed.

TDLR would be required to issue a barbering and massage establishment license or a dual shop and massage establishment license to any individual that met the necessary requirements, held other required licenses, submitted an application, and paid the required fees.

Under the bill, inspections for most barbering or cosmetology shops or facilities would be required every four years instead of every two. Inspections would still have to be conducted every two years for licensed specialty shops that performed practices related to treating a person's nails or massaging, cleansing, treating, or beautifying a person's hands.

TCLR would have to adopt rules necessary to implement these licensure changes by June 1, 2020.

Used automotive parts recyclers. TDLR would have to inspect each used automotive parts recycling facility every four years instead of every two.

The bill would take effect September 1, 2019, unless otherwise specified.

NOTES:

According to the Legislative Budget Board, the bill would have an estimated negative fiscal impact of about \$54,000 to general revenue related funds through fiscal 2020-21.