

# Texas Department of Licensing and Regulation

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## Agency at a Glance

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The Texas Department of Licensing and Regulation (TDLR) serves as an umbrella licensing agency for 20 regulatory programs. Currently, TDLR administers the following regulatory programs.

- Air Conditioning Contractors
- Architectural Barriers
- Auctioneers
- Boilers
- Career Counseling Services
- Combative Sports
- Court Interpreters
- Elevators, Escalators, and Related Equipment
- Industrialized Housing and Buildings
- Personnel Employment Services
- Property Tax Consultants
- Service Contract Providers
- Staff Leasing Services
- Talent Agencies
- Temporary Common Worker Employers
- Transportation Service Providers
- Vehicle Protection Product Warrantors
- Water Well Drillers
- Water Well Pump Installers
- Weather Modification

The Department traces its history to 1909 when the Legislature created the Bureau of Labor Statistics. Over time the agency's purpose broadened to include a number of labor-related regulatory functions and, in 1989, Sunset legislation established TDLR as an umbrella licensing agency for non-health related professions.

To oversee the regulated industries and professions, TDLR:

- licenses, certifies, and registers qualified professional applicants;
- inspects equipment, facilities and buildings, including boilers, elevators, industrialized buildings, for safety and accessibility; and
- ensures compliance by investigating and resolving complaints against persons or businesses.

## Key Facts

- **Funding.** The Department operates with an annual budget of \$6.9 million – 99 percent of which comes from licensing fees paid into the General Revenue Fund.
- **Staffing.** TDLR has 145 employees, with 113 in Austin, and 32 in regional and field offices in Dallas, Houston, San Antonio, Wichita Falls, Midland/Odessa, and Lubbock.
- **Architectural Barriers.** The Department reviews construction plans and inspects buildings to help ensure that buildings are accessible to persons with disabilities.
- **Boilers.** TDLR certifies and inspects 60,000 boilers in Texas for safe operation. The agency also commissions 300 boiler inspectors to aid in the inspection workload.

- **Air Conditioning Contractors.** The Department licenses 12,000 air conditioning and refrigeration contractors and oversees 10,000 freon registrants.
- **Elevators and Escalators.** TDLR issues certificates of compliance for 30,000 inspected elevators and escalators that meet minimum standards. The Department has about 110 certified Qualified Elevator Inspectors to inspect elevators and escalators for building owners.

### **Commission Members (6)**

Leo Vasquez, Presiding Officer (Houston)	Gina Parker (Waco)
Mickey Christakos (Allen)	Patricia Stout (San Antonio)
Frank Denton (Conroe)	Vacant

### **Agency Head**

William H. Kuntz, (512) 463-6599

### **Recommendations**

1. Give TDLR's Commission Rulemaking Authority and Advisory Committee Appointment Authority Common to Other Agency Policy Bodies.
2. Reduce the Commission's Size from Six Members to Five Members.
3. Conform Key Elements of the Department's Programs to Commonly Applied Occupational Licensing Practices.
4. Require Elevator Certificates of Compliance to Be Posted in Publicly Visible Areas.
5. Coordinate Oversight of Abandoned and Unplugged Water Wells Among TDLR, Local Groundwater Conservation Districts, and the Texas Commission on Environmental Quality.
6. Abolish the Registration of Transportation Service Providers.
7. Transfer Certain Occupational Licensing Programs from the Texas Commission of Environmental Quality to TDLR.
8. Require TDLR to Act as an Information Resource for Consumers on All State Licensing Agencies.
9. Require TDLR to License and Regulate Mobile Amusement Park Rides and Require Annual Inspections.
10. Continue the Texas Department of Licensing and Regulation (TDLR) for 12 Years.

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**Issue 1** | **The Commission on Licensing and Regulation Lacks Oversight Powers Common to Agency Policy Bodies.**

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**Key Findings**

- The Commission's ability to fully oversee the Department is hampered by a lack of direct rulemaking authority.
- Vesting rulemaking authority in the Executive Director eliminates the standard forum for public deliberations.
- The Commission's ability to oversee the Department's licensing functions is hindered because it does not receive needed advice directly from its advisory committees.
- Most other agency boards and commissions exercise authority for rulemaking and advisory committee appointments.

The Commission on Licensing and Regulation oversees 20 professions and industries yet the rulemaking authority for most of these licensing functions is not vested in the Commission but in the Executive Director. While the Executive Director must conform to all the public input requirements of the Administrative Procedure Act, removing the Commission from the rulemaking process deprives the State of the input and discussion of the agency's policymaking body, and limits the Commission's ability to oversee TDLR's regulatory programs.

