

EXECUTIVE SUMMARY OF SUNSET STAFF REPORT

Texas Department of Licensing and Regulation

Project Manager: Emily Johnson

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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.

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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.