

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: July 15, 2020

DATE OF REQUEST: June 26, 2020

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Gwen Ricco, Rule/Agenda Coordinator, (512) 239-2678

CAPTION: Docket No. 2018-0983-RUL. Consideration for publication of proposed amended Sections 30.20, 30.24, 30.33, 30.34, 30.36, 30.81, 30.95, 30.129, and 30.402; and new Section 30.29 of 30 TAC Chapter 30, Occupational Licenses and Registrations.

The proposed rulemaking would implement House Bill (HB) 1508, 85th Texas Legislature, 2017, Regular Session, relating to notice to applicants regarding the consequences of a criminal conviction on eligibility for an occupational license; and HB 1342, Senate Bill (SB) 37, and SB 1217, 86th Texas Legislature, 2019, Regular Session, relating to notice to individuals regarding the licensing authority's intention to deny an individual a license based on criminal history, the prohibition on denying or suspending an occupational license due to an individual's default on student loans, and the prohibition on including an arrest that did not result in a conviction in a licensing authority's determination of a person's fitness to perform the duties and responsibilities of a licensed occupation. The proposed rulemaking would also include administrative changes to ensure current and accurate cross-references. (Rebecca Moore, Hollis Henley) (Rule Project No. 2018-024-030-WS)

Brent Wade

Deputy Director

Jaya Zyman

Division Director

Gwen Ricco

Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 26, 2020

Thru: Bridget C. Bohac, Chief Clerk
Toby Baker, Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2018-0983-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 30, Occupational Licenses and Registrations
HB 1508 (85th Leg) and HB 1342, SB 37, and SB 1217 (86th Leg): Clarifying
Administrative Amendments
Rule Project No. 2018-024-030-WS

Background and reason(s) for the rulemaking:

The proposed rulemaking would implement House Bill (HB) 1508 from the 85th Texas Legislature, 2017; and HB 1342, Senate Bill (SB) 37, and SB 1217 from the 86th Texas Legislature, 2019.

HB 1508 added Texas Occupations Code, §§53.151 - 53.153, which provides individuals the ability to petition the agency to seek reimbursement from a training provider if they were not notified that they may be ineligible for an initial occupational license due to their criminal history and were subsequently denied the license due to a criminal conviction.

HB 1342 amended Texas Occupations Code, §§51.355, 53.021(a), 53.022, 53.023, 53.051, and 53.104(b) and added Texas Occupations Code, §§51.357, 51.358, 51.4041(a-1), 53.003, 53.0231, and 53.026. Based on HB 1342, a licensing authority may no longer suspend or revoke a license, disqualify a person from receiving a license, or deny a person the opportunity to take a licensing examination based on the person's conviction of an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applied for the license. HB 1342 also prohibits a licensing authority from denying a license or the opportunity to be examined for a license because of the person's prior conviction of an offense unless the authority provides written notice to the person of the reason for the intended denial and allows the person a chance to submit any relevant information.

SB 37 amended Texas Occupations Code, Chapter 56; Texas Finance Code, §157.015(f) and (g) and §180.055(d); and Texas Government Code, §466.155(a) and (g) to remove language that allows licensing agencies to deny or take other disciplinary action against license holders or potential license holders who are in default of their student loans.

SB 1217 added Texas Occupations Code, §53.0231 which prohibits a licensing authority to consider an arrest that did not result in the person's conviction or placement on deferred adjudication community supervision in the denial of a new or renewal license. Additionally, the licensing authority is required to provide a written notice to the applicant giving the reasons for denial of a license.

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Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

The proposed rulemaking would amend §§30.20, 30.24, 30.33, 30.34, 30.36, 30.81, 30.95, 30.129, and 30.402 to ensure consistency between the rules and their applicable statutes as amended by recent legislation. The proposed amendments would remove language giving the agency authority to suspend or revoke a license, disqualify an individual from receiving a license, or deny an individual the opportunity to take a licensing examination based on the individual's conviction of an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applied for the license; address the agency's procedure for providing written notice to individuals for whom the agency intends to deny a license or the opportunity to be examined for a license because of the individual's prior conviction of an offense; and remove language allowing the agency to deny or take other disciplinary action against license holders or potential license holders who are in default of their student loans.

