SUNSET ADVISORY COMMISSION

STAFF REPORT WITH FINAL RESULTS

Texas Department
of Licensing and
Regulation

2020–2021

87TH LEGISLATURE

SUNSET ADVISORY COMMISSION

Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. Elaborate, custom-designed hardware accentuates the beautifully carved wooden doors. The Sargent and Co. of New Haven, Connecticut created the glass molds especially for the building in the 1880s. The Capitol hardware features incised designs of geometric and stylized floral motifs. This reflects the shift from the Renaissance Revival style of the building's interior architecture to the simpler Aesthetic Movement for its decorative details. Photo credit: Janet Wood

Texas Department of Licensing and Regulation

Sunset Staff Report with Final Results
2020–2021
87th Legislature

HOW TO READ SUNSET REPORTS

For each agency that undergoes a Sunset review, the Sunset Advisory Commission publishes three versions of its staff report on the agency. These three versions of the staff report result from the three stages of the Sunset process, explained in more detail at sunset.texas.gov/how-sunset-works. The current version of the Sunset staff report on this agency is noted below and can be found on the Sunset website at sunset.texas.gov.

Sunset Staff Report

The first version of the report, the Sunset Staff Report, contains Sunset staff's recommendations to the Sunset Commission on the need for, performance of, and improvements to the agency under review.

Sunset Staff Report with Commission Decisions

The second version of the report, the Sunset Staff Report with Commission Decisions, contains the original staff report as well as the commission's decisions on which statutory recommendations to propose to the Legislature and which management recommendations the agency should implement.

CURRENT VERSION: Sunset Staff Report with Final Results

The third and final version of the report, the Sunset Staff Report with Final Results, contains the original staff report, the Sunset Commission's decisions, and the Legislature's final actions on the proposed statutory recommendations.

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FINAL RESULTS

House Bill 1560 Goldman (Buckingham)

Summary

For three decades, the Legislature has established new programs at the Texas Department of Licensing and Regulation (TDLR) and transferred several troubled programs to the agency. Compared to its previous Sunset review in 2002, the agency now oversees more than twice the number of programs and roughly eight times as many licensees. Overall, the Sunset Commission found TDLR performs critical functions for the state, and House Bill 1560 continues the agency for 12 years.

TDLR's functionally aligned structure allows it to eliminate duplicate administrative functions and maximize efficiency by performing similar licensing, customer service, and enforcement processes across all its programs. However, Sunset found TDLR's ability to take on additional responsibilities without jeopardizing the quality of service to licensees and the general public is not limitless. Acknowledging this finding, House Bill 1560 helps free up some of the agency's capacity by eliminating 29 license types. While the Legislature continued the trend of consolidating similar programs under the TDLR umbrella by adding a provision to House Bill 1560 that transfers the licensing and regulation of residential service companies from the Texas Real Estate Commission (TREC) to TDLR, the bill also removes burdensome regulations and streamlines the regulation of barbers, cosmetologists, and driver training providers.

Finally, House Bill 1560 aligns certain licensing and enforcement processes with best practices for licensing agencies and requires TDLR to take a more risk-based approach to inspections and complaints, which will push the agency toward a more efficient allocation of resources toward the highest risks to the public.

The following material summarizes results of the Sunset review of TDLR, including management actions directed to the agency that do not require legislative action.

ISSUE 1 — Governance and Advisory Boards

Recommendation 1.1, Adopted — Continue TDLR for 12 years and remove the statutory provision requiring TDLR programs transferred to the agency on or after September 1, 2016, to undergo a limited scope Sunset review in 2022–23. Instead, these programs will undergo review during TDLR's next Sunset review in 2033.

Recommendation 1.2, Adopted — Remove advisory board meeting requirements from statute and authorize TDLR to call meetings as needed.

Recommendation 1.3, Adopted — Authorize TDLR to create interdisciplinary advisory boards to coordinate the expertise and input for similar industries.

Recommendation 1.4, Adopted — Update the standard across-the-board requirements regarding board member training and complaints.

ISSUE 2 — Polygraph Examiners, Auctioneering, and Combative Sports Programs

Recommendation 2.1, Adopted — Eliminate the Polygraph Examiners Program.

Recommendation 2.2, Not Adopted — Eliminate the Auctioneers Program.

Recommendation 2.3, Not Adopted — Eliminate the Licensed Breeders Program.

Recommendation 2.4, Not Adopted — Eliminate the Professional Employer Organizations Program.

Recommendation 2.5, Not Adopted — Eliminate the Weather Modification Program.

Recommendation 2.6, Not Adopted — Eliminate the Responsible Pet Owner Program.

Recommendation 2.7, Not Adopted — Eliminate the journeyman lineman license.

Recommendation 2.8, Not Adopted — Eliminate the journeyman industrial electrician license.

Recommendation 2.9, Adopted — Eliminate the combative sports matchmaker license.

Recommendation 2.10, Adopted — Eliminate the combative sports event coordinator license.

Recommendation 2.11, Adopted — Eliminate the combative sports second license.

ISSUE 3 — Barbering and Cosmetology Programs

Recommendation 3.1, Modified — Consolidate Texas' regulation of barbers and cosmetologists, and administer the two programs under a unified licensing structure by September 1, 2023. Specify the chair of the combined Barbering and Cosmetology Advisory Board may be any member appointed by the presiding officer of the Texas Commission of Licensing and Regulation.

Recommendation 3.2, Adopted — Eliminate barbering and cosmetology instructor licenses.

Recommendation 3.3, Adopted — Eliminate all wig-related licenses.

Recommendation 3.4, Adopted — Eliminate state regulation of barber poles.

ISSUE 4 — Driver Training Programs

Driver Improvement

Recommendation 4.1, Adopted — Eliminate the separate drug and alcohol driving awareness course and associated licenses.

Recommendation 4.2, Adopted — Eliminate the separate specialized driving safety course and associated licenses.

Recommendation 4.3, Adopted — Eliminate the separate driving safety course for drivers under 25 years old.

Recommendation 4.4, Adopted — Eliminate the redundant driving safety school license.

Recommendation 4.5, Adopted — Eliminate the driving safety instructor license.

Recommendation 4.6, Not Adopted — Eliminate the minimum fees driving safety course providers must charge consumers.

Driver Education and Parent-Taught Driver Education

Recommendation 4.7, Modified — Modernize the licensing of driver education businesses by establishing three different license types, including a separate license with distinct regulatory requirements for parent-taught driver education providers. Require TDLR to implement the new licensing structure by June 1, 2023, and authorize the agency to provide for the issuance of a single license to a person who provides driver education courses under more than one license type.

Recommendation 4.8, Adopted — Eliminate pre-license and continuing education requirements for driver education instructors.

Recommendation 4.9, Adopted — Require a memorandum of understanding to facilitate better coordination between TDLR and DPS.

Recommendation 4.10, Adopted — Direct TDLR to remove from rule certain driver education school inspection requirements. (Management action – nonstatutory)

Driver Improvement and Driver Education

Recommendation 4.11, Adopted — Eliminate prescriptive curriculum hours and authorize TDLR to set minimum hours in rule.

Recommendation 4.12, Adopted — Eliminate costly course approval fees and streamline TDLR's process for approving driver training curricula.

Recommendation 4.13, Adopted — Modify the membership of the Driver Training and Traffic Safety Advisory Committee to conform to the new licensing structure.

Recommendation 4.14, Adopted — Direct TDLR to list on its website only licensed instructors and providers, not the specific courses they offer. (Management action – nonstatutory)

Issue 5 — Used Automotive Parts Recyclers Program

Recommendation 5.1, Not Adopted — Transfer the regulation of used automotive parts recyclers (UAPR) from TDLR to the Texas Department of Motor Vehicles, and consolidate the UAPR and salvage dealer licenses into a single license.

Issue 6 — Inspections and Complaint Priorities

Recommendation 6.1, Modified — Require TDLR to establish a risk-based approach to inspections but retain statutory inspection requirements for the Licensed Breeder Program.

Recommendation 6.2, Adopted — Require TDLR to prioritize complaints based on the risk they pose to the public.

Recommendation 6.3, Adopted — Direct TDLR to develop a comprehensive, data-driven strategy for assessing program risks and setting regulatory priorities. (Management action – nonstatutory)

ISSUE 7 — LICENSING AND ENFORCEMENT

Recommendation 7.1, Adopted — Remove subjective licensure provisions from TDLR's statute.

Recommendation 7.2, Adopted — Authorize TDLR to require disclosure of additional financial and controlling information of applicants for certain business licenses.

Recommendation 7.3, Modified — Clarify TDLR's general authority to adopt rules requiring continuing education, as necessary, but retain prescriptive statutory continuing education requirements in the Property Tax Professionals and Property Tax Consultants programs.

Recommendation 7.4, Not Adopted[1] — Authorize TDLR to deny license renewal applications for noncompliant applicants.

Recommendation 7.5, Adopted — Provide TDLR general authority to order refunds.

Recommendation 7.6, Adopted — Require TDLR to collect, maintain, and make publicly available detailed statistical information on complaints regarding its licensees.

Recommendation 7.7, Modified — Require TDLR to dismiss low-level complaints.

Recommendation 7.8, Adopted — Direct the agency to maintain complainants' confidentiality when possible. (Management action – nonstatutory)

NEW RECOMMENDATION ADDED BY THE SUNSET COMMISSION

Virtual advisory board meetings, Adopted — Authorize TDLR's advisory boards to continue holding fully telephonic or videoconference meetings.

Provisions Added by the Legislature

Residential service companies — Transfer the licensing and regulation of residential service companies from TREC to TDLR.

Auctioneering study — Require TDLR to study the regulation of auctioneering and submit a report to the Legislature by January 1, 2023, with any findings and recommendations to improve public safety and the agency's processes.

Barbering and cosmetology provisions

- Authorize, rather than require, TDLR to deny an application, or suspend or revoke a barbering or cosmetology license, if the applicant or licensee engages in certain behavior.

- Specify that private postsecondary barbering and cosmetology schools are not required to allow a student to reenter a course if the student presents a danger to the other students or staff of the school.

Driver training terminology — Authorize TDLR to refer to driver education and driver safety providers as schools in rules, forms, records, licenses and other agency documents.

Commission membership — Specify that a person may be a member of the Texas Commission of Licensing and Regulation if the person or person's spouse is registered, certified, or licensed by a regulatory agency in the field of health care.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations on TDLR, as enacted in House Bill 1560, will result in long-term efficiency gains by eliminating duplicate and unnecessary administrative functions. The elimination of certain license types and course approvals will result in a net revenue loss of $170,730 per year beginning in fiscal year 2024 once all provisions take effect. The exact fiscal impact of other provisions, such as requiring TDLR to better direct its inspection and enforcement efforts using available data, will depend on timing and implementation.

Eliminating the licensing of polygraph examiners as well as matchmakers, event coordinators, and "seconds" in the Combative Sports Program will result in a loss of $98,425 per year, partially offset by an estimated annual savings of $62,220 in operating expenses, and a reduction of 0.5 full-time positions, beginning in fiscal year 2022.

Consolidating the Barbering and Cosmetology programs and eliminating instructor and wig-related licenses will result in a net loss of about $12,050 per year beginning in fiscal year 2023.

Streamlining TDLR's licensing structure for driver training and eliminating course approvals and certain driver improvement license types will result in a net loss of $176,075 in fiscal year 2022, a net loss of $90,325 in 2023, and a net loss of $162,975 each year thereafter.

Since TREC is a self-directed, semi-independent agency and all fees have been previously deposited to that agency's account outside the treasury, transferring the licensing and regulation of residential service companies from TREC to TDLR will result in a gain to general revenue, estimated to total $14,250 in fiscal year 2022 and $40,500 each year thereafter.

Texas Department of Licensing and Regulation

Fiscal Year	Gain to the General Revenue Fund	Savings to the General Revenue Fund	Loss to the General Revenue Fund	Net Loss to the General Revenue Fund	Changes in FTEs From FY 2020
2022	$14,250	$62,220	$274,500	$198,030	-0.5
2023	$40,500	$62,220	$200,800	$98,080	-0.5
2024	$40,500	$62,220	$273,450	$170,730	-0.5
2025	$40,500	$62,220	$273,450	$170,730	-0.5
2026	$40,500	$62,220	$273,450	$170,730	-0.5

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[1]   TDLR has existing authority to deny license renewal for noncompliant applicants, making this recommendation unnecessary.

SUNSET COMMISSION DECISIONS

Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Texas Department of Licensing and Regulation (TDLR), as well as modifications and a new recommendation raised during the public hearing.

For three decades, the Legislature has established new programs at TDLR and transferred several troubled programs to the agency. Compared to its previous Sunset review in 2002, the agency now oversees more than twice the number of programs and roughly eight times as many licensees. Overall, the commission found TDLR performs critical functions for the state and recommends continuing the agency for 12 years.

TDLR's functionally aligned structure allows it to eliminate duplicate administrative functions and maximize efficiency by performing similar licensing, customer service, and enforcement processes across all its programs. However, TDLR's ability to take on additional responsibilities without jeopardizing the quality of service to licensees and the general public is not limitless. To help free up some of the agency's capacity and allow it to become even more efficient, the commission recommends eliminating 31 license types, removing burdensome regulations, and streamlining certain programs — particularly those regulating barbers, cosmetologists, and driver training providers.

The commission also identified certain processes inconsistent with best practices for licensing agencies and found TDLR's decision making for key regulatory functions is largely driven by a reactive process reliant more on qualitative information than consistent, reliable data. Additional tools and a comprehensive, risk-based strategy should guide TDLR's inspection and enforcement functions and ensure the most efficient allocation of resources toward the highest risks to the public.

ISSUE 1

The State Has a Continuing Need for TDLR, but the Effectiveness of Its Advisory Boards Could Be Improved.

Recommendation 1.1, Adopted as Modified — Continue TDLR for 12 years and remove the statutory provision requiring TDLR programs transferred to the agency on or after September 1, 2016, to undergo a limited scope Sunset review in 2022–2023. Instead, these programs would undergo review during TDLR's next Sunset review in 2033.

Recommendation 1.2, Adopted — Remove advisory board meeting requirements from statute and authorize TDLR to call meetings as needed.

Recommendation 1.3, Adopted — Authorize TDLR to create interdisciplinary advisory boards to coordinate the expertise and input for similar industries.

Recommendation 1.4, Adopted — Update the standard across-the-board requirements regarding board member training and complaints.

ISSUE 2

Fifteen Occupational Licenses Are Not Necessary to Protect the Public.

Recommendation 2.1, Adopted — Eliminate the Polygraph Examiners Program.

Recommendation 2.2, Adopted — Eliminate the Auctioneers Program.

Recommendation 2.3, Not Adopted — Eliminate the Licensed Breeders Program.

Recommendation 2.4, Not Adopted — Eliminate the Professional Employer Organizations Program.

Recommendation 2.5, Not Adopted — Eliminate the Weather Modification Program.

Recommendation 2.6, Not Adopted — Eliminate the Responsible Pet Owner Program.

Recommendation 2.7, Not Adopted — Eliminate the journeyman lineman license.

Recommendation 2.8, Not Adopted — Eliminate the journeyman industrial electrician license.

Recommendation 2.9, Adopted — Eliminate the combative sports matchmaker license.

Recommendation 2.10, Adopted — Eliminate the combative sports event coordinator license.

Recommendation 2.11, Adopted — Eliminate the combative sports second license.

ISSUE 3

Regulating Barbering and Cosmetology Separately Is Inefficient, Unfair, and Unnecessary to Protect the Public.

Recommendation 3.1, Adopted — Consolidate Texas' regulation of barbers and cosmetologists, and administer the two programs as one.

Recommendation 3.2, Adopted — Eliminate barbering and cosmetology instructor licenses.

Recommendation 3.3, Adopted — Eliminate all wig-related licenses.

Recommendation 3.4, Adopted — Eliminate state regulation of barber poles.

ISSUE 4

TDLR's Driver Training Programs Need Fundamental Reform to Eliminate Unnecessary, Burdensome, and Unfair Regulations.

Driver Improvement

Recommendation 4.1, Adopted — Eliminate the separate drug and alcohol driving awareness course and associated licenses.

Recommendation 4.2, Adopted — Eliminate the separate specialized driving safety course and associated licenses.

Recommendation 4.3, Adopted — Eliminate the separate driving safety course for drivers under 25 years old.

Recommendation 4.4, Adopted — Eliminate the redundant driving safety school license.

Recommendation 4.5, Adopted — Eliminate the driving safety instructor license.

Recommendation 4.6, Not Adopted — Eliminate the minimum fees driving safety course providers must charge consumers.

Driver Education and Parent-Taught Driver Education

Recommendation 4.7, Adopted as Modified — Modify the original staff recommendation to modernize the licensing of driver education businesses by clearly establishing a separate license for parent-taught driver education (PTDE) providers. The new structure would be as follows:

- **In-person provider**: a business, other than a PTDE provider, offering driver education courses in person, in-car instruction, observation hours, and/or driver license exams

- **Online provider**: a business, other than a PTDE provider, offering driver education courses remotely through the internet rather than at an on-site location where the student is physically present

- **PTDE provider**: a business offering driver education courses that parents or designees use to teach their student

Statute would authorize PTDE providers to offer correspondence and/or online courses and would define the unique requirements for these providers. Specifically, statute would clearly require PTDE providers to adhere to minimum course curriculum standards established by TDLR. Statute would exempt PTDE providers from requirements to have an instructor but would specify that if the provider chooses to offer an instructor, that individual must be licensed. Statute would also require PTDE providers who offer online courses to include measures to validate a student's active participation in the course but would exempt them from requirements to include mechanisms to validate a student's identity and other requirements applicable to online providers.

Recommendation 4.8, Adopted — Eliminate pre-license and continuing education requirements for driver education instructors.

Recommendation 4.9, Adopted — Require a memorandum of understanding to facilitate better coordination between TDLR and DPS.

Recommendation 4.10, Adopted — Direct TDLR to remove from rule certain driver education school inspection requirements. (Management action – nonstatutory)

Driver Improvement and Driver Education

Recommendation 4.11, Adopted — Eliminate prescriptive curriculum hours and authorize TDLR to set minimum hours in rule.

Recommendation 4.12, Adopted — Eliminate costly course approval fees and streamline TDLR's process for approving driver training curricula.

Recommendation 4.13, Adopted — Modify the membership of the Driver Training and Traffic Safety Advisory Committee to conform to the new licensing structure.

Recommendation 4.14, Adopted — Direct TDLR to list on its website only licensed instructors and providers, not the specific courses they offer. (Management action – nonstatutory)

ISSUE 5

The Texas Department of Motor Vehicles Could Regulate Used Automotive Parts Recyclers More Effectively Than TDLR.

Recommendation 5.1, Not Adopted — Transfer the regulation of UAPRs from TDLR to TxDMV, and consolidate the UAPR and salvage dealer licenses into a single license.

ISSUE 6

TDLR Lacks a Data-Driven, Risk-Based Strategy to Guide Key Regulatory Functions and Maximize Efficiency.

Recommendation 6.1, Adopted — Require TDLR to establish a risk-based approach to inspections.

Recommendation 6.2, Adopted — Require TDLR to prioritize complaints based on the risk they pose to the public.

Recommendation 6.3, Adopted — Direct TDLR to develop a comprehensive, data-driven strategy for assessing program risks and setting regulatory priorities. (Management action – nonstatutory)

ISSUE 7

Key Elements of TDLR's Statute and Rules Do Not Conform to Common Regulatory Standards.

Recommendation 7.1, Adopted — Remove subjective licensure provisions from TDLR's statute.

Recommendation 7.2, Adopted — Authorize TDLR to require disclosure of additional financial and controlling information of applicants for certain business licenses.

Recommendation 7.3, Adopted — Clarify TDLR's general authority to adopt rules requiring continuing education, as necessary.

Recommendation 7.4, Adopted — Authorize TDLR to deny license renewal applications for noncompliant applicants.

Recommendation 7.5, Adopted — Provide TDLR general authority to order refunds.

Recommendation 7.6, Adopted — Require TDLR to collect, maintain, and make publicly available detailed statistical information on complaints regarding its licensees.

Recommendation 7.7, Adopted — Authorize the Texas Commission of Licensing and Regulation to dismiss low-level complaints and to delegate this authority to agency staff.

Recommendation 7.8, Adopted — Direct the agency to maintain complainants' confidentiality when possible. (Management action – nonstatutory)

ADOPTED NEW RECOMMENDATION

Virtual Advisory Board Meetings

Authorize TDLR's advisory boards to continue holding fully telephonic or videoconference meetings.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations would result in long-term efficiency gains by eliminating duplicate and unnecessary administrative functions. Of the 201 different license types TDLR administers across its programs, the commission recommends eliminating 31 of them. While the elimination of these license types would result in a revenue loss, the exact fiscal impact of other recommendations would depend on timing and implementation. As such, the overall impact of the commission's recommendations cannot be estimated.

The recommendations to eliminate seven license types would result in a loss of $259,931 each year, partially offset by an estimated annual savings of $152,011 in operating expenses, and a reduction of 1.9 full-time positions, beginning in fiscal year 2022.

The recommendation to consolidate the Barbering and Cosmetology programs would improve TDLR's operations by eliminating duplicate administrative functions, but the agency may incur some upfront costs to implement the recommendation, such as staff time to modify information technology systems and update rules, procedures, and other materials. The recommendations to eliminate instructor and wig-related license types would result in a loss of about $190,000 in revenue that would be partially offset by savings in operating expenses.

The recommendations to streamline TDLR's licensing structure for driver training would improve TDLR's operations by eliminating burdensome and unnecessary administrative functions, but again, the agency may incur some upfront costs to implement the recommendations. The recommendations to eliminate certain driver improvement license types would result in a loss of about $212,000 in revenue, or less based on the recently approved fee reductions, that would be partially offset by savings in operating expenses.

SUMMARY OF SUNSET STAFF REPORT

For three decades, the Legislature, often through the Sunset process, has established new programs at the Texas Department of Licensing and Regulation (TDLR) and transferred several troubled programs to the agency. Compared to its previous Sunset review in 2002, the agency now oversees more than twice the number of programs and roughly eight times as many licensees. Overall, the review found TDLR performs critical functions for the state and should be continued, but if the Legislature is going to keep entrusting TDLR with more responsibilities, a bit of house cleaning is in order.

> If the Legislature keeps entrusting TDLR with more responsibilities, a bit of house cleaning is in order.

Even though TDLR is known as the state's largest umbrella occupational licensing agency, its role is not limited to traditional occupational licensing functions. For certain programs TDLR plays a regulatory role disconnected from its licensing one, such as ensuring landowners in certain parts of the state plug abandoned or deteriorated water wells. Sometimes the agency's regulation is connected more to economic development than public safety, such as oversight of potentially lucrative combative sports events. These nuances are important when considering TDLR's ability to operate efficiently. As Sunset staff has noted several times, TDLR's functionally aligned structure allows it to eliminate duplicate administrative functions and maximize efficiency by performing similar licensing, customer service, and enforcement processes across all its programs. Yet TDLR's other regulatory roles demonstrate not everything fits into this structure. As such, the Legislature needs to carefully evaluate which programs it entrusts to TDLR, considering the impact on existing programs and the agency's functional alignment.

This Sunset review is the first in-depth look at TDLR following a period of dramatic growth and change after the agency took on regulation of barbers and cosmetologists in 2005, as well as 13 programs transferred from the Department of State Health Services in 2016 and 2017. Although the Legislature excluded programs transferred to the agency after September 1, 2016 from this review, Sunset staff still evaluated how integrating new programs has affected TDLR's overall operations. While TDLR has generally incorporated new programs successfully, its ability to take on additional responsibilities without jeopardizing the quality of service to licensees and the general public is not limitless. In fact, evidence of increased burdens is beginning to show. To that end, the review focused on preparing TDLR for the future by eliminating certain programs and licenses, removing burdensome regulations, and making other improvements that would free up the agency's capacity and allow it to become even more efficient.

As required by the Sunset Act, Sunset staff evaluated and identified numerous licenses that could be eliminated with little risk to the public. Although some of these licenses provide benefits to a limited group of consumers, they do not

meet the broader criteria of protecting the overall public interest. Other programs — those regulating barbers, cosmetologists, and driver training providers — need significant changes to streamline their licensing structures and provide more efficient and fair regulation. The review also identified one program, the regulation of used automotive parts recyclers, that could be regulated more effectively at the Texas Department of Motor Vehicles with the rest of the automotive industry.

TDLR has done a commendable job adjusting its operations to handle some of the pressure points resulting from its ever-expanding licensee population and dynamic regulatory responsibilities. For example, the agency moved quickly to suspend rules and adopt alternative procedures during the COVID-19 pandemic to give licensees flexibility to continue providing services to the extent possible and consistent with the governor's orders. However, the review identified certain processes inconsistent with best practices for licensing agencies and found decision making for key regulatory functions is largely driven by a reactive process reliant more on qualitative information than consistent, reliable data. Additional tools and a comprehensive, risk-based strategy to guide TDLR's inspection and enforcement functions would ensure the most efficient allocation of resources toward the highest risks to the public.

The following material highlights Sunset staff's key recommendations for the Texas Department of Licensing and Regulation.

Sunset Staff Issues and Recommendations

ISSUE 1

The State Has a Continuing Need for TDLR, but the Effectiveness of Its Advisory Boards Could Be Improved.

Most of TDLR's licensing programs continue to be needed to protect Texas consumers and the public, and the agency's functionally aligned structure allows it to administer these programs effectively. However, statute limits TDLR's ability to conduct advisory board meetings in the most efficient manner possible. Standardizing certain advisory board meeting requirements and authorizing TDLR to create advisory boards comprised of members from similar industries or professions it regulates would improve administrative efficiency and enhance coordination among professions that face similar policy issues.

Key Recommendations

- Continue TDLR for 12 years, until 2033.

- Remove advisory board meeting requirements from statute and authorize TDLR to call meetings as needed.

- Authorize TDLR to create interdisciplinary advisory boards to coordinate the expertise and input for similar industries.

ISSUE 2

Fifteen Occupational Licenses Are Not Necessary to Protect the Public.

The Sunset review found 15 license types across eight programs do not meaningfully protect the public. Sunset staff's analysis found these licenses do not meet the Sunset Act's criteria for regulatory need given limited enforcement activity, duplication of existing controls, minimal public exposure, or numerous exemptions that significantly undermine regulation. Ultimately, Sunset staff found these regulatory programs and licenses are no longer needed and could be safely eliminated.

Key Recommendations

- Eliminate the Polygraph Examiner, Auctioneers, Licensed Breeder, Professional Employer Organizations, Weather Modification, and Responsible Pet Owner programs.

- Eliminate the journeyman lineman and journeyman industrial electrician licenses in the Electricians Program.

- Eliminate the matchmaker, event coordinator, and second licenses in the Combative Sports Program.

ISSUE 3

Regulating Barbering and Cosmetology Separately Is Inefficient, Unfair, and Unnecessary to Protect the Public.

Licensing barbers and cosmetologists is necessary to protect Texans from unsanitary practices. However, while these professionals often provide identical services, the state divides them into siloed licensing programs, which wastes state resources, creates arbitrary disparities between licensees, and protects unknowing consumers inconsistently. Further, both programs include burdensome regulations that do not enhance public safety and should be removed. Combining and simplifying TDLR's licensing of barbers and cosmetologists would eliminate unfair treatment of licensees, reduce burdens on licensees and staff, and improve communication across the industry without compromising consumer protection.

Key Recommendations

- Consolidate Texas' regulation of barbers and cosmetologists, and administer the two programs as one.

- Eliminate instructor and wig-related licenses.

ISSUE 4

TDLR's Driver Training Programs Need Fundamental Reform to Eliminate Unnecessary, Burdensome, and Unfair Regulations.

TDLR licenses schools, course providers, and instructors in two broad categories of driver training: driver education and driver improvement. However, outdated, convoluted, and inconsistent statutes as well as lengthy, prescriptive rules overregulate the industry and expend TDLR's administrative efforts on aspects that lack a meaningful connection to public safety. Excessive regulations create barriers to entry and

licensees are not treated equally under the law, resulting in unfair advantages for certain businesses, such as parent-taught driver education course providers. Removing these regulations would lower burdens and barriers for licensees, and streamlining how the state licenses and regulates driver training businesses would eliminate unfair treatment of licensees and make TDLR's administration more efficient. Further, improving coordination with the Department of Public Safety (DPS), the agency charged with driver licensing, would prevent any disconnects between driver education curricula and the driver license exam.

Key Recommendations

● Streamline and modernize the licensing of driver training in Texas.

- Eliminate certain driver improvement license types, including driving safety schools and instructors, and all specialized driving safety and drug and alcohol driving awareness licenses.

- Create a consistent regulatory framework for driver education based on course delivery methods.

- Eliminate pre-license and continuing education requirements for driver education instructors.

- Eliminate prescriptive curriculum hours and authorize TDLR to set minimum hours in rule.

- Eliminate costly course approval fees and streamline TDLR's process for approving driver training curricula.

- Require a memorandum of understanding to facilitate better coordination between TDLR and DPS.

Issue 5

The Texas Department of Motor Vehicles Could Regulate Used Automotive Parts Recyclers More Effectively Than TDLR.

In 2009 the Legislature divided regulation of the salvage vehicle industry across two agencies with TDLR regulating used automotive parts recyclers (UAPRs) and the Texas Department of Motor Vehicles (TxDMV) regulating salvage dealers. UAPRs are motor vehicle businesses that purchase end-of-life vehicles to dismantle and resell usable parts and components. Consumer protections intended by regulating these businesses rely on the state classifying dismantled vehicles as "nonrepairable" in the state's vehicle titling system. However, TDLR does not have the authority, systems, or expertise to enforce motor vehicle laws and mostly ensures compliance with UAPRs' obligations to TxDMV. On the other hand, TxDMV maintains the state's vehicle titling system and coordinates with law enforcement to more effectively address illegal activity in the motor vehicle industry, such as vehicle theft and title fraud. Regulating UAPRs and salvage dealers as one industry at TxDMV would improve the state's ability to regulate the end-of-life vehicle market by eliminating TDLR's middleman status and empowering TxDMV to use its tools and expertise to efficiently regulate UAPR businesses.

Key Recommendation

● Transfer the regulation of UAPRs from TDLR to TxDMV and consolidate the UAPR and salvage dealer licenses into a single license.

Issue 6

TDLR Lacks a Data-Driven, Risk-Based Strategy to Guide Key Regulatory Functions and Maximize Efficiency.

TDLR's functional alignment and strong relationships with stakeholders allow staff to handle most serious public safety issues effectively. However, inflexible inspection schedules and unclear complaint priorities prevent the agency from operating as efficiently as possible. Overloaded with growing responsibilities, TDLR has not stepped back from day-to-day operations and conducted systematic data analyses to guide its decision making. As a result, the agency has missed opportunities for proactively addressing problematic behavior among licensees, improving the agency's response to repeat violators, and updating rules to reflect past experience and current risks. Developing a more data-driven approach to decision making across programs would help TDLR target its resources toward issues most essential to licensees, policymakers, and the public.

Key Recommendations

- Require TDLR to establish a risk-based approach to inspections.

- Require TDLR to prioritize complaints based on the risk they pose to the public.

- Direct TDLR to develop a comprehensive, data-driven strategy for assessing program risks and setting regulatory priorities.

Issue 7

Key Elements of TDLR's Statute and Rules Do Not Conform to Common Regulatory Standards.

Certain provisions in TDLR's statutes, rules, and policies do not match model standards or common practices observed through Sunset's experience reviewing licensing and regulatory agencies. Specifically, some licensure requirements are inappropriately subjective and vague, and could create inconsistent barriers to licensure for otherwise qualified applicants. For some of its programs, TDLR lacks the authority to obtain adequate information to establish whether a license applicant presents a risk to consumers or the public, or to deny licensure renewal for noncompliance with disciplinary orders. Additionally, TDLR lacks clear general authority to establish continuing education requirements, order licensees to issue refunds to consumers, and administratively dismiss complaints. The review found TDLR does not report statistical information on complaints or protect the identity of complainants to the extent possible. Aligning TDLR's statutes, rules, and procedures with best practices would help protect consumers and the public, reduce burdens on licensees, and match the level of regulation with the level of risk posed to the public.

Key Recommendations

- Remove subjective licensure provisions from TDLR's statute.

- Authorize TDLR to require disclosure of additional financial and controlling information of applicants for certain business licenses.

- Clarify TDLR's general authority to adopt rules requiring continuing education, as necessary.

- Require TDLR to collect, maintain, and make publicly available detailed statistical information on complaints regarding its licensees.

