

# Texas Department of Licensing and Regulation

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S.B. 279 Jackson (Solomons, et al)

## Summary

The Texas Department of Licensing and Regulation (TDLR) 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 and renamed it to clarify its role. The Department serves as an umbrella licensing agency for 20 occupational licensing and regulatory programs, administering exams and licenses, conducting inspections, and taking enforcement actions against non-compliant licensees. The Department operates with an annual appropriation of \$6.9 million and has 145 employees. Currently, TDLR administers the following 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
- Water Well Drillers
- Water Well Pump Installers
- Weather Modification
- Vehicle Protection Product Warrantors

Senate Bill 279 continues the Department for 12 years, and contains the Sunset Commission's recommendations to strengthen TDLR's oversight powers, conform program statutes to provide consistency, abolish the regulation of transportation service providers, and create a toll-free information line administered by TDLR that allows consumers to access information about any state-regulated occupation. The Legislature did not adopt the Sunset recommendations to transfer certain regulatory programs to TDLR from the Texas Commission on Environmental Quality (TCEQ). It did, however, add several other statutory modifications to S.B. 279, including increasing the Commission size from six to seven members, requiring valet parking services to establish financial responsibility, setting requirements relating to the use of loss damage waivers under rental purchase agreements, and creating the registration of elevator contractors. The following list summarizes the major provisions of S.B. 279, and a more detailed discussion follows.

## Sunset Provisions

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1. Give TDLR's Commission Rulemaking Authority and Advisory Committee Appointment Authority Common to Other Agency Policy Bodies.
2. Adjust the Size of the Commission on Licensing and Regulation.
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, and Provide for Elevator Contractor Registration.
5. Coordinate Oversight of Abandoned and Unplugged Water Wells Among TDLR, Local Groundwater Conservation Districts, and TCEQ.
6. Abolish the Registration of Transportation Service Providers.
7. Require TDLR to Act as an Information Resource for Consumers on All State Licensing Agencies.
8. Continue the Texas Department of Licensing and Regulation for 12 Years.

## Provisions Added by the Legislature

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9. Require the Department to Better Monitor Complaints in the Architectural Barriers Program.
10. Remove Inconsistent Enforcement Time Lines From the Career Counseling Services Program.
11. Provide a Mechanism for TDLR to Reinspect Industrialized Housing That Has Moved.
12. Authorize Municipalities to Pass Certain Regulations Relating to Industrialized Housing and Building.
13. Require TDLR to Approve All Loss Damage Waiver Contracts Under Rental Purchase Agreements.
14. Require Persons Regulated by One or More Licensing Authorities to File a Single Change of Address Online.
15. Require Valet Parking Services to Maintain Financial Responsibility.
16. Transfer the Authority to Administer Grants in the Weather Modification Program From the Department of Agriculture to TDLR.
17. Expand Requirements in the Combative Sports Program Statute.

## Sunset Provisions

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### **1. Give TDLR's Commission Rulemaking Authority and Advisory Committee Appointment Authority Common to Other Agency Policy Bodies.**

Senate Bill 279 gives TDLR's Commission rulemaking authority for the programs it oversees. This authority is currently vested with the Executive Director. This change conforms the Commission's powers for rulemaking with those of other boards and commissions and also affords the public the opportunity to address the Commission during the rulemaking process.

The legislation also clarifies that advisory committees exist to assist the Commission in creating rules and regulating the professions and industries under its jurisdiction. The presiding officer of the Commission will appoint members of all advisory committees, with the Commission's approval. The presiding officer will also select the chairs of each advisory committee to serve two-year terms, except for the boiler program, in which the chief boiler inspector will remain the presiding officer. This provision does not affect the Industrialized Building Code Committee as its members will continue to be appointed by the Governor.

### **2. Adjust the Size of the Commission on Licensing and Regulation.**

The Legislature increased the size of the Commission from six to seven members instead of reducing it to five as recommended by the Sunset Commission. This change brings the Commission into compliance with a 1999 constitutional amendment requiring boards and commissions to consist of an odd number of members. The Commission will continue to be composed of all public members.

### **3. Conform Key Elements of the Department's Programs to Commonly Applied Occupational Licensing Practices.**

Senate Bill 279 includes the following provisions that bring the Department's programs in line with standard licensing agency practices and allow the Department to administer its programs more consistently.

- Requires the Department to follow the general guidelines set up in Chapter 53, Occupations Code, for dealing with criminal convictions of licensees.
- Eliminates the involvement of the Water Well Drillers Advisory Council in making recommendations on specific licensure and enforcement actions in the water well drillers and water well pump installers programs.
- Eliminates the requirement that complaints be notarized in the auctioneers, career counseling services, and personnel employment services program statutes, and removes the \$50 complaint filing fee required to make a claim against the Auctioneers Education and Recovery Fund.
- Requires the Department to document its complaint process from submission of the complaint to its final disposition, to be published in the *Texas Register*.
- Repeals non-standard administrative penalty amounts in the service contract providers, staff leasing services, vehicle protection product warrantors, water well drillers, and water well pump installers program statutes and replaces them with the cap of \$5,000 per day per violation used for all other Department programs.