The proposed rulemaking would also add §30.29 to address the procedure for individuals to petition the agency to seek reimbursement from a training provider if they were not notified that they may be ineligible for an initial occupational license due to their criminal history and were subsequently denied the license due to a criminal conviction.

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

The proposed rulemaking would implement HB 1508 and HB 1342, SB 37, and SB 1217.

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

Staff recommends amendments that would remove language referencing the Texas State Board of Plumbing Examiners (Board) and include a generic reference to an alternate agency to avoid any complications should the licensing of plumbers move from the Board to an alternate agency in a future legislative session.

Staff also recommends amendments that would update language and correct cross-references to other chapters.

Statutory authority:

- Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission;
- TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction;
- TWC, §5.103, which requires the commission to adopt rules necessary to carry out its powers and duties;
- TWC, §5.105, which provides the commission's authority to establish and approve all general policy of the commission by rule;
- TWC, §37.002, which provides the commission's authority to adopt rules for various occupational licenses;

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- TWC, §37.003, which provides that persons engaged in certain occupations must be licensed by the commission;
- TWC, §37.005, which requires the commission to establish requirements and uniform procedures for issuing licenses and registrations;
- TWC, §37.006, which requires the commission to establish requirements and uniform procedures for renewing licenses and registrations;
- Texas Occupations Code, §53.021, which allows the commission to revoke, suspend, or deny a license to a person who has been convicted of certain offenses;
- Texas Occupations Code, §53.022, which provides the factors the commission shall consider in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation;
- Texas Occupations Code, §53.023, which provides additional factors the commission shall consider if it determines that an individual's criminal conviction directly relates to the duties and responsibilities of a licensed occupation;
- Texas Occupations Code, §53.0231, which provides the procedure for the commission's written notice to individuals for whom the commission intends to deny a license or the opportunity to be examined for a license because of the individual's prior conviction of an offense;
- Texas Occupations Code, §53.051, which requires to the commission to provide to an individual written notice of the reason for suspension, revocation, denial, or disqualification of a license based on the individual's prior criminal conviction;
- Texas Occupations Code, §53.152, which gives individuals the right to petition the commission to seek reimbursement from a training provider if they were not notified that they may be ineligible for an initial occupational license due to their criminal history and were subsequently denied the license due to a criminal conviction; and
- Texas Occupations Code, §53.153, which requires the commission to order a training provider to reimburse individuals the amount of application and examination fees to the commission if the commission determines a training provider did not notify individuals that they may be ineligible for an initial occupational license due to criminal history and individuals were subsequently denied the license due to a criminal conviction.

Effect on the:

A.) Regulated community:

The rulemaking would help remove barriers faced by former offenders seeking entry into trades, industries, and vocations that require an occupational license.

B.) Public:

There would be no direct effect on the public. The public may benefit indirectly from the proposed rulemaking as a result of having additional trained and licensed professionals.

C.) Agency programs:

The proposed rulemaking is not expected to significantly affect agency programs.

Commissioners

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Stakeholder meetings:

No stakeholder meetings were held. TCEQ provided outreach to all TCEQ approved training providers with active courses by email in August 2017 and a follow-up letter to those who did not respond to the email to formally communicate the statutory requirements of HB 1508. Additionally, public outreach was conducted through advisory committee meetings and via the TCEQ Trade Fair.

Potential controversial concerns and legislative interest:

There is legislative interest regarding the implementation of HB 1508 and HB 1342, SB 37, and SB 1217.

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

The statute required the development of new policies, which are already in place.

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

If this rulemaking does not go forward, the TCEQ rules will not be in compliance with the amended statutes. There are no alternatives to rulemaking.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: July 15, 2020

Anticipated *Texas Register* publication date: July 31, 2020

Anticipated public hearing date: None

Anticipated public comment period: July 31, 2020 - August 31, 2020

Anticipated adoption date: November 18, 2020

Agency contacts:

Rebecca Moore, Rule Project Manager, Permitting and Registration Support Division, (512) 239-2463

Hollis Henley, Staff Attorney, (512) 239-0611

Gwen Ricco, Texas Register Rule/Agenda Coordinator, (512) 239-2678

Attachments:

HB 1508 (85th Texas Legislature)

HB 1342 (86th Texas Legislature)

SB 37 (86th Texas Legislature)