To assist the Department in oversight for its 20 regulatory functions, the Legislature has established 11 advisory committees that recommend rules, licensing requirements, fees, continuing education, and other issues. However, these advisory committees do not report directly to the Commission, but exist primarily to advise the Executive Director. This disconnect between the advisory committees and the policymaking body limits the assistance the Legislature created these committees to provide. This lack of Commission involvement with the appointment of advisory committees and in the rulemaking process is unusual among Texas state agencies.

**Recommendations****Change in Statute****1.1 Vest all rulemaking authority for the licensing and regulatory programs of TDLR in the Commission.**

This recommendation would give the Commission the important tool of rulemaking for the programs that it oversees by giving it authority currently vested with the Executive Director. To ensure continuity and to prevent the Commission's workload from increasing, all rules existing on the effective date of this recommendation would remain in effect unless rewritten by the Commission. This change would conform the Commission's powers for rulemaking with those of other boards and commissions. It would also permit greater public deliberations during the rulemaking process and would afford the public the opportunity to address the Commission concerning these rules.

## **1.2 Grant the Presiding Officer of the Commission, with approval of the Commission, the authority to make all appointments to advisory committees under the Commission's jurisdiction.**

This recommendation would clarify that the advisory committees exist to serve the Commission. The statutes would expressly provide that the work of the advisory committees is to assist the Commission in creating rules and regulating the professions and industries under its jurisdiction. By creating stronger ties between the Commission and the advisory committees, the Commission would be able to take greater advantage of the assistance these committees were created to provide.

The Presiding Officer would appoint members of all advisory committees, with the Commission's approval. The Presiding Officer would also select the chairs of each advisory committee to serve a two-year term. Current Advisory Board Chairs would remain until the Presiding Officer appoints a new chair. This recommendation would not affect the Industrialized Building Code Committee as its members would continue to be appointed by the Governor.

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## **Issue 2 | The Current Size of the Commission Does Not Comply With the Constitution.**

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### **Key Finding**

- The size of the Commission does not comply with the Texas Constitution.

The primary duties of the Commission on Licensing and Regulation, which is composed of six public members, are to approve fees for the Department's licensing programs, to hear appeals of administrative cases brought by the Department, and to oversee the operation of the agency. In 1999, Texas voters approved a constitutional amendment requiring state agency boards to be composed of an odd number of members. Removing one member would bring the Commission into compliance with the Constitution and maintain a sufficient number of members to handle the Commission's workload.

### **Recommendation**

#### **Change in Statute**

#### **2.1 Change the size of the Texas Commission on Licensing and Regulation from six to five members.**

This recommendation would reduce the Commission to five members. The Commission would continue to be composed of all public members. The workload of the Commission does not appear to be so great that a decrease in its membership by one would constitute a burden on the remaining members. In addition, transferring rulemaking authority for the Department's programs from the Executive Director to the Commission would not significantly add to the Commission's workload.

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**Issue 3 | Key Elements of the Programs Administered by the Department Do Not Conform to Commonly Applied Occupational Licensing Practices.**

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**Key Findings**

- Licensing provisions of several of the Department's program statutes do not follow model licensing practices and could potentially affect the equal treatment of licensees and consumer protection.
- Non-standard enforcement provisions of several TDLR program statutes potentially reduce the agency's effectiveness in protecting the consumer.
- Inconsistent administrative provisions of several Department programs reduce the agency's efficiency and flexibility to adapt to changing circumstances.

The Department operates 20 diverse occupational or industry related licensing programs created over the last 70 years. Various licensing, enforcement, and administrative processes set up in agency and program statutes do not match model licensing standards developed from experience gained through more than 70 Sunset reviews of occupational licensing agencies in 25 years. Conforming TDLR's processes to the model standards results in efficiency and consistency from standardization, additional administrative flexibility, fairer processes for the licensee, and additional protection for consumers.

**Recommendations****Licensing****Change in Statute****3.1 Require agency programs to deal with felony and misdemeanor convictions in the standard manner defined in the Occupations Code.**

This recommendation would require the Department to follow the general guidelines set up in Chapter 53 for dealing with criminal convictions. Conflicting language found in Auctioneers, Staff Leasing Services, and Licensed Court Interpreter statutes would be removed, and new language would be added to reference Chapter 53 for all agency programs. Based on the requirements of this Chapter, the Department would develop guidelines explaining how a particular crime relates to a particular license. These guidelines would be published in the Texas Register.