- Requires the Department to develop administrative penalty amounts that relate appropriately to different violations for each program.
- Eliminates hearing and decision deadlines in the career counseling services, personnel employment services, and water well drillers program statutes that vary from the Administrative Procedure Act.
- Eliminates fees and fee caps that are statutorily set in the auctioneers, combative sports, elevators, staff leasing services, talent agencies, vehicle protection product warrantors, and weather modification programs and gives TDLR the flexibility to set fees at the level necessary to recover program costs.
- Standardizes all agency renewal periods to one year for property tax consultants, service contract providers, and staff leasing services.
- Requires the Department to adopt rules regarding annual registration renewals for service contract providers.
- Requires the Department to establish an exam fee refund policy and repeals language in the property tax consultants, water well drillers, and water well pump installers program statutes that conflicts with this standard language.

#### **4. Require Elevator Certificates of Compliance to Be Posted in Publicly Visible Areas, and Provide for Elevator Contractor Registration.**

This provision repeals 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 will be required to be posted in a publicly accessible area within the building. The certificate will include information showing the date of the last inspection and the due date of the next one, and contact information for the consumer to report violations to TDLR. The bill also provides for annual elevator inspections.

The Legislature modified this provision to also include the creation of a program to require elevator contractors to be registered before they install, repair, or maintain elevators and related equipment. In addition, these contractors must provide information to TDLR regarding the locations at which they have worked as a means of identifying elevators in the state. Additionally, the bill changes enforcement provisions making certain elevator violations subject to administrative penalties and providing for emergency orders under certain circumstances.

#### **5. Coordinate Oversight of Abandoned and Unplugged Water Wells Among TDLR, Local Groundwater Conservation Districts, and TCEQ.**

This bill transfers 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 enforcement responsibility 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. Additionally, TDLR, local Groundwater Conservation Districts, and TCEQ will be required to enter into memoranda of understanding to better use TCEQ's field offices and to refer cases of groundwater contamination stemming from abandoned and unplugged water wells.

## **6. Abolish the Registration of Transportation Service Providers.**

Senate Bill 279 repeals requirements that transportation service providers register with TDLR, but does not affect the statute requiring companies to keep transaction records, so as to preserve evidence that may be useful to law enforcement agencies in the future. The provision permitting TDLR to audit these records will transfer to the Department of Public Safety, as the State's primary law enforcement agency.

## **7. Require TDLR to Act as an Information Resource for Consumers on All State Licensing Agencies.**

This provision requires TDLR to create a toll-free information number to allow consumers to call one number to find out information about any state-issued license. The Legislature modified this provision to clarify that the toll-free information licensing hotline is strictly a connection tool for consumers and to remove the requirement for TDLR to maintain a database on licensing entities and licensing information. The Legislature also removed the fee that TDLR was to charge other licensing agencies to cover the costs of providing this service. Senate Bill 279 also requires the Department, on a cost-recovery basis, to identify licensing agencies that do not use *TexasOnline* and to assist those agencies in making the conversion to *TexasOnline*.

## **8. Continue the Texas Department of Licensing and Regulation for 12 Years.**

Senate Bill 279 continues the agency for the standard 12-year period, until 2015.

## **Provisions Added by the Legislature**

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### **9. Require the Department to Better Monitor Complaints in the Architectural Barriers Program.**

The Legislature added a provision requiring the Department to provide better monitoring of all architectural barrier complaints that allege non-compliance with Texas Accessibility Standards. The provision requires the Department to monitor the complaints until the building comes into compliance with the law, unless the building is exempt from compliance or otherwise unable to come into compliance.

### **10. Remove Inconsistent Enforcement Time Lines From the Career Counseling Services Program.**

Senate Bill 279 removes the enforcement action time lines in the career counseling services statute that are inconsistent with other programs regulated by TDLR. The provision also removes the requirement that a service provide its client with a copy of a service contract at the first interview and the requirement for two interviews before entering into a contract.

### **11. Provide a Mechanism for TDLR to Reinspect Industrialized Housing That Has Moved.**

The bill allows industrialized housing to be movable, and provides a mechanism for reinspection by the Department. The bill also removes the requirement that all modular components be inspected at the manufacturing plant or facility.

## **12. Authorize Municipalities to Pass Certain Regulations Relating to Industrialized Housing and Building.**

The Legislature added a provision that gives municipalities the authority to adopt industrialized housing regulations. The regulations may require industrialized housing to have equal or greater value as the median taxable value for single family homes within 500 feet, comply with municipal aesthetic standards, have certain exterior qualities comparable to single family homes in the area, and be secured to a permanent foundation.

## **13. Require TDLR to Approve All Loss Damage Waiver Contracts Under Rental Purchase Agreements.**

The Legislature adopted a provision that sets forth requirements relating to the use of loss damage waivers under rental purchase agreements, including prohibiting a merchant from selling a loss damage waiver unless the consumer agrees to the waiver in writing. The provision requires TDLR to approve all loss damage waiver contracts and gives the Department rulemaking and fee authority, as well as investigative and administrative enforcement authority over loss damage waiver contracts.