SB 1217 (86th Texas Legislature)

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Brody Burks
Office of General Counsel
Rebecca Moore
Gwen Ricco

1 AN ACT

2 relating to a person's eligibility for an occupational license;
3 providing an administrative penalty.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 51.355, Occupations Code, is amended to
6 read as follows:

7 Sec. 51.355. LICENSE ELIGIBILITY OF PERSON WHOSE LICENSE
8 HAS BEEN REVOKED. (a) Except as otherwise provided by this
9 section, a [A] person whose license has been revoked by order of the
10 commission or executive director is not eligible for a new license
11 until the first anniversary of the date of the revocation.

12 (b) Notwithstanding Subsection (a), a person whose license
13 has been revoked by order of the commission or executive director is
14 eligible to apply for a new license before the first anniversary of
15 the date of the revocation if:

16 (1) the revocation was based solely on the person's
17 failure to pay an administrative penalty; and

18 (2) the person:

19 (A) has paid the administrative penalty in full;
20 or

21 (B) is paying the administrative penalty under a
22 payment plan with the department and is in good standing with
23 respect to that plan.

24 SECTION 2. Subchapter G, Chapter 51, Occupations Code, is

1 amended by adding Sections 51.357 and 51.358 to read as follows:

2 Sec. 51.357. RESTRICTED LICENSES FOR CERTAIN OCCUPATIONS.

3 (a) As an alternative to denying, revoking, suspending, or
4 refusing to issue or renew a license under Section 51.356 or
5 51.4012(a) or Chapter 53, the commission or executive director may
6 issue a restricted license to an applicant for a license under:

7 (1) Chapter 1302; or

8 (2) Chapter 1305.

9 (b) The department may impose reasonable conditions on a
10 holder of a restricted license, including requiring the license
11 holder to:

12 (1) limit the scope or location of the license holder's
13 practice;

14 (2) be supervised; and

15 (3) report to the department, including notifying the
16 department promptly of any change in the license holder's
17 supervision.

18 (c) The department may:

19 (1) include on the face of a license and in the
20 department's records a statement:

21 (A) that the license is restricted; and

22 (B) of any condition of the restricted license;

23 and

24 (2) use a distinctive design for a restricted license.

25 (d) A license holder who supervises the holder of a
26 restricted license shall use reasonable care to ensure that the
27 license holder complies with any condition imposed under this

1 section.

2 (e) The commission or executive director may impose an
3 administrative penalty or other sanction on the holder of a
4 restricted license or on a license holder who supervises the person
5 for a violation of this section.

6 Sec. 51.358. RESTRICTED LICENSE TERM. (a) A restricted
7 license issued under Section 51.357 is valid for the term provided
8 for an unrestricted license of the same type.

9 (b) A restricted license may be renewed by complying with
10 the requirements for the renewal of an unrestricted license of the
11 same type.

12 (c) On the expiration of the term of a restricted license
13 and the receipt by the department of a license renewal application,
14 there is a rebuttable presumption that the applicant is entitled to
15 issuance by the department of an unrestricted license.

16 (d) The presumption under Subsection (c) may be rebutted by
17 the department's determination that:

18 (1) the applicant failed to comply with any condition
19 imposed under Section 51.357;

20 (2) the applicant is not in good standing with the
21 department; or

22 (3) issuing an unrestricted license to the applicant
23 would result in an increased risk of harm to any person or property.

24 SECTION 3. Section 51.4041, Occupations Code, is amended by
25 adding Subsection (a-1) to read as follows:

26 (a-1) Notwithstanding any other law, the alternative means
27 adopted under Subsection (a) may include accepting as sufficient

1 evidence of a person's eligibility for a license relevant
2 education, training, or experience obtained while the person was
3 imprisoned if the person:

4 (1) previously held a license of the same type for
5 which the person is applying and the license was revoked under
6 Section 53.021(b);

7 (2) has not been convicted of, placed on deferred
8 adjudication for, or entered a plea of guilty or nolo contendere to:

9 (A) an offense listed in Article 42A.054, Code of
10 Criminal Procedure;

11 (B) a sexually violent offense, as defined by
12 Article 62.001, Code of Criminal Procedure; or

13 (C) an offense under Chapter 21 or 43, Penal
14 Code; and

15 (3) while imprisoned, maintained a record of good
16 behavior and:

17 (A) successfully participated in a program
18 acceptable to the department to prepare the person for reentry into
19 the workforce in the occupation for which the person seeks a
20 license; or

21 (B) performed work on a regular basis in the
22 occupation for which the person seeks a license.