Fiscal Implication Summary

The recommendations would result in long-term efficiency gains by eliminating duplicate and unnecessary administrative functions. Of the 201 different license types TDLR administers across its programs, the Sunset review identified 39 that could be eliminated. While the elimination of these license types would result in a revenue loss, the exact fiscal impact of other recommendations would depend on timing and implementation. As such, the overall impact cannot be estimated.

Issue 2 — The recommendations to eliminate 15 license types would result in a loss of about $520,800 each year, partially offset by an estimated annual savings of $349,500 in operating expenses, and a reduction of 4.4 full-time staff positions, beginning in fiscal year 2022.

Issue 3 — Consolidating the Barbering and Cosmetology programs would improve TDLR's operations by eliminating duplicate administrative functions, but the agency may incur some upfront costs to implement the recommendations, such as staff time to modify information technology systems and update rules, procedures, and other materials. The recommendations to eliminate instructor and wig-related license types would result in a loss of about $190,000 in revenue that would be partially offset by savings in operating expenses.

Issue 4 — Streamlining TDLR's licensing structure for driver training would improve TDLR's operations by eliminating burdensome and unnecessary administrative functions, but as with Issue 3, the agency may incur some upfront costs to implement the recommendations. The recommendations to eliminate course approvals and certain driver improvement license types would result in a loss of about $212,000 in revenue, or less based on the recently proposed fee reductions, that would be partially offset by savings in operating expenses.

Issue 5 — The recommendation to transfer the regulation of UAPRs from TDLR to TxDMV and consolidate the UAPR and salvage dealer licenses into a single license would require the Legislature to permanently transfer 1.5 full-time staff positions and an annual appropriation of $107,000 from TDLR to TxDMV. Additionally, TxDMV estimates it would incur a one-time cost of approximately $83,000 to modify its information technology systems to accommodate the new licensees. Eliminating required inspections should reduce ongoing costs overall, but these savings cannot be estimated at this time.
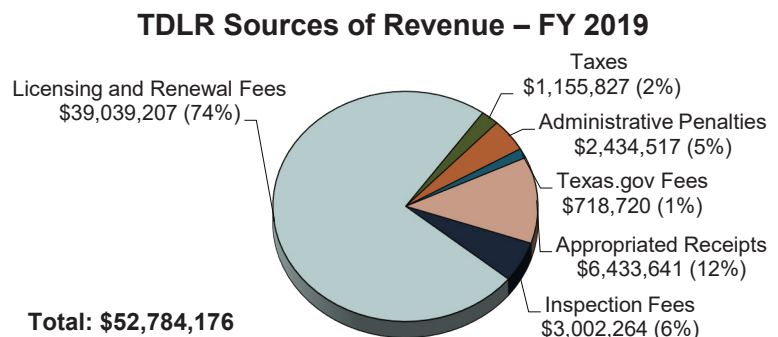
AGENCY AT A GLANCE

The Legislature created the Texas Department of Licensing and Regulation (TDLR) under its former name, the Texas Bureau of Labor Statistics, in 1909 to collect and report workforce data and administer several labor laws. Over time, the agency's mission broadened to include labor-related regulatory functions and later, following the agency's Sunset review in 1989, TDLR became an umbrella agency for occupational licensing and regulatory programs. To carry out its stated mission of earning the trust of Texans every day by providing innovative regulatory solutions for licensees and those they serve, TDLR performs the following key activities:

- Licenses, certifies, permits, and registers qualified applicants.

- Oversees requirements for pre-licensure education, licensing examinations, and continuing education for regulated occupations.

- Inspects facilities, equipment, and buildings for safety and accessibility.

- Investigates complaints and enforces the agency's statutes and rules by taking disciplinary action against violators.

- Responds to customer service inquiries.

Although TDLR's overall operations, program administration, and structure are under Sunset review, the Legislature excluded programs transferred to TDLR on or after September 1, 2016 from this review.[1] These programs, which are noted in the *TDLR Licensees by Program* chart on Page 9, are not subject to abolishment and Sunset staff did not evaluate their professional standards or requirements.

Key Facts

- **Governance.** The agency's governing body, the Texas Commission of Licensing and Regulation, consists of seven members of the general public appointed by the governor, with the advice and consent of the Senate, who serve staggered six-year terms. Statute prohibits commission members from having close ties to the industries they oversee, so the commission receives advice and recommendations from 31 statutorily created advisory boards made up largely of industry participants.[2] The composition of the boards varies, but most members are nominated by the commission chair and approved by the commission to serve staggered six-year terms.

- **Funding.** As shown in the *TDLR Sources of Revenue* chart, TDLR received almost $53 million in revenue in fiscal year 2019, including $39 million from licensing and renewal fees. TDLR also collects revenues generated from a gross receipts tax on combative sports events the agency regulates. Historically, the agency has generated revenue through fees in excess of that needed to cover agency expenditures. In fiscal year 2019, TDLR deposited nearly $8 million into the General Revenue Fund. TDLR has two

TDLR Sources of Revenue – FY 2019

Licensing and Renewal Fees
$39,039,207 (74%)

Taxes
$1,155,827 (2%)

Administrative Penalties
$2,434,517 (5%)

Texas.gov Fees
$718,720 (1%)

Appropriated Receipts
$6,433,641 (12%)

Inspection Fees
$3,002,264 (6%)

Total: $52,784,176

general revenue dedicated funds and a trust fund used for restitution in the Barbering, Cosmetology, and Auctioneers programs, respectively.

As shown in the *TDLR Expenditures* chart, TDLR spent about $45 million across its functional divisions in fiscal year 2019, with nearly half going toward inspections and enforcement. A description of TDLR's use of historically underutilized businesses in purchasing goods and services for fiscal years 2017–19 is included in Appendix A.

TDLR Expenditures – FY 2019

IT and Central Administration
$10,406,578 (23%)

Licensing
$7,696,489 (17%)

Education and Examination
$1,825,350 (4%)

Customer Service
$3,249,601 (7%)

Texas.gov Fees
$718,720 (2%)

Enforcement
$9,092,915 (20%)

Field Inspections and Plan Reviews
$11,863,091 (27%)

Total: $44,852,744
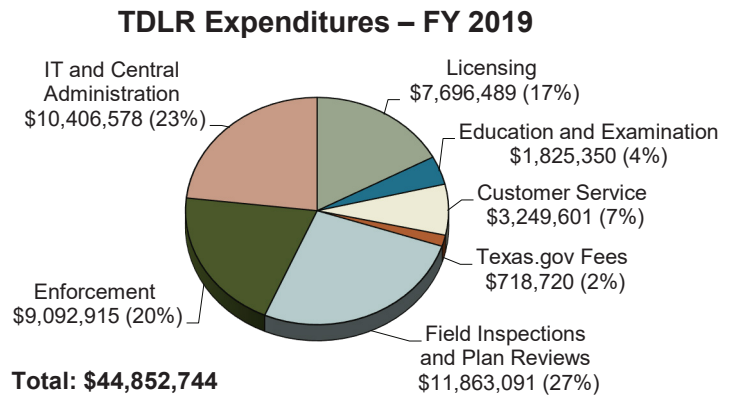
- **Staffing.** TDLR employed about 460 full time staff in fiscal year 2019, including a number of technical and industry experts. About 400 staff work at the agency's Aust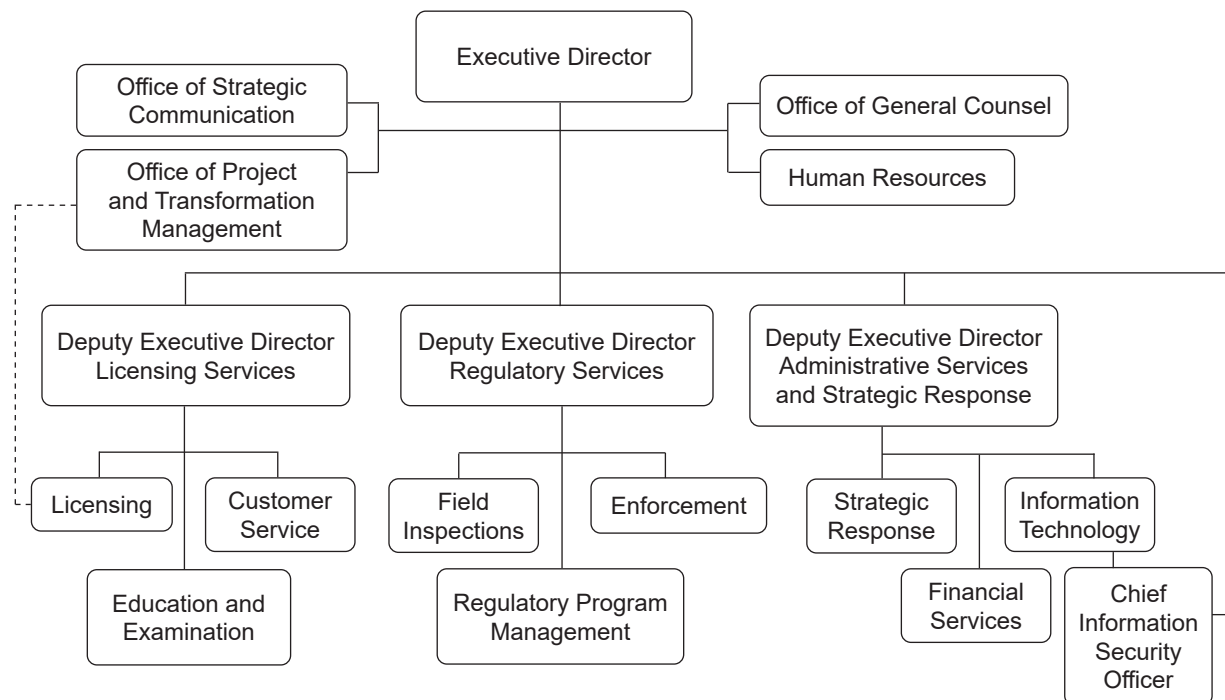in headquarters and north campus while the remainder report to Fort Worth and Houston field offices. As shown in the chart below, TDLR is organized functionally across all its programs. Appendix B compares TDLR's workforce to the percentage of minorities in the statewide civilian labor force for the past three fiscal years.

TDLR Organizational Chart

- Executive Director
- Office of Strategic Communication
- Office of Project and Transformation Management
- Office of General Counsel
- Human Resources
- Deputy Executive Director Licensing Services
  - Licensing
  - Customer Service
  - Education and Examination
- Deputy Executive Director Regulatory Services
  - Field Inspections
  - Enforcement
  - Regulatory Program Management
- Deputy Executive Director Administrative Services and Strategic Response
  - Strategic Response
  - Information Technology
  - Financial Services
  - Chief Information Security Officer

- **Licensing.** Over time, the Legislature has established several new licensing programs at TDLR and transferred troubled programs from other state agencies, as detailed in Appendix C. At the end of fiscal year 2019, TDLR licensed over 820,000 individuals, businesses, and pieces of equipment across 39 programs and 201 different license types. The chart on the following page, *TDLR Licensees by Program*, provides the number of licensees in each program. TDLR estimates its licensee population

will reach about 1 million when the recent transfers of the Motorcycle/All-Terrain Vehicle Safety and Motor Fuel Metering and Quality programs are complete by September 2020. Appendix D briefly describes each of TDLR's programs.

TDLR Licensees by Program – FY 2019

Air Conditioning and Refrigeration Contractors	48,391	Midwives*	313
Athletic Trainers*	3,974	Mold Assessors and Remediators*	5,464
Auctioneers	2,398	Offender Education Programs*	3,509
Barbering	27,160	Orthotists and Prosthetists*	912
Behavior Analysts	1,989	Podiatric Medicine*	1,626
Boiler Safety	53,492	Polygraph Examiners	258
Code Enforcement Officers*	2,543	Professional Employer Organizations	404
Combative Sports	3,088	Property Tax Consultants	1,842
Cosmetology	315,088	Property Tax Professionals	3,699
Dietitians*	6,134	Responsible Pet Owner	0
Driver Education and Safety	4,055	Sanitarians*	1,283
Dyslexia Practitioners and Therapists*	964	Service Contract Providers	384
Electricians	158,109	Speech-Language Pathologists and Audiologists*	21,692
Elevators, Escalators, and Related Equipment	48,236	Tow Trucks and Operators	29,388
Elimination of Architectural Barriers	25,057	Transportation Network Companies	14
Hearing Instrument Fitters and Dispensers*	885	Used Automotive Parts Recyclers	3,179
Industrialized Housing and Buildings	887	Vehicle Storage Facilities	4,518
Laser Hair Removal*	3,197	Water Well Drillers and Pump Installers	2,270
Licensed Breeders	157	Weather Modification	13
Massage Therapy*	33,986	**Total**	**820,558**

* Programs not currently under review.

- **Examinations and education.** In fiscal year 2019, TDLR administered 73,000 written and practical exams at 24 exam sites for 74 different license types through its third-party exam provider and facilitator, PSI Services. PSI maintains educational centers overseas for military personnel and facilitates licensing exams in two Texas prisons. TDLR also approves schools, continuing education providers, curricula, training programs, and courses for various programs.

- **Inspections and plan reviews.** TDLR field inspectors work across four regions to perform periodic inspections of licensed facilities, equipment, and schools, and to educate licensees on statutes and agency rules. TDLR also works with third-party inspectors for seven of its programs. In fiscal year 2019, TDLR and third-party inspectors conducted 145,600 inspections. For certain programs, TDLR's inspections come in the form of reviewing building or design plans and in fiscal year 2019, the agency completed 26,029 plan reviews.

- **Enforcement.** The agency receives complaints against licensees, initiates its own investigations, and takes action against those in violation of statutes and rules. The commission may impose administrative penalties or suspend or revoke a license for serious violations. However, the agency resolves nearly 80 percent of cases informally to encourage licensees to come into compliance. In fiscal year 2019, the agency received over 37,000 complaints across all programs. In that same year, the agency averaged 152 days to resolve each of its roughly 10,000 opened cases. The table, *TDLR Disciplinary Efforts,* summarizes the agency's enforcement actions across all programs in fiscal year 2019.

TDLR Disciplinary Efforts – FY 2019

Total Number of Complaints	37,019
Total Number of Cases Resolved	10,113
Number of Cases Closed with an Informal Resolution (such as a warning)	7,934
Number of Cases Resulting in Formal Disciplinary Action	2,179
Total Administrative Penalties Assessed	$3,452,750

- **Customer service.** To assist licensees and the general public with questions related to its programs, TDLR performs a variety of customer service activities, including operating a call center, publishing newsletters, hosting summits, and providing presentations at industry events. The agency received over 568,000 inquiries across all programs in fiscal year 2019, with the top programs shown in the table, *Top Five Customer Service Contacts by Program.* In addition to helping its own licensees, TDLR provides assistance and referral services, as required by law, for individuals who inquire about any program regulated by a licensing entity in the state.

Top Five Customer Service Contacts by Program – FY 2019

Cosmetology	122,935
Electricians	56,598
Massage Therapy	30,953
Speech-Language Pathologists and Audiologists	29,774
Driver Education and Safety	27,486

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[1] All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov/. Section 51.0021, Texas Occupations Code.

[2] Section 51.053, Texas Occupations Code.

| ISSUE 1 | The State Has a Continuing Need for TDLR, but the Effectiveness of Its Advisory Boards Could Be Improved. |

Background

Following the agency's Sunset review in 1989, the Legislature established the Texas Department of Licensing and Regulation (TDLR) as the state's primary agency responsible for occupational licensing and regulation of most trades and professions not related to health care. Since then, and as shown in the timeline in Appendix C, the Legislature has continued expanding TDLR by establishing new programs at and transferring troubled programs to the agency, including certain healthcare professions. During fiscal year 2019, TDLR regulated 201 different license types across 39 programs, totaling over 820,000 licensed individuals, businesses, and pieces of equipment.

Although TDLR's overall operations, program administration, and structure are under Sunset review, the Legislature excluded programs transferred to TDLR on or after September 1, 2016 from this review.[1] These 16 programs, also noted in Appendix C, are not subject to abolishment and Sunset staff did not evaluate their professional standards or requirements. The remaining 25 programs currently under review include about 734,000 licensees.

The agency's governing body, the Texas Commission of Licensing and Regulation, receives advice and recommendations from 31 separate advisory boards with a combined total of 256 members.[2] The boards' membership, terms, and meeting requirements vary but most are composed primarily of industry participants.

Findings

Most of TDLR's licensing programs continue to be needed to protect Texas consumers and the public.

In 2013, the Legislature emphasized its desire for a rigorous assessment of the need and level of regulation for an occupational licensing program by adding specific criteria for Sunset reviews of such programs.[3] As discussed further in Issue 2, Sunset staff determined state oversight of six entire programs currently under review is no longer needed and recommends eliminating those programs.

Sunset staff's analysis established the continuing need for the remaining 19 programs, though as discussed in other issues, some programs need significant changes to streamline their licensing structures or could be regulated more effectively at another agency. Some programs, such as those that ensure elevators and boilers are inspected, are vital to protecting the health and safety of the public. Others, including the regulation of service contract providers and property tax consultants, provide financial protection to consumers.

TDLR's functional alignment allows the agency to operate efficiently, but continued unchecked growth risks compromising quality of service.

Texans expect a lean, well-performing state government, which is why the Legislature has sought opportunities to improve regulatory structures through consolidation. An umbrella licensing agency allows the state to take advantage of economies of scale and eliminate duplicate administrative functions for occupational licensing programs, while preserving each occupation's autonomy. TDLR exemplifies this structure, maximizing its administrative efficiency by primarily organizing itself across key functions — licensing, inspections, and enforcement — and cross-training staff to perform standard processes for all its programs.

The number of programs at TDLR has more than doubled in the last 12 years.

However, the agency's growth has stressed the functional alignment that makes it so efficient and ensures licensees, businesses, and the general public receive timely, quality service. As Texas continues to experience rapid growth, several of the industries TDLR regulates are also growing. In the last three years, TDLR's largest programs — Cosmetology and Electricians — gained roughly 23,000 and 12,500 new licensees, respectively. Meanwhile, the number of programs housed under the TDLR umbrella has more than doubled in the last 12 years as the Legislature has entrusted the agency with additional responsibilities. The most seismic event in the agency's recent history was the transfer of 13 programs from the Department of State Health Services in 2016 and 2017. Each new program increased TDLR's workload across functions — bringing additional customer service calls, license applications, inspections, exams, outreach efforts, advisory board meetings, and legacy licensing systems. The charts below show how the volume of TDLR's work has increased over the last five fiscal years.

Licensee Population

27% Increase

Customer Service Inquiries

39% Increase

Inspections Performed by Staff

51% Increase

Complaints Received

53% Increase
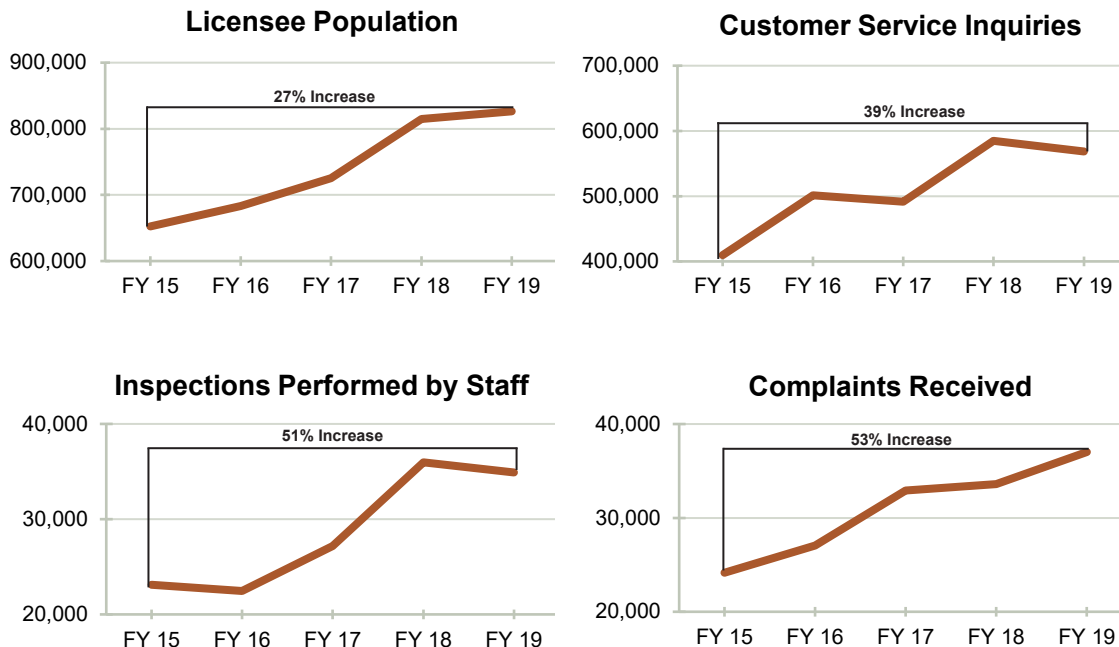
Although TDLR has generally incorporated new programs successfully, it has not been without challenges. Since the Legislature often transfers programs due to inefficient or ineffective regulation at their existing agency, TDLR spends significant time sorting out pre-existing issues, such as record-keeping gaps, contracting problems, and backlogs in licensing, complaint investigations, or enforcement cases. Across the agency, evidence of increased burdens and capacity issues is beginning to show. Since the 2017 transfers, some TDLR performance and customer service metrics have dipped. For example, the average length of time to resolve cases is 10 days longer and the percentage of cases closed within six months is 10 percent lower as compared to three years ago.

The textbox, *Dealing With Continued Growth*, provides some examples of how TDLR has adjusted operations to account for some of the pressure points resulting from its ballooning licensee population. Yet the agency has also had to abandon or postpone other projects because it had to shift its priorities to onboarding another new program. For example, last year information technology staff started transferring data for the Podiatric Medicine Program into the agency's main licensing database, which would have helped with TDLR's overall administrative efficiency and ability to issue new licenses and renewals quickly. However, the agency had to stop this effort to focus on the Motor Fuel Metering and Quality Program transfer from the Texas Department of Agriculture. While TDLR's flexibility and adaptability as it takes on new programs is commendable, its ability to continue doing so without further sacrificing quality of service and adversely impacting licensees and the general public is not guaranteed.

> **Dealing With Continued Growth**
>
> - TDLR requested and received funds from the 86th Legislature to begin procuring a new consolidated licensing system since licensing staff currently have to use nine different legacy licensing systems to process applications.
>
> - Field inspectors implemented software to route the ever-growing number of inspections more efficiently.
>
> - Changes made by the 86th Legislature allowed TDLR to move from a two- to four-year inspection cycle for some license types to handle the workload.
>
> - Enforcement intake and investigation staff overhauled their case assignment process to cover increasing workloads across the state.
>
> - Customer service staff implemented a callback function to manage the increasing call volume.

TDLR lacks the flexibility needed to maximize its advisory boards' efficiency and effectiveness.

The agency's advisory boards provide the commission valuable technical expertise and industry insights, and play a critical role in the rulemaking process. For the majority of TDLR's advisory boards, statute or rule authorizes the presiding officer of the commission or agency executive director to call meetings as needed. However, for 10 of its advisory boards, statute limits TDLR's ability to conduct meetings in the most efficient manner by prescribing the minimum number of meetings or allowing the board chair to call meetings, resulting in unnecessary meetings that waste staff time and resources and burden advisory board members who serve voluntarily without compensation or reimbursement for expenses.[4] For example, the Architectural Barriers Advisory Committee is statutorily required to meet at least two times per year, but across five meetings in 2018 and 2019, the committee conducted little official business, with only

> Unnecessary meetings waste staff time and burden voluntary advisory board members.

two agenda items requiring a vote. On average, TDLR estimates staff spends almost 50 hours per meeting — more than a full work week — to assist and support the advisory boards, including preparing for and attending the meetings and following up on any items advisory board members request. Given the significant resources needed for meetings, TDLR should have the flexibility to hold them only when necessary to conduct business.

Further, TDLR lacks broad authority to create advisory boards that cross similar industries. Such interdisciplinary boards could enhance coordination among professions that face similar policy issues and whose licensee populations often overlap, such as its Electricians Program and Air Conditioning and Refrigeration Contractors Program. Recognizing the potential benefits to collaboration, in 2019, the Legislature authorized TDLR to call a joint meeting of the advisory boards for its Driver Education and Safety and newly transferred Motorcycle/All-Terrain Vehicle Safety programs.[5] However, this authority does not extend to other programs that could benefit from enhanced coordination, such as TDLR's healthcare or trades programs.

TDLR's statute does not reflect standard language typically applied across the board during Sunset reviews.

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These across-the-board provisions (ATBs) reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

- **Commission member training.** TDLR's statute contains standard language requiring commission members to receive training and information necessary for them to properly discharge their duties. While new board members receive robust training, statute does not contain newer requirements for all topics the training must cover, such as a discussion of the scope of, and limitations on, the commission's rulemaking authority. Statute also does not require that the agency create a training manual for all commission members or specify that commission members must attest to receiving and reviewing the training manual annually.

- **Complaint information.** Statute requires TDLR to maintain a system to track complaints filed with the agency. However, statute does not require the agency to promptly and efficiently act on complaints and contains other minor differences from standard language. As previously mentioned, the percentage of complaints TDLR closes within six months has declined recently, so updating this requirement would ensure TDLR maintains the standard to not only track but take timely action on complaints.

TDLR staff spends almost 50 hours per meeting to assist and support advisory boards.

Statute should require TDLR to promptly and efficiently act on complaints.

Sunset Staff Recommendations

Change in Statute

1.1   Continue TDLR for 12 years.

This recommendation would continue TDLR as the state's umbrella agency for occupational licensing and regulation until 2033. However, programs transferred to TDLR on or after September 1, 2016 would remain subject to Sunset review during the 2022–23 biennium.[6]

1.2   Remove advisory board meeting requirements from statute and authorize TDLR to call meetings as needed.

This recommendation would improve administrative efficiency by removing prescriptive advisory board meeting requirements from statute as well as all references to who has authority to call meetings. Instead, TDLR's enabling statute would authorize the commission's presiding officer or the agency's executive director to call meetings when needed to conduct business.

1.3   Authorize TDLR to create interdisciplinary advisory boards to coordinate the expertise and input for similar industries.

This recommendation would authorize the commission's presiding officer or TDLR's executive director to create standing advisory boards comprised of members from similar industries or professions TDLR regulates. This recommendation would not require the creation of any specific advisory board, but would authorize the agency to establish them by rule to meet its needs.

These boards would not take the place of any of TDLR's existing advisory boards, and should work in coordination with Recommendation 1.2 to avoid creating an additional administrative burden for the agency. For example, statute currently requires TDLR's Electrical Safety and Licensing Advisory Board and Air Conditioning and Refrigeration Contractors Advisory Board to each meet two times per year. Under these recommendations, TDLR could convene each on its own once and then hold one interdisciplinary advisory board meeting that would address issues across both industries.

1.4   Update the standard across-the-board requirements regarding board member training and complaints.

This recommendation would update existing statutory requirements for TDLR to provide commission member training by requiring the agency to develop a training manual that each commission member attests to receiving annually, and require existing member training to include information about the scope of and limitations on the commission's rulemaking authority. The training should provide clarity that the Legislature sets policy, and agency boards and commissions have rulemaking authority necessary to implement legislative policy. The recommendation would also update the statutory requirement for the commission to maintain a system to act promptly and efficiently on complaints.

Fiscal Implication

These recommendations would not result in a fiscal impact to the state. Based on fiscal year 2019 appropriations, continuing TDLR would require $44.2 million annually. The recommendations related to advisory boards are meant to improve internal operations and efficiency, and should reduce TDLR's workload. However, the exact fiscal impact related to staff time saved will depend on the number of advisory board meetings and cannot be estimated.

[1]   All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov/. Section 51.0021, Texas Occupations Code.

[2]   Once the transfer of the Motorcycle/ATV Safety Program is complete in September 2020, TDLR will have 32 advisory boards. Accounting for vacancies, membership across all of TDLR's advisory boards as of February 2020 totals 243.

[3]   Section 325.0115, Texas Government Code.

[4]   The 10 advisory boards are: Air Conditioning and Refrigeration Contractors Advisory Board; Behavior Analyst Advisory Board; Board of Boiler Rules; Electrical Safety and Licensing Advisory Board; Architectural Barriers Advisory Committee; Licensed Breeders Advisory Committee; Property Tax Consultants Advisory Council; Towing and Storage Advisory Board; Texas Water Well Drillers Advisory Council; and Used Automotive Parts Recycling Advisory Board.

[5]   Section 8.004, Article 8 (S.B. 616), Acts of the 86th Texas Legislature, Regular Session, 2019.

[6]   Section 51.0021, Texas Occupations Code.

ISSUE 2 | Fifteen Occupational Licenses Are Not Necessary to Protect the Public.

Background

The Texas Department of Licensing and Regulation (TDLR) has one of the most extensive and diverse regulatory scopes in state government. The agency licenses and regulates individuals, businesses, and pieces of equipment across 39 technical trades, healthcare professions, and other industries. TDLR sets standards; issues licenses, registrations, and certifications; conducts inspections and complaint investigations; and takes enforcement actions when warranted.

The Sunset Advisory Commission has a long history of evaluating licensing and regulatory agencies, guided by standards set in the Sunset Act.[1] In 2013, the Legislature re-emphasized the need for a rigorous assessment of state regulation by adding criteria for Sunset reviews of licensing and regulatory programs, as summarized in the textbox, *Sunset Licensing and Regulatory Questions*.[2] Sunset reviews evaluate the need for agencies and programs; when evaluating licensing and regulatory programs, the burden is on proving the need for the regulation. The assessment of need occurs through a detailed analysis of the potential harm, whether in terms of physical harm or in more subjective terms, such as financial or economic loss. With these criteria in mind, Sunset staff focused on identifying and eliminating programs at TDLR that fail to meet the need for continued regulation, including those that may provide some benefit to a limited class of consumers but do not meet the broader definition of public interest or are otherwise so flawed as to render regulation ineffective.

> **Sunset Licensing and Regulatory Questions**
>
> - Does the occupational licensing program serve a meaningful public interest and provide the least restrictive form of regulation needed to protect the public interest?
>
> - Could the program's regulatory objective be achieved through market forces, private certification and accreditation programs, or enforcement of other law?
>
> - Are the skill and training requirements for a license consistent with a public interest, or do they impede applicants, particularly those with moderate or low incomes, from entering the occupation?
>
> - What is the impact of the regulation on competition, consumer choice, and the cost of services?

Findings

The Sunset review of TDLR identified 15 license types, representing 5,315 licensees across eight programs, that do not meet Sunset's criteria for regulatory need given limited regulatory activity, duplication of existing controls, minimal public exposure, or numerous exemptions that significantly undermine regulation. Although each program and license type on its own does not constitute a significant administrative burden on TDLR, taken together, they require the agency to dedicate time and resources to unnecessary regulations that provide no meaningful public benefits and could be safely eliminated.

Licensing polygraph examiners is unnecessary.

The Polygraph Examiners Program does not meet the intent of occupational licensing given its inability to provide adequate recourse to the public, its low risk to consumers, and that other mechanisms are in place to ensure public protection. The Legislature passed the Polygraph Examiners Act in 1965, establishing the Polygraph Examiners Board within the Engineering Extension Service at Texas A&M University. Through the Sunset process in 1981, the Legislature transferred and administratively housed the Polygraph Examiners Board within the Department of Public Safety (DPS).[3] In 2009, again through the Sunset process, the Legislature abolished the Polygraph Examiners Board and transferred the program to TDLR, reconstituting the board as a five-member advisory committee.[4] The committee consists of two polygraph examiners who work for a governmental law enforcement agency, two polygraph examiners in the commercial field, and one public member.

Statute defines a polygraph instrument as a device used to detect deception or verify the truth by "recording visually, permanently, and simultaneously a subject's cardiovascular and respiratory patterns."[5] The program's 262 licensees, which include full licensees and trainees, are either employed by law enforcement agencies or work as commercial polygraph examiners. The primary consumers of polygraph services are law enforcement and government agencies, and sex offenders who must undergo polygraph testing during their rehabilitative treatment.[6] Pre-employment screening of applicants is polygraph's primary use in government and law enforcement — from local EMS and fire departments to the FBI — though law enforcement agencies also use polygraph exams for investigations.

- **No true recourse for consumers.** Ten years of enforcement data show a polygraph complaint has a less than 1 percent chance of resulting in formal disciplinary action. The Polygraph Examiners Program receives relatively few complaints to begin with — only 104 since transferring to TDLR more than a decade ago — far lower than most of TDLR's other programs. Of the polygraph complaints opened for investigation, 35 percent concerned payment disputes, disqualifying criminal history, and alleged unlicensed activity. TDLR usually settles these types of complaints informally, or the allegations are easy to disprove because polygraph tests are often recorded on video, audio, or written transcripts, and rule requires examiners to retain records of the exams they conduct.[7]

> Substantiating an allegation that an examiner violated professional or ethical standards is extremely difficult.