## **14. Require Persons Regulated by One or More Licensing Authorities to File a Single Change of Address Online.**

The Legislature added a provision to require persons regulated by one or more licensing authorities to file a single change of address online with the Department of Information Resources (DIR), through *TexasOnline*. The legislation requires DIR to provide the new address to each appropriate licensing agency and requires licensing authorities to share information electronically with each other regarding license holders.

## **15. Require Valet Parking Services to Maintain Financial Responsibility.**

Senate Bill 279 requires valet parking services to maintain financial responsibility and creates an offense for services that do not comply. The provision authorizes TDLR and the Department of Insurance to coordinate to assure consistency with the standard of proof required. The bill also provides that this provision will only take effect after TDLR conducts a study and determines that these requirements will not increase the average consumer cost for valet parking services by more than 25 percent.

## **16. Transfer the Authority to Administer Grants in the Weather Modification Program From the Department of Agriculture to TDLR.**

The bill transfers from the Department of Agriculture (TDA) to TDLR the authority to administer grants to political subdivisions in the weather modification program, consolidating the program at one agency. The provision also requires TDA and TDLR to adopt a memorandum of understanding that provides for the transfer of all files, records, equipment, or property necessary to administer the grant program.

## **17. Expand Requirements in the Combative Sports Program Statute.**

The Legislature adopted changes to the combative sports statute requiring TDLR to establish practice requirements for ringside physicians and health and safety requirements for contestants; authorizing the Commission to establish a medical advisory committee to advise on health issues affecting boxing event contestants; and establishing requirements for promoters. Senate Bill 279 also allows the price charged for the sale or lease of broadcasting or movie rights to boxing events be added to the amount of total ticket sales in determining the amount of sales on which the gross receipts tax is calculated. The legislation also makes changes to the structure of elimination tournaments and expands the Department's enforcement authority.

## **Removed Provisions**

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

The Legislature did not adopt the Sunset recommendation to transfer the 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, from TCEQ to TDLR.

### **2. Require TDLR to License and Regulate Mobile Amusement Park Rides and Require Annual Inspections.**

The Legislature did not adopt the Sunset recommendation to transfer the insurance and inspection requirements for mobile amusement park rides from the Department of Insurance to TDLR.

## **Fiscal Implication Summary**

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Senate Bill 279 contains several provisions that will have a fiscal impact. Overall, the provisions will result in a fiscal impact to the Department to implement new programs, but the Department will adjust its fees to cover the costs. The legislation will have a net positive impact to the State of \$12,300 per year in increased gross receipts tax collections. The provisions with a fiscal impact are discussed below, followed by a five-year summary chart.

Increasing the number of Commission members from six to seven will result in an increase in travel costs of \$900. Transferring all rulemaking authority to the Commission will require the Commission to meet approximately two additional times per year to ensure timely adoption of rules, increasing travel and per diem expenses by about \$1,800 per year. These costs will be absorbed by the agency within current resources.

Requiring the Department to create a central toll-free licensing hotline will require one additional administrative technician with an annual salary of \$29,571 and yearly costs of \$10,800 for related expenses. The Department will also have a \$5,900 start-up cost for equipment in fiscal year 2005. However, the Department will reallocate its current resources to absorb any costs associated with this project.

Abolishing the regulation of transportation service providers will result in a savings of approximately \$8,000 in funds used for these oversight activities. However, no net savings will accrue to the State because the licensing revenue funding these activities would no longer be collected.

Requiring TDLR to register elevator contractors will require an additional 1.5 staff positions, costing TDLR \$63,188 for the first year and \$54,338 per year thereafter. These costs will be offset by licensing and registration fees charged.

Transferring the authority to administer grants in the weather modification program from TDA to TDLR requires the two agencies to adopt a memorandum of understanding to provide for the transfer of funds currently appropriated to TDA, which is approximately \$2.5 million annually. Additionally, the transfer will have a \$5,900 one-time, start-up cost for the program, to be absorbed by fees collected.

The legislation requires TDLR to register and investigate merchants providing loss damage waivers, requiring an additional three staff positions and \$118,411 per year, with costs offset by fees charged in the program.

Senate Bill 279 requires TDLR to register ringside physicians in the combative sports program, resulting in an increase of \$1,050 per year in additional registration fees. The bill will also increase the amount of gross receipts tax collected from combative sports activities each year by \$11,250, which is deposited in the General Revenue fund.

<b>Fiscal Year</b>	<b>Gain to the General Revenue Fund</b>	<b>Cost to the General Revenue Fund</b>	<b>Change in Staff Positions From 2003</b>
2004	\$242,870	\$230,570	+5.5
2005	\$234,020	\$221,720	+5.5
2006	\$228,120	\$215,820	+5.5
2007	\$228,120	\$215,820	+5.5
2008	\$228,120	\$215,820	+5.5