**3.2 Eliminate the involvement of the Water Well Drillers Advisory Council in making recommendations on specific licensure and enforcement actions.**

No other TDLR advisory committee performs these occupational licensing and enforcement functions, which puts the six water well drillers on this nine-member advisory council in the position of making recommendations on entry to the profession, validity of complaints against drillers, and sanctions that should be applied. This recommendation requires that the statute be amended to

eliminate these functions. The change would not affect the ability of the Council to provide technical advice on issues that may be the subject of enforcement cases.

## **Enforcement**

### **Change in Statute**

#### **3.3 Eliminate onerous requirements on individuals to file complaints with the agency.**

Specifically, this recommendation would eliminate the \$50 filing fee and notarized complaint required to make a claim against the Auctioneers Education and Recovery Fund. It would also eliminate the requirement that complaints be notarized in the Career Counselors and Personnel Employment Services programs.

#### **3.4 Provide statutory language authorizing routine inspections for the Combative Sports and Weather Modification programs.**

Routine inspections are conducted in these two programs. This recommendation adds statutory language that provides the Department with clear authority to perform inspections.

#### **3.5 Require the Department to develop comprehensive complaint procedures that are adopted by the Commission and published in the Texas Register.**

This recommendation requires that the agency document its complaint process from submission of the complaint to its final disposition. The procedures would not require formal adoption as rules, but would be finally adopted by the Commission and published in the Texas Register after giving the public opportunity for comment.

#### **3.6 Set administrative penalties for all Department programs not to exceed \$5,000 per day per violation.**

Four agency programs have set amounts that differ from this standard: Service Contract Providers, Water Well Drillers, Staff Leasing Services, and Vehicle Protection Product Warrantors. This recommendation removes these non-standard amounts and replaces them with the cap of \$5,000 per day per violation used for all other Department programs.

#### **3.7 Require the agency to adopt an administrative penalty matrix for each program in agency procedures or rules.**

This recommendation would ensure that the Department develops administrative penalty amounts that relate appropriately to different violations for each program. The agency may develop these amounts in procedures and not in formal rules; however, the procedures should be adopted by the Commission and published in the Texas Register, after giving the public the opportunity to comment.

### **3.8 Eliminate hearing and decision timelines that vary from the standard approach in the Administrative Procedure Act.**

The statutes for the Career Counselors and Personnel Employment Services programs require that various hearings occur not later than the 45th day after the date on which a complaint is filed with the Commissioner. These acts further provide that the Commissioner must enter a decision on the possible violation not later than eight days after the hearing ends. This recommendation removes these non-standard time periods and returns the programs to the standards set out in the Administrative Procedure Act.

## **Administration**

### **Change in Statute**

#### **3.9 Eliminate the fee caps in the Elevator, Service Contract Providers, Staff Leasing Services, and Talent Agencies programs.**

This recommendation would give TDLR the flexibility to set fees in these four programs, as it has in its other programs, at the level necessary to recover program costs as conditions change. Statutory language would be added as necessary to clarify that the programs' fees be designed to cover costs and not to earn additional revenues for the agency.

#### **3.10 Change licensing renewal periods from two years to one year for the Property Tax Consultant and Staff Leasing Services Programs.**

This recommendation would standardize all agency renewal periods to one year. The Commission would adjust renewal fees as necessary to recover program costs and to prevent over-collection of funds because of the shorter renewal period.

#### **3.11 Provide renewal provisions for Service Contract Providers and Vehicle Protection Product Warrantors.**

These two programs do not have renewal provisions, requiring registrants to resubmit registration information annually. Under this recommendation, the Department would need to inform registrants of new renewal requirements which, typically, are less burdensome on both the licensee and the agency than having to re-register.

#### **3.12 Require the Department to establish a policy for refunding examination fees under certain circumstances.**

The Department follows differing exam refund policies. These policies should be standardized to allow refunds only to applicants who provide reasonable advance notification of their inability to sit for the exam or who miss the exam because of emergency circumstances.

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**Issue 4 | Current Elevator Inspection Requirements Do Not Take Full Advantage of Reporting by the Elevator-Riding Public.**

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**Key Findings**

- To the extent that elevators are not being inspected, the State and the public cannot be ensured of their safe operation.
- Most statewide elevator inspection programs in other states require conspicuous posting of certificates of compliance.
- Other Texas regulatory programs also require conspicuous posting of certificates of compliance or seals.

The elevator inspection program at TDLR intends to protect the safety of individuals who use elevators and escalators but is hampered by the number of uninspected, and possibly unsafe, elevators and escalators that the public is using across the state. TDLR's statute prohibits TDLR from requiring such posting in the elevator car, immediately outside the car, or in the lobby or hallways of the building. Without more conspicuous posting of these certificates, the public is unlikely to know of the inspection status of elevators, and TDLR misses an opportunity to find uninspected elevators and bring more elevators into compliance with state standards.