More than 80 percent of all polygraph complainants have been examinees, most of whom were displeased with their exam results. Since exam results are insufficient grounds for an investigation, a complainant must allege a violation of professional or ethical standards, which is why the other 65 percent of complaints opened for an investigation alleged the licensee conducted the exam incorrectly or unfairly. However, because polygraph testing has inherent potential for false positives, inaccuracy, or different interpretations of physiological responses, substantiating an allegation that an undesired exam result stemmed from an examiner violating professional

or ethical standards is extremely difficult. Accordingly, the Polygraph Examiners Program has taken only one formal disciplinary action since TDLR assumed oversight of the program.

- **Outdated statute devalues the license.** Texas' polygraph licensing statute is out of date and narrow, impeding the growth of the profession while calling into question the usefulness of this limited licensure. For example, the antiquated statute excludes from the polygraph instrument definition the measurement of galvanic skin response (sweat), which has been a component of polygraph testing for decades. The statute also confines state regulation to the traditional polygraph instrument while excluding all other deception detection tools, including technologies that have entered the market in recent years. While statute prohibits licensed polygraph examiners from using other deception detection tools, anyone else is free to market, sell, and use them without state oversight.[8] In other words, the individuals the state licenses as being proficient in deception detection can only legally use the polygraph instrument, undercutting the relevance and value of the polygraph examiner license.

> Texas does not regulate newer deception detection tools.

- **Other sufficient controls for monitoring sex offenders.** Besides government and law enforcement, discussed further below, polygraph is most frequently used in court-ordered or state-supervised monitoring and treatment of sex offenders. The state's sex offender monitoring and treatment process is a collaborative effort among parole and probation departments, licensed sex offender treatment providers, and polygraph examiners, which use common testing guidelines, training, and standards listed in the *State and National Sex Offender Polygraph Exam Guidelines* textbox.[9] Licensed sex offender treatment providers serve a central role in sex offender monitoring, including crafting the questions for the sex offender polygraph test. Because of the potential for inaccuracy in a polygraph test, sex offender treatment regulations require multiple routine polygraph tests over time, and the tests are just one of several components of an offender's treatment plan, which includes various other tests, therapies, and risk assessments.[10]

> **State and National Sex Offender Polygraph Exam Guidelines**
>
> - Texas has established the Joint Polygraph Committee on Offender Testing (JPCOT) guidelines and training requirements.
>
> - The American Polygraph Association (APA) created national standards for Post-Conviction Sex Offender Testing (PCSOT).

Numerous controls and protections through other state licensing programs and existing state processes for screening vendors, including polygraph examiners, further negate the need to license polygraph examiners.

- Texas Department of Criminal Justice. The parole division of the Texas Department of Criminal Justice (TDCJ) currently contracts with 37 polygraph examiners through the state procurement process to service the entire state. For non-contract polygraph examiners that sex offenders select on the open market, TDCJ verifies the examiner is on the public roster of polygraph examiners that meet JPCOT qualifications.[11]

> Probation
> departments
> typically do not
> contact state
> regulators when
> issues arise
> with a polygraph
> examiner.

- State and local probation departments. While probation departments' approach to selecting any kind of provider — from cybersecurity professionals to ankle monitor companies — varies, most have a standard vendor screening process, regardless of whether a vendor's profession or industry is licensed by the state. Most departments maintain a list of approved vendors, including polygraph examiners, based on background research and sometimes an interview or site visit. When issues arise with a polygraph examiner or any vendor, departments normally address them directly by terminating a contract and/or removing the vendor from the list of approved providers. Departments typically do not contact state regulators in these cases, suggesting that in the absence of a state license, parole and probation departments could simply continue to require all polygraph examiners working with sex offenders be on the JPCOT roster or that they have PCSOT training, which is searchable on the websites of APA and the National Polygraph Association (NPA).

- Texas Civil Commitment Office. The state civilly commits a subset of sex offenders who have been deemed to be violent predators inherently dangerous to the community to a secure facility.[12] The Texas Civil Commitment Office (TCCO) manages the sex offenders in this facility and uses an open enrollment solicitation process for contracting with polygraph examiners, who work for the office on a rotating basis. In addition to a license in good standing, TCCO requires a polygraph examiner be on the JPCOT roster and adhere to the JPCOT and PCSOT guidelines.

- **Limited class of consumers.** The multiple restrictions on the legal use of polygraph testing confines its use to a limited class of consumers. Private sector polygraph exams include "infidelity tests" for couples or tests verifying fairness in athletic or skill competitions. However, as described in the textbox, *Employee Polygraph Protection Act of 1988*, federal law substantially limits use of a polygraph in the private sector, so its use is most concentrated in government and law enforcement.

Employee Polygraph Protection Act of 1988

- Prohibits most private employers from using any type of lie detector tests, either for pre-employment screening or during the course of employment.

- Subject to restrictions, allows polygraph exams to be administered to certain job applicants of security service and pharmaceutical firms.

- Subject to restrictions, allows polygraph exams to be administered to certain employees of private firms who are reasonably suspected of involvement in a workplace incident (theft, embezzlement, etc.) that resulted in specific economic loss or injury to the employer.

Yet the state also restricts government and law enforcement agencies' use of polygraph exams.[13] For example, state law prohibits TDCJ from disciplining an employee under investigation for refusing to take a polygraph exam and, with the exception of DPS, similar restrictions apply to a law enforcement agency when a peace officer refuses to submit to a polygraph exam as part of an internal investigation into the officer's conduct.[14] Polygraph exam results are also not admissible in court and cannot be the sole reason for revocation of probation or parole.[15]

- **Other means to determine qualifications.** An occupational license validates an individual's qualifications to practice in the regulated field, which is especially needed when consumers lack the means to make informed choices otherwise. For polygraph examiners, however, the APA and the American Association of Police Polygraphists (AAPP) establish national standards for polygraph schools while the NPA establishes national and international standards for polygraph training. Only 25 states and only three of the country's 10 most populous states, including Texas, license polygraph examiners. Ten of these 25 recognize APA or AAPP standards either in statute or rule, and others, like Texas, have a policy that recognizes these standards. These nationally recognized industry groups already serve as the standard bearers for quality in the polygraph industry, making a government-issued license redundant as an indicator of quality. A polygraph examiner's professional and educational history, the publicly available JPCOT roster, and credentials from the APA, AAPP, and NPA are sufficient for consumer choice.

  Meanwhile, more than 73 percent of polygraph examiners in Texas are also active or retired peace officers licensed by the Texas Commission on Law Enforcement. As such, most polygraph examiners have already undergone a state licensing process — including significant training, often over many years, and a fingerprint background check — independent of their polygraph examiner license requirements. Additionally, because most polygraph examiners work for or with law enforcement or corrections, most examiners are already subject to a rigorous background check as a condition of employment, so the polygraph license as a vetting mechanism is largely duplicative.

> Most examiners have already undergone a state licensing process independent of their polygraph license requirements.

Regulation of auctioneers is incomplete, ineffective, and unnecessary.

The auction industry has undergone substantial transformation in recent years as live auctions have been increasingly supplanted with online sales. With this significant portion of the industry exempt from licensure, and administrative penalties that are largely ineffective for the worst offenders, licensing auctioneers does not offer meaningful public protection.

In 1975, the Legislature established the Auctioneers Program at TDLR, which includes 2,356 full and associate licensees. Licensed auctioneers preside over live auction events and work with individual clients by providing services like selling the belongings of an estate. Customers defrauded by an auctioneer can make a claim against a $350,000 Auctioneer Education and Recovery Fund, which licensed auctioneers maintain by paying additional fees when it is depleted.[16]

> More than half of consumer complaints in the program related to online or other exempt auctions.

- **Significant exemptions.** As listed in the *Exempt Auctions* textbox on the following page, statute exempts many types of auctions from regulation, most notably internet auctions, which make up a growing share of all auction business in the state.[17] In fiscal year 2019, more than half of the consumer complaints in the program TDLR received and did not open

Exempt Auctions

- Internet auctions that do not also include an in-person bid component
- Auctions for federal and state governmental agencies
- Auctions for charitable organizations
- Foreclosure auctions
- Bankruptcy auctions
- Auctions of livestock
- Auction conducted by stockyards
- Auctions by dealers registered with the Department of Motor Vehicles
- Sales conducted by sealed bid without the option of changing the bid
- Auctions conducted for students training for licensure
- Auctions/sales conducted by licensees located out of state

for investigation related to online or other exempt auctions. Although most licensed professions have some exemptions from regulation, exempting so many types of auctions from oversight undermines state regulation. Exempted auctioneers enjoy freedom from TDLR's jurisdiction and other license requirements, undermining the intent to protect consumers from individuals who conduct auctions improperly or mismanage property or funds.

The Legislature placed online auctions under regulation in 2013 but reversed course the following session given challenges with a regulatory scope that charged TDLR with attempting to regulate interstate and international commerce, including the multibillion-dollar online juggernaut eBay.[18] In a modern market where online auctions have become ubiquitous, the Legislature's decision highlights that hiring an auctioneer is a matter of consumer choice, which should be governed more by the open market than by state regulation.

- **Limited and ineffective enforcement.** TDLR takes very few enforcement actions against a limited number of auctioneers, reflecting low risk of harm to the public. Just 18 individuals — less than 1 percent of licensees — account for all 37 formal disciplinary actions in the last three fiscal years.[19] Further, enforcement actions the agency takes are largely ineffective, particularly for auctioneers who commit criminal acts such as theft, fraud, and other deceptive business practices, which administrative remedies cannot adequately address. Although TDLR uses the tools it has, including cease and desist orders, administrative penalties, and license suspensions and revocations, these tools do not effectively punish or deter the worst offenders. For example, TDLR revokes auctioneers' licenses until they repay the amount of consumers' losses, but according to enforcement staff, the worst offenders are often insolvent and might forgo their license to avoid the fine, sometimes continuing to practice unlicensed. Although TDLR does not accurately track the number of recidivists across its programs, as discussed in Issue 6, enforcement data suggest a handful of auctioneers repeatedly violate the law despite TDLR's disciplinary actions. In the last five fiscal years, eight auctioneers have committed violations more than once, with one auctioneer committing violations at eight auction events. Not surprisingly, TDLR collects very little of the fines it assesses against auctioneers — only 3 percent in fiscal year 2019, while across all programs the agency collected on average 57 percent of fines assessed.

Moreover, enforcement cases against an auctioneer can take a long time to investigate and resolve, and prolonged case resolution likely contributes to the relatively high number of auctioneers with repeat offenses since some

Less than 1 percent of auctioneers account for all formal disciplinary actions in the last three years.

can continue to practice for more than a year before facing discipline. Many offending auctioneers keep poor records on the inventory entrusted to them, complicating TDLR's effort to prove the auctioneer stole property or the profits from sales. Given these challenges, auctioneer enforcement cases took an average of 403 days to resolve in fiscal year 2019, more than double the agency's average across programs.

While TDLR's enforcement process can be a building block for a future civil case, it could delay more expedient or appropriate redress, including civil actions or criminal penalties, particularly in cases involving significant financial losses. Given a small and overwhelmingly compliant population of auctioneers overall, a minimal caseload of offending auctioneers would likely not overwhelm the courts.

- **Limited restitution.** When an auctioneer does not transfer the funds or property from an auction, each harmed individual can claim up to $15,000 from the recovery fund, with a maximum of $30,000 per auction.[20] Claims made against the fund are typically fulfilled, but the mechanism is imperfect. According to stakeholders, when individuals suffer losses greater than $15,000, they are unlikely to even file a claim and instead file suit against the auctioneer. In some situations involving multiple harmed parties, the $30,000 limit per auction is insufficient. In fiscal year 2019, for example, 19 parties made claims totaling approximately $104,000 against one offending auctioneer. These claimants received on average only $0.28 of every dollar they requested. Further, since only consumers under contract with the offending auctioneer can file claims against the fund, TDLR sometimes has difficulty proving cases against an auctioneer in the absence of a written contract.

- **Other sufficient controls and requirements.** Other laws establish standards and requirements necessary to protect consumers, facilitate fair taxation, and establish permissible grounds for any needed civil or criminal action. Auctions and auctioneers are subject to key sections of the Texas Business and Commerce Code, which for example, establish misdemeanor charges for certain deceptive auction advertising practices.[21] Under the Texas Tax Code, auctioneers are also responsible for collecting sales taxes on behalf of the comptroller.[22]

Criminal penalties or civil actions would provide more appropriate redress in cases involving financial loss.

The Licensed Breeders Program does not provide meaningful regulation.

TDLR's licensing and regulation of dog and cat breeders is intended to combat unscrupulous operators, commonly referred to as "puppy mills," who often improperly shelter animals and provide inadequate care and veterinary attention. However, significant statutory exemptions and unenforceable requirements undermine both the program's goals and the agency's efforts, despite disproportionately high administrative costs. Eight years into the program, Texans still primarily rely on the protections that predate it: federal regulators enforcing requirements for e-commerce and transport of pets,

nonprofit organizations temporarily sheltering abused and neglected animals, and local jurisdictions bringing the most egregious puppy mills to justice.

The U.S. Department of Agriculture (USDA) enforces federal standards for humane care and treatment of certain animals bred for sale through a licensing program that includes inspections and investigations.[23] Breeders with at least five breeding female dogs or cats, selling at least 25 dogs or cats per year, and making more than $500 per year from these sales must have a USDA license.[24] However, dog and cat breeders who only sell directly to pet owners in person, with the seller, buyer, and animal physically present, are exempt.[25]

In 2011, the Legislature established TDLR's licensing program for certain dog and cat breeders and minimum standards of care for dogs and cats bred for sale, whether in person or online.[26] Any person who has 11 or more adult intact female dogs or cats and breeds them to sell or exchange at least 20 animals per year must be licensed.[27]

<div style="float:left; font-style:italic;">Only a small share of Texas breeders fall under TDLR's jurisdiction.</div>

- **Significant loopholes.** Many types of breeding and animals are exempt from state regulation. Statute only contemplates dogs and cats, and does not apply to any animal used for racing or field competitions, personal use, herding, or hunting. Oklahoma is the only other state that establishes a threshold as high as 11 or more adult intact female dogs or cats for licensure to apply. Considering the average dog litter is five puppies, a breeder with less than 11 breeding females could legally house and sell a significant number of animals without a license.[28] The data reflect the limiting effect of these narrow criteria, suggesting only a small share of Texas breeders fall under TDLR's jurisdiction. Sunset staff found through internet searches more than 400 dog breeders operating in Texas, but more than 350 of these breeders had neither a current state nor federal license. Meanwhile, the current number of state licensed breeders is only 154, and the population has been declining since a peak of 177 in 2016.

<div style="float:left; font-style:italic;">Unlicensed activity makes up roughly half of all breeder investigations.</div>

Since pet sales are often cash transactions, and a breeder can lawfully give away animals without keeping a record, as state law requires for pet sales, proving the sale of at least 20 animals per year is almost impossible.[29] Only three other states that license breeders have an annual sales threshold for licensure to apply. TDLR staff consistently encounter breeders who sidestep record-keeping requirements by claiming animals no longer in their possession were not sold but rather are being "temporarily held" by a friend or family member. Staff often hear from licensees about unlicensed actors, something Sunset staff even observed during a ride-along inspection, and ample evidence indicates unlicensed activity, including large breeding operations, continues. Among 20 different complaint categories, unlicensed activity is the most common complaint leading TDLR to open a breeder investigation, making up roughly half of all breeder investigations in eight years of the program's existence.

- **Regulation misses the intended target.** The Legislature created the Licensed Breeder Program to prevent and prosecute large-scale breeder

operations with significant potential for animal harm, yet the program has not had a significant impact on bringing such operations to justice. The nonprofit Society for the Prevention of Cruelty to Animals of Texas has publicly documented at least 22 animal seizures by law enforcement statewide from fiscal years 2012 to 2019. Only three of these offenders were TDLR licensees or license applicants, and in only one instance did a TDLR inspection facilitate the seizure. The presence of law enforcement is key given the danger involved in investigating allegations of unlicensed breeding. TDLR investigators have encountered armed individuals barring them from entering a property where unlicensed activity is suspected. Outside of the licensing program, state law makes cruelty to animals — including failing to provide necessary food, water, care, or shelter — a criminal offense punishable up to a state jail felony, which is appropriate for law enforcement, not a regulatory agency, to address.[30]

- **Resource-intensive but ineffective enforcement.** Statute's narrow criteria for licensure exempt many breeders, but proving exemption is exceedingly difficult and wastes staff's time. As reflected in the *Jurisdictional Cases and Disciplinary Actions* table, jurisdictional cases rarely result in disciplinary action, and for investigations into unlicensed activity — the most common complaint — disciplinary action is even rarer.

> The presence of law enforcement is key when investigating unlicensed breeding allegations.

Jurisdictional Cases and Disciplinary Actions

Fiscal Year	Jurisdictional Cases	Total Disciplinary Actions	Disciplinary Actions Against Unlicensed Breeders
2017	58	13	6
2018	68	5	1
2019	72	3	2

Despite minimal disciplinary activity, TDLR allocates significant resources to this program and revenues do not cover its administration. In fiscal year 2019, TDLR's cost per licensee to administer the program was about three times greater than the small breeder license fee and nearly double that of the large breeder license fee. A 2018 agency fee study found the program had a 38 percent cost overrun. A large share of the cost is inspections; statute requires TDLR to inspect each licensed breeder facility at least once every 18 months.[31] These facilities are often in remote areas of the state and once on site, staff takes on average three hours to complete each inspection.[32] Enforcement cases took 307 days on average to resolve in fiscal year 2019, more than double the average across all TDLR programs. While rule provides for up to four additional inspections per year for noncompliance, TDLR has never conducted such an inspection, lacking the resources to do so.[33]

> Revenues do not cover administration of the breeder program.

Having clear roles for professional employer organizations provides important protections for small businesses, but licensure is unnecessary to protect the public.

When the professional employer organization (PEO) industry was forming, state regulation served a useful purpose to develop consistent standards and supportive legal structures, which are important to retain in law. Today however, as sophisticated "business-to-business" enterprises subject to other accountability and oversight mechanisms, PEOs no longer need state licensure.

PEOs are businesses that provide human resource services, including insurance benefits, payroll processing, tax filing, and workers' compensation insurance to other, typically small, client businesses. By serving multiple clients, often across multiple states, PEOs are able to provide cost-effective services most small and mid-size businesses could not otherwise afford. TDLR annually audits licensed PEOs for proof of positive working capital or other proof of financial security, such as a guaranty, letter of credit, or surety bond, to ensure businesses can fulfill financial commitments to clients and their employees. The program's 391 licensees, which include full and limited licensees, serve businesses that employ nearly 360,000 workers in Texas.

Established in 1993, the Professional Employer Organization Act, defines the nature and terms of a PEO's relationship as a "coemployer" with client businesses.[34] The law distinguishes coemployment from joint employment or other legal employment relationships and outlines contractual requirements between PEOs and their clients.[35] This legal framework clarifies the responsibilities of each party, including payment of wages, taxes, and benefits to the client's employees. Further, key sections of statute also outline the responsibilities of other agencies, including the Texas Department of Insurance and Texas Workforce Commission, in overseeing PEOs' administration of benefits, such as workers' compensation and unemployment insurance, and the enforcement authority of the attorney general.[36] These definitions and delegations are important to ensure the welfare of PEO-covered Texans.

> **TDLR has taken only two formal disciplinary actions in the PEO program's 27-year history.**

- **Public is not the primary consumer of services.** When an industry has a direct impact on the public, members of the public typically file complaints with the regulating agency about unqualified or substandard services. Yet PEOs provide services to other business and only indirectly to those businesses' employees, not to the general public. In fiscal year 2019, TDLR received only five jurisdictional consumer complaints, and in the program's 27-year history the agency has taken only two formal disciplinary actions against licensees. Little evidence exists to suggest the absence of licensure would risk Texans' financial health or welfare.

- **Other means to determine qualifications.** Two other mechanisms currently exist to help potential client businesses make an informed choice when seeking to engage a PEO's services, rendering the state's licensure as an indicator of quality redundant and unnecessary.

– Employer Services Assurance Corporation. The Employer Services Assurance Corporation (ESAC) is a national organization that offers a voluntary accreditation for PEOs.[37] TDLR accepts ESAC as an "assurance organization" required for licensure, as its financial and reporting requirements are more stringent than the agency's. In addition to requiring accredited PEOs to hold a surety bond of up to $1 million, ESAC offers $15 million in liability coverage to accredited PEOs, protecting client businesses and their employees should the PEO go out of business or fail to meet its obligations, though ESAC has never needed to deploy this coverage. One-third of the licensed PEOs in Texas are also accredited by ESAC.

– Certified Professional Employer Organization. The IRS also offers a voluntary certification process called the Certified Professional Employer Organization (CPEO) Program. Its requirements, shown in the *Oversight Entities for PEOs* table, are substantially similar to those of TDLR's program, with some additional reporting requirements. The IRS maintains a public list of certified PEOs as well as those with suspended or revoked certifications — much like TDLR does for all licensees on its website — providing prospective PEO clients with information to make an informed decision.[38] Although the program has only been operational for three years, 10 PEOs in Texas have already earned the certification.[39]

Other accrediting entities cover about 60 percent of PEO-covered employees in Texas.

Oversight Entities for PEOs

Requirement	TDLR License	IRS CPEO Certification	ESAC Accreditation
Annual Fee	$150	$1,000	$7,500–$72,000+ (based on annual gross wages)
Bond or other proof of positive working capital	$50,000–$100,000 (graduated by number of employees)	Greater of $50,000 or 5% of liability during the preceding calendar year, up to $1 million	$250,000–$1 million
Reporting	Annual audited financial statements	Annual audited financial statements; quarterly assertion, CPA attestation, and working capital statements	Quarterly reporting on financial status, ethics, operations, and issues

While these forms of oversight are voluntary, PEOs that hold the ESAC accreditation, CPEO certification, or both cover about 60 percent of the 360,000 PEO-covered employees in Texas. ESAC and the IRS may terminate a PEO's accreditation or certification for noncompliance, which ESAC communicates to a PEO's clients and the IRS publishes on its website.

The Weather Modification Program is unnecessary to protect the public.

Although weather modification regulation may have been necessary when it first gained prominence as a way to legitimize the practice, with few licensees and almost no history of enforcement activity, ongoing regulation does not provide any meaningful public protection.

The Legislature enacted the Weather Modification Act in 1967 and required any individual or organization attempting to conduct weather modification, commonly known as cloud seeding, to obtain a license. Licensees must also obtain a permit for each project, which documents the method, location, and reason for the weather modification.[40] The Legislature transferred the program from the Texas Commission on Environmental Quality to TDLR in 2001.[41] The program also includes a grant component; however, the Legislature has not appropriated any grant funds since 2003.

> **What is Cloud Seeding?**
>
> Several methods exist to conduct cloud seeding, but commonly a plane or ground device ejects silver iodide into clouds; silver iodide has a molecular structure similar to ice so it provides a crystal around which moisture can condense. Moisture is already present in the clouds, but the iodide essentially makes rain clouds more effective at dispensing their water.

Currently, six licensees hold six permits, which cover roughly 30 million acres of mostly farm and ranch land in South-central and West Texas. Licensees carry a minimum of $1 million in liability insurance. Under contract with the Texas Weather Modification Association, Texas Tech University conducts an annual evaluation of the projects; the most recent results available indicate the 2018 weather modification efforts resulted in a 10 percent increase in precipitation.

- **Limited regulatory activity and enforcement.** In evaluating whether to issue a permit, TDLR does not assess if weather modification is needed, only whether a proposed project would have a significantly negative impact on cloud formation in the area. Because the regulation is not designed to assess the need for or effectiveness of projects, the program does not adequately advance the public interest or provide significant public protection. TDLR has never denied a license and only denied a permit once but did so only after a local election had rejected the project. The agency has also never revoked a license or permit, and the program has received zero complaints for the last three fiscal years. Finally, as far as TDLR is aware, no one has ever filed an insurance claim against a licensee, further suggesting a low risk of any actual harm.

TDLR has received zero weather modification complaints for the last three years.

- **Unnecessary layers of regulation.** Most weather modification licensees are groundwater conservation districts or associations of water districts with experience and expertise in water, and that are accountable to elected boards, so the additional oversight by TDLR is unnecessary. Further, although no other state agency directly regulates weather modification, entities must report their activities to multiple agencies. Federal law requires all nonfederal weather modification activities be reported to the National Oceanic and Atmospheric Administration.[42] Additionally, if an individual groundwater conservation district has a goal related to precipitation

enhancement, including one involving weather modification, it reports that in its management plan submitted to the Texas Water Development Board.[43]

The Responsible Pet Owner Program is unnecessary to protect the public.

With no risk of harm to consumers and just two licensees, maintaining a state occupational license for providers of online responsible pet owner courses is not needed and unfairly regulates only one part of a single industry.

In 2017, the Legislature created the Responsible Pet Owner Program to approve online versions of court-ordered courses for animal cruelty offenders.[44] TDLR sets minimum curriculum standards and technical requirements, including password-protected login, course timers, and measures to verify students' identity and active participation in courses. To date, only four businesses have ever submitted an application, and the agency did not issue the first two licenses until early 2020. Statute also authorizes courts to require offenders to attend courses sponsored by municipal animal shelters but does not require any state regulation of these courses.[45]

- **Unnecessary and unfair regulation.** While allowing for online animal cruelty courses could be convenient for many offenders, Sunset staff found no data or evidence to suggest any demonstrable threat to public health, safety, or welfare suggesting licensure of course providers is necessary. The small number of qualified providers that have applied since the Legislature established the program also suggests the population of potential providers is limited and unlikely to grow substantially.

  Several probation departments statewide have internal staff or committees that screen offender education courses, particularly in counties with a high density of providers. State regulation is only beneficial for larger offender education programs with a direct link to public safety, such as driving safety courses discussed in Issue 4, which more than 600,000 Texans take per year and where a license and uniform certificates enable courts and their partners to quickly vet course providers and verify offenders have completed the course.

  Finally, by requiring a license and adherence to curriculum standards of online course providers but not of municipal animal shelter-sponsored courses, the state created an unfair disparity in regulation of the same activity.

> The state created an unfair disparity in the regulation of responsible pet owner courses.

Voluntary licensure of certain electricians does not provide meaningful regulation and wastes TDLR's resources.

Statute exempts several types of electrical work from licensure but also establishes two licenses for individuals who perform certain exempt work, which negates licensure as a means of protecting the public.

In 2003, the Legislature established statewide regulation of electricians at TDLR; prior to that, local governments regulated the profession.[46] The Electricians Program includes 14 license types, including the journeyman lineman, created in 2013, and journeyman industrial electrician, created in 2017. The *Select Electrician Licenses* textbox describes these two license types in more detail.[47]

> ### Select Electrician Licenses
>
> **Journeyman Lineman Electrician (34 licensees).** Authorizes the licensee — who must have 7,000 hours of training in a federally approved apprenticeship program or 3.5 years of experience — to engage in electrical work involving the maintenance and operation of equipment associated with the transmission and distribution of electricity from the electricity's original source to a substation for further distribution.
>
> **Journeyman Industrial Electrician (203 licensees).** Authorizes the licensee — who must have 8,000 hours of training as a licensed electrical apprentice — to perform electrical work exclusively at a chemical plant, petrochemical plant, refinery, natural gas plant, natural gas treating plant, pipeline, or oil and gas exploration and production operation.

- **Voluntary licensure makes regulation meaningless.** The journeyman lineman and journeyman industrial electrician licenses are largely optional because statute already exempts the type of electrical work for which TDLR issues these licenses. Such voluntary licenses provide no meaningful public protection since anyone can perform the work without the license. Instead, these licenses mainly serve as an advertising tool for the individual, which is not the purpose of the state's expenditure of resources on occupational licensing.

  — <u>Journeyman lineman.</u> Statute broadly exempts from licensure electrical transmission work performed by a utility or similar entity, as well as work performed by a business's employees that is not done for the public.[48] Yet the Legislature established the journeyman lineman license for employees of companies that do electrical transmission work and are exempt from licensure but want to demonstrate their qualifications.

    Demonstrating the voluntary nature of the license, the governor vetoed a bill in 2015 that would have expanded the journeyman lineman's scope of practice noting the "current law does not require a license in order to conduct journeyman lineman work, nor should it."[49] The governor also concluded the license serves no imperative public purpose, requires unnecessary government bureaucracy, and creates the potential to artificially increase prices for consumers.[50]

  — <u>Journeyman industrial electrician.</u> Statute exempts from licensure most electrical work performed at petrochemical plants, refineries, and other similar locations.[51] However, the Legislature created the journeyman industrial electrician license for certain industrial facilities that stipulate in their electrical contracts a certain number of licensed journeyman electricians but do not need them to be proficient in all the subjects of a traditional journeyman. Creating an occupational license as a means

Certain electrician licenses serve mainly as an advertising tool for individuals.

to fulfill contractual obligations between businesses is not appropriate nor an efficient use of agency resources.

- **Limited to no enforcement.** The lack of protection the voluntary licenses provide is further demonstrated by how in the last three fiscal years, TDLR has taken no formal disciplinary action against a journeyman lineman or journeyman industrial electrician and only one informal action against a journeyman lineman. This is not unexpected since the only meaningful violation individuals could commit, since the work is exempt, would be indicating they are licensed when they are not.

- **Unnecessary administrative burden on TDLR.** The agency has to create an exam for both license types and process applications, which is a waste of time and resources for licenses that are not meaningful, especially when electricians are already TDLR's second largest licensee population.

- **Dead-end licenses.** Unlike the traditional journeyman license, the journeyman lineman and journeyman industrial electrician licenses do not help individuals who want to pursue their master electrician license in the future. The hours worked do not count toward the on-the-job training hours needed to become a master electrician.

> In the last three years, TDLR has taken no formal disciplinary action against certain electricians.

Three combative sports licenses are duplicative and unnecessary to protect the public.

While the state has an interest in regulating combative sports to protect the fighters and obtain economic benefits these events provide, licensing matchmakers, event coordinators, and "seconds" does not serve a meaningful public interest.

The Combative Sports Program, TDLR's oldest program, licenses boxing, kick boxing, mixed martial arts, and other forms of competition in which a blow is struck which may reasonably be expected to inflict injury.[52] Regulating combative sports fulfills Texas' responsibility under the federal Muhammed Ali Boxing Reform Act, which requires basic safety protections for fighters and the assurance of promoters' financial responsibility for events they produce.[53] Statute gives TDLR broad authority to establish regulatory requirements by rule, such as defining licensing requirements and procedures governing contests.[54]

TDLR ensures compliance at licensed events by managing referees and judges, verifying scores, and overseeing third-party inspectors who regulate fighters before, during, and after a bout. In fiscal year 2019, the agency oversaw 118 events, of which 20 were broadcast live on television. TDLR also collects 3 percent of gross receipts from ticket sales and 3 percent of broadcast sales for deposit into general revenue. In fiscal year 2019, TDLR collected over $955,000 in taxes from events.

The program includes nine license types, including matchmakers, event coordinators, and seconds, described in more detail in the *Select Combative Sports Licenses* textbox on the following page.[55]

> ### Select Combative Sports Licenses
>
> **Matchmaker (10 licensees).** Authorizes the licensee to set matches and be in dressing rooms at an event. By rule, matchmakers may not have a financial interest in the fighter or be licensed as a contestant, second, or ring official.
>
> **Event Coordinator (1 licensee).** Authorizes the licensee to arrange, conduct, or stage combative sports events as a representative of a licensed event promoter. The licensee may also serve as a promoter's representative generally.
>
> **Second (1,896 licensees).** Authorizes the licensee, also known as a cornerman, to serve as one of three assistants to a contestant before and during a match. A second is authorized to sit ringside, enter and stand next to the ring between rounds, provide coaching during a bout, and surrender the fight if necessary.

- **Unnecessary duplication.** The duties of matchmakers, event coordinators, and seconds largely overlap those of the licensed promotor without providing any additional level of protection to contestants or spectators.

  - Matchmakers. TDLR rule places primary responsibility for the financing, staffing, administrative, and logistics requirements of a regulated combative sports event on the licensed promoter.[56] Additionally, both the promoter and TDLR staff are required to ensure bouts are safe and fair, including appropriately pairing contestants, making separate licensure of matchmakers duplicative. Because matching bouts is one of the licensed promoter's core responsibilities, the promoter's employees are exempt from matchmaker licensure. While TDLR rarely disapproves matches of experienced promoters, the agency has final authority over which matches can take place and separately licensing matchmakers does not relieve it of that responsibility, especially when matchmakers have no specific qualifications for licensure.