23 SECTION 4. Subchapter A, Chapter 53, Occupations Code, is
24 amended by adding Section 53.003 to read as follows:

25 Sec. 53.003. LEGISLATIVE INTENT; LIBERAL CONSTRUCTION OF
26 SUBCHAPTER. (a) It is the intent of the legislature to enhance
27 opportunities for a person to obtain gainful employment after the

1 person has:

2 (1) been convicted of an offense; and

3 (2) discharged the sentence for the offense.

4 (b) This chapter shall be liberally construed to carry out
5 the intent of the legislature.

6 SECTION 5. Section 53.021(a), Occupations Code, is amended
7 to read as follows:

8 (a) Subject to Section 53.0231, a [A] licensing authority
9 may suspend or revoke a license, disqualify a person from receiving
10 a license, or deny to a person the opportunity to take a licensing
11 examination on the grounds that the person has been convicted of:

12 (1) an offense that directly relates to the duties and
13 responsibilities of the licensed occupation;

14 ~~(2) [an offense that does not directly relate to the~~
15 ~~duties and responsibilities of the licensed occupation and that was~~
16 ~~committed less than five years before the date the person applies~~
17 ~~for the license,~~

18 ~~[(3)]~~ an offense listed in Article 42A.054, Code of
19 Criminal Procedure; or

20 (3) ~~[(4)]~~ a sexually violent offense, as defined by
21 Article 62.001, Code of Criminal Procedure.

22 SECTION 6. Section 53.022, Occupations Code, is amended to
23 read as follows:

24 Sec. 53.022. FACTORS IN DETERMINING WHETHER CONVICTION
25 DIRECTLY RELATES TO OCCUPATION. In determining whether a criminal
26 conviction directly relates to the duties and responsibilities of a
27 licensed ~~an~~ occupation, the licensing authority shall consider

1 each of the following factors:

2 (1) the nature and seriousness of the crime;

3 (2) the relationship of the crime to the purposes for
4 requiring a license to engage in the occupation;

5 (3) the extent to which a license might offer an
6 opportunity to engage in further criminal activity of the same type
7 as that in which the person previously had been involved; ~~and~~

8 (4) the relationship of the crime to the ability or ~~[7]~~
9 capacity ~~[, or fitness]~~ required to perform the duties and
10 discharge the responsibilities of the licensed occupation; and

11 (5) any correlation between the elements of the crime
12 and the duties and responsibilities of the licensed occupation.

13 SECTION 7. The heading to Section [53.023](#), Occupations Code,
14 is amended to read as follows:

15 Sec. 53.023. ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO
16 CONSIDER AFTER DETERMINING CONVICTION DIRECTLY RELATES TO
17 OCCUPATION.

18 SECTION 8. Sections [53.023](#)(a) and (b), Occupations Code,
19 are amended to read as follows:

20 (a) If a licensing authority determines under Section
21 [53.022](#) that a criminal conviction directly relates to the duties
22 and responsibilities of a licensed occupation, [In determining the
23 ~~fitness to perform the duties and discharge the responsibilities of~~
24 ~~the licensed occupation of a person who has been convicted of a~~
25 ~~crime,~~] the licensing authority shall consider the following in
26 determining whether to take an action authorized by Section [53.021](#)
27 ~~[, in addition to the factors listed in Section [53.022](#)]:~~

1 (1) the extent and nature of the person's past criminal
2 activity;

3 (2) the age of the person when the crime was committed;

4 (3) the amount of time that has elapsed since the
5 person's last criminal activity;

6 (4) the conduct and work activity of the person before
7 and after the criminal activity;

8 (5) evidence of the person's rehabilitation or
9 rehabilitative effort while incarcerated or after release; ~~and~~

10 (6) evidence of the person's compliance with any
11 conditions of community supervision, parole, or mandatory
12 supervision; and

13 (7) other evidence of the person's fitness, including
14 letters of recommendation ~~[from:~~

15 ~~[(