

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** May 30, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2013-1872-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 30, Occupational Licenses and Registrations
House Bills 798, 1302, 1659, 1846 and Senate Bill 162: Occupational
Licenses
Rule Project No. 2013-044-030-WS

Background and reason(s) for the rulemaking:

The 83rd Legislature, 2013, passed several bills that require changes to Occupational Licensing rules in 30 Texas Administrative Code (TAC) Chapter 30, Subchapter A.

- House Bill (HB) 798, authored by Representative Senfronia Thompson, amended Texas Occupations Code, Chapter 53, relating to Class C misdemeanor convictions by individuals applying for an occupational license.
- HB 1302, authored by Representative Travis Clardy, amended Texas Code of Criminal Procedure, Chapter 62, relating to prohibiting certain registered sex offenders from performing services in a person's residence unless supervised.
- HB 1659, authored by Representative Senfronia Thompson, amended Texas Occupations Code, Chapter 53, relating to individuals charged with certain offenses where the proceedings have been dismissed to be considered as having a conviction if required to register with the Sex Offender Registration Program.
- HB 1846, authored by Representative Stefani Carter, amended Texas Family Code, Chapter 232, relating to child support payments by applicants for occupational licenses.
- SB (SB) 162, sponsored by Senator Leticia Van de Putte, amended Texas Occupations Code, Chapter 55, relating to recognizing verified military service, training, or education for occupational licensing applicants who are military service members or military veterans, and expediting occupational licensing applications from military spouses.

Texas Water Code (TWC), §37.002 requires the commission to adopt any rules necessary to administer the provisions of TWC, Chapter 37 and other laws governing occupational licenses and registrations under the commission's jurisdiction.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rules will enable the commission to:

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- exclude Class C misdemeanor convictions when reviewing applications for an occupational license, as required by HB 798;
- prohibit certain registered sex offenders from providing services in a person's residence unless supervised as required by HB 1302;
- consider individuals whose proceedings have been dismissed to have a conviction if registered as a sex offender, as required by HB 1659;
- suspend or refuse the application of an individual who has not made a minimum payment of child support, as required by HB 1846;
- recognize verified military service, training, or education when considering applications for an occupational license from military service members or military veterans, and expedite occupational licensing applications from military spouses, as required by SB 162; and
- repeal and simultaneously adopt new §30.33, regarding License or Registration Denial, Warning, Suspension, or Revocation, in order to reorganize the section to improve readability by the public.

B.) Scope required by federal regulations or state statutes:

SB 162 requires state agencies to adopt rules implementing provisions of this bill not later than January 1, 2014. The remaining bills, HB 798, HB 1302, HB 1659, and HB 1846, apply to applications made on or after September 1, 2013, the effective date of the bills.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Staff is recommending adoption of additional amendments to 30 TAC Chapter 30, Subchapter A, which will enable the commission to:

- add relevant statutory citations;
- remove rule and statutory citations which no longer pertain to occupational licenses;
- adjust workload deadlines due to increased processing requirements;
- provide consistent time periods required prior to retaking licensing examinations;
- clarify the validity period for examinations;
- incorporate new training technology;
- establish a fee for review of new training technology and related requirements;
- provide consistency throughout the section;
- reorganize content to create a more logical flow;
- improve readability of rules; and
- update the citation for applications made after September 1, 1999 to reference a motion to overturn the executive director's decision.