**Recommendation****Change in Statute****4.1 Require elevator certificates of compliance to be posted in publicly visible areas.**

This recommendation would repeal the prohibition against TDLR requiring building owners to post certificates of compliance in or near elevators, or in other public places within the building. Instead, certificates of compliance would be required to be posted in a publicly accessible area within the building. The certificate should include information showing the date of the inspection and the due date of the next one, and contact information for the consumer to report violations to TDLR. The Commission would be granted rulemaking authority to determine the location of the certificates and the information required to be included.

By publicly posting certificates of compliance, the public will know of the compliance status of elevators on which they ride, providing a source of information to TDLR to know about the compliance status of a greater number of elevators. This recommendation is the least restrictive regulatory approach that will bring more elevators into compliance through the increased likelihood of consumer reporting.

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**Issue 5 | TDLR is Not Suited to Oversee the Environmental Responsibility of Plugging Abandoned Water Wells.**

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**Key Findings**

- Abandoned water wells contribute to groundwater contamination.
- As a licensing agency, the Department is inappropriately charged with sole responsibility for dealing with abandoned water wells.

An estimated 150,000 abandoned and unplugged water wells in Texas pose a danger of contaminating groundwater supplies. Currently TDLR is responsible for licensing water well drillers and taking enforcement action against landowners who fail to plug abandoned wells, but local Groundwater Conservation Districts and the Texas Commission on Environmental Quality (TCEQ) are charged with protecting groundwater in the state. Requiring local Groundwater Conservation Districts, where available, to enforce against unplugged abandoned wells could decrease the likelihood of groundwater contamination stemming from unplugged water wells. Additionally, requiring TDLR, Conservation Districts, and TCEQ to work together to use the State's investigative and enforcement tools may also decrease groundwater contamination.

**Recommendations****Change in Statute****5.1 Transfer the enforcement of plugging of abandoned water wells to local Groundwater Conservation Districts, where they exist, and keep TDLR responsible for enforcement in other areas of the state.**

This recommendation would transfer the responsibility for taking enforcement actions against individuals with unplugged abandoned water wells from TDLR to local Groundwater Conservation Districts where they exist. The Department will maintain responsibility for enforcing against landowners with unplugged water wells in areas of the state with no local Conservation District. The Department will also maintain responsibility for creating well plugging standards. Landowners must still have their wells plugged according to those standards. This recommendation would reduce groundwater contamination through unplugged wells by better using the State's existing tools of water quality enforcement.

**5.2 Require the Texas Commission on Environmental Quality, TDLR, and Groundwater Conservation Districts to enter into Memoranda of Understanding to better use the Commission's regional field office investigative system, and implement procedures for referral of abandoned well complaints.**

Texas Commission on Environmental Quality has the tools in place to investigate individuals who cause groundwater contamination. To better take advantage of these tools, TDLR, TCEQ, and the local Groundwater Conservation Districts would be required to enter into memoranda of understanding to use TCEQ's field offices better and to refer cases of groundwater contamination stemming from abandoned and unplugged water wells.

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**Issue 6** | **State Oversight of Transportation Service Providers Is No Longer Needed.**

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**Key Finding**

- Registration of transportation service providers offers little benefit to the state and is unnecessarily burdensome on the industry.

Current law requiring the registration of transportation service providers does not provide protections to the state. Only 77 companies are licensed and no consumer has ever filed a complaint against one. Although the original intent of the law is to collect additional information on companies that may be used by drug smugglers, this information has not proven useful to law enforcement agencies. The Department's program for transportation service providers does not provide additional public protections and is burdensome on the industry.

**Recommendation****Change in Statute****6.1 Abolish the registration of transportation service providers.**

This recommendation would repeal requirements that transportation service providers register with TDLR. To preserve evidence that may be useful to law enforcement agencies in the future, the statute requiring companies to keep transaction records would remain. The provision permitting TDLR to audit these records would transfer to the Department of Public Safety, as the state's primary law enforcement agency. Because the records are of the type kept by most companies, maintaining the record keeping and audit requirements would not be a burden on the industry.

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**Issue 7** | **Regulating Certain Occupations at the State's Environmental Quality Agency Conflicts with TDLR's Role as an Umbrella Licensing Agency.**

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The Texas Commission on Environmental Quality (TCEQ) is currently responsible for issuing occupational licenses, certifications, and registrations for 14 types of environmental occupations, as well as taking enforcement action against those licensees as appropriate. Certain of these licensing programs differ from TCEQ's primary regulatory function – the protection of Texas' environment through permitting and enforcement of facilities. These programs are Backflow Prevention Assembly Testers, Customer Service Inspectors, Water Treatment Specialists, Landscape Irrigators, and Underground Storage Operators. TDLR, as the state's umbrella licensing agency, is equipped to effectively license and regulate these occupations.

## Recommendation

### Change in Statute

#### **7.1 Transfer Certain Occupational Licensing Programs from the Texas Commission on Environmental Quality to TDLR.**

Responsibility for the licensure, regulation, and enforcement activities of five environmental occupational licensing programs, including Backflow Prevention Assembly Testers, Customer Service Inspectors, Water Treatment Specialists, Landscape Irrigators, and Underground Storage Tank Operators, would transfer from the Texas Commission on Environmental Quality to TDLR. This recommendation would better consolidate the State's occupational licensing functions.

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<b>Issue 8</b>	<b>Without a Central Source of Information, Consumers May Have Difficulty Accessing Information About State-Regulated Occupations.</b>
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Texas regulates many different types of individuals, from air conditioning contractors to doctors. Though TDLR acts as the State's umbrella licensing agency for occupational licenses, many other state agencies regulate individuals, making it difficult for consumers to access information about who is regulated. This recommendation would create a telephone information center for all licensing agencies to be housed at the Department. Additionally, TDLR would identify licensing agencies that currently do not use Texas Online and offer services to develop Web sites and assist those agencies in converting to Texas Online.

## Recommendations

### Change in Statute

#### **8.1 Create a toll-free consumer information line for all state licensing agencies to be administered by TDLR.**

This recommendation would allow consumers to call one number to find out information about any state-issued license. To provide this information, TDLR would maintain a licensing information database and other licensing agencies would contract with TDLR to use this service.

#### **8.2 Require TDLR to identify licensing agencies that do not use Texas Online and to offer services to assist those agencies.**

This recommendation would increase the opportunity for both consumers and licensees to have easy access to occupational licensing information on the Internet. The Department would offer its services, on a cost-recovery basis, to develop those agencies' Web sites and to assist those agencies in making the conversion to Texas Online.

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**Issue 9 | The Current Regulation of Mobile Amusement Park Rides by the State Does Not Adequately Protect the Public.**

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Currently, the Texas Department of Insurance requires the owners of mobile amusement park rides to provide proof of insurance and inspection for those rides, but no state agency currently has the authority to license and regulate rides.

**Recommendation****Change in Statute****9.1 Require TDLR to license and regulate mobile amusement park rides.**

This recommendation would transfer the insurance and inspection requirements for mobile amusement park rides from the Department of Insurance to TDLR. The recommendation would also require TDLR to license and regulate the rides, including administering annual inspections.

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**Issue 10 | Texas Has a Continuing Need for the Texas Department of Licensing and Regulation.**

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**Key Findings**

- Texas has a continuing interest in licensing and regulating certain occupations, businesses, and professions.
- TDLR functions efficiently in its role of licensing a variety of occupations.
- The Legislature has demonstrated its confidence in TDLR through recent enactments, signaling the agency's readiness to expand its role as an umbrella licensing agency.
- Most other states use a central licensing agency to regulate a variety of professions.

The Department of Licensing and Regulation oversees 20 professions and industries through its licensing, inspection and enforcement functions. Its regulatory functions are needed for consumer safety and protection in the state, and the Department should be continued for 12 years. The Department's organization and use of technology enables it to operate efficiently as the State's umbrella licensing agency.

## Recommendation

### Change in Statute

#### **10.1 Continue the Texas Department of Licensing and Regulation for 12 years.**

This recommendation continues the agency for the standard 12-year period, until 2015.

## Fiscal Implication Summary

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These recommendations in this report would not have a significant fiscal impact to the State, as discussed below.

- *Issue 1 and Issue 2* – Granting the Commission rulemaking authority would require the Commission to meet approximately two additional times per year to ensure timely adoption of rules, increasing travel and per diem expenses. However, reducing the size of the Commission by two members, as recommended in Issue 2, would lower travel and per diem expenses. Consequently, these recommendations would have not have a net fiscal impact to the State.
- *Issue 6* – Abolishing oversight of Transportation Service Providers would result in a savings of approximately \$8,000 in funds used for these oversight activities. However, no net savings would accrue to the State because the licensing revenue funding these activities would no longer be collected.
- *Issue 9* – Requiring TDLR to license and regulate amusement park rides would not have a net fiscal impact to the State, as costs associated with regulatory activities would be offset by licensing revenues collected by the Department.