  - Event coordinators. With the exception of advertising or independently promoting an event, an event coordinator's responsibilities entirely duplicate those of a promoter and, by rule, promoters must supervise the event coordinator's activities, making a separate license unnecessary.[57] As with matchmakers, the duplication of the licensed promoter's responsibilities means even the promoter's employees may work as event coordinators without a license.

  - Seconds. A second, employed by the contestant, their manager, or the promoter, is a member of the team supporting the contestant during the fight. The second is responsible for properly equipping contestants, providing first aid when necessary, and acting as a coach during a match. Rule even holds the contestant responsible, by means of disqualification from a bout, for certain actions of the second during a fight.[58] Licensing seconds, however, is an unnecessary layer of licensure given both contestants' responsibility to ensure their own well-being and the safety protocols required of the promoter and TDLR. Contestants who can afford to do so hire a dedicated and trained team to assist them. But seconds do not have to prove any expertise as a fighter, first aid provider, or coach to qualify for licensure, providing no guarantees of

The duties of certain combative sports licensees largely overlap those of licensed promoters.

quality even for contestants with limited resources. The most protection provided by licensing seconds is using that credential to limit who enters a fighter's warm-up room or the ring during a bout, an issue a promoter and venue provider also have an interest in addressing to protect the security of contestants and event staff.

- **Limited to no enforcement.** Low numbers of complaints, investigations, and enforcement actions typically reflect a lower risk of harm to the public. The matchmaker, event coordinator, and second license types have very little to no enforcement activity. In the last three fiscal years, TDLR has taken no disciplinary action against matchmakers or event coordinators, and only five formal actions against seconds, all but one of which were for violations the licensees committed under their licenses as contestants, not as seconds.

> In the last three years, TDLR has taken no disciplinary action against matchmakers or event coordinators.

Sunset Staff Recommendations

Change in Statute

Effective September 1, 2021, the following recommendations would eliminate 15 license types, as well as TDLR's enforcement, development of licensing examinations, and other regulatory functions associated with the licenses. Abolishing these programs and license types would fulfill Sunset's charge to examine and eliminate programs that are not critical to ensuring public welfare and better position TDLR for the future should the Legislature continue entrusting the agency with additional licensing and regulatory responsibilities.

Any licensing fees licensees pay before the effective date of the resulting legislation would not be refunded. Additionally, any enforcement cases open before the effective date would be continued in effect under the terms that existed before the effective date until completion.

2.1   Eliminate the Polygraph Examiners Program.

This recommendation would eliminate the licensing and regulation of polygraph examiners and polygraph examiner trainees. Under this recommendation, polygraph examiners would still be able to lawfully operate in the state. All statutes and rules for performing polygraph tests on law enforcement and corrections personnel and sex offenders would still apply. Federal requirements for performing polygraph tests on private sector employees would also continue in effect. This recommendation would not affect the use of polygraph test results or a recorded polygraph test interview as part of litigation or any other official use. Under this recommendation, any entity or individual would be entitled to require, as part of a contract with a polygraph examiner, that the interview and results of the polygraph test for which they have paid or contracted be recorded in some fashion.

This recommendation would not affect JPCOT or PSCOT standards or use of the JPCOT roster by licensed sex offender treatment providers, TDCJ, TCCO, or anyone else. Sex offenders would still have access to due process through parole and probation departments' complaint systems, as well as that of the Council on Sex Offender Treatment, which licenses and regulates sex offender treatment providers.

2.2   Eliminate the Auctioneers Program.

This recommendation would eliminate the licensing and regulation of auctioneers and associate auctioneers, and abolish the Auctioneer Education and Recovery Fund. Under this recommendation, auctioneers

would remain subject to other relevant state laws, including sections of the Business and Commerce Code that define a sale by auction and establish misdemeanor charges for deceptive auction practices, and sales tax collection requirements under the Tax Code.

2.3 Eliminate the Licensed Breeders Program.

This recommendation would eliminate the state's licensing and regulation of dog and cat breeders. This recommendation would not affect the authority of any law enforcement agency or prosecutor to investigate or prosecute animal cruelty, nor would this recommendation affect the ability of a nonprofit group to provide assistance to a local jurisdiction in such efforts. Likewise, any breeder who meets federal criteria would be subject to USDA's requirements for licensure and regulation, including federal inspections.

2.4 Eliminate the Professional Employer Organizations Program.

This recommendation would eliminate the licensing of professional employer organizations, including full and limited licenses. However, to maintain clarity regarding the legal relationship between PEOs and their clients, the recommendation would retain in statute definitions pertaining to the coemployment relationship, requirements of PEO contracts, and provisions pertaining to the responsibilities and authorities of other state agencies and the attorney general. PEOs provide valuable services to many small businesses in Texas, and this recommendation would ensure they can continue to operate effectively.

2.5 Eliminate the Weather Modification Program.

This recommendation would eliminate the licensing, permitting, and regulation of weather modification. Projects could continue, and entities engaging in weather modification would still have to report their efforts to the federal government and the Texas Water Development Board, as applicable.

2.6 Eliminate the Responsible Pet Owner Program.

This recommendation would eliminate the licensing and regulation of responsible pet owner online providers. Courts could continue referring offenders to animal cruelty courses sponsored by municipal animal shelters, which would not be prohibited from sponsoring an online course and could partner with an existing online provider.

2.7 Eliminate the journeyman lineman license.

This recommendation would eliminate the licensing of journeyman lineman electricians. Eliminating the license would not prohibit these individuals from continuing to work since the work is already exempt from licensure.

2.8 Eliminate the journeyman industrial electrician license.

This recommendation would eliminate the licensing of journeyman industrial electricians. Eliminating the license would generally not prohibit these individuals from continuing to work since the work is largely exempt from licensure. For any work that is not exempt, individuals could obtain the traditional journeyman license or an electrical apprentice license.

2.9 Eliminate the combative sports matchmaker license.

This recommendation would eliminate the licensing and regulation of matchmakers. Eliminating the license would not prohibit these individuals from continuing to work because promoters can still delegate duties to them as an agent or employee, and TDLR would continue to approve or deny matches as necessary.

As part of this recommendation, TDLR should consider clarifying the promoter's responsibility for the behavior and actions of any matchmaker it uses.

2.10 Eliminate the combative sports event coordinator license.

This recommendation would eliminate the licensing of event coordinators. Eliminating the license would not prohibit the one licensee from continuing to work because promoters could still delegate coordinator duties to that person as an agent or employee. The current licensee also has the option to pursue a promoter license.

2.11 Eliminate the combative sports second license.

This recommendation would eliminate the licensing and regulation of seconds. As part of this recommendation, TDLR should consider making the contestant or other licensee who hired the second responsible for the second's actions and behavior during an event.

Fiscal Implication

The elimination of these programs and licenses and their associated fees would result in a loss to general revenue of about $520,800 each fiscal year, partially offset by an estimated annual savings of $349,500 in operating expenses. The recommendations would also result in a reduction of 4.4 full-time staff positions, beginning in fiscal year 2022.

Texas Department of Licensing and Regulation

Fiscal Year	Loss to the General Revenue Fund	Change in FTEs
2022	$171,300	-4.4
2023	$171,300	-4.4
2024	$171,300	-4.4
2025	$171,300	-4.4
2026	$171,300	-4.4

1   All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov/. Section 325.0115, Texas Government Code.

2   Section 325.0115, Texas Government Code.

3   S.B. 441, 67th Texas Legislature, Regular Session, 1981.

4   S.B. 1005, 81st Texas Legislature, Regular Session, 2009.

5   Section 1703.003(3), Texas Occupations Code.

6   22 T.A.C Sections 810.64(c)(17) and (18).

7   16 T.A.C. Section 88.79.

8   Section 1703.003(4), Texas Occupations Code.

9   22 T.A.C Section 810.64(c)(18).

10   22 T.A.C Section 810.64(c).

11   Texas Department of Criminal Justice, *Policy and Operating Procedure – Sex Offender Treatment and Polygraph Guidelines*, May 2, 2016, https://www.tdcj.texas.gov/documents/pd/03.06.09_parole_policy.pdf; "Joint Polygraph Committee on Offender Testing Roster," Texas Association of Law Enforcement Polygraph Investigators and Texas Association of Polygraph Examiners, accessed March 21, 2020, https://talepi.com/downloads/jpcot.pdf.

12   Section 841.007, Texas Health and Safety Code.

13   Employee Polygraph Protection Act (29 U.S.C. Chapter 22).

14   Sections 493.022 and 614.063, Texas Government Code.

15   Leonard v. State, 385 S.W.3d 57 (Tex. Crim. App. 2012); Section 508.281(e), Texas Government Code.

16   Chapter 1802, Subchapter D, Texas Occupations Code.

17   Section 1802.002, Texas Occupations Code.

18   H.B. 3038, 83rd Texas Legislature, Regular Session, 2013. H.B. 2481, 84th Texas Legislature, Regular Session, 2015.

19   The number of disciplinary actions does not include concurrent actions to pay consumers out of the Auctioneer Education and Recovery Fund.

20   Section 1802.206, Texas Occupations Code.

21   Sections 2.328 and 17.11, and Chapter 17, Subchapter E, Texas Business and Commerce Code.

22   Chapter 151, Subchapter F, Texas Tax Code; 34 T.A.C. Chapter 3.

23   Animal Welfare Act (7 U.S.C. Section 2131 et seq.).

24   9 C.F.R. Section 2.1(a)(3).

25   9 C.F.R. Section 1.1.

26   H.B. 1451, 82nd Legislature, Regular Session, 2011.

27   Section 802.002(8), Texas Occupations Code.

28   Kaja Sverdrup Borge, Ragnhild Tønnessen, Ane Nødtvedta, and Astrid Indrebø, "Litter size at birth in purebred dogs — A retrospective study of 224 breeds," *Theriogenology,* Volume 75, Issue 5, (March 15, 2011), pp. 911–919, https://www.sciencedirect.com/science/article/abs/pii/S0093691X10005625?via%3Dihub.

29   Section 802.062(d), Texas Occupations Code; 16 T.A.C. Section 91.76.

30   Section 42.092, Texas Penal Code.

31   Section 802.062(a), Texas Occupations Code.

32   Section 802.062(a), Texas Occupations Code.

33   16 T.A.C. Section 91.53.

34   Section 91.001(3-a), Texas Labor Code.

35   Sections 91.0011 and 91.032, Texas Labor Code.

36   Sections 91.041, 91.0411, 91.042, and 91.044, Texas Labor Code.

37   "Industry Regulators," Employer Services Assurances Corporation, accessed April 9, 2020, https://www.esac.org/regulators/.

38   "CEPO Public Listings," Internal Revenue Service, accessed April 16, 2020, https://www.irs.gov/tax-professionals/cpeo-public-listings.

39   "IRS Certified Professional Employer Organizations," Internal Revenue Service, last modified April 14, 2020, https://www.irs.gov/pub/irs-utl/list_of_cpeos.pdf.

40   Section 301.107, Texas Agriculture Code.

41   S.B. 1175, 77th Texas Legislature, Regular Session.

42   15 U.S.C. Section 330a.

43   Section 36.1071(a)(7), Texas Water Code.

44   H.B. 162, 85th Texas Legislature, Regular Session, 2017.

45   Article 42A.511, Texas Code of Criminal Procedure.

46   H.B. 1487, 78th Texas Legislature, Regular Session.

47   Sections 1305.1601 and 1305.1605, Texas Occupations Code.

48   Section 1305.003(a)(5) and (8), Texas Occupations Code.

49   Veto Proclamation, Governor Greg Abbott, H.B. 3043, 84th Texas Legislature, Regular Session, 2015.

50   Ibid.

51   Section 1305.003(a)(14), Texas Occupations Code.

52   Section 2052.002(4), Texas Occupations Code.

53   Muhammad Ali Boxing Reform Act (15 U.S.C Section 6301).

54   Section 2052.052, Texas Occupations Code.

55   16 T.A.C. Sections 61.10(11) and 61.43; Section 2052.002(11-a), Texas Occupations Code.

56   16 T.A.C. Section 61.40.

57   16 T.A.C. Section 61.40(b)(17).

58   16 T.A.C. Section 61.43(g).

ISSUE 3 | Regulating Barbering and Cosmetology Separately Is Inefficient, Unfair, and Unnecessary to Protect the Public.

Background

The Texas Department of Licensing and Regulation (TDLR) has regulated barbers and cosmetologists since 2005, when the Legislature abolished the Board of Barber Examiners and the Cosmetology Commission and transferred their functions to TDLR.[1]

The transfer had a profound impact on TDLR, as Cosmetology immediately became and has remained the agency's largest program by most measures. In fiscal year 2019, TDLR oversaw about 315,000 Cosmetology licensees and 27,000 Barbering licensees, comprising 42 percent of the agency's total population.

These two programs comprise the highest number of license types at TDLR, with 21 licenses for barbers, 26 licenses for cosmetologists, and two dual licenses that apply to both programs. The programs have similar licensing structures. Each has a top license — the Class A license for barbers and the operator license for cosmetologists — with which individuals can perform hair, skin, and nail care services after completing certain coursework and passing written and practical exams. Practitioners with one of these licenses can take a crossover course to obtain the other license without having to start from scratch.[2]

Statute also establishes a series of specialty licenses that allow individuals to perform a limited set of services, such as manicuring, facials, or hair weaving. In addition, TDLR regulates students, instructors, schools, and various types of barbershops and salons. The table on the following page, *Barbering and Cosmetology Licensing Structures*, shows each license type and its comparable license in the other program, if one exists.

The state regulates the programs across three statutes — one for barbers, one for cosmetologists, and a third that establishes requirements applicable to both groups. As described in the *Barbering and Cosmetology Advisory Boards* textbox, each program has a statutorily created advisory board that offers advice and recommendations to the Texas Commission of Licensing and Regulation.[3] Each program also has a tuition protection account within the General Revenue Fund dedicated to refunding students if their school closes before they complete their required training.[4]

Barbering and Cosmetology Advisory Boards

Advisory Board on Barbering
- Five industry participants (slotted for different license types)

Advisory Board on Cosmetology
- Seven industry participants (slotted for different license types)
- Two public members
- One non-voting representative from the Texas Education Agency with expertise in career and technical education

Barbering and Cosmetology Licensing Structures – FY 2019

Barbering Licenses	Number	Cosmetology Licenses	Number
Individuals			
Class A Barber	18,307	Operator	152,435
Manicurist	267	Manicurist	49,065
Technician	13	Esthetician	22,906
Manicurist/Technician	1	Manicurist/Esthetician	8,785
Hair Weaving Specialist	11	Hair Weaving Specialist	141
Hair Weaving Specialist/Technician	9		
		Eyelash Extension Specialist	1,057
		Wig Specialist	14
Barber Student	3,681	Cosmetology Student	26,071
Class A Instructor	596	Operator Instructor	5,686
Manicure Instructor	0	Manicure Instructor	93
Technician Instructor	1	Esthetician Instructor	244
Manicure/Technician Instructor	0	Manicure/Esthetician Instructor	15
Hair Weaving Instructor	0		
Hair Weaving/Technician Instructor	0		
		Eyelash Extension Instructor	8
		Wig Instructor	2
Total	**22,886**	**Total**	**266,522**
Schools			
Private Postsecondary School	141	Private Beauty Culture School	240
Public Postsecondary School	5	Public Postsecondary Beauty School	61
Public Secondary School	5	Public Secondary Beauty School	200
Total	**151**	**Total**	**501**
Establishments			
Barbershop	3,404	Beauty Salon	19,620
Manicurist Specialty Shop	41	Manicuring Specialty Salon	662
		Esthetician Specialty Salon	1,925
		Manicurist/Esthetician Specialty Salon	6,262
Hair Weaving Specialty Shop	2	Hair Weaving Specialty Salon	38
		Eyelash Extension Specialty Salon	340
		Wig Specialty Salon	36
Mini Barbershop	652	Mini Salon	13,415
Mobile Shop	24	Mobile Salon	55
Dual Shop/Salon			5,219
Mini Dual Shop/Salon			493
Total	**4,123**	**Total**	**48,065**

Findings

Having two separate state licensing structures for barbers and cosmetologists is redundant and unnecessary to protect the public.

- **Pointless and outdated separation.** Texas divides the regulation of one industry over the use of a single instrument. Statute authorizes Class A barbers and cosmetology operators to perform the same core hair, skin, and nail care functions, with only one indisputable exception: barbers can use an unguarded straight razor, while cosmetologists can only use a guarded razor.[5] This distinction and the contrasting cultural perceptions of each profession are rooted in the outdated tradition of barbers focusing on men's hair and shaving, while cosmetologists focus on women's hair and other services. Today, men and women work in both occupations, serve diverse clientele, and sometimes offer services side-by-side. Real-world differences between the programs are based on marketing strategies, not concerns about public safety.

  Ultimately, the state's role is to ensure consumers receive services from licensees who comply with health and safety standards, not to uphold traditions that do not impact the public interest. Regulating barbers and cosmetologists is necessary to protect consumers from unsanitary practices, but dividing the occupations into siloed licensing programs does not enhance public safety.

  As significant policy issues outside the scope of this review, Sunset staff did not consider two of the most glaring problems within the current licensing structure — the considerable overlap between each program's top license and, despite support and demand, the barrier to entry created by the lack of a license dedicated just to cutting hair.

  - Dual licensing tracks. By maintaining two separate licensing programs, the state has created multiple duplicative licenses based solely on whether applicants want to call themselves barbers or cosmetologists. These titles do not denote meaningful distinctions about practitioners' qualifications to the public. For example, manicurists and hair weaving specialists in one program can perform the exact same services as their counterparts in the other program. No practical differences separate their work, other than the titles they advertise to consumers.

  - Divided education. Separating the programs also bifurcates barbers' and cosmetologists' educational opportunities for no public benefit. Although barber and cosmetology schools can exist in a shared space, owners must obtain separate licenses, receive separate inspections, comply with disparate requirements, and keep students from different programs apart, even if only by a door. While manicurists and operators in the Cosmetology Program can share the same classroom, manicurists across both programs cannot — a nonsensical separation when students are learning the same skills. Further, though students across programs

> The state's role is not to uphold traditions that do not impact the public interest.

> No practical differences separate many licensees' work, other than the titles they advertise to consumers.

learn similar curricula, they cannot transfer pre-license instruction hours between the programs, which can unnecessarily lengthen their training and keep them out of the workforce longer.

- **Unnecessary and excessive regulation.** Sunset is required to evaluate whether occupational licensing programs provide regulation at the minimum level necessary to protect the public.[6] Within the Barbering and Cosmetology programs, 14 license types, as well as certain license restrictions, fail to meet this standard.

  - Redundant instructor licenses. TDLR's regulation of barbers' and cosmetologists' instructors is unnecessarily burdensome and duplicative. Applicants must obtain two separate licenses before stepping into a classroom — a license to practice in whichever field they wish to teach and an instructor license. The instructor credential requires experienced professionals to spend thousands of extra dollars on more coursework, written and practical exams, and new licensing fees.

    As the *Barbering and Cosmetology Licensing Structure* table and Appendix E show, demand for several types of instructor licenses is low or nonexistent, and TDLR rarely takes action against instructors, further suggesting these license types do not serve a public need. TDLR offers 12 distinct instructor license types, but no one has ever applied for four of these types, and another four have always had populations of less than 20.[7] Even instructor license types with more substantial populations do not enhance consumer protection. As of fiscal year 2019, TDLR licensed over 6,600 instructors, but the agency has only taken 13 disciplinary actions against these licensees in the last five fiscal years.

  - Unnecessary wig specialty licenses. Wig specialists cut, style, and otherwise service wigs on a block or a person's head. Though these specialists serve an important function, particularly for clients who lose their hair to cancer or other health conditions, license requirements and enforcement actions show their work poses minimal risks to the public. To obtain a wig specialty license, applicants must complete 300 hours of instruction, but only 10 of those hours must be dedicated solely to sanitation, disinfection, and state regulations.[8] The rest of the hours focus primarily on cosmetic issues, like styling techniques, which lie beyond the state's interest. Since the Cosmetology Program transferred to TDLR, staff has only opened two jurisdictional complaints against wig licensees, and has never taken formal disciplinary action against a wig specialist, instructor, or specialty salon. Further, demand for these licenses is consistently low and declining. The state's wig-only licensee population decreased by 31 percent over the last 13 years.

Within the two programs, 14 license types are unnecessary to protect the public.

TDLR has never taken formal disciplinary action against a wig licensee.

– Needless barber pole regulation. The barber pole, as described in the *Barber Pole History* textbox, is a marketing tool unrelated to public safety that does not require state oversight.[9] Statute restricts the use of certain symbols, such as the pole, to individuals and businesses with barber licenses.[10] Regulating barber pole displays made sense centuries ago when they advertised a barber's ability to provide medical services, such as pulling teeth or bloodletting.[11] However, barbers can no longer perform surgery, so the poles do not signify a unique medical skill set to the public, nor do they protect consumers from making unsafe decisions. In an effort to focus enforcement resources on clear health and safety issues, TDLR has never taken formal disciplinary action for pole-related violations since they pose no risk to the public.

> ### Barber Pole History
>
> A barber pole is a cylinder with red, white, and, at times, blue stripes that licensed barbers, barber schools, and barbershops often display. At the time of the pole's inception, barbers used the symbol to advertise their unique surgical skills, relying on the pole's red stripe to represent blood, the white to represent bandages, and the blue to represent veins.
>
> In the 1700s, barbers stopped performing medical procedures. Though the pole's symbolism is no longer relevant, agency rules still stipulate licensees must use the traditional red, white, and optional blue colors, or they could face a fine.

Differing requirements for barbers and cosmetologists treat licensees unfairly and protect the public inconsistently.

Comparable licenses across the Barbering and Cosmetology programs allow professionals to provide nearly or exactly identical services, but disparate requirements to obtain and maintain those licenses create unfair advantages for some applicants over others. Arbitrary differences result solely from regulating licensees under separate statutes, rules, and advisory boards, ultimately causing licensees to pay the price — sometimes literally — and leaving unknowing consumers with inconsistent levels of protection. The greatest burden falls on the individuals, schools, and establishments that are licensed in both programs and therefore must comply with all laws at the same time, even those that conflict.

● **Licensing.** As highlighted in the table on the following page, *Examples of Licensing Disparities*, the most striking differences impact individual practitioners applying for licensure. Most differences inexplicably favor barbers by imposing less restrictive requirements even though barbers can, at times, offer a wider range of services. For example, while consumers count on all licensees to follow health and safety standards, only cosmetologists have to complete routine continuing education to guarantee they are up-to-date on sanitation procedures.[12] Further, barber applicants pay less than cosmetologists do for many licenses, despite TDLR's cost per licensee averaging $50 more to administer the Barbering Program.

Most differences in license requirements inexplicably favor barbers by imposing less restrictive requirements.

Examples of Licensing Disparities[13]

Licensing Requirement	Barbering Program	Cosmetology Program
Age	16 (*Class A*)	17 (*operator*)
Education level	Seventh grade	High school diploma or equivalent
Pre-license instruction	300 hours (*technician*)	750 hours (*esthetician*)
Continuing education	None	4 hours every two years
Criminal conviction guidelines	Certain drug-related offenses **are** considered in the criminal history check	Drug-related offenses **are not** considered in the criminal history check
Fees	$60 (*barbershop*)	$106 (*salon*)

- **Education.** Similarly, education-related differences between the programs affect how and when applicants are trained, what protections students have access to, and how school owners must operate their businesses. In practice, the differences do not strengthen public protection but they often benefit cosmetology students more than barbering students. The *Examples of Education Disparities* table provides information on specific discrepancies.

Examples of Education Disparities[14]

Education Requirements	Barbering Program	Cosmetology Program
Curriculum standards	Prescriptive required topics (*e.g., manicurists' 600-hour curriculum is divided into 21 categories*)	Broad required topics (*e.g., manicurists' 600-hour curriculum is divided into six categories*)
Alternative education opportunities	Restrictive distance learning rules (*e.g., manicurists can complete 7.5 percent of their curriculum through distance learning*)	Expansive distance learning rules (*e.g., manicurists can complete 25 percent of their curriculum through distance learning*)
Tuition protection	Up to $2,500 per student	Up to $10,000 per student

- **Inspections.** Other irrational inconsistencies throughout the programs' statutes and rules subject licensees to numerous differing regulations they must keep track of to remain in compliance, even when those requirements do not relate directly to public safety. The table on the following page, *Examples of Inspection Disparities*, describes just a few of the many discrepancies. Although TDLR inspectors almost never refer licensees for enforcement action if they find violations of these minor requirements, the variation highlights the unfair treatment licensees face and the burden on businesses that operate under both programs.

Examples of Inspection Disparities[16]

Barbering Requirement	Cosmetology Requirements
Individuals must sweep hair as soon as practicable (which, in practice, is as time allows).	Individuals must sweep hair after every client.
Individuals must dispose of hair in trashcans, which can be covered or uncovered.	Individuals must dispose of hair in covered trashcans.
Individuals can use certain alcohols as agency-approved disinfectants.	Individuals cannot use similar alcohols as agency-approved disinfectants.
Shops must post a copy of sanitation rules.	No equivalent requirement.
No equivalent requirement.	Salons and schools must post information about human trafficking.

- **Enforcement.** Differences in the programs' penalty matrixes could result in TDLR unfairly penalizing licensees who commit identical violations, as shown in the table, *Examples of Enforcement Disparities*. The penalty matrix for barbers often recommends higher fines than the matrix for cosmetologists. At the same time, statute limits the civil penalties the attorney general can pursue against a barber at $25 a day, per violation, while cosmetologists could face up to $5,000 a day, per violation.[15]

Examples of Enforcement Disparities[17]

Violation	Barbering Penalty*	Cosmetology Penalty*
Practicing without a license or beyond the scope of a license.	$1,500	$1,000
Failure to clean and sanitize certain facial and manicure equipment.	$1,000	$750
Reusing wax when removing clients' hair.	$1,000	$750
Advertising services under the relevant title without a license.	$300	No equivalent penalty

* All penalties reflect the amount TDLR could assess for the licensee's first violation.

Administering the Barbering and Cosmetology programs separately is inefficient.

The sheer number of barbers and cosmetologists means they consume a significant amount of TDLR's resources, but the arbitrary separation between the two groups creates extra work for an agency that is already loaded with responsibilities. In fiscal year 2019, the two programs accounted for 39 percent of the agency's customer service calls, 75 percent of exams administered, and 91 percent of inspections conducted by TDLR's Field Inspections Division.

- **Redundant effort.** Maintaining duplicative advisory boards, rules, inspection reference guides, penalty matrixes, fee schedules, and webpages wastes TDLR's time and resources. For example, the agency supports two advisory boards with entirely different memberships, even though staff typically

presents nearly identical information about the programs' overlapping laws and issues at each meeting. Since preparing for and attending a single advisory board meeting requires almost 50 hours of staff time, any duplication of this effort is unjustifiable.

The programs also undergo the legislatively mandated four-year review of their rules at the same time, often resulting in similar rule packages, advisory board discussions, and adopted changes. Over the last several legislative sessions, lawmakers have updated the programs' shared chapter of statute to minimize inconsistencies, but the agency still must go through separate rulemaking processes to implement statutory changes. While the boards discuss the same information, they typically do not communicate with one another, nor do they consider their potential impact on the other program as they make decisions, leaving agency staff to do so instead.

- **Burdens across agency divisions.** Though some differences appear minor, inconsistencies across the programs, as discussed above, cumulatively add to TDLR's workload. Licensing and inspection staff must individually keep track of all program differences to ensure they apply regulations accurately and consistently. Meanwhile, enforcement staff must make judgment calls about which program to take action under for dual licensees, or they may open complaints in both programs, effectively doubling their data entry and drafting tasks. The inefficient use of resources inhibits the agency from focusing on higher priority issues, such as pursuing repeat bad actors or conducting follow-up inspections — concerns discussed further in Issue 6.

Also, given the nuance involved in some of the differences, TDLR divisions do not always agree on how to interpret inconsistent regulations. For example, while most legal and education employees contend barbers do not have authority to provide certain waxing and eyelash extension services, many field inspectors and subject matter experts disagree. If the agency cannot agree on the basic definitions of barbering and cosmetology, then expecting stakeholders to do so is unreasonable.

- **Ongoing efforts to harmonize the programs.** Behind the scenes, TDLR does all it can to manage the programs jointly and efficiently. The same staff works on both programs; the agency hosts advisory board meetings back-to-back on the same day; and the commission has taken steps to align health and safety standards. Occasionally, however, major differences between the programs occur, forcing staff to set aside valuable time for corrections.

Throughout the Sunset review, an effort to harmonize pre-license instruction requirements for Class A barbers and cosmetology operators monopolized many agency resources. As described in the textbox on the following page, *TDLR's Curriculum Harmonization Efforts*, the agency has already dedicated over 1,600 hours — more time than any barber's or cosmetologist's required training takes — to fixing an administrative headache that likely would not have occurred if the programs operated under a single statute, set of rules, and advisory board.[18]

> Inconsistencies across the programs cumulatively add to TDLR's workload.

> Major differences between the programs sometimes occur, forcing staff to use valuable time for corrections.

> ## TDLR's Curriculum Harmonization Efforts
>
> In 2019, the Legislature decreased pre-license instruction requirements for cosmetology operators from 1,500 to 1,000 hours. However, these requirements for Class A barbers did not change because their hours are prescribed in rule, not statute.
>
> The seemingly minor discrepancy resulted in a months-long debate among barbers about whether they should make a similar change. Without a corresponding decrease in barbers' instruction hours, cosmetology applicants could obtain an operator license and a crossover barber license for only 1,300 hours. Meanwhile, barber applicants would still have to complete 1,500 hours for a single Class A license, potentially destroying the barber school market.
>
> Between summer 2019 and spring 2020, TDLR convened internal and external workgroups, hosted industry summits, and dedicated numerous advisory board conversations to fixing the problem. Finally, in February 2020, the commission voted to align barbers' hour requirements with cosmetologists', against the recommendation of the barbers' advisory board. The effort is ongoing, as statute and rules still require updates to ensure smooth implementation of the change.

Sunset Staff Recommendations

The following recommendations are designed to work together by consolidating and simplifying TDLR's licensing of barbers and cosmetologists, eliminating unfair and unnecessary differences between licensees, improving communication across the industry, and reducing administrative burdens on staff without compromising public safety. Appendix F shows the ultimate effect of the recommendations in a proposed licensing structure that reduces the total number of licenses from 49 to 20 without substantively changing the existing scope of practice or authority of most individuals and businesses.

Change in Statute

3.1   Consolidate Texas' regulation of barbers and cosmetologists, and administer the two programs as one.

This recommendation would eliminate the two separate barbering and cosmetology statutes and instead merge the requirements under the existing statute that regulates both programs to minimize unfair, resource-draining differences. This recommendation would address current statutory inconsistencies by adopting the least restrictive statutory language or, where appropriate, granting TDLR authority to establish consistent requirements in rule.

In recognition of the Legislature's role as state policymakers and to ensure the rulemaking process does not become a vehicle for anticompetitive measures, the recommendation would require TDLR to consider the following factors when establishing license requirements, particularly for individuals:

● License requirements should be the least restrictive possible to ensure public safety without creating barriers to entry into the profession.

● Requirements for specialty licenses, including those for individuals and establishments, should not be more stringent than those for broader license types. For example, applicants for the manicurist/esthetician license should not be required to complete more instruction hours than operators.

● Requirements should be standardized across similar license categories, as appropriate. For example, manicurists and estheticians should be held to the same age and education level requirements.

- When evaluating whether to require continuing education for licensees, TDLR should consider the impact of regular training on combatting human trafficking and opportunities for individuals with expanded scopes of practice to catch up on new skills.

The recommendation would include the following key elements:

a. **Consolidate comparable barbering and cosmetology license types, and align requirements for all licenses.** This recommendation would streamline the state's redundant licensing structure for barbers and cosmetologists by consolidating 26 license types into 13. For example, separate licenses for barber manicurists and cosmetology manicurists would be combined into a unified license. Similarly, the barbershop and beauty salon licenses would be combined, eliminating the need for a separate dual shop/salon license and allowing all qualified professionals to work in the same establishment, regardless of title. Barbering and cosmetology school licenses would also be combined, which would allow students to learn side-by-side and transfer hours between training courses when appropriate. The program's top licenses for Class A barbers and cosmetology operators would remain separate. The table, *Proposed License Consolidation*, details which individual, school, and establishment licenses would be merged together.

Proposed License Consolidation

Current Barbering License	Current Cosmetology License	Proposed Consolidated License
Individuals		
Manicurist	Manicurist	Manicurist
Technician	Esthetician	Esthetician
Manicurist/Technician	Manicurist/Esthetician	Manicurist/Esthetician
Hair Weaving Specialist	Hair Weaving Specialist	Hair Weaving Specialist
Barber Student	Cosmetology Student	Student
Schools		
Private Postsecondary School	Private Beauty Culture School	Private Postsecondary School
Public Postsecondary School	Public Postsecondary Beauty School	Public Postsecondary School
Public Secondary School	Public Secondary Beauty School	Public Secondary School
Establishments		
Barbershop	Beauty Salon	Establishment
Manicurist Specialty Shop	Manicuring Specialty Salon	Manicurist Specialty Establishment
Hair Weaving Specialty Shop	Hair Weaving Specialty Salon	Hair Weaving Specialty Establishment
Mini Barbershop	Mini Salon	Mini Establishment
Mobile Shop	Mobile Salon	Mobile Establishment

While the scope of practice for most licensees would not change, barber technicians would gain authority to offer eyelash extension services and waxing below the neck. This change would impact all technicians, including manicurist/technicians and hair weaving specialists/technicians. The recommendation would also combine license exemptions across the programs, ensuring all individuals who are currently exempt from licensure remain so after the programs are merged.

To provide consistency across the industry, the recommendation would establish each license type in statute and align requirements not only for combined licenses but for all licenses, as follows:

– Licensing requirements for practitioners. The recommendation would remove prescriptive requirements that apply to individuals, listed in the accompanying textbox, and instead authorize TDLR, with input from its advisory board, to set consistent requirements in rule. As the state agency entrusted with governing the barbering and cosmetology industry, TDLR is best positioned to determine the proper requirements. For example, as discussed in Issue 7, TDLR would use authority in its enabling statute to determine which licensees would benefit from continuing education. The recommendation would also make TDLR's authority to issue temporary licenses, offer inactive status for licenses, and set policies for reinstatements of expired licenses consistent across the unified Barbering and Cosmetology Program.[19]

> **Individual License Requirements to Specify in Rule**
>
> - Age
> - Education level
> - Pre-license instruction hours
> - Instruction hours to obtain a crossover license
> - Required curricula topics
> - Exam eligibility
> - Continuing education hours and content

– General requirements for schools and establishments. The recommendation would standardize general requirements for barbering and cosmetology schools and establishments as appropriate to reflect current practice, establish consistency, and retain provisions clearly tied to public health and safety. For example, statute would continue to prohibit establishment owners from employing a person with certain infectious diseases to perform services on clients, as well as using shops and salons as sleeping quarters.[20] Statute would ensure TDLR maintains its authority to set other health and safety requirements by rule when necessary.[21]

This recommendation would also eliminate provisions unrelated to health and safety from statute, and grant TDLR authority to harmonize needed requirements by rule. For example, while statute would no longer dictate when certain schools must teach theory courses or how many hours per week students may work, rules could do so uniformly across comparable license types.

– Posting requirements. The recommendation would align posting requirements to ensure all consumers have access to essential information. For example, all schools and establishments would be required to display the same signage regarding sanitation and human trafficking, while all individual practitioners and students would follow standard requirements for displaying their licenses.

b. **Replace the separate advisory boards with the Barbering and Cosmetology Advisory Board.** This recommendation would eliminate the Advisory Board on Barbering and the Advisory Board on Cosmetology, and establish a single nine-member board for the industry. Membership would include one public member who would serve as the board's chair, two licensed establishments, two licensed schools, and four licensed individual practitioners, including at least one Class A barber and one cosmetology operator. The new board would maintain the same standard statutory requirements regarding six-year terms, vacancy procedures, and required duties.

c. **Replace the separate barbering and cosmetology tuition protection accounts with a single account.** This recommendation would eliminate the two stand-alone tuition protection accounts

and establish a single account for all students enrolled in a private postsecondary school that closes before the students complete their training. The Comptroller of Public Accounts would continue to act as custodian of the fund, and TDLR would administer claims against the account. The joint account would have a statutory minimum balance of $225,000, the sum of the separate accounts' current minimums. Current statutory requirements for the cosmetology fund would apply to the new fund, including provisions dictating the collection of fees from private schools if the fund drops below its statutory minimum and those describing how TDLR may use the fund. Statute would also grant TDLR rulemaking authority to adjust caps on tuition reimbursement and update processes for collecting fees from schools to replenish the fund as appropriate.

d. **Remove TDLR's authority to amend cosmetologists' scope of practice.** This recommendation would eliminate the agency's authority to alter the definition of cosmetology by rule. Scopes of practice are policy decisions determined by the Legislature and revising them outside of the legislative process does not align with best practices.

e. **Eliminate redundant civil penalty provisions.** This recommendation would remove language specific to the Barbering and Cosmetology programs regarding civil penalties because TDLR and the attorney general already have this authority under the agency's enabling statute.

This recommendation would direct TDLR to create one set of administrative rules for barbers and cosmetologists, which would align all health and safety standards; fees; license requirements; and responsibilities for comparable individual, school, and establishment licensees. The agency would adopt a single set of resources and reference materials for the industry, including one rulebook, penalty matrix, webpage, and set of criminal conviction and inspection guidelines. The agency would also update exams and related materials for each consolidated license type. Any fees paid before the recommendation's effective date would not be refunded, and any enforcement cases opened before the effective date would continue until completion under the terms that existed when the violation occurred.

The recommendation to consolidate the Barbering and Cosmetology programs would take effect in four phases to give the agency sufficient time to update its rules, advisory board, procedures, forms, and information technology systems.

- **Phase 1.** Immediately after the passage of legislation consolidating the programs, TDLR would be directed to work with schools to ensure a smooth transition into the new licensing structure. TDLR staff would collaborate with current school owners to discuss when and how certain changes, particularly updates to curriculum standards, must occur so schools can maintain their accreditation, and students can continue qualifying for federal aid. The commission would adopt any rules necessary to implement Phase 1 as soon as practicable.

- **Phase 2.** On September 1, 2021, the following components of the recommendation would take effect:

  - Establishments could begin hiring any licensed and qualified professionals within the Barbering and Cosmetology Program.

  - Current barber technicians, including those with a combination license like barber hair weaving specialists/technicians, would be grandfathered into the esthetician scope of practice. At this time, they could perform eyelash extension services and waxing below the neck.

- **Phase 3.** No later than December 1, 2021, the commission would appoint the new Barbering and Cosmetology Advisory Board.

- **Phase 4.** No later than September 1, 2022, the following components of the recommendation would take effect:

  - The agency would stop issuing new licenses under the previous bifurcated structure. Instead, as individuals, schools, and establishments apply for an initial license, TDLR would be granted authority to issue them the appropriate consolidated license. For example, when students complete a cosmetology manicurist training program and pass the exam, TDLR would issue them a manicurist license under the new unified licensing structure.

  - To maintain a staggered renewal schedule, TDLR would issue licensees the appropriate consolidated license as they become eligible for renewal. Any license issued under the previous bifurcated regulatory structure would be continued until its expiration date.

  - All other changes would also take effect, including rule updates, fee changes, and exam rewrites. Until TDLR updates exams, students would be held to the written and practical exams that exist for the training program in which they are enrolled. For example, until TDLR revises the unified manicurist exam, students in a barber manicurist program would continue taking the exam already in place for barber manicurists. However, once they are eligible, TDLR would issue them a license under the new structure.

This recommendation would direct Sunset staff to work with the Texas Legislative Council and TDLR to draft legislation that ensures orderly implementation and aligns law with current agency practice where appropriate.

3.2   Eliminate barbering and cosmetology instructor licenses.

This recommendation would eliminate all 12 instructor license types across the Barbering and Cosmetology programs. When current instructors renew their licenses, TDLR would reissue instructors their former practice licenses to ensure qualified professionals can continue working and teaching in the industry.

While instructors would no longer be regulated individually, TDLR would continue to regulate the schools employing them. This recommendation would require schools to hire licensed professionals as instructors, thereby guaranteeing instructors still pass a background check before interacting with students. If schools do not comply with this requirement, TDLR would have authority to take enforcement action when necessary. Eliminating instructor licenses would decrease unnecessary burdens on licensees and staff while maintaining public safety.

3.3   Eliminate all wig-related licenses.

This recommendation would eliminate the wig specialist, wig instructor, and wig specialty salon licenses. Other licensees, such as a cosmetology operator, would still be permitted to provide wig-related services. However, licensure requirements would no longer apply to any individuals who solely service clients' wigs or artificial hairpieces. Eliminating wig licenses would remove unnecessary regulation and reduce administrative burdens on the industry.

3.4   Eliminate state regulation of barber poles.

This recommendation would eliminate the state's oversight of barber poles. Though barbers could continue using their traditional symbol, state law would no longer dictate who can display the pole, where they

may do so, and what colors they must use. This change would eliminate an unnecessary regulation and allow the agency to focus its limited time and resources on issues that clearly impact consumers' health and safety.

Fiscal Implication

The recommendations to streamline TDLR's licensing structure for barbers and cosmetologists would improve internal operations, but the exact fiscal impact cannot be estimated. Consolidating the Barbering and Cosmetology programs would result in long-term efficiency gains by eliminating duplicate administrative functions. However, TDLR may incur some upfront costs to implement the recommendations, such as staff time to modify information technology systems and update rules, procedures, and other materials. Given the significant amount of work needed to implement these complex changes, TDLR would need to retain staffing at current levels. The recommendations to eliminate instructor and wig-related license types would result in a loss of about $190,000 in revenue that would be partially offset by savings in operating expenses.

1   S.B. 411, 79th Texas Legislature, Regular Session, 2005.

2   All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov/. Sections 1601.253(c) and 1602.254(c), Texas Occupations Code.

3   Sections 1601.051 and 1602.051, Texas Occupations Code.

4   Sections 1601.3571 and 1602.464, Texas Occupations Code.

5   Sections 1601.002(1)(A) and 1602.002(a-1), Texas Occupations Code.

6   Section 325.0115(b), Texas Government Code.

7   The four license types with zero applicants include: barber manicure instructors, barber manicure/technician instructors, barber hair weaving/technician instructors, and barber hair weaving instructors. The four license types with populations consistently under 20 people include: barber technician instructors, cosmetology manicure/esthetician instructors, cosmetology eyelash extension instructors, and cosmetology wig instructors.

8   16 T.A.C. Section 83.120(b).

9   Maura Scali-Sheahan, Leslie Roste, Linnea Linquest, Amy Burness, and Dennis Mitchell, *Milady Standard Barbering*, 6th ed. (Boston: Cengage Learning, 2017), 11–13; 16 T.A.C. Section 82.71(e); "Barber Penalties and Sanctions," Texas Department of Licensing and Regulation, accessed April 29, 2020, https://www.tdlr.texas.gov/enforcement/barsanctions.htm.

10   Section 1601.251(c), Texas Occupations Code.

11   Scali-Sheahan, *Milady Standard Barbering*, 11.

12   Section 1602.354, Texas Occupations Code; 16 T.A.C. Section 83.25.

13   Sections 1601.253(a)(1), 1601.256(b), 1601.257(b)(2), 1601.262(c)(1), 1602.254(b), 1602.256(b)(2), 1602.257(b), and 1602.354, Texas Occupations Code; 16 T.A.C. Sections 82.80(a)(7), 83.20, 83.25, 83.80(a)(7); "Guidelines for License Applicants with Criminal Convictions," Texas Department of Licensing and Regulation, accessed April 29, 2020, https://www.tdlr.texas.gov/crimconvict.htm.

14   16 T.A.C. Sections 82.40(f), 82.72(o)(3), 82.120, 83.40(f), and 83.120.

15   Sections 51.352(a) and 1603.452(b), Texas Occupations Code.

16   Sections 1601.452 and 1602.408, Texas Occupations Code; 16 T.A.C. Sections 82.101(c), 82.102(i), 83.101, and 83.102(h).

17   "Barber Penalties and Sanctions," Texas Department of Licensing and Regulation, accessed April 29, 2020, https://www.tdlr.texas.gov/enforcement/barsanctions.htm; "Cosmetologists Penalties and Sanctions," Texas Department of Licensing and Regulation, accessed April 29, 2020, https://www.tdlr.texas.gov/enforcement/cossanctions.htm.

18   H.B. 2847, 86th Texas Legislature, Regular Session, 2019.

19   Sections 1601.404, 1602.351(b), and 1602.353, Texas Occupations Code.

20   Sections 1601.505, 1601.507, and 1602.406, Texas Occupations Code.

21   Section 1603.102, Texas Occupations Code.

| ISSUE 4 | TDLR's Driver Training Programs Need Fundamental Reform to Eliminate Unnecessary, Burdensome, and Unfair Regulations. |

Background

The Texas Department of Licensing and Regulation (TDLR) has regulated driver training since 2015, when the Legislature transferred the Driver Education, Driving Safety, Specialized Driving Safety, and Drug and Alcohol Driving Awareness programs from the Texas Education Agency (TEA), and the Parent-Taught Driver Education Program from the Department of Public Safety (DPS).[1] As detailed below, TDLR licenses schools, course providers, and instructors in two broad categories of driver training: driver education and driver improvement. TDLR also reviews and approves curriculum for compliance with minimum standards and conducts inspections of driver education schools. In fiscal year 2019, TDLR licensed 4,055 individuals and businesses offering driver training in Texas.

TDLR works with a statutorily created advisory committee of industry participants to solicit expertise on rulemaking and technical administration of the program.[2] As described in Appendix G, the committee consists of 11 members appointed by the presiding officer of the Texas Commission of Licensing and Regulation (commission) who serve staggered six-year terms.[3]

Driver Education

More than 300,000 Texans per year take driver education, which the state requires for drivers under 25 years of age, to acquire the knowledge and skills necessary to obtain a driver license.[4] Students can take teen or adult courses through a licensed driver education school, or an eligible parent or designee can teach driver education to their student using a Parent-Taught Driver Education (PTDE) curriculum.[5] TDLR does not regulate driver education taught in public schools, though it does set curriculum standards. The table, *Driver Education Licenses and Approvals*, describes the businesses and individuals TDLR licenses to provide driver education, as well as the fees for a license application and TDLR's pre-license approval of driver education curricula.

Driver Education Licenses and Approvals

License Type	Population	License Application Fee*	Approvals	Approval Fee Per Course*
School (main or branch location)	607	$500	Traditional (in-person) course	$0–$200
			Alternative method of instruction (online) course	$5,850–$9,750
Parent-taught course provider	81**	N/A	Parent-taught course (traditional or alternative method)	N/A
Instructor	2,020	$50	N/A	N/A

* Expected license and approval fee amounts pending a commission vote.

** While parent-taught course providers are not technically licensed as such, TDLR approves their courses and issues a registration number for each approved course.

DPS develops the written knowledge exam to earn a learner license, commonly known as a "learner's permit," which students must obtain to complete required in-car instruction, observation, and practice.[6] DPS also administers most in-car skills exams students take after completing the classroom phase of driver education to earn a driver license, though it also authorizes other entities, including driver education schools and specially certified instructors, to administer the knowledge and skills exams.[7]

Driver Improvement

As detailed in the *Driver Improvement Licenses and Approvals* table, TDLR also regulates instructors and businesses that offer driver improvement courses, including both physical schools and course providers, who develop curricula TDLR must approve. Statute establishes three driver improvement courses, which courts may order to penalize a driver who violates traffic law.

- **Driving Safety**, commonly known as "defensive driving," focuses on driving errors and their impact. In addition to those who violate traffic law, any driver may electively take this course to improve their driving skills or potentially earn insurance discounts. By statute, TDLR also maintains standards for a driving safety course specifically for people under 25 years of age.[8]

- **Specialized Driving Safety** focuses exclusively on seat belt and child passenger safety.[9]

- **Drug and Alcohol Driving Awareness** focuses on the effects of alcohol and drugs on driving and decision making, as well as related Texas laws.[10]

Driver Improvement Licenses and Approvals

License	Population		License Application Fee*	Approvals	Approval Fee Per Course*
School	Driving Safety	456	$150	N/A	N/A
	Specialized Driving Safety	1			
	Drug and Alcohol Driving Awareness	19	$100		
Course provider	Driving Safety	87	$500	Traditional (in-person) or alternative method of delivery (online) course	$5,850
	Specialized Driving Safety	3	N/A		
	Drug and Alcohol Driving Awareness	4			
Instructor	Driving Safety	652	$50	N/A	N/A
	Specialized Driving Safety	11			
	Drug and Alcohol Driving Awareness	113			

* Expected license and approval fee amounts pending a commission vote.

Findings

In addition to evaluating how efficiently agencies operate, Sunset is charged with considering the extent to which regulatory programs protect the public interest through the least restrictive means possible.[11] Taking the first holistic look at the driver training programs since they transferred to TDLR, Sunset staff found that outdated, convoluted, and inconsistent statutes, as well as lengthy, prescriptive rules, overregulate the driver training industry and expend TDLR's administrative efforts on aspects that lack a meaningful connection to public safety.

When the Legislature transferred the driver training programs to TDLR, the agency merged the administrative rules from DPS and TEA into a single set of rules, but made few substantive changes, consistent with its standard approach to give staff time to learn about the program. Following the significant transfer of additional programs from the Department of State Health Services in 2016 and 2017, TDLR had to put comprehensive updates to the driver training rules on the back burner. Since then, the Legislature has streamlined some aspects of the regulation and TDLR has embarked on a multi-phase process to amend the rules. The rule changes, which the agency expects the commission to approve later this year, are extensive and will simplify numerous provisions, implement recent legislation, and reduce fees. Still, Sunset staff found more significant changes are needed to correct long-standing problems perpetuated, in part, by an industry resistant to change.

As the following material discusses, the statutes and rules are a hodgepodge of confusing terms and duplicative, inconsistent requirements, creating needless complexity for everyone involved: students and parents, the regulated industry, and TDLR.

> Texas' driver training laws are a hodgepodge of confusing terms and duplicative, inconsistent requirements.

Certain driver improvement regulations are unnecessary to protect the public and some create barriers to entry.

- **Duplicative courses.** Certain driver improvement courses are unnecessary and do not merit state regulation, as they largely duplicate other courses or TDLR programs, have very small populations of both consumers and licensees, and see limited enforcement activity, suggesting minimal risk of harm to consumers.

  - Drug and Alcohol Driving Awareness. These courses largely duplicate thousands of other courses courts can use when adjudicating cases against offenders of drug- and alcohol-related laws, for which Texas already has statewide standards.[12] A declining licensee population and little enforcement activity further suggest licensure does not offer any substantial public protection. Since fiscal year 2017, the number of licensed schools and instructors has declined by 30 and 23 percent, respectively. TDLR has never taken an enforcement action against a licensee in the program's history.

> TDLR has never taken an enforcement action against a drug/ alcohol driving awareness course provider.

- Specialized Driving Safety and "Under 25 Years of Age" Driving Safety. More than 600,000 Texans take a driving safety course each year, but less than 0.2 percent take one of these special courses, which largely duplicate the content of general driving safety courses.[13] Moreover, the one specialized driving safety school is also licensed as a general driving safety school, suggesting the market for specialized courses may be too limited to sustain these businesses.

- **Redundant layers of licensing.** Driver improvement businesses have an extra, duplicative layer of licensure that exceeds the minimum necessary to protect the public. Unlike driver education, which only contemplates a school license, the driver improvement program treats schools and course providers as two distinct license types. However, driver improvement course providers are more akin to driver education schools, as described in Appendix H. Driver improvement course providers not only develop curriculum, but also maintain student contracts, hold a surety bond, and issue certificates of completion.[14] By contrast, driver improvement schools' statutory responsibilities largely duplicate those of course providers or are no longer needed in the absence of physical inspections and driving safety instructor regulation, as discussed below.[15] Yet statute requires a driver improvement course provider to identify at least one school willing to teach its course before it can apply for a license, artificially tethering these businesses to one another.[16]

> Neither statute nor rule reflect modern practices for offering driver education through a web-based platform.

- **Outdated regulation of online providers.** Initially developed in the 1990s, neither statute nor rule reflect modern practices for offering education through a web-based platform. For example, statute and rule still refer to an online course as an "alternative method" and as explained in the *Outdated Rules for Online Courses* textbox, nebulous definitions and archaic rules excessively regulate courses, create confusion, and potentially inhibit innovation in course delivery. The state's role is to ensure courses meet minimum curriculum standards, regardless of the delivery method. TDLR's basic technical standards for online courses, including measures to validate students' identity and active participation in the course, should be the only unique requirements for online providers.[17]

Outdated Rules for Online Courses

- Restrictions on the amount of time driver training courses may spend using "multimedia" instructional tools create particular confusion for online providers. Only select applications, such as PowerPoint, have been explicitly exempted from the limits.

- Stipulations on the length and frequency of breaks per clock hour of instruction are irrelevant, since students taking an online course can pause at any time.

- Maximum amounts of time within which students must respond to a content-check question are outdated, allowing different response times for questions presented over the internet versus by telephone.

- **Unnecessary regulation of instructors.** Driver improvement courses are typically taught to adults, completed in one day, and largely remedial for individuals who have already taken driver education. In this context, the state's burden of public protection is low, and businesses should have the discretion to hire qualified instructors without intervention from the state. TDLR has taken only two disciplinary actions against these instructors in the last three fiscal years, reflecting low risk of harm to consumers.

  Further, license requirements for driver improvement instructors create unnecessary barriers for potential licensees and bind those already in the market to a single employer. For example, the program's administrative rules require license applicants to take at least 24 hours of pre-license education, known as "instructor development courses," through their course provider and then obtain the provider's recommendation that they be licensed.[18] Existing instructors must take continuing education through their course provider, which similarly binds instructors to their employers, limiting their mobility and reducing competition in the market.[19]

> Requirements for instructors create unnecessary barriers and bind those in the market to a single employer.

- **Inflexible curriculum standards.** Statute prescribes the total number of curriculum hours required for certain driver improvement courses, limiting TDLR's ability to update, revise, or expand its standards.[20] As the state's experts on driving safety, aided by an industry advisory committee, TDLR should have flexibility to set the minimum number of hours needed to promote and reinforce safe driving practices.

- **Inefficient and costly curriculum review.** Statute requires TDLR to approve driver training courses and charge a separate course approval fee in addition to the license fee.[21] Despite prescriptive curriculum standards in rule, TDLR manually reviews curricula for approval. This process wastes agency resources, particularly given less burdensome alternatives the agency uses in other programs, such as having schools certify their curricula meet standards, subject to audit or review in response to a complaint. Further, the review process comes at a hefty cost to licensees. Even after TDLR adopts lower fees, the approval fee will be $5,850 for each in-person or online driver improvement course, far exceeding most of the agency's other licensing fees, which tend to be less than $1,000.[22] TDLR does not comprehensively review curricula for required education in its other programs and the added cost of doing so creates a barrier for potential licensees.

> Course approval fees far exceed most of TDLR's other licensing fees.

- **Prescriptive course fees.** Statute requires certain driver improvement course providers to charge each student at least $25 for a course, and an administrative fee of at least $3.[23] Statutory fee minimums limit competition by artificially undermining the market advantage of providers who could charge consumers lower fees for a similar product. No other program at TDLR has a minimum fee a licensee must charge a consumer for a service.

Unfair and excessive regulation in the driver education program burdens TDLR and licensees.

- **Outdated and unfair regulation of online providers.** Regulation of online driver education businesses is also outdated and nebulous, resulting in unfair treatment of online driver education businesses — particularly with respect to fees — compared to those providing in-person courses. Although the Legislature recently adopted TDLR's strategic initiative to remove the antiquated statutory requirement that a driver education school first have a brick-and-mortar location before offering an online course, additional unwarranted regulatory burdens specific to online businesses linger in rule.[24] For example, only online driver education schools must submit to TDLR statements on the "academic integrity" and "instructional design" of a course, an unjustified extra requirement.[25] The most glaring inequity, however, is in the fees online businesses must pay. As shown in the *Anticipated Curriculum Approval Fees* table, TDLR levies no fee to approve an in-person teen driver education course, but businesses seeking approval for a similar online course will pay $9,750, soon to be reduced from $15,000 under the revised rules.[26] While the costs businesses incur to offer in-person and online courses are not equal, the purpose of regulatory fees is to cover the cost of administration, not to level the playing field or punish innovation. TDLR spends some additional time to review an online course provider's technical standards, but this effort does not justify the disparity in fees.

Anticipated Curriculum Approval Fees

Curriculum Type	In-person	Online
Teen	$0	$9,750
Adult	$200	$5,850

> The purpose of regulatory fees is not to level the playing field.

- **Excessive regulation of instructors.** Driver education instructors primarily interact with minors, often alone or at odd hours, so the required criminal history background check helps ensure they do not pose a risk to this vulnerable population.[27] State licensure also enables DPS to vet instructors who can be certified to administer the in-car driving skills exam. However, additional statutory requirements for pre-license and continuing education are unnecessary and create barriers to entry. For example, prior to licensure, statute requires driver education instructors to take six to 15 semester hours of instructor development courses at a driver education school or relevant coursework at an accredited college or university, a significant investment of time and resources.[28] As described in the *Driver Education Instructor Endorsements* table, different levels of education qualify instructors to earn one of three endorsements to provide different kinds of instruction.[29]

Driver Education Instructor Endorsements

Endorsement (Pre-license education – semester hours)	In-car Instruction	Classroom Instruction	Instructor Development Course Instruction
Teaching Assistant (6)	✓		
Driver Education Teacher (9)	✓	✓	
Supervising Teacher (15)	✓	✓	✓

Online instructors must also have this training, although many of them largely monitor students' progress through a pre-recorded course. While the state must ensure instructors are safe to work with minors, businesses should be responsible for the quality of their employees.

- **Inflexible curriculum standards.** Having course hours set in statute impedes TDLR from adjusting curriculum standards as appropriate, including in response to guidance, best practices, or technological innovations. For example, while statute stipulates that teen driver education requires seven hours of instruction and seven hours of observation, model standards from the National Highway Safety and Traffic Administration recommend 10 hours of behind-the-wheel instruction and 10 hours of additional flexible instruction, consisting of any combination of observation, behind-the-wheel, range, simulation, classroom, or computer-based independent learning.[30]

> TDLR cannot adjust curriculum standards in response to best practices or technological innovations.

- **Inefficient and costly curriculum review.** Comprehensive curriculum review is not only unnecessary, but also particularly inefficient in driver education, where a teen course takes staff up to two weeks of full-time work to review. This wastes agency resources and, as previously discussed, is also costly for businesses given high approval fees in addition to the regular license fee.[31] A new driver education school offering both teen and adult online courses will pay $16,100 in application and course approval fees to start up the business, based on pending revised rules.[32] Additionally, TDLR reviews the curricula of all pre-license instructor development courses and continuing education courses, although these often have no direct tie to state curriculum standards.[33]

TDLR also lacks clear statutory authority to hold driver education businesses accountable for failing to incorporate new legislative requirements into their curricula, as the agency does in other programs, such as Cosmetology. TDLR solicits signed statements to verify driver education schools have updated their curricula, but the lack of enforcement authority weakens this tool.[34]

- **Inefficient inspections.** By rule, TDLR annually inspects each driver education school. These frequent inspections, as well as most requirements of the on-site, pre-license driving school inspection, are inefficient, wasting agency resources. TDLR spends about $47,000 per year to conduct inspections, yet most violations the agency finds relate to paperwork that could be evaluated in a desk audit. Rule also requires TDLR inspectors to check a school's building code compliance, the number of desks and chairs in each classroom, instructor licenses, student records, and various aspects of motor vehicles used for in-car instruction.[35] While inspecting the unique features of vehicles used for in-car training has value since these features are not part of a vehicle's annual state registration inspection, all other aspects of the inspections are either unnecessary or could be confirmed remotely or in the application process.

> TDLR spends about $47,000 per year conducting inspections of driver education schools.

Unclear statutory authority over Parent-Taught Driver Education results in unfair advantages for some businesses and administrative burdens for TDLR.

Statute is unclear as to who develops parent-taught curriculum, whether they must be licensed, or any requirements.

- **Unequal regulation of providers.** The PTDE Program does not meet a fundamental expectation of any government regulation: clear, understandable standards guiding consistent administration and fair treatment of the regulated population. While statute clearly authorizes an eligible parent or designee to teach driver education and requires TDLR to approve the curriculum, it provides no clear guidance about who develops the curriculum, whether that individual or business must be licensed, or any license requirements.[36] In practice, while a few PTDE providers offer traditional materials, all offer online courses and function much like driver education schools that offer online courses. Yet without clear statutory direction, TDLR does not license PTDE providers and asserts the agency lacks explicit authority to charge a fee to review PTDE curricula, exempting these providers from regulatory requirements with which all other licensees must comply.

  Moreover, while online PTDE courses have the same curriculum standards as any teen driver education course, statute does not clearly subject PTDE businesses to certain requirements of other driver education licensees. These businesses do not have to provide students with virtual access to an instructor to answer questions or have measures to validate students' identity and active participation in the course.

TDLR's website should have no role as a marketing tool for the businesses it regulates.

- **Manipulative business practice.** In the absence of fees to review PTDE courses, some businesses have tried to manipulate TDLR's website for their own advertising gain, undermining transparency for consumers and causing an enormous administrative lift for the agency. When the program first transferred to TDLR, the agency listed driver education businesses and all their courses on its website. The number of PTDE courses the agency had to review swelled as businesses aimed to improve their search results on the website by creating "clone courses," or near-exact copies of an original course, renamed and falsely marketed as distinct courses with unique content. TDLR estimates staff spent about 3,000 hours reviewing new courses, and when businesses then complained to TDLR about their placement on the website, staff spent more than 200 hours adjusting the search results in an attempt to fairly represent all businesses. The agency recently changed its policy, now listing only one course per provider, but ultimately TDLR's website should have no role as a marketing tool for the businesses it regulates.

Ineffective coordination between TDLR and DPS risks creating a disconnect in what driver education students learn and what they are tested on.

Mechanisms exist to facilitate coordination between TDLR, the agency charged with maintaining driver education curriculum standards, and DPS,

the agency charged with developing and administering driver license exams: a DPS representative sits on TDLR's industry advisory committee, and the two agencies established a memorandum of understanding (MOU) in 2016. However, in practice, these mechanisms have proved inadequate. Having a DPS representative on the advisory committee has not fostered productive collaboration, and the voluntary MOU requires only minimal communication, such as status updates on any new licensed schools. The agencies did not even renew the MOU in 2019 as its terms required.

DPS and TDLR do not work together to develop the driver license exams or reference materials to ensure they align with what driver education schools teach. When the Legislature makes a change to driver education content, the two agencies do not adequately coordinate efforts, typically updating exam questions and curriculum standards independently of one another. Further, while DPS collects some data on exam performance, DPS and TDLR do not exchange data beyond the basic notification requirements outlined in their MOU. TDLR could potentially use exam data to evaluate the performance of its curriculum standards.

> Coordination mechanisms between DPS and TDLR have proved inadequate.

Sunset Staff Recommendations

The following recommendations are designed to work together to significantly streamline the licensing of driver training in Texas to accurately reflect the existing market and contemporary educational practices, reduce fees on businesses, and improve TDLR's administration of the program. The *Proposed Driver Training Licensing Structure* table provides an overview of the ultimate effect of these recommendations, and Appendix I provides additional detail about how the recommendations would affect all licensees. Unless otherwise specified, these recommendations would take effect September 1, 2021.

Proposed Driver Training Licensing Structure

License Type		Driver Education	Driving Safety
Provider	In-person	A business offering courses in person, in-car instruction, observation hours, and/or driver license exams.	A business offering driving safety curricula for in-person and/or online courses.
	Online	A business offering courses remotely through the internet rather than at an on-site location where the student is physically present.	
	Correspondence	A business offering materials for parents or designees to provide traditional, classroom-style instruction to their student.	N/A
Instructor		A background-checked individual employed by a driver education in-person or online provider.	N/A

Driver Improvement

Change in Statute

4.1 Eliminate the separate drug and alcohol driving awareness course and associated licenses.

This recommendation would eliminate the separate drug and alcohol driving awareness course from statute, and as such, TDLR would no longer establish minimum curriculum standards for this course or license schools, course providers, or instructors specific to this course. Courts and probation departments statewide could continue referring offenders to any of the thousands of drug- and alcohol-related courses that meet other existing statewide standards.

4.2 Eliminate the separate specialized driving safety course and associated licenses.

This recommendation would eliminate the separate specialized driving safety course from statute, and as such, TDLR would no longer establish minimum curriculum standards for this course or license schools, course providers, or instructors specific to this course. Courts and probation departments statewide could continue referring offenders to any of TDLR's dozens of general driving safety course providers.

4.3 Eliminate the separate driving safety course for drivers under 25 years old.

This recommendation would eliminate this separate driving safety course from statute, and as such, TDLR would no longer establish minimum curriculum standards for it. Courts and probation departments statewide could continue referring offenders to any of TDLR's dozens of general driving safety course providers.

4.4 Eliminate the redundant driving safety school license.

This recommendation would eliminate the licensing and regulation of driving safety schools, whose requirements are redundant with course providers' or no longer needed in the absence of physical inspections and driving safety instructor regulation, as discussed below. Driving safety course providers could still elect to partner with a school but, consistent with current practice, would remain subject to complaints related to curriculum, course policies, or student contracts.

4.5 Eliminate the driving safety instructor license.

This recommendation would eliminate the licensing and regulation of driving safety instructors, eliminating an unnecessary barrier to entry for those individuals without sacrificing public safety.

4.6 Eliminate the minimum fees driving safety course providers must charge consumers.

This recommendation would eliminate the statutorily required minimum fees driving safety course providers must charge for a course and course materials, and for supervising and administering the course. Removing these fees will allow providers to charge whatever amount the market will bear, potentially lowering costs for consumers.

Driver Education and Parent-Taught Driver Education

Change in Statute

4.7   Modernize the licensing of driver education businesses.

This recommendation would replace TDLR's existing driver education school license and parent-taught course provider registration with three types of driver education provider licenses:

- **In-person provider**, or a business offering driver education courses in person, in-car instruction, observation hours, and/or driver license exams

- **Online provider**, or a business offering driver education courses remotely through the internet rather than at an on-site location where the student is physically present

- **Correspondence provider**, or a business offering materials for parents or designees to provide traditional, classroom-style instruction to their student

This recommendation would eliminate unfair treatment of licensees and create a consistent framework to license driver education businesses based on their course delivery methods, and would work together with Recommendation 4.12 to streamline the entire licensing and course approval process. This recommendation would take effect no later than January 1, 2023 to allow TDLR time to update rules, procedures, application forms, and fees to implement the changes.

Businesses with a driver education school license issued before the effective date would be grandfathered until the license expires. All providers with registered PTDE courses would be required to apply for an online and/or correspondence provider license by the effective date, and TDLR should intermittently notify providers of the changed requirements and new application process in advance of this deadline. The recommendation would remove from statute the requirement that courses be designated as "parent-taught driver education," clarifying parents or designees wishing to teach a student could choose any course from an approved online or correspondence provider, expanding consumers' options.

Online driver education is a growing market and an increasingly important tool in modern education, especially evident during the COVID-19 pandemic. By explicitly recognizing providers offering only online courses, this recommendation would subject all online providers to equivalent requirements. All online providers would be required to provide access to a licensed instructor for technical assistance and content questions, offering an additional benefit to parents who choose this option. All online providers would also be subject to technical standards to validate students' identity and active participation. In updating its rules, TDLR should reexamine all license fees to ensure they are reasonable and necessary to cover the costs of administering each license, as required by the agency's enabling statute.[37]

Although in this proposed structure some businesses would require more than one license, overall costs to most licensees will likely be lower absent course approval fees, as discussed in Recommendation 4.12, and with simplified administrative processes.

4.8   Eliminate pre-license and continuing education requirements for driver education instructors.

This recommendation would retain the fingerprint background check for driver education instructors, but remove from statute the three instructor endorsements and their prescribed education requirements. Driver education businesses would determine the qualifications and training their instructors require. As discussed in Issue 7, TDLR would have the authority to establish any continuing education requirements as appropriate.

4.9   Require a memorandum of understanding to facilitate better coordination between TDLR and DPS.

Effective January 1, 2022, this recommendation would require TDLR and DPS to enter into an MOU to coordinate on developing the content of driver license exams and reference materials to ensure alignment with curriculum standards, and any other issues the agencies deem appropriate. The MOU would provide for DPS to share with TDLR any available relevant data, particularly related to exam results. While the former MOU was voluntary, a statutory MOU with clear directives would better ensure ongoing collaboration between the two agencies.

Management Action

4.10 Direct TDLR to remove from rule certain driver education school inspection requirements.

In accordance with Issue 6, TDLR should remove the annual inspection schedule for driver education schools from rule and instead conduct inspections based on risk and in the most efficient manner possible. As part of this recommendation, TDLR should also consider limiting pre-license inspection requirements in rule to the special features of driver education vehicles: the passenger-side mirror and dual control brakes. The other aspects of inspections of driver education providers or vehicles requiring confirmation could be added as a supplement to the application or inspected remotely.

Driver Improvement and Driver Education

Change in Statute

4.11 Eliminate prescriptive curriculum hours and authorize TDLR to set minimum hours in rule.

This recommendation would remove from statute prescribed hour requirements for adult driver education; in-car instruction, observation, and practice for teen driver education; and driving safety. To implement this recommendation, TDLR should holistically reexamine the curriculum standards for driver education and safety. Working with its industry advisory committee, the agency should consider such factors as best practices and recent innovations, including other states' and national standards, and ensure standards are set at the minimum level necessary to protect the public.

4.12 Eliminate costly course approval fees and streamline TDLR's process for approving driver training curricula.

This recommendation would remove the statutory requirement that TDLR establish a separate fee for approving driver training courses and as a management action, direct TDLR to discontinue comprehensive pre-license review of curricula.[38] Instead, businesses applying for a driver education provider license under the new structure proposed in Recommendation 4.7, or a driving safety provider license, would certify their courses meet standards, subject to audit or review upon a complaint. To facilitate audits, the agency could require providers to explain how each course meets standards, if appropriate, in their application.

In updating license fees, TDLR should account for any processes staff uses to ensure licensees comply with minimum curriculum standards. Under this streamlined approach, businesses would apply for a license, certify their courses meet standards, and pay a single license fee for each license, which should be significantly lower for most businesses given the reduction in TDLR's administrative workload associated with time-consuming curriculum review.

This recommendation would also clarify TDLR has the same authority as in other education programs, including Barbering and Cosmetology, to hold licensees accountable for compliance with both existing and new curriculum standards, which would require updates to curricula.

4.13 Modify the membership of the Driver Training and Traffic Safety Advisory Committee to conform to the new licensing structure.

This recommendation would alter membership of the industry advisory committee to reflect the new licensing structure proposed in Recommendations 4.1–4.5 and 4.7. The recommendation would reduce the committee from 11 to nine members, comprising three driver education providers, one driver education instructor, three driving safety providers, the head of the DPS driver license division (or designee), and one public member. With the exception of removing specific references to who may call meetings to conform to Issue 1, other requirements related to the advisory committee, such as member term limits, would not change. To ensure the committee is involved in updating the program's rules, this recommendation would require the commission to appoint committee members no later than December 1, 2021.

Management Action

4.14 Direct TDLR to list on its website only licensed instructors and providers, not the specific courses they offer.

Under this recommendation, TDLR would only include licensed driver training instructors and providers on its website. Removing the list of courses from the website would help prevent the use of TDLR's website as a promotional tool for private businesses while still ensuring students, parents, and other stakeholders can readily identify and evaluate licensed providers.

Fiscal Implication

Overall, the recommendations are designed to improve internal operations, but their exact fiscal impact cannot be estimated. The recommendations to streamline TDLR's licensing structure for driver training would result in long-term efficiency gains for the agency by eliminating burdensome and unnecessary administrative functions. However, TDLR may incur some upfront costs to implement the recommendations, such as staff time to modify information technology systems and update rules, procedures, and other materials. Given the significant amount of work needed to implement these complex changes, TDLR would need to retain staffing at current levels. The recommendations to eliminate course approvals and certain driver improvement license types would result in a loss of about $212,000 in revenue, or less based on the recently proposed fee reductions, that would be partially offset by savings in operating expenses.

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[1]   H.B. 1786, 84th Texas Legislature, Regular Session, 2015.

[2]   All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov/. Section 1001.058, Texas Education Code.

[3]   Section 1001.058, Texas Education Code.

[4]   16 T.A.C. Section 84.500.

[5]   Section 1001.112, Texas Education Code.

6   Section 521.1601, Texas Transportation Code; 16 T.A.C. Section 84.500.

7   Sections 521.161, 521.165, and 521.1655, Texas Transportation Code.

8   Section 1001.111, Texas Education Code.

9   Sections 545.412 and 545.413, Texas Transportation Code.

10   Section 1001.103, Texas Education Code.

11   Section 325.0115, Texas Government Code.

12   Section 106.115, Texas Alcoholic Beverage Code; Sections 521.374–521.376, Texas Transportation Code; Articles 42A.403, 42A.404, 42A.405, and 42A.406, Texas Code of Criminal Procedure.

13   TDLR does not collect data on the number of people taking drug and alcohol driving awareness courses.

14   Section 1001.206, Texas Education Code.

15   Sections 1001.205 and 1001.206, Texas Education Code.

16   Section 1001.206, Texas Education Code.

17   Sections 1001.354 and 1001.3541, Texas Education Code; 16 T.A.C. Chapter 84, Subchapter M.

18   16 T.A.C. Sections 84.64, 84.72, 84.503, and 84.505.

19   16 T.A.C. Sections 84.64(e), 84.502(a)(3), and 84.503(a)(3).

20   Sections 1001.111 and 1001.451, Texas Education Code.

21   Section 1001.151(e), Texas Education Code.

22   Section 1001.151(b)(7) and (8), Texas Education Code; 16 T.A.C. Chapter 84, Subchapter K.

23   Section 1001.352, Texas Education Code.

24   H.B. 2847, 86th Texas Legislature, Regular Session, 2019.

25   16 T.A.C. Sections 84.501(b)(6) and (7).

26   Texas Department of Licensing and Regulation, Driver Education and Safety, 45 Tex. Reg. 2966-3005 (to be codified at 16 T.A.C. Sections 84.300–.302).

27   Section 1001.2511, Texas Education Code.

28   Sections 1001.2532, 1001.2533, and 1001.2534, Texas Education Code.

29   Sections 1001.2531, Texas Education Code.

30   Section 1001.101, Texas Education Code; "Novice Teen Driver Education and Training Administrative Standards 2017 Revision," U.S. Department of Transportation, National Highway Traffic Safety Administration, last modified February 2017, http://www.anstse.info/Images/2017%20Home/001%20-%202017%20NTDETAS.pdf.

31   Section 1001.151(e), Texas Education Code.

32   16 T.A.C. Chapter 84, Subchapter K.

33   16 T.A.C. Sections 84.500(c) and (d).

34   16 T.A.C Sections 84.501, 84.502, and 84.506.

35   16 T.A.C. Section 84.40 and 84.42; Chapter 84, Subchapter I.

36   Section 1001.112, Texas Education Code.

37   Section 51.202, Texas Occupations Code.

38   Section 1001.151(b)(7) and (8), and (e), Texas Education Code.

| ISSUE 5 | The Texas Department of Motor Vehicles Could Regulate Used Automotive Parts Recyclers More Effectively Than TDLR. |

Background

In 2009, the Legislature removed motor vehicle titling, registration, and regulation, including vehicle theft prevention, from the Texas Department of Transportation. In transferring these functions to other agencies, the Legislature divided the motor vehicle salvage industry into salvage dealers and used automotive parts recyclers (UAPRs) — sending oversight of salvage dealers, along with the rest of motor vehicle oversight, to the Texas Department of Motor Vehicles (TxDMV) and sending UAPR regulation to the Texas Department of Licensing and Regulation (TDLR).[1] The *UAPR vs. Salvage Dealers* textbox highlights the differences between the two business types.[2] Both serve consumers and the automotive industry by turning wrecked or otherwise unusable vehicles into usable parts or automobiles.

TDLR licenses 751 UAPRs, inspects each licensee once every four years as required by statute, investigates complaints, and takes disciplinary action when warranted. The Texas Commission of Licensing and Regulation gets advice and recommendations from the Used Automotive Parts Recycling Advisory Board, which consists of five members representing the industry.[3] In fiscal year 2019, TDLR spent approximately $107,000 to administer the UAPR Program.

> ### UAPR vs. Salvage Dealers
>
> **Used Automotive Parts Recyclers:** Purchase nonrepairable vehicles to harvest and resell usable parts, such as small engine components, doors, and cosmetic parts.
>
> **Salvage Dealers:** Purchase both nonrepairable and repairable vehicles allowed to return to the road after a safety inspection. A salvage dealer generally buys and sells the whole vehicle rather than individual parts, but can sell used parts as long as doing so is not its primary business.

TxDMV licenses 5,199 salvage dealers, investigates complaints, and takes disciplinary action when warranted. TxDMV also supports the Motor Vehicle Crime Prevention Authority, which partners with local law enforcement agencies through task forces to inspect and investigate suspected criminal activity at a motor vehicle business. The Department of Motor Vehicles Board receives advice and recommendations from industry stakeholders through several advisory boards, required as part of the agency's recent Sunset review.

Findings

TDLR's regulation of UAPRs is not designed to focus on fraud prevention or protecting the public as part of broader motor vehicle regulation.

Accurate and timely updates to a vehicle's titling record prevent the unlawful registration and issuance of license plates to vehicles that are stolen or that, if operated on public roads, could endanger the lives of passengers, such as flooded or totaled cars. Consumer protections intended by regulating UAPRs rely on the state classifying dismantled vehicles as "nonrepairable" in the state's vehicle titling system and cross-checking that data with national titling databases.

However, TDLR lacks the authority, systems, and expertise to provide the intended protections and instead largely just ensures businesses comply with their obligations to another state agency, an unnecessary and ineffective use of TDLR's resources.

TDLR inspectors check records showing whether a UAPR has submitted titling documents to TxDMV within the required timeframe, removed and securely stored license plates, and obtained liability insurance. But TDLR lacks direct, real-time access to the state's motor vehicle registration and titling system at TxDMV that would allow it to verify documentation, rendering its inspections ineffective. Because statute allows a UAPR to sell parts from a vehicle as soon as it submits documentation to TxDMV, even in cases where TxDMV ultimately rejects the documentation, which may imply an illegally obtained vehicle, TDLR does not take disciplinary action against the licensee because they met the requirement to timely submit the documents to TxDMV.

Further, the Legislature did not task TDLR with identifying potential vehicle fraud, so the agency does not train its inspectors for that purpose. An inspector could not, for example, identify when a licensee might be operating a chop shop, an illegal business selling dismantled stolen vehicles, and would not file a complaint to investigate this behavior. TDLR took only seven disciplinary actions against UAPRs in fiscal year 2019, but the exact cause of this low level of enforcement activity is unclear, as TDLR's regulatory jurisdiction is primarily restricted to an administrative review of paperwork, likely limiting the agency's ability to identify bad actors.

TxDMV, as custodian of the state's vehicle titling and registration data and regulator of the entire automotive industry, is better positioned to oversee used automotive parts recyclers.

- **Appropriate regulatory tools.** TxDMV, strengthened by the 2018 Sunset review, has the tools and regulatory structure to best oversee UAPRs. TxDMV regulates the automotive industry from a vehicle's manufacture to its final dismantling and destruction, in part, by maintaining titling records and matching them with national data. Managing a vehicle's registration and title history, including any reports of theft, enables the agency to identify and take immediate action in cases of theft or fraud for the industries it regulates. For example, if TxDMV regulated UAPRs and inspected a business in response to a complaint, the agency would be able to identify a vehicle on the premises that lacked proper documentation and quickly determine whether that car had been reported stolen in the titling database, something TDLR cannot and is not required to do.

  Further, the Legislature strategically placed the Motor Vehicle Crime Prevention Authority with TxDMV to proactively address criminal activity across the motor vehicle industry. Local law enforcement task forces inspect and investigate suspected theft and fraud at motor vehicle businesses, including UAPRs. Feedback from law enforcement personnel who participate with TxDMV on automobile theft task forces across the

state indicates fraud, theft, and unlicensed activity occurs among UAPRs. The arbitrary separation between salvage dealers and UAPRs, however, means task forces must know two statutes and coordinate with two agencies to prosecute crimes in a single industry.

- **Regulatory overlap.** Nearly half of UAPRs are also licensed as salvage dealers under TxDMV, making TDLR's regulation an unnecessary layer of licensure. Even for UAPRs that do not hold a salvage dealer license, TxDMV regulations shape their day-to-day operations. For example, a UAPR must submit to TxDMV documentation of all the nonrepairable vehicles it has acquired and will be dismantling in the form determined by the agency. Any changes to this process, such as requiring more detailed reporting about a vehicle's origin, are solely under TxDMV's purview. Yet TDLR checks this same documentation just to verify it was submitted to TxDMV on time. Further, UAPRs are accountable to two agencies but lack formal, direct input to TxDMV to weigh in on decisions that impact their business.

> Nearly half of UAPRs are also licensed as salvage dealers under TxDMV.

Regulating UAPRs and salvage dealers as one industry will enhance public protections, increase opportunities for businesses, and improve regulatory administration.

The Legislature has recently moved to consolidate salvage dealer regulation by simplifying its licensing structure and authorizing additional business types to engage in salvage activity. In 2019, the Legislature eliminated the five separate salvage endorsements, listed in the accompanying textbox, in favor of a single, comprehensive salvage dealer license, and authorized licensed independent used automobile dealers to perform all functions of a salvage dealer without needing a separate license.[4] UAPRs operate within the same salvage industry, and the distinction between selling full vehicles and reusable parts does not necessitate separate licenses. Further consolidation of the salvage industry, as discussed below, would provide additional benefits to businesses and protections to consumers.

> **Former Salvage Dealer Endorsements**
> - New automobile dealers
> - Used automobile dealers
> - Salvage pool operators
> - Salvage vehicle brokers
> - Salvage vehicle rebuilders

- **Enhanced law enforcement.** UAPRs, just like any business licensed as a motor vehicle dealer, have the potential for criminal activity, but as previously discussed, TDLR's routine inspections serve as a perfunctory check on administrative license requirements that do not effectively identify potential criminal activity. Consolidating the regulation of UAPRs and salvage dealers will strengthen the state's ability to pursue both administrative and criminal penalties by having TxDMV regulate them as a single industry to identify bad actors, coordinate with law enforcement, and more effectively and efficiently address illegal activity. For example, TxDMV could develop a comprehensive, standard system for tracking vehicle parts that would allow law enforcement to more easily identify the origin of stolen parts.

- **Lower costs, increased opportunities for businesses, and more choices for consumers.** Reuniting the salvage industry would cut costs for businesses in two ways. First, businesses operating as both UAPRs and salvage dealers would only have to pay for one license. Further, merging the licenses would eliminate the cost and unnecessary burden of UAPRs' current $250,000 general liability insurance policy.[5] Sunset staff found no evidence of a business having used the policy to protect the general public, and as a barrier to entry, it should be eliminated.

Merging UAPR and salvage dealer licenses would cut costs for businesses and benefit consumers.

The benefits of combining the UAPR and salvage dealer licenses would also extend to consumers. For example, current UAPR licensees would be authorized to buy and sell whole cars instead of just parts, and salvage dealers could sell parts. In accordance with the Legislature's change last session, licensed independent used automobile dealers could also market in parts without a separate license. Sunset staff is required to evaluate the impact of regulation on competition and consumer choice, and although these businesses may face some increased competition resulting from having a single salvage license, consumers would ultimately benefit from additional options in the market.

- **Improved administration for businesses and TxDMV.** Consolidating the UAPR and salvage dealer licenses would streamline regulations and improve efficiency for the state and licensees.

  - <u>More efficient investigations.</u> Complaint-based inspections for UAPRs, in lieu of regularly scheduled inspections, would enable TxDMV to target its resources on bad actors while allowing consistently compliant licensees to conduct business with minimal intrusions.

  - <u>Streamlined administrative requirements.</u> Implementing consistent, streamlined documentation and reporting, such as allowing additional ownership evidence — like an auction sales receipt — for a salvage or nonrepairable vehicle to serve as proof of ownership, would speed up transaction time between a vehicle purchase and dismantling or sale for salvage dealers without compromising public safety, a benefit to both businesses and TxDMV.

  - <u>Formal stakeholder input.</u> Under a unified license, UAPRs would be represented on TxDMV's advisory boards and more directly involved in the agency's rulemaking process as stakeholders in the agency's licensee population.

Sunset Staff Recommendations

Change in Statute

5.1   Transfer the regulation of UAPRs from TDLR to TxDMV, and consolidate the UAPR and salvage dealer licenses into a single license.

Building on the Legislature's previous efforts to streamline salvage regulation, this recommendation would transfer licensing and regulation of UAPRs to TxDMV, effective March 1, 2022. The recommendation

would consolidate the UAPR and existing salvage dealer license into a single salvage dealer license. Current UAPR licensees would gain authority to buy and sell whole cars instead of just parts, and salvage dealers would gain authority to sell parts. To align with the Legislature's recent change, licensed independent used automobile dealers could also sell used parts without a separate license. Businesses with an existing UAPR or salvage dealer license issued before the effective date would be grandfathered until the license expires.

To maximize efficiency and public protection, the recommendation would standardize licensing requirements and other regulations, as follows.

a. **Eliminate the UAPR advisory board and incorporate UAPR representation into TxDMV advisory boards.** This provision would eliminate the Used Automotive Parts Recycling Advisory Board. However, to ensure UAPRs have formal input into rulemaking and other decisions, TxDMV should incorporate UAPR representation into its existing advisory boards, which the agency is in the process of establishing in accordance with recommendations from its previous Sunset review.

b. **Maintain existing salvage dealer license application.** Using the current, more detailed salvage dealer application would provide TxDMV with the information necessary to prevent licensees and their business partners from skirting regulation by transferring ownership between interested parties, otherwise known as corporation hopping, which is discussed further in Issue 7. UAPRs would be required to submit the detailed application when renewing their license for the first time following the transfer.

c. **Eliminate UAPR general liability insurance requirement.** Under the new license, UAPRs would no longer need to carry $250,000 worth of general liability insurance.

d. **Maintain existing federal and state requirements.** Federal and state environmental regulations requiring a storm water permit would continue to apply only to businesses that must collect pollutants from dismantled motor vehicles. TxDMV would establish a process to ensure licensees comply with all applicable environmental regulations administered by the Texas Commission on Environmental Quality.[6]

e. **Eliminate inefficient inspections.** Statutorily required periodic inspections of UAPRs would be eliminated. Instead, TxDMV would conduct complaint-based inspections aimed at businesses suspected of license violations or engaging in criminal activity. Consistent with previous Sunset recommendations for TxDMV, the agency would consider UAPRs in its guidelines and criteria for inspections and investigations. By consolidating the licenses, law enforcement would also gain explicit authority to inspect all licensed businesses for violations against the wider scope of the state's motor vehicle law.

f. **Expand proof of ownership documentation.** As currently allowed for UAPRs, salvage dealers would be authorized to submit other types of documentation to TxDMV for proof of ownership, such as an auction sales receipt, when reporting a vehicle as scrapped, dismantled, or destroyed. Expanding ownership documents salvage dealers may use when buying and reporting vehicles as scrapped, dismantled, or destroyed would reduce workload for TxDMV and shorten the time between the purchase and reporting of a salvage or nonrepairable vehicle.

g. **Eliminate license plate inventory requirement.** This provision would eliminate the requirement that salvage dealer licensees take inventory of license plates and instead authorize their removal, secure storage, and destruction after purchase of a salvage or nonrepairable vehicle, consistent with

current UAPR licensee requirements. This standard of regulation would not pose a risk to the public because as each vehicle is issued a salvage or nonrepairable vehicle title, the registration and title system also renders the corresponding license plates unusable.

h. **Require consistent automotive parts documentation and inventory.** When purchasing individual automotive parts or components, salvage dealers and UAPRs collect slightly different identifying information about the seller. This provision would standardize documentation by requiring all licensees to collect a legible photocopy of the seller's driver license or a detailed log identifying the seller. UAPRs, as salvage dealers, would also comply with the current requirement to maintain inventory of all parts, which is consistent with their current business model. Additionally, TxDMV would be authorized to develop, with industry assistance, a standardized numbering system for used automotive parts.

i. **Apply criminal penalties for salvage dealers.** Existing penalties for a salvage dealer license, prosecuted as a Class A misdemeanor and punishable by a year in jail, a $4,000 fine, or both, would extend to UAPRs, which are currently subject to Class C misdemeanor punishments that cannot exceed a $500 fine.[7] Strengthening the criminal penalties would provide licensees greater incentive to comply with the law and ensure local law enforcement has the tools needed to pursue motor vehicle crimes.

j. **Authorize state injunctive relief.** Consistent with best practices for state regulatory agencies, TxDMV would appeal to the Office of the Attorney General for injunctive relief against a licensee or business in violation of salvage dealer laws and regulation. Currently, for salvage dealer cases, TxDMV must pursue injunctive relief through local prosecutors and courts.

As part of this recommendation, TDLR would work with TxDMV to coordinate, provide access to, and transfer all necessary information and systems to effectively transfer the UAPR licensing program. This recommendation would also direct Sunset staff to work with TxDMV, TDLR, and the Texas Legislative Council in drafting legislation to account for the consolidation of the two licenses. The recommendation would improve the state's ability to regulate the end-of-life vehicle market by eliminating TDLR's middleman status and empowering TxDMV to use its tools and expertise to provide efficient regulation of UAPR businesses.

Fiscal Implication

Transferring the regulation of UAPRs to TxDMV would be cost neutral once TxDMV fully consolidates the UAPR and salvage dealer licenses. The recommendation would require the Legislature to permanently transfer 1.5 full-time staff positions and an annual appropriation of $107,000 from TDLR to TxDMV. Standardizing the licensing and other regulatory requirements would minimize initial costs to TxDMV to issue salvage dealer licenses to the small number of UAPRs, but TxDMV estimates it would incur a one-time cost of approximately $83,000 to modify its information technology systems. Eliminating required inspections should reduce ongoing costs overall, but these savings cannot be estimated at this time.

1   S.B. 1095, 81st Texas Legislature, Regular Session, 2009.

2   All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov/. Section 2309.004, Texas Occupations Code; Section 501.091(17), Texas Transportation Code.

3   Section 2309.051, Texas Occupations Code.

4   H.B. 1667, 86th Texas Legislature, Regular Session, 2019.

5   Section 2309.153, Texas Occupations Code.

6   30 T.A.C. Section 281.25; The Clean Water Act (40 C.F.R. Section 122.126 et seq.).

7   Sections 2302.353 and 2309.254, Texas Occupations Code.

ISSUE 6	**TDLR Lacks a Data-Driven, Risk-Based Strategy to Guide Key Regulatory Functions and Maximize Efficiency.**

Background

The Texas Department of Licensing and Regulation (TDLR) safeguards the public by ensuring its more than 820,000 licensees perform their work in compliance with health, safety, sanitation, and consumer protection standards. To fulfill this responsibility, staff periodically inspects licensed facilities, businesses, and equipment; investigates complaints from the public and agency staff; and takes enforcement action when necessary.
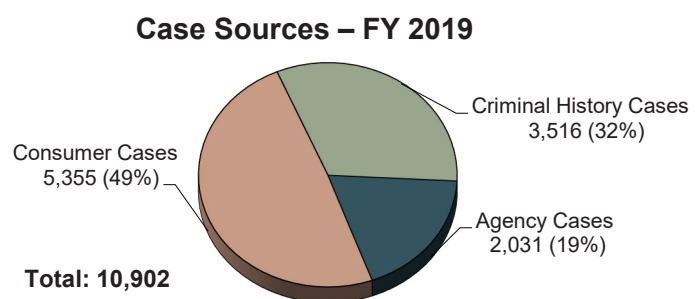
Both TDLR staff and third parties perform inspections for the agency's programs. Within TDLR, the Field Inspections Division conducts the majority of the agency's inspections, while the Regulatory Program Management Division handles inspections, plan reviews, and investigations requiring specialized expertise. In fiscal year 2019, TDLR staff conducted roughly 41,000 inspections across 14 programs.[1] Third parties, including licensed inspectors, independent contractors, and insurance companies, conducted another 105,000 inspections across seven programs.[2] The table on the following page, *TDLR's Inspection Requirements*, provides more details on which programs receive state-level inspections, who performs them, and how many were conducted in fiscal year 2019.

When inspectors find areas of noncompliance during their fieldwork, they divide violations into two categories:

- Minor (typically administrative) issues inspectors handle in the field through education and corrective actions, not penalties or sanctions

- Violations deemed serious enough to require an enforcement referral so the agency can take disciplinary action, as warranted

TDLR receives, investigates, and resolves complaints against licensees and other individuals alleged to have violated the agency's statutes and rules. In fiscal year 2019, the agency received over 37,000 complaints, about 11,000 of which enforcement staff formally opened for investigation. As the *Case Sources* chart shows, almost half of opened cases stemmed from a complaint filed by a member of the public.

Through its last two strategic plans, TDLR sought to target enforcement resources to issues that involve direct consumer harm and threats to public safety, resulting in a 10 percent drop in the number of cases opened between fiscal years 2017 and 2019. TDLR closed 22 percent of cases through formal disciplinary action, such as administrative penalties, license denials, and license revocations in fiscal year 2019.

Case Sources – FY 2019

Consumer Cases
5,355 (49%)

Criminal History Cases
3,516 (32%)

Agency Cases
2,031 (19%)

Total: 10,902

TDLR's Inspection Requirements – FY 2019

Program[i]	Entity Conducting Inspection	Inspection Cycle	Number of Inspections[ii]
Barbering	Field Inspections Division	School: 6 months Manicure shop: 2 years Other shop: 4 years	6,028
Boiler Safety	Regulatory Program Management Division and licensed third parties	1 to 3+ years depending on the type of boiler and approved extensions	27,544[iii]
Combative Sports	Regulatory Program Management Division and contracted third parties	One-time inspection for each event	118
Cosmetology	Field Inspections Division	School: 6 months Manicure salon: 2 years Other salon: 4 years	25,886
Driver Education and Safety	Field Inspections Division	School: 1 year	345
Elevator, Escalators, and Related Equipment	Licensed third parties	1 year and specific tests every 5 years	56,145
Elimination of Architectural Barriers	Regulatory Program Management Division and licensed third parties	Within 1 year of project completion	18,689
Industrialized Housing and Buildings	Regulatory Program Management Division and licensed third parties	Varies by project. TDLR conducts initial certification inspections, while third parties inspect ongoing construction.	7,925
Licensed Breeders	Field Inspections Division	Facility: 18 months	134
Massage Therapy	Field Inspections Division	School: 1 year Establishment: 2 years	733
Midwives	Field Inspections Division, Regulatory Program Management Division, and contracted third parties	School: 3 years	2
Mold Assessors and Remediators	Contracted third party (Department of State Health Services)	Varies by project	267
Orthotists and Prosthetists	Field Inspections Division	Facility: 2 years	78
Tow Trucks and Operators[iv]	Field Inspections Division	Company: 2 years	293
Used Automotive Parts Recyclers	Field Inspections Division	Facility: 4 years	418
Vehicle Storage Facilities	Field Inspections Division	Facility: 2 years	994
Total			**145,600**

i Licensees in the Air Conditioning and Refrigeration Contractors and Electricians programs may be subject to inspections at the city level if the city has a permitting process but they are not inspected at the state level.

ii Does not include plan reviews for any programs. Does not include complaint-based inspections, except in the Industrialized Housing and Buildings Program.

iii Includes only inspections that may result in a certificate of inspection.

iv The agency stopped conducting inspections for the Tow Trucks and Operators Program in February 2019 to avoid duplicating municipal efforts.

Findings

Inflexible schedules in statute and rule prevent TDLR from conducting inspections based on the risk licensees pose to the public.

An agency should have statutory authority and procedures to evaluate the risk level posed by entities and individuals subject to inspection, and target more staff resources to the highest risk areas. Instead, TDLR's statute and rules prescribe specific inspection schedules for 11 programs that receive routine inspections and four programs that receive project- or event-based inspections.[3] As a result, field inspectors must spend their time in facilities that do not need a frequent regulatory presence, reducing the number of staff available to follow up with licensees who present ongoing problems. While TDLR has made attempts to account for risk when conducting inspections in certain programs, the agency's data collection systems and other tools lack the capacity to facilitate risk-based inspections across programs.

In 2019, the Legislature extended statutory inspection schedules for certain TDLR licensees, but the change did not provide the flexibility TDLR needs to allocate resources most efficiently and effectively.[4] For example, in the Barbering and Cosmetology programs, statute requires TDLR to inspect each school twice per year but each nail salon once every other year.[5] Data, however, show the agency is nearly two times more likely to find violations — particularly serious violations requiring an enforcement referral — in nail salons than schools. None of these facilities received follow-up inspections to ensure licensees made and maintained required corrective actions.

TDLR's approach to inspections in the Combative Sports Program also does not align with known risks. TDLR staffs and performs inspections similarly for all events, even though large-scale, well-resourced events run by experienced promoters pose less risk because they have robust safeguards in place, such as professional staff and on-site law enforcement. The agency recognizes risks vary widely across events and promoters, but staff does not collect or analyze the necessary data to quantify these risks and tailor the agency's level of on-site involvement accordingly. While continued regulation of the combative sports industry is necessary to protect licensed contestants, more data-driven, critical analyses could help TDLR allocate its limited inspection resources most efficiently. Further, even in programs with relevant data to evaluate, the agency does not regularly use alternative, cost-effective means to complete low-risk inspections, such as desk audits to review records for vehicle storage facilities that are consistently compliant. Creative alternatives will be crucial as the agency starts to manage the inspection backlog the COVID-19 pandemic has created.

TDLR does not formally prioritize complaints based on risk, which perpetuates inefficiency.

Agencies should have a structured and clear process for prioritizing complaints to ensure limited resources are allocated to complaints in order of importance.

> Current inspection schedules force staff to spend time in facilities that do not need frequent oversight.

> TDLR does not allocate its inspection resources most efficiently.

Laws for other licensing agencies either establish or require the agency to establish priorities for their complaints, but TDLR's statutes and rules do not. Staff has not developed systematic means for ranking complaints for investigation, an essential step for an agency that must juggle disparate risks across 39 programs.

TDLR uses a complaint screening process, but it does not align with best practices to increase efficiency and reduce staff burdens. After receiving complaints, intake staff filters out nonjurisdictional ones and those that do not contain enough information to investigate. Intake also flags particularly significant, though rare, complaint types, which are listed in the *Limited Complaint Priorities* textbox and were developed in response to emerging issues brought forward by industry stakeholders and state leaders. Beyond flagging these priority complaints, the burden falls on individual investigators and attorneys to wade through their heavy caseloads and decide where to focus their efforts first. While each attorney has a legal assistant to help with this task at the end of the enforcement process, investigators are on their own to handle a backlog that more than doubled since fiscal year 2017, as shown in the *Increasing Investigator Caseloads* chart.

Limited Complaint Priorities

TDLR fast-tracks only those cases involving:

- Death
- Human trafficking
- Fuel pump skimmers
- Outdated or inoperable elevator equipment

Increasing Investigator Caseloads
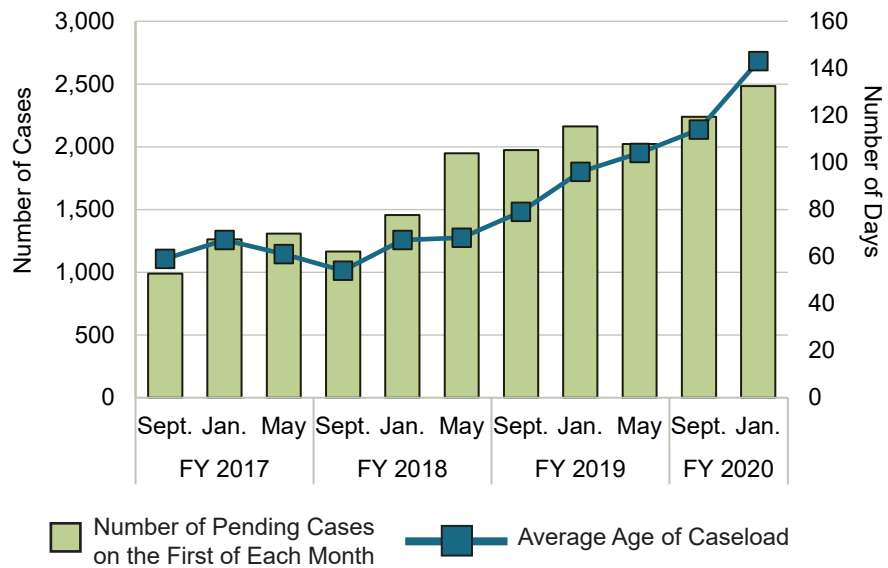
TDLR's reliance on individual discretion rather than a data-driven complaint prioritization system also has the potential to create unnecessary delays for consumers. For example, individual employees have taken it upon themselves to prioritize vehicle "flipping" cases in the agency's Vehicle Storage Facilities and Tow Trucks and Operators programs. This scheme, prevalent in the Houston area, charges owners of towed cars exorbitant fees. A small group of investigators, attorneys, and community partners has developed informal

strategies to fast-track these cases, but TDLR does not have official, agency-wide priorities in place to prevent them from falling through the cracks due to high workloads or staff turnover.

TDLR does not adequately collect or use comprehensive data to drive decision making, manage risk, and avoid wasting resources.

Bolstered by strong relationships with stakeholders and industry groups, TDLR's functional alignment allows its staff to respond to the most serious public safety risks effectively, as discussed in Issue 1. However, overloaded with inflexible inspection schedules and a growing complaint volume, TDLR has not stepped back from day-to-day operations and conducted systematic data analyses to guide its decision making. Sunset staff found strong personalities and industries — rather than reliable and comprehensive data — often drive a reactive process for allocating resources at TDLR. While qualitative information and responsiveness to stakeholders are important, a more data-driven approach to decision making would help the agency concentrate on public safety issues even more efficiently and proactively, especially as the Legislature continues entrusting TDLR with new programs that present diverse risks.

- **Inconsistent data definitions, collection, and use.** Data revealed inconsistencies in how the agency tracks its inspection work, which is TDLR's second highest cost-driver.

  - <u>Incomplete and conflicting data.</u> Without complete, clearly defined data and performance metrics, data collection and reporting have become perfunctory tasks rather than helpful tools to guide the agency's decisions, compare program risks, and evaluate each division's workload. Data collection within the Regulatory Program Management Division depends on the preferences of subject matter experts who staff each program, rather than a division-wide approach to monitoring standard information, which results in inconsistent and, at times, nonexistent data. For example, while the division reports certain violations in nationwide databases for the Boiler Safety and Combative Sports programs, it does not comprehensively document or analyze violation data to guide agency-wide decision making and resource allocation. While TDLR's programs are very different from one another, collecting comparable, meaningful data across programs could maximize the cost effectiveness of the agency's collective regulatory efforts.

    Additionally, two of TDLR's key performance measures — total inspections completed and percent of required inspections completed on time — are based on inconsistent underlying data that fail to demonstrate the true scope of the agency's inspection process. The measures require staff to aggregate data across programs, but the agency does not clearly define what information should be counted for each program. Instead, employees create their own definitions, which inevitably leads to inconsistent, conflicting, and less useful data. For

Strong personalities and industries often drive TDLR's decisions about resource allocation.

Two of TDLR's key performance measures are based on inconsistent underlying data.

example, while the Industrialized Housing and Buildings Program includes enforcement-related inspections in its total counts, the Air Conditioning and Refrigeration Contractors, Electricians, and Water Well Drillers and Pump Installers programs appropriately exclude this same data.

<div style="text-align: right">Inspectors do not use historical data to uncover problematic trends in behavior.</div>

– <u>Irregular data use.</u> Meanwhile, the Field Inspections Division collects standard data across programs, but employees make limited use of that information to steer their activities. While inspectors meticulously gather and upload information about licensees' violation history, they do not refer back to those data to uncover problematic trends in behavior, determine whether licensees completed corrective actions, or develop educational materials to address systemic problems. Similarly, the division closely monitors its backlog statistics but does not dig deeper into risk-related data to find and address inconsistencies. For example, over the last three fiscal years, data show inspectors in South Texas were up to four times more likely to report serious violations to enforcement staff than inspectors in the Houston area, despite numerous accounts across several divisions that Houston poses unique compliance problems for TDLR. Regional data disparities would likely reveal differences in how inspectors carry out their responsibilities. Still, the division does not routinely analyze and correct these differences to ensure they do not adversely impact public protection or consistent treatment of licensees across the state.

● **Missed opportunities for addressing repeat violations.** As the Legislature transferred more programs to TDLR and complaint volume grew, enforcement staff focused on minimizing the number of minor administrative cases opened for investigation. The effort helped decrease the attorneys' backlog of pending cases by 40 percent between the start of fiscal years 2016 and 2019. However, the paradigm shift also resulted in incomplete strategies and missed opportunities for handling repeat violators based on available risk data.

<div style="text-align: right">Licensees can commit certain violations indefinitely without facing any enforcement action.</div>

– <u>Procedural gaps.</u> To reduce attorneys' caseloads, agency staff overcorrected by narrowing the types of violations deemed serious enough to initiate direct-to-enforcement reporting from inspectors, creating an accountability vacuum for licensees. Staff designed the updated process based largely on theoretical discussions about the seriousness of different violations rather than historical data, and removed clear procedures for when inspectors should escalate their response to repeat violations. Currently, licensees can commit certain violations indefinitely without facing any enforcement action or receiving other follow-up contact from the agency.

Procedural gaps for handling repeat inspection violations trigger two problems. First, for violations related to health and safety, the gaps may impact consumer protection. For example, protocols no longer require inspectors to make enforcement referrals for licensees who

use an unclean wax pot in a cosmetology salon, no matter how many times this occurs. The violation implies poor sanitation and, if repeated, a general disregard for the state's health standards. However, unless an inspector ignores established procedures and decides to submit a complaint, which is rare, the licensee will never be held responsible. Second, for violations that pose little safety risk, the gaps highlight areas where inspectors are wasting their time. As discussed below, violations that will never be serious enough to warrant an attorney's attention present opportunities for scaling back regulations that burden licensees for no public benefit.

In response to Sunset staff's questions and concerns during the review, the agency started a pilot initiative in March 2020 to revisit certain businesses with recent violations, but the pilot project was limited in scope and put on hold during the COVID-19 pandemic.

– Insufficient recidivism analysis. Recidivism rates are critical for measuring the effectiveness of an agency's enforcement strategies, but TDLR does not systematically use this information to assess its performance or compare risks across programs. Given the frequency with which TDLR acquires newly transferred programs and the often unreliable enforcement data that comes with them, a single recidivism statistic for the entire agency would likely not be useful. However, even within programs TDLR has regulated for decades, staff does not use program-specific recidivism rates to identify problematic trends within industries, reassess complaint priorities, and increase educational opportunities when appropriate. Further, the agency calculates its recidivism rates inaccurately. As explained in the *Recidivism Data Breakdown* textbox, TDLR's method for determining recidivism skews the data downward, giving staff and the Legislature an inaccurate picture of how often TDLR licensees commit repeat violations.

> TDLR's method for calculating recidivism downplays how often licensees commit repeat violations.

Recidivism Data Breakdown

A recidivism rate, which originates from crime-related statistics, captures the relative number of people who commit repeat violations resulting in disciplinary action across multiple years. To calculate recidivism, agencies use the following formula:

Total individuals who committed multiple violations during the current and two previous years
divided by
Total individuals receiving disciplinary action in the current year

TDLR calculates both components of its recidivism rate incorrectly.

• In the **numerator,** the agency includes only individuals who committed violations *across* fiscal years, not those who committed multiple violations in the *current* fiscal year. For example, if a tow operator had a clean disciplinary record until committing two separate violations in fiscal year 2020, TDLR would exclude the operator from recidivism data, artificially lowering the overall rate.

• In the **denominator,** the agency uses *total cases closed* with disciplinary action, not *total individuals* receiving disciplinary action. Since one individual can be involved in multiple cases, this method makes the rate appear lower than it actually is.

<div style="float:left; width:30%;">

TDLR's rule review process results in stakeholders having to comply with needless regulations.

</div>

– <u>Incomplete rule review.</u> Statute requires state agencies to review their rules every four years and determine whether the reasons for initially adopting each rule continue to exist.[6] While TDLR effectively trims unnecessary rules after programs first transfer and completes the required rule review, the agency does not use the periodic review process to adequately consider the continuing need and appropriateness of its rules based on risk data. A meaningful rule review should evaluate whether the initial factual, legal, and policy reasons for adopting each rule are still relevant.[7] As part of its analysis, TDLR should consider the practical experience the agency, stakeholders, and public have had with each rule over the past four years.[8] For example, rules require inspectors to spend time checking the font size on certain signs in vehicle storage facilities, but this violation alone has never resulted in disciplinary action. TDLR's incomplete rule review process results in stakeholders having to comply with rules that do not accurately reflect the agency's current practice or relevant experience.

Conversely, a routine analysis of top violations, inspection trends, and consumer harm throughout the rulemaking process could uncover regulatory topics that need increased attention or clarity. For instance, in the Tow Trucks and Operators Program, updated rules strictly prohibiting operators from recommending transport of a vehicle from an accident scene to an unregulated body shop could help TDLR thwart flipping schemes before they begin.

Sunset Staff Recommendations

Change in Statute

6.1   Require TDLR to establish a risk-based approach to inspections.

This recommendation would remove prescribed inspection schedules from statute and rule, and instead require the agency to adopt policies formally guiding the prioritization of inspections based on risk to consumer welfare. In establishing these policies, the agency would develop an assessment tool to determine how frequently and intensively staff must be involved in various inspections based on key risk factors, such as past and repeat violations, volume of complaints, and negative media attention. For inspections deemed low-risk, the recommendation would also clearly authorize TDLR to use alternative inspection methods, such as less onerous desk audits or videoconferencing technology, instead of in-person, on-site visits. The recommendation would not adjust requirements related to pre-license inspections. Establishing a risk-based approach to inspections would ensure the most efficient allocation of resources toward the highest risks to the public.

6.2   Require TDLR to prioritize complaints based on the risk they pose to the public.

This recommendation would require the agency to adopt policies formally guiding prioritization of complaint investigations based on the risk the complaint poses to consumers, using indictors such as repeat violations. The agency would develop complaint investigation priorities with stakeholder input as necessary. As a management action, the agency should also adopt policies to train intake staff, investigators, legal assistants, and attorneys on how to apply the new rules to their caseloads. Prioritizing complaints would ensure the most efficient allocation of resources toward the highest-risk complaints.

Management Action

6.3 Direct TDLR to develop a comprehensive, data-driven strategy for assessing program risks and setting regulatory priorities.

Under this recommendation, TDLR should develop clear policies and procedures outlining how to use data to develop a risk-based approach to its inspection and enforcement processes. Together with the recommendations above, TDLR would minimize current inefficiencies and position itself to better absorb growing licensee populations and new programs in the future.

In developing its policies and procedures, TDLR should at a minimum:

a. **Standardize data collected for each inspection.** Data should include, but not be limited to, the number and type of violations found and whether the inspector required corrective action in the field or referred the activity to enforcement staff. Staff would not be prohibited from tracking additional data unique to a specific program but should communicate data collection activities across divisions to identify opportunities for comparison or collaboration.

b. **Adopt clear, consistent definitions for inspection-related performance measures.** TDLR should ensure staff understands what information to incorporate into agency-wide metrics, including total inspection counts and percent of required inspections completed on time. TDLR should work with the Legislative Budget Board to ensure its existing performance measures adequately assess and consistently measure the agency's outcomes.

c. **Develop and implement consistent inspection protocols and procedures.** TDLR should establish common risk factors and protocols for inspectors to follow when determining whether to conduct follow-up inspections or refer repeat violations to enforcement attorneys, though specific procedures in the field may necessarily differ based on the program and violation type.

d. **Update recidivism rate methodology.** The agency's recidivism rate calculation should accurately reflect the number of individuals, not cases, who commit multiple violations within and across fiscal years.

e. **Update agency policy to ensure each rule undergoes more meaningful review.** The agency should update its policy establishing the process for the four-year review of its rules. The revised policy should require the review to consider current factual, legal, and policy reasons for readopting each rule, as well as practical experience the agency, regulated community, and public have had with each rule over the past four years. Undergoing a more substantive four-year rule review analysis would allow the agency to maintain its rules based on current circumstances and factors.

To implement this recommendation, TDLR should organize a collaborative effort among advisory boards, stakeholders, and relevant divisions, particularly the Field Inspections, Regulatory Program Management, and Enforcement divisions. Collaboration should focus on how to consistently and fairly define risk across programs and what data are necessary to monitor that risk.

In addition to improving its data collection methods, TDLR should also routinely analyze the information it gathers and use it when setting agency priorities and allocating resources. For example, the agency should use program-specific recidivism rates to track trends within industries, compare relative harms, and adjust inspection- and enforcement-related tasks as needed. TDLR would then filter its data analysis through a qualitative lens by considering real-world experience and stakeholder input to inform decision making. For example, while data may show some inspection violations rarely result in disciplinary action

— such as individuals failing to post their licenses in a conspicuous place — staff may determine the requirements are still necessary because they speed up the inspection process. The agency could also use its quantitative analysis to guide its robust strategic planning process by uncovering latent issues in programs that stakeholders do not bring forward or may not even be aware of yet.

Collectively, the components of this recommendation would help TDLR revamp the way it responds to risk, assesses its own performance, and focuses resources on issues most essential to policymakers and the public. The agency would be required to provide the Sunset Commission an update on its implementation of this recommendation by March 1, 2021.

Fiscal Implication

These recommendations are meant to improve internal operations and efficiency, and should reduce TDLR's workload by better targeting resources on activities that present the most risk to the public. However, the exact fiscal impact related to staff time saved will depend on the results of TDLR's data-driven analyses and cannot be estimated. Any technological changes required to facilitate risk-based inspection schedules could be incorporated into the agency's current data collection and routing systems, or built into its new licensing database, for which TDLR received funding in fiscal years 2020 and 2021.[9]

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[1]   The 14 programs for which staff conducted inspections include: Barbering; Boiler Safety; Combative Sports; Cosmetology; Driver Education and Safety; Elimination of Architectural Barriers; Industrialized Housing and Buildings; Licensed Breeders; Massage Therapy; Midwives; Orthotists and Prosthetists; Tow Trucks and Operators; Used Automotive Parts Recyclers; and Vehicle Storage Facilities.

[2]   The seven programs for which third parties conducted inspections include: Boiler Safety; Combative Sports; Elimination of Architectural Barriers; Elevators, Escalators, and Related Equipment; Industrialized Housing and Buildings; Midwives; and Mold Assessors and Remediators.

[3]   The 11 programs receiving routine inspections include: Barbering; Boiler Safety; Cosmetology; Driver Education and Safety; Elevators, Escalators, and Related Equipment; Licensed Breeders; Massage Therapy; Midwives; Orthotists and Prosthetists; Used Automotive Parts Recyclers; and Vehicle Storage Facilities. The four programs receiving project- or event-based inspections include: Combative Sports; Elimination of Architectural Barriers; Industrialized Housing and Buildings; and Mold Assessors and Remediators.

[4]   H.B. 2847, 86th Texas Legislature, Regular Session, 2019.

[5]   All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov/. Section 1603.104(c) and (c-1), Texas Occupations Code.

[6]   Section 2001.039, Texas Government Code.

[7]   Ronald L. Beal, *Texas Administrative Practice and Procedure*, (New York: Matthew Bender & Company, 2018), Section 3.8, 36–37.

[8]   Ibid.

[9]   Rider 2 (Capitol Budget), page VIII-30, Article VIII (H.B. 1), Acts of the 86th Legislature, Regular Session. 2019 (the General Appropriations Act).

| ISSUE 7 | Key Elements of TDLR's Statute and Rules Do Not Conform to Common Regulatory Standards. |

Background

The Texas Department of Licensing and Regulation (TDLR) is an umbrella agency that administers 39 occupational licensing programs. Among TDLR's more than 820,000 licensees is a broad range of individuals, businesses, and pieces of equipment. TDLR's largest programs are those regulating cosmetologists, electricians, boilers, and air conditioning and refrigeration contractors and technicians.

The Sunset Advisory Commission has a long history of evaluating licensing and regulatory agencies, as the increase of occupational regulation served as an impetus behind the creation of the commission in 1977. Since then, the Sunset Commission has completed numerous reviews of licensing and regulatory agencies, documenting standards to guide future reviews. While these standards provide guidance for evaluating a regulatory agency's structure and functions, they are not intended for blanket application. Sunset staff continues to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. The following material highlights areas where the agency's statutes and rules differ from these model standards and describes potential benefits of conforming to standard practices.

Findings

Nonstandard licensure requirements present hurdles to applicants and reduce the agency's effectiveness.

- **Subjective statutory qualifications for licensure.** Qualifications for licensure should be clear, objective, and not unreasonably restrict entry into practice. TDLR's enabling statute contains language allowing the agency to determine an applicant's eligibility for a license based on "criminal history or other information that indicates a person lacks the honesty, trustworthiness, and integrity to hold a license."[1] The Legislature has increasingly narrowed the grounds for which an applicant's criminal history may act as a barrier to licensure.[2] Specifically, for most occupational licensing agencies, statute requires criminal convictions that could make an applicant ineligible for licensure be directly related to the occupation for which an individual seeks licensure and requires agencies to consider mitigating and aggravating factors.[3] Similarly, the Legislature has removed from licensing statutes other vague terms like "good moral character" as part of the effort to replace subjective criteria open to bureaucratic interpretation with more objective and appropriate criminal history evaluations informed by legislatively established guidelines.[4] In addition, courts have expressed concern that subjective requirements for licensure related to an applicant's background warrant scrutiny and additional legislative direction.[5] While Texas wants licensees to have honesty, trustworthiness, and integrity, this statutory language is inappropriately subjective and vague, and could create inconsistent barriers to licensure for otherwise qualified applicants.

The Legislature has made an effort to replace subjective licensure requirements with more objective ones.

Unscrupulous licensees can evade disciplinary action by acquiring a new license under a new business.

- **Insufficient background checks.** A regulatory agency should have statutory authority and direction to perform the appropriate level background check. Such authority enables an agency to determine whether an applicant presents a risk to the health, safety, or welfare of the public. To make this determination, an agency should have adequate information to establish whether a licensee has demonstrated a pattern of behavior that presents a risk to consumers or the public, including having unresolved compliance issues. For some of TDLR's programs, licensees evade disciplinary action by acquiring a new license to continue operations under a new business before TDLR can finalize an order to revoke the license or issue a significant administrative penalty. For example, unscrupulous tow truck operators either reincorporate under a different name or have a family member apply for a license on their behalf and then transfer all their assets to the new company. Once they obtain the new license, these bad actors continue to flout the law — overcharging consumers, "flipping" vehicles, and committing other violations — until they get caught again.

  The individual statutes of some TDLR programs, like the Vehicle Storage Facilities Program, offer moderate protections against this type of malfeasance, such as requiring applicants to disclose each of their partners or executive officers. However, TDLR does not have clear authority to apply such protections in all of its programs. Other occupational licensing agencies, like the Texas State Board of Pharmacy, have broader statutory authority to better prevent disreputable entities from continuing to operate by reincorporating or obtaining licensure through a proxy.[6] Authorizing TDLR to require additional disclosure for certain business licenses would better position the agency to root out persistent bad actors, including repeat violators in the towing industry.

Not every license type has a scope of practice dynamic enough to merit mandated continuing education.

- **Unclear continuing education authority.** Continuing education requirements clearly authorized in statute and described in agency rules provide a way of ensuring continued competence. TDLR has clear authority to mandate continuing education for certain programs whose enabling statutes make obtaining continuing education a condition for license renewal. However, whether TDLR has broad authority to establish continuing education requirements for all its programs is less explicit.[7] Not every license type under TDLR's purview has a scope of practice dynamic enough to merit mandated continuing education. For example, because vehicle storage facility employees are often alone with consumers at odd hours and are exercising control over expensive personal property, the state licenses them to ensure these individuals do not present a safety risk to vehicle owners. Requiring continuing education of these types of licensees would be an unjustified burden. However, other TDLR licensees work in industries, such as elevator safety and cosmetology, which experience frequent technological changes or potentially dangerous products being introduced into the market. In such cases, proper public protection depends on practitioners having a working knowledge of recent developments and techniques used in their professions. Clearly authorizing TDLR to adopt

rules for continuing education would provide the flexibility needed to set and adjust continuing education requirements for its varied licensing programs.

- **No statutory authority to deny license renewals for noncompliance.** The authority to deny license renewals based on the applicant's failure to comply with a current administrative order bolsters an agency's enforcement efforts and helps ensure disciplined licensees fulfill their responsibilities to consumers, other licensees, and the agency. TDLR's rules establish enforcement holds as a reason the agency may deny a license or license renewal, and TDLR uses these holds in practice. However, explicit statutory authority to consider a licensee's compliance history during the renewal process would improve consumer and public protection, and better protect this practice from a legal challenge.

Nonstandard statutory enforcement provisions present obstacles to effective regulation.

- **No refund authority.** Some regulatory agencies can order refunds instead of or in addition to imposing an administrative penalty or other sanction on licensees. Refunds can be granted when a consumer has been defrauded or subjected to a quantifiable loss, such as payments owed by a licensed service contract provider to an individual who has purchased a warranty for high-dollar personal property. Individual statutes that govern some of TDLR's programs, such as the Tow Trucks and Operators Program, authorize consumer refunds, and in practice, TDLR will order a licensee to issue a refund as part of an agreed order, provided the licensee consents. However, TDLR does not have general statutory authority across all of its programs to order a licensee to pay a refund to a consumer, even though many of the complaints it receives involve financial disputes between consumers and licensees regarding the services charged for and actually received. In these instances, clear authority to grant a refund would strengthen an existing enforcement tool to help make consumers who have been defrauded whole again.

> Clear authority to grant refunds would strengthen TDLR's enforcement tools and help make consumers whole.

- **Missing complaint information.** Regulatory agencies should keep and report statistical information detailing the number, source, and type of complaints received, and the disposition of complaints resolved. TDLR provides individual disciplinary information for each program on its website. The agency also collects a substantial amount of aggregated statistical information on complaints it receives and reports some of this information in the form of performance measures to the Legislative Budget Board. However, TDLR mostly does not make its complaint data publicly available, nor does any such requirement for the agency to do so exist in statute, though this is a best practice. Publicly reporting comprehensive complaint data would help the agency better revise or develop rules and provide general guidance for licensees as well as allow for analysis by other interested parties, including other state agencies and policymakers.

TDLR should protect the identity of complainants for as long as possible.

- **Complainant confidentiality.** While anonymous complaints may enable an agency to pursue further action, they generally do not provide sufficient basis and documentation to fully support a complaint investigation. However, to the extent possible, licensing agencies should protect the identity of complainants. Statute gives TDLR discretion to investigate anonymous complaints, and the agency does so in practice.[8] When initiating a complaint investigation against a licensee, TDLR redacts from the copy of the complaint sent to the licensee all non-TDLR email addresses, social security or government issued identification numbers, medical information, and any information protected by attorney-client privilege. However, if complainants identify themselves, the agency does not redact their names. Such a practice could potentially discourage people, including a licensee's colleagues or employees, from filing legitimate complaints out of fear of retaliation. While licensees may find out the identity of the complainant as the investigation proceeds, agencies should do their best to protect the identity of complainants for as long as possible to reduce the reluctance of consumers or other licensees to file complaints.

- **Administrative dismissal of complaints.** An agency's statute or rules should provide for administrative dismissal of complaints. In practice, TDLR administratively dismisses complaints but lacks explicit statutory authority to do so, which creates potential liability for the agency. TDLR staff should have the authority to dismiss complaints without having to involve the Texas Commission of Licensing and Regulation. The commission should be informed of all such dismissals, however. This approach saves the commission time in considering each complaint while still providing the commission information on staff actions.

Sunset Staff Recommendations

Change in Statute

7.1   Remove subjective licensure provisions from TDLR's statute.

This recommendation would remove the outdated provision allowing TDLR to determine license eligibility based on an applicant's perceived lack of "honesty, trustworthiness, and integrity," a standard that is unclear, subjective, and difficult to enforce. The agency would continue to assess the applicant's criminal history pursuant to Chapter 53 of the Texas Occupations Code, like most other occupational licensing agencies. Relying on objective standards for evaluating applicants better adheres to both legislative intent and TDLR's goal of eliminating barriers to licensing.[9]

7.2   Authorize TDLR to require disclosure of additional financial and controlling information of applicants for certain business licenses.

This recommendation would authorize TDLR to adopt rules that require an applicant for business license types the agency deems necessary to provide the name of the business, as well as each person who has any form of financial investment in the business, the percentage of their investment, and other financial interest information. However, if the business applying for the license is a publicly traded corporation or is controlled by a publicly traded corporation, statute would establish that TDLR's disclosure rules

only apply to an officer or director of the corporation, not a shareholder or lender of the corporation. TDLR should also consider requiring disclosure of the name of each individual who acts as a controlling person of the business through the exercise of direct or indirect influence or control over its management, expenditures, or policies. Examples of individuals to whom this disclosure could apply include a partner, officer, director, managing employee, and owner or person who controls the owner.

For certain types of business licenses, TDLR should also consider requiring disclosure of any individual who has a personal, familial, or other relationship with an owner, manager, landlord, tenant, or other associate of the applicant that allows the individual to exercise actual control of the business. TDLR's rules could also apply these disclosure requirements to any other person the agency determines should be included based on the person's exercise of direct or indirect influence or control.

If an applicant discloses a relationship to a bad actor, such as another licensee with an outstanding administrative penalty or an individual who had their license under the relevant program revoked, TDLR would have authority under this recommendation to deny the license or take other disciplinary action if the bad actor is exercising direct or indirect control over the business. Failure to disclose a relationship required by TDLR rules would be grounds to deny or revoke a license. The additional administrative checks included in this recommendation would enable TDLR to gather full information before providing the state's official endorsement of an applicant's fitness to conduct business.

7.3   Clarify TDLR's general authority to adopt rules requiring continuing education, as necessary.

This recommendation would clarify that TDLR, by rule, may establish continuing education as a condition for license renewal, and TDLR's general authority over continuing education in its enabling statute would replace continuing education provisions in individual program statutes. After evaluating appropriateness and need — based on factors like potential risk, the nature of the regulated industry, and a license type's scope of practice — the agency and its commission, with the advice of its advisory boards, would decide for which license types to require continuing education. Authority to require continuing education when warranted keeps licensees current on developments in their industry or profession, thereby ensuring consumers' and the public's consumption of these licensees' services continues to be safe.

7.4   Authorize TDLR to deny license renewal applications for noncompliant applicants.

Under this recommendation, TDLR would have the discretion to determine whether licensees who did not comply with a disciplinary order could continue providing services without harm to the public or if their renewal applications should be denied. An applicant could appeal the denial in the same manner as other license denials. Authority to deny renewals would further protect consumers, bolster enforcement efforts, and provide a greater incentive for licensees to comply with disciplinary orders in a timely manner.

7.5   Provide TDLR general authority to order refunds.

This recommendation would give the agency general authority to require a licensee to issue a refund to a consumer. The amount of the refund could not exceed the amount the consumer paid to the licensee, without inclusion of any additional consideration of damages or harm. Any requirement to issue a refund may be in lieu of or in addition to other sanctions ordered against a licensee. This recommendation would also direct the agency to consider revising its penalty matrixes to account for this authority. This recommendation would allow TDLR to take more effective action when consumer harm can be quantified and offer relief to consumers without the need for separate civil court action to recover these amounts.

7.6   Require TDLR to collect, maintain, and make publicly available detailed statistical information on complaints regarding its licensees.

Under this recommendation, statute would clearly require TDLR to track and post on its website statistical information detailing the number, source, and types of complaints received and the disposition of complaints. Doing so would provide policymakers, stakeholders, and the public a complete picture of TDLR's regulatory and operational activities. Also, analysis and public reporting of TDLR complaint information would assist the agency and others in identifying regulatory problem areas. At a minimum, the information should include the following, and where possible, should be broken out by program:

- Number of licensees

- Total number of complaints against licensees

- All resolved complaints per fiscal year by each type of action taken (e.g., nonjurisdictional, dismissed, warning, administrative penalty, suspension, revocation, etc.)

- Breakdown of the resolution by the nature of the alleged violation of each resolved complaint that was opened for investigation in that fiscal year (e.g., falsifying records, impairment, unlicensed practice, continuing education violation, etc.)

- Breakdown of each resolved complaint in that fiscal year by source (i.e., administrative violations originating with agency staff, or disciplinary cases originating from the public or another outside source)

- Average administrative penalty assessed

- Number of agreed, default, and commission orders

- Number of cases referred to the State Office of Administrative Hearings (SOAH)

- Number of contested cases heard at SOAH

- Number of cases that went to district court

- Average number of days to resolve a complaint

- Total number and amount of refunds (including restitution) awarded through administrative action

7.7   Authorize the Texas Commission of Licensing and Regulation to dismiss low-level complaints and to delegate this authority to agency staff.

This recommendation would clarify the commission's authority to dismiss minor complaints and delegate this authority to staff, provided staff informs the commission of complaints disposed of under this authority in a manner of the commission's choosing.

Management Action

7.8   Direct the agency to maintain complainants' confidentiality when possible.

This recommendation would direct the agency to protect the identity of complainants to the extent possible, while ensuring licensees still have access to all necessary information to fully respond to complaints. While TDLR would retain its ability to accept anonymous complaints, this recommendation would allow the agency to encourage reluctant complainants to identify themselves, which would facilitate more

thorough investigations and enhance the agency's ability to prosecute wrongdoing. To accomplish this recommendation, the agency could consider redacting the complainant's name and other identifying information when providing notice of a complaint to respondents. By better protecting complainants' identities, this recommendation would make the public and others more comfortable filing complaints without fear of retaliation.

Fiscal Implication

Overall, the recommendations would not have a significant fiscal impact to the state. Authorizing TDLR to require additional financial and controlling information may necessitate the agency conducting more comprehensive background investigations, which may moderately increase licensing and information technology staff workload.

Similarly, the recommendation to clarify TDLR's general authority to require continuing education to renew a license could result in additional licensees having to submit proof of compliance at time of renewal or at a specified interval as established by rule, which could add to the agency's administrative requirements. However, other licensees' continuing education requirements could potentially be reduced or eliminated, making the net effect of the recommendation impossible to estimate at this time. Regardless, TDLR should be able to fulfill these responsibilities using existing resources and has sufficient fee authority to recover added costs if necessary.

1   All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov/. Section 51.4012(a), Texas Occupations Code.

2   H.B. 798, 83rd Legislature, Regular Session, 2013; H.B. 1342, 86th Legislature, Regular Session, 2019.

3   Sections 53.021(a)(1) and 53.022, Texas Occupations Code.

4   H.B. 2561, 85th Legislature, Regular Session, 2017; S.B. 624, 86th Legislature, Regular Session, 2019.

5   *Board of Law Examiners v. Stevens*, 868 S.W.2d 773 (Tex. 1994); The Texas Supreme Court noted the danger of subjective licensure requirements without additional legislative guidance but found in this specific case the Board of Law Examiners had sufficient guidance to determine whether an applicant had good moral character due to additional statutory language present.

6   Section 560.0521, Texas Occupations Code.

7   Sections 51.203(b)(3) and 51.405, Texas Occupations Code.

8   Section 51.252(b-1), Texas Occupations Code.

9   Texas Department of Licensing and Regulation, *TDLR Strategic Plan 2019–2023*, https://www.tdlr.texas.gov/StratPlan/2019/tdlr_strategic_plan_2019–2023.pdf, p. 22.

APPENDIX A | Historically Underutilized Businesses Statistics, 2017–2019

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.[1]

The following material shows trend information for the Texas Department of Licensing and Regulation's (TDLR) use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.[2] TDLR has elected to set agency-specific goals for HUB purchasing in all categories. With the exception of the other services category, the agency's goals meet or exceed the statewide goals. In the charts, the dashed lines represent the agency's goal for HUB purchasing in each category. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2017 to 2019. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

TDLR exceeded its goals for HUB spending consistently over the last three fiscal years only in the commodities category. However, the agency has limited contract spending overall and has no spending in heavy construction or building construction categories.
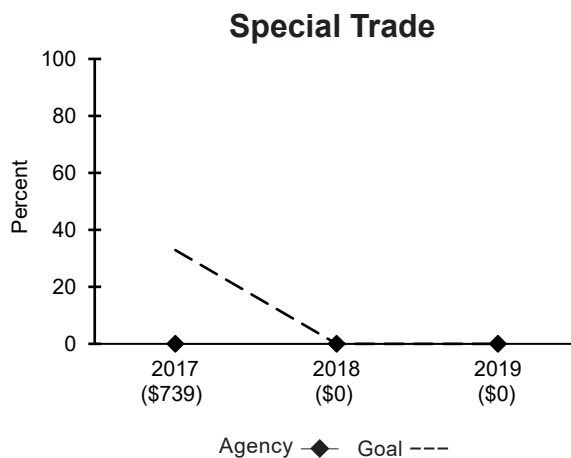
Special Trade

The agency did not meet its goal for HUB spending for special trade in fiscal year 2017, but had very little spending in the category that year and none in fiscal years 2018 and 2019.

Professional Services
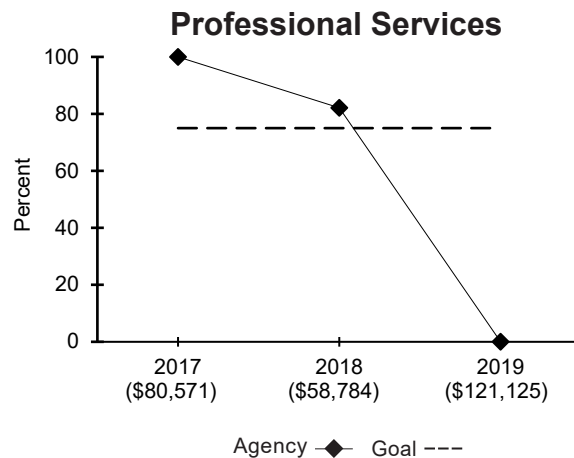
The agency exceeded its goal for HUB spending for professional services in fiscal years 2017 and 2018 but failed to meet its goal in fiscal year 2019. However, spending in this category is for a single contract.

Appendix A

Other Services

2017   2018   2019
($2,087,716)   ($1,794,958)   ($1,767,962)

Agency ◆   Goal ---
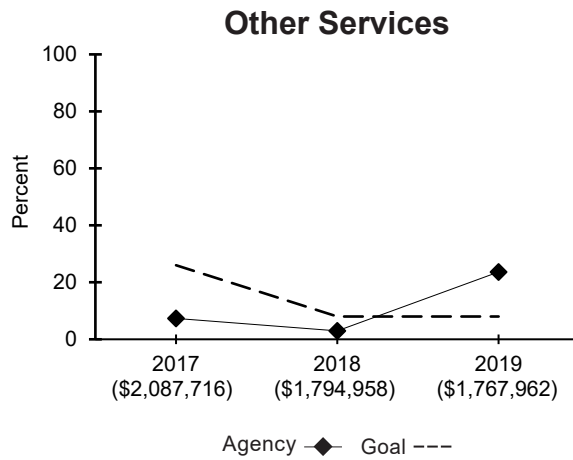
The agency failed to meet its goal for HUB spending for other services in fiscal years 2017 and 2018, but exceeded its goal in fiscal year 2019. The agency lowered its goal in fiscal year 2018 to align with the actual expenditure trends.

Commodities

2017   2018   2019
($754,873)   ($707,171)   ($921,402)

Agency ◆   Goal ---
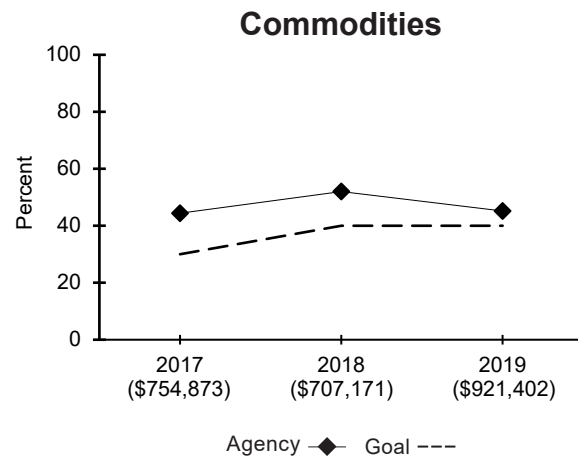
The agency exceeded its goal for HUB spending for commodities in each of the last three fiscal years.

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[1]   All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov/. Section 325.011(9)(B), Texas Government Code.

[2]   Chapter 2161, Texas Government Code.

APPENDIX B | Equal Employment Opportunity Statistics, 2017–2019

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Department of Licensing and Regulation.[1] The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.[2] In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and females in each job category.[3] These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2017 to 2019. With the exception of females in the technical category and Hispanics in the administration category, the agency met or exceeded the civilian workforce percentages. The agency had no employees in the service/maintenance or skilled craft categories.

Administration

African American

Percent			
100			
80			
60			
40			
20			
0	2017	2018	2019
Positions:	22	19	22

Hispanic

Percent			
100			
80			
60			
40			
20			
0	2017	2018	2019
	22	19	22

Female

Percent			
100			
80			
60			
40			
20			
0	2017	2018	2019
	22	19	22
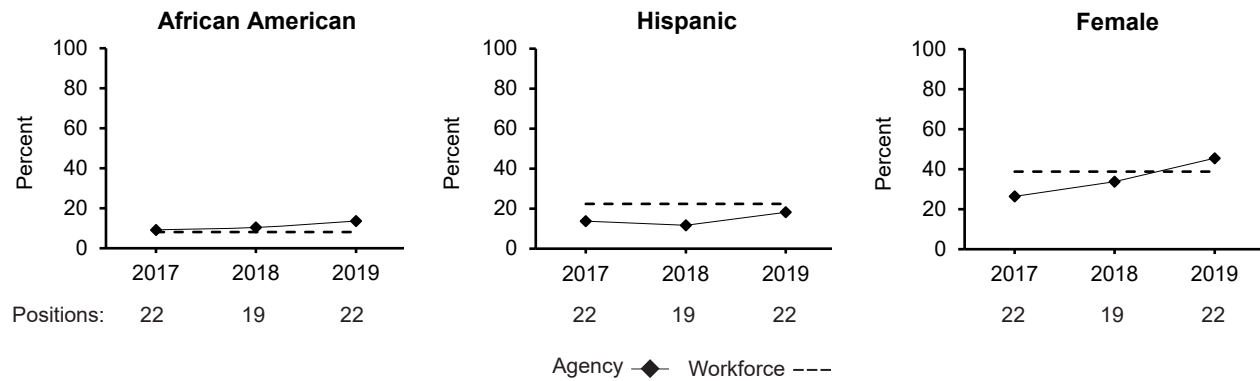
Agency ◆   Workforce –––

The agency exceeded the statewide civilian workforce percentage for African Americans in each of the last three fiscal years. The agency fell slightly below the statewide percentage for Hispanics in each of the last three fiscal years but has made improvements and nearly met the percentage in fiscal year 2019. The agency fell below the statewide percentage for females in fiscal years 2017 and 2018 but exceeded the percentage in fiscal year 2019.

Appendix B

Professional
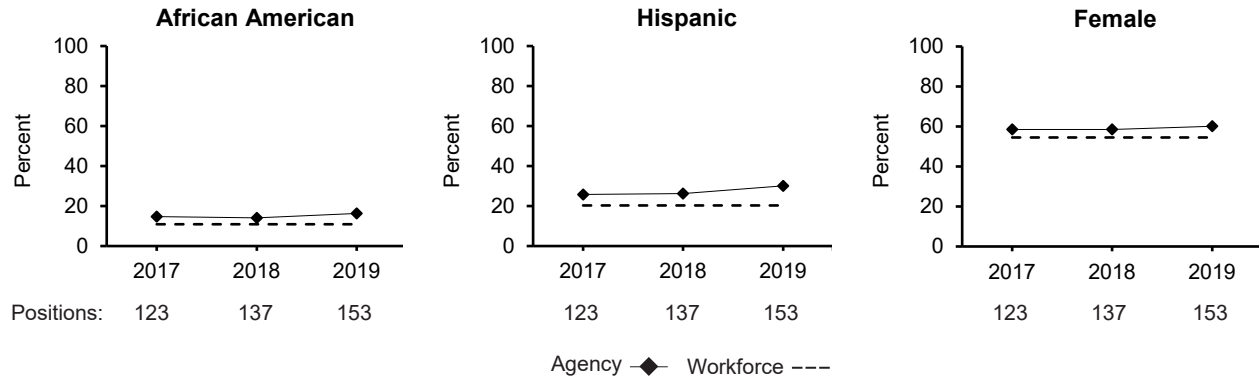
African American	Hispanic	Female

Positions: 123   137   153   123   137   153   123   137   153

Agency ◆ Workforce ---

The agency exceeded the statewide percentage for African Americans, Hispanics, and females in each of the last three fiscal years.

Technical

African American	Hispanic	Female

Positions: 109   113   115   109   113   115   119   113   115

Agency ◆ Workforce ---
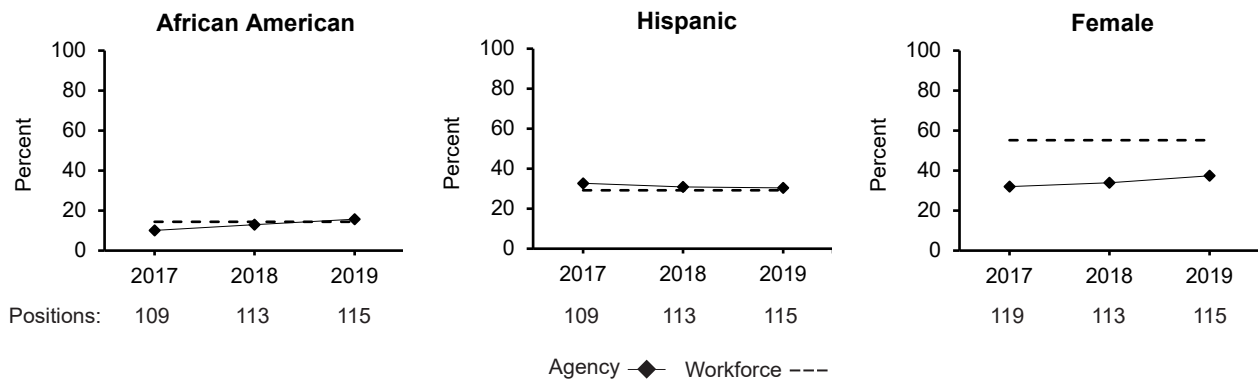
The agency nearly met or exceeded the statewide percentage for African Americans and exceeded the percentage for Hispanics in each of the last three fiscal years. The agency fell below the statewide percentage for females in each of the last three fiscal years, but has made improvements every year.

Appendix B

Administrative Support
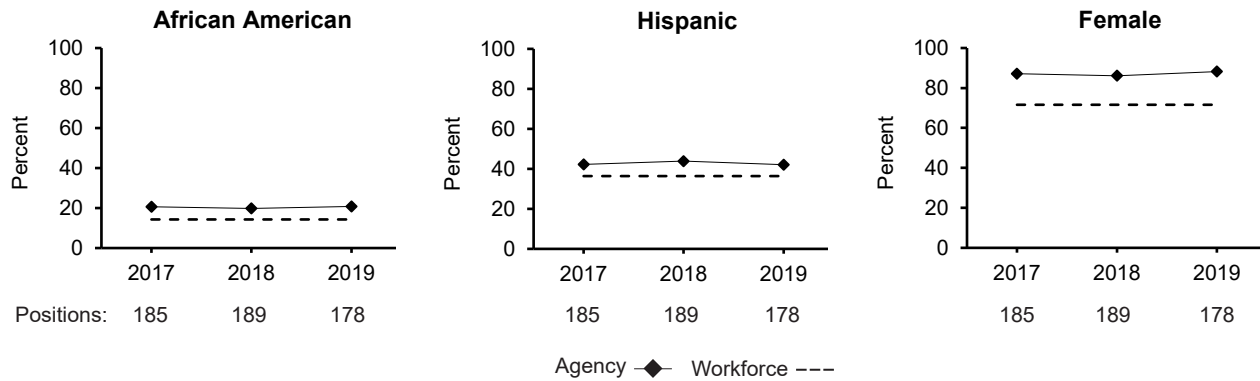
The agency exceeded the statewide percentage for African Americans, Hispanics, and females in each of the last three fiscal years.

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1   All citations to Texas statutes are as they appear on http://www.statutes.legis.texas.gov/. Section 325.011(9)(A), Texas Government Code.

2   Section 21.501, Texas Labor Code.

3   Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

APPENDIX C | Regulatory Program Timeline

Combative Sports — **1933**

1937 Boiler Safety

☐ Created at TDLR
☐ Transferred to TDLR

* Programs not currently under review.

Programs abolished — Transportation Service Providers, Career Counselors, Talent Agents, Professional Employment Services, Loss Damage Waivers, Temporary Common Worker Employers, Vehicle Protection Product Warrantors, Vehicle Booting, For-Profit Legal Service Contract Companies

Auctioneers — **1975**

1983 Air Conditioning and Refrigeration Contractors

Industrialized Housing and Buildings — **1985**

1991 Elimination of Architectural Barriers
Property Tax Consultants

Elevators, Escalators, and Related Equipment
Professional Employer Organizations — **1993**

1997 Water Well Drillers and Pump Installers

Service Contract Providers — **1999**

2001 Weather Modification

Electricians — **2003**

2005 Barbering
Cosmetology

Tow Trucks and Operators
Vehicle Storage Facilities — **2007**

2009 Polygraph Examiners
Property Tax Professionals
Used Automotive Parts Recyclers

Licensed Breeders — **2011**

2015 Driver Education and Safety

*Athletic Trainers
*Dietitians
*Dyslexia Practitioners and Therapists
*Hearing Instrument Fitters and Dispensers
*Midwives
*Orthotists and Prosthetists
*Speech-Language Pathologists and Audiologists — **2016**

*Code Enforcement Officers
*Offender Education Programs
*Laser Hair Removal
*Massage Therapy
*Mold Assessors and Remediators
*Podiatric Medicine
*Sanitarians — **2017**

*Motor Fuel Metering and Quality — **2019**

Behavior Analysts
Responsible Pet Owner
Transportation Network Companies

*Motorcycle/ATV Safety — **2020**

APPENDIX D | TDLR Program Descriptions

Air Conditioning and Refrigeration Contractors	Licensees install and service air conditioners and refrigeration units.
Athletic Trainers*	Licensees prevent, recognize, assess, manage, treat, and recondition athletic injuries.
Auctioneers	Licensees sell personal and real property by live bid.
Barbering	Licensees provide skin, nail, and hair care services, including shaving with an unguarded straight razor. Licensees also include the facilities where these services are offered and programs and individuals that train the practitioners.
Behavior Analysts	Based on direct observation and measurement of behavior, licensees design, implement, and evaluate instructional and environmental modifications to produce socially significant improvements in clients' behavior.
Boiler Safety	TDLR and licensed third-party inspectors conduct periodic safety inspections of boilers used in dry cleaners, car washes, power plants, schools, hospitals, office buildings, and nuclear plants.
Code Enforcement Officers*	Licensees inspect and rehabilitate environmental hazards on public or private premises by determining the presence of fire or health hazards, or nuisance violations.
Combative Sports	Licensees compete in, promote, monitor, or score professional boxing events or other forms of competition between two contestants in which a blow is struck that may reasonably be expected to inflict injury, including professional and amateur kick boxing, mixed martial arts, and Muay Thai.
Cosmetology	Licensees provide skin, nail, and hair care services. Licensees can shave with a guarded but not an unguarded straight razor. Licensees also include the facilities where these services are offered and programs and individuals that train the practitioners.
Dietitians*	Licensees use principles of food, nutrition, biochemistry, physiology, and behavioral science to ensure proper nourishment, care, and education.
Driver Education and Safety	Licensees provide driver education (to obtain a driver license), as well as driving safety and drug and alcohol awareness programs.
Dyslexia Practitioners and Therapists*	Licensees provide individuals with dyslexia and related disorders a treatment called multisensory structured language education.
Electricians	Licensees install, maintain, or extend an electrical wiring system.

*   Programs not currently under review.

Appendix D

Elevators, Escalators, and Related Equipment	Licensees install, alter, and inspect elevators and escalators in Texas for safety and conformance to mechanical codes. TDLR also reviews plans to install or alter an elevator or related equipment. Single-family dwellings are largely exempt from TDLR's regulation of elevators and escalators, except that the elevator or related equipment must be inspected by an individual registered with the agency.
Elimination of Architectural Barriers	Licensed third-party Registered Accessibility Specialists conduct reviews of building plans with construction or renovation costs of more than $50,000 to ensure building accessibility and adherence to the Texas Architectural Barriers Act and Texas Accessibility Standards.
Hearing Instrument Fitters and Dispensers*	Licensees fit and dispense hearing instruments, commonly known as hearing aids.
Industrialized Housing and Buildings	Licensees manufacture, build, and inspect modular residential or commercial buildings designed to be placed on a permanent foundation.
Laser Hair Removal*	Licensees use a laser or pulsed light device for hair removal procedures that do not remove the outermost layer of the skin. Licensees also include the facilities where the procedure occurs and programs that train the practitioners.
Licensed Breeders	Licensees possess 11 or more adult intact female dogs or cats and breed them for direct or indirect sale, and sell or exchange at least 20 animals in a year.
Massage Therapy*	Licensees manipulate soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage. Licensees also include the facilities where these services are offered and programs and individuals that train the practitioners.
Midwives*	Licensees are nonmedical, non-nursing practitioners who supervise, care for, and advise women during normal pregnancy, labor, and the postpartum period. They conduct normal deliveries and provide normal newborn care, meaning they do not perform caesarean sections, episiotomies, or any invasive procedures, nor do they use medicine or mechanical devices.
Mold Assessors and Remediators*	Licensees inspect structures for and remove mold. Licensees also include laboratories that analyze mold samples.
Motorcycle/ATV Safety*	Licensees provide motorcycle and all-terrain vehicle safety training programs. (Transfers from the Department of Public Safety to TDLR on September 1, 2020.)
Motor Fuel Metering and Quality*	Licensees include fuel delivery devices (gas pumps), individuals who inspect those devices, and companies that sell motor fuels. (Transferred from the Texas Department of Agriculture to TDLR on September 1, 2019.)

*   Programs not currently under review.

Appendix D

Offender Education Programs*	Licensees provide educational seminars to persons who, because of convictions for offenses related to drugs or alcohol, must complete coursework designed to educate them on the dangers of drug or alcohol abuse and to assist them in developing a personal action plan.
Orthotists and Prosthetists*	Licensed orthotists design, assemble, and fit for patients medical devices designed to support, align, prevent, or correct neuromuscular or musculoskeletal disease, injury, or deformity. Licensed prosthetists design, assemble, and fit for patients medical devices that are not surgically implanted but used to replace a missing limb, appendage, or other external human body part.
Podiatric Medicine*	Licensees treat any disease, disorder, physical injury, deformity, or ailment of the human foot.
Polygraph Examiners	Licensees use an instrument to test a subject to detect deception or verify the truth of a statement. The test includes recording visually, permanently, and simultaneously a subject's cardiovascular and respiratory patterns.
Professional Employer Organizations	Licensees are businesses that provide payroll, employment taxes, insurance, human resources, and other administrative services to a client business.
Property Tax Consultants	Licensees prepare tax renditions and reports or assist individuals protesting or negotiating property tax valuations.
Property Tax Professionals	Licensees include property tax appraisers, assessors-collectors, and collectors in Texas, with the exception of elected county tax assessor-collectors and their employees.
Responsible Pet Owner	Licensees offer online versions of courses designed for individuals convicted of certain criminal offenses involving animals.
Sanitarians*	Licensees evaluate, plan, design, manage, organize, enforce, or implement programs, facilities, or services that protect public health and the environment. For example, sanitarians conduct inspections of food quality and on-site wastewater treatment facilities.
Service Contract Providers	Licensees contract with consumers to provide extended warranties to repair, replace, or maintain products.
Speech-Language Pathologists and Audiologists*	Licensed speech-language pathologists use nonmedical procedures to examine, counsel, and provide habilitative or rehabilitative services for persons with disorders related to speech, voice, language, oral pharyngeal function, or cognitive processes. Licensed audiologists use nonmedical procedures to examine, counsel, and provide habilitative or rehabilitate services for persons with disorders related to hearing or vestibular function. Licensees can also fit, dispense, and sell hearing instruments.

*   Programs not currently under review.

Appendix D

Tow Trucks and Operators	Licensees include equipment, companies, and individuals involved in moving vehicles with or without the consent of the vehicle owner or operator.
Transportation Network Companies	Licensees, known as rideshare or ride-hailing companies, enable passengers to arrange transportation through a digital network.
Used Automotive Parts Recyclers	Licensees dismantle and reuse or resell used automotive parts and safely dispose of salvage motor vehicles or nonrepairable motor vehicles.
Vehicle Storage Facilities	Licensees own or operate garages, parking lots, or other facilities (known as impound lots) for storing or parking 10 or more vehicles per year without the consent of the vehicle owner.
Water Well Drillers and Pump Installers	Licensed drillers drill, bore, core, or construct water wells. Licensed pump installers prepare, install, and repair equipment used to obtain water from a well. TDLR and groundwater conservation districts jointly enforce requirements for landowners to plug abandoned or deteriorated water wells.
Weather Modification	Licensees attempt to change or control the natural development of atmospheric cloud forms or precipitation forms that occur in the troposphere by artificial methods.

*   Programs not currently under review.

APPENDIX E | Instructor Licensing Population FYs 2012–2019

License Type	2012	2013	2014	2015	2016	2017	2018	2019
Barbering Instructors								
Class A Instructor	190	237	272	323	367	446	501	596
Manicure Instructor	0	0	0	0	0	0	0	0
Technician Instructor	0	0	0	0	0	0	0	1
Manicure/Technician Instructor	0	0	0	0	0	0	0	0
Hair Weaving Instructor	0	0	0	0	0	0	0	0
Hair Weaving/ Technician Instructor	0	0	0	0	0	0	0	0
Cosmetology Instructors								
Operator Instructor	4,706	4,847	5,055	5,272	5,437	5,552	5,680	5,686
Manicure Instructor	46	52	61	59	66	76	81	93
Esthetician Instructor	150	161	169	179	193	207	211	244
Manicure/Esthetician Instructor	0	1	3	6	10	11	15	15
Eyelash Extension Instructor	0	0	0	0	0	1	5	8
Wig Instructor	2	2	2	2	2	2	2	2

APPENDIX F | Proposed Barbering and Cosmetology Licensing Structure

Current License(s)	Proposed License	Proposed General Scope
Individuals – *14 license types consolidated into 9 license types*		
Class A Barber	Class A Barber	Provides hair, skin, and nail care services, including use of an unguarded straight razor.
Cosmetology Operator	Cosmetology Operator	Provides hair, skin, and nail care services, including use of a guarded straight razor.
Barber Manicurist and Cosmetology Manicurist	Manicurist	Treats a person's nails, including by manicuring, pedicuring, massaging, or otherwise beautifying a person's hands and feet.
Barber Technician and Cosmetology Esthetician	Esthetician	Administers facial treatments; cleanses, massages, or beautifies a person's scalp, face, neck, or arms; removes superfluous hair, including by waxing below the neck; and applies eyelash extensions.
Barber Manicurist/Technician and Cosmetology Manicurist/Esthetician	Manicurist/Esthetician	Provides services offered by both manicurists and estheticians.
Barber Hair Weaving Specialist and Cosmetology Hair Weaving Specialist	Hair Weaving Specialist	Uses any method to attach hair to a person's hair or scalp.
Barber Hair Weaving Specialist/ Technician	Hair Weaving Specialist/ Esthetician	Provides services offered by both hair weaving specialists and estheticians.
Cosmetology Eyelash Extension Specialist	Eyelash Extension Specialist	Applies semi-permanent, thread-like extensions to a person's eyelashes.
Barber Student and Cosmetology Student	Student	Studies the required curricula for any individual license at an approved public or private school.
Schools – *6 license types consolidated into 3 license types*		
Barber Private Postsecondary School and Cosmetology Private Beauty Culture School	Private Postsecondary School	A privately funded school that teaches barbering and cosmetology curricula according to standards set in rule.
Barber Public Postsecondary School and Cosmetology Public Postsecondary Beauty School	Public Postsecondary School	A public junior college or other nonprofit tax-exempt institution that teaches barbering and cosmetology curricula according to standards set in rule.
Barber Public Secondary School and Cosmetology Public Secondary Beauty School	Public Secondary School	A public high school that teaches barbering and cosmetology curricula according to standards set in rule.
Establishments – *13 license types consolidated into 8 license types*		
Barbershop and Cosmetology Beauty Salon	Establishment	Provides any type of barbering and/or cosmetology services and may employ any type of licensed individual, excluding students.
Barber Manicurist Specialty Shop and Cosmetology Manicuring Specialty Salon	Manicurist Specialty Establishment	Provides only services that may be performed by a licensed manicurist.
Cosmetology Esthetician Specialty Salon	Esthetician Specialty Establishment	Provides only services that may be performed by a licensed esthetician.
Cosmetology Manicurist/Esthetician Specialty Salon	Manicurist/Esthetician Specialty Establishment	Provides only services that may be performed by licensed manicurists and estheticians.

Appendix F

Current License(s)	Proposed License	Proposed General Scope
Barber Hair Weaving Specialty Shop and Cosmetology Hair Weaving Specialty Salon	Hair Weaving Specialty Establishment	Provides only services that may be performed by a licensed hair weaving specialist.
Cosmetology Eyelash Extension Specialty Salon	Eyelash Extension Specialty Establishment	Provides only services that may be performed by a licensed eyelash extension specialist.
Mini Barbershop and Mini Cosmetology Salon	Mini Establishment	Consists of a room or suite of rooms at a single location that opens onto a common area and provides any type of barbering and cosmetology services. May employ any type of licensed individual, excluding students.
Mobile Barbershop and Mobile Cosmetology Salon	Mobile Establishment	Operates in a self-contained, self-supporting, enclosed mobile unit and provides any type of barbering and cosmetology services. May employ any type of licensed individual, excluding students.

APPENDIX G | Driver Training and Traffic Safety Advisory Committee Membership

- One driver education school with a traditional classroom course and in-car training

- One driver education school with a traditional classroom course, alternative methods of instruction, or in-car training

- One driving safety school with a traditional classroom course or providing an alternative method of instruction

- One driving safety course provider approved for a traditional classroom course and for an alternative method of instruction

- One driving safety course provider approved for a traditional classroom course or for an alternative method of instruction

- One licensed instructor

- One representative of the Department of Public Safety

- One drug and alcohol driving awareness program course provider

- One parent-taught course provider

- Two public members

APPENDIX H | Responsibilities of Businesses in Driver Education vs. Driver Improvement

Driver Education	Driver Improvement	
Schools	**Course Providers**	**Schools**
Submit course for TDLR approval	✓	
Issue certificates of completion	✓	
Prove financial solvency	✓	
Maintain a bond	✓	
Provide information and policies to students	✓	
Maintain and publish student contracts	✓	
Maintain student records (attendance, progress, conduct)	✓	✓
Comply with municipal, county, state, and federal codes	✓	✓
Use no erroneous or misleading advertising	✓	✓
Have no outstanding administrative penalties	✓	✓
Have a unique business name	✓	✓
Ensure curricula meet "educational objectives" (defined in rule)		✓
Provide adequate space, equipment, and materials		✓
Ensure instructors have required education/experience		✓

APPENDIX I | Proposed Driver Training Licensing Structure

Program	Current License/ Registration	Current Course Approval	Proposed License	Description
Driver Education	School (main or branch location)	Traditional Instruction (in person)	In-person Provider (main or branch location)	A business offering driver education courses in person, in-car instruction, observation hours, and/or driver license exams.
		Alternative Method of Instruction (online)	Online Provider	A business offering courses remotely through the internet rather than at an onsite location where the student is physically present.
	Parent-Taught Course Provider	Alternative Method of Instruction		
		Traditional Instruction	Correspondence Provider	A business offering materials for parents or designees to provide traditional, classroom-style instruction to their student.
	Instructor (Teaching Assistant, Driver Education Teacher, Supervising Teacher)	N/A	Instructor	A background-checked individual employed by an in-person or online driver education provider.

Appendix I

Program	Current License/ Registration	Current Course Approval	Proposed License	Description
Driver Improvement	Driving Safety Course Provider	Traditional Instruction	Driving Safety Provider	A business offering driving safety curricula for in-person and/or online courses.
		Alternative Delivery Method		
	Specialized Driving Safety Course Provider	Traditional Instruction		
		Alternative Delivery Method		
	Drug and Alcohol Driving Awareness Course Provider	Traditional Instruction		
		Alternative Delivery Method		
	Driving Safety School	N/A		
	Specialized Driving Safety School	N/A		
	Drug and Alcohol Driving Awareness School	N/A		
	Driving Safety Instructor (Instructor, Instructor Trainer, or Instructor Development Course Instructor Trainer)	N/A		
	Specialized Driving Safety Instructor (Instructor, Instructor Trainer, or Instructor Development Course Instructor Trainer)	N/A		
	Drug and Alcohol Driving Awareness Instructor	N/A		

APPENDIX J | Staff Review Activities

During the review of the Texas Department of Licensing and Regulation (TDLR), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended commission meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state and federal statutes and rules, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency:

- Accompanied TDLR staff on inspections of regulated barber and cosmetology establishments and schools, breeder facilities, tow businesses, and used automotive parts recycling facilities.

- Toured and interviewed staff at TDLR's Fort Worth field office.

- Attended a combative sports event in Houston.

- Attended multiple advisory board meetings.

- Attended three stakeholder summits.

- Conducted a survey of current TDLR licensees.

- Interviewed staff from the United States Department of Agriculture's Animal and Plant Health Inspection Service.

- Interviewed staff from the Comptroller of Public Accounts, Department of Criminal Justice, Texas Department of Motor Vehicles, Department of Public Safety, Department of Housing and Community Affairs, Department of Information Resources, and State Office of Administrative Hearings.

Sunset Staff Review of the
Texas Department of Licensing and Regulation

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