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Statutory authority:

- TWC, §37.002, Rules, requiring the commission to adopt any rules necessary to: 1) establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456, Texas Health and Safety Code, §§341.033, 341.034, 361.027, and 366.071, and Texas Occupations Code, §1903.251; (2) establish classes and terms of occupational licenses and registrations; and (3) administer the provisions of this chapter and other laws governing occupational licenses and registrations under the commission's jurisdiction.
- Texas Code of Criminal Procedure, Chapter 62, Sex Offender Registration Program, prohibiting certain registered sex offenders from providing services in a person's residence unless supervised.
- Texas Occupations Code, Chapter 53, Consequences of Criminal Convictions, specifying circumstances where the criminal proceedings have been dismissed but the offense may be considered a conviction by the licensing authority.
- Texas Occupations Code, Chapter 53, Consequences of Criminal Convictions, exempting Class C misdemeanors from the types of offenses considered to be convictions.
- Texas Occupations Code, Chapter 55, License While on Military Duty and for Military Spouse, re-titled by SB 162 to Licensing of Military Service Members, Military Veterans, and Military Spouses, requiring state agencies to expedite the procedure for processing and issuance of licenses for military spouses.
- Texas Occupations Code, Chapter 55, License While on Military Duty and for Military Spouse, re-titled by SB 162 to Licensing of Military Service Members, Military Veterans, and Military Spouses, requiring state agencies to credit verified military service, training, and education toward the licensing requirements for military service members and military veterans.
- Texas Family Code, Chapter 232, Suspension of License, requiring a licensing authority to refuse an application for a license from an individual who owes child support arrearages until the authority is notified that the individual has paid all arrearages or made an immediate payment of not less than \$200 toward arrearages owed and has either established a payment plan for the remainder owed or is in compliance with a court order for payment of arrearages.

Effect on the:

A.) Regulated community:

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The effect on the regulated community from statutory changes would be limited to license holders or potential license holders with criminal histories, delinquent child support payments on or after September 1, 2013, or military experience. The changes staff recommends for consistency and clarity would positively affect the regulated community by making the rules easier to read and understand. The recommended changes are not expected to negatively affect the regulated community.

B.) Public:

The effect on the public would be to prohibit certain registered sex offenders from providing services in a person's residence unless supervised. The adopted changes would affect the public by exempting Class C misdemeanors from the type of offenses that may be considered convictions. The adopted changes would also affect the public by specifying that the executive director may consider an individual charged with certain offenses to have been convicted of an offense, regardless of whether the criminal proceedings were dismissed.

C.) Agency programs:

No effects on agency programs, other than the Occupational Licensing Program, have been identified.

Stakeholder meetings:

A stakeholder meeting was held on September 17, 2013, and generated one comment. The stakeholders generally supported the amendments, but requested additional clarification regarding what would constitute direct supervision for registered sex offenders. The stakeholders also requested additional clarification regarding enforcement for payment of child support arrearages by applicants for occupational licenses and current license holders. Changes were made to clarify the definitions of residence and supervision for purposes of supervising service provided by registered sex offenders in an individual's residence in response to stakeholder concerns.

Public comment:

The commission received written comments from the Texas Water Utility Association (TWUA). The major concerns expressed were the change of deadlines related to examination waiting periods and license processing. Additionally a concern was expressed about the supervision of sex offenders. TWUA also made several comments regarding qualifications of training providers, the usefulness of correspondence training, and approved operator training, which were beyond the scope of this rulemaking.

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Significant changes from proposal:

There were no substantive changes made from the proposed rule package.

Potential controversial concerns and legislative interest:

There are no potential controversial concerns or legislative interest.

Does this rulemaking affect any current policies or require development of new policies?

This rulemaking would require amendments to current policies in order to bring the policies into compliance with current statutory provisions. The rulemaking would not require the development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

SB 162 requires rulemaking before January 1, 2014. The remaining bills became effective on September 1, 2013 and may be implemented without rule changes. However, if the legislative wording is not incorporated into commission rules, there would be an inconsistency between the statutory language and commission rules. Staff recommendations to 30 TAC Chapter 30 are needed for clarity and consistency to ensure program integrity over time.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** February 14, 2014

Anticipated *Texas Register* adoption publication: July 4, 2014

Anticipated effective date: July 10, 2014

Six-month *Texas Register* filing deadline: August 14, 2014

Agency contacts:

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Attachments

Enrolled versions of HB 798, HB 1302, HB 1659, HB 1846, and SB 162.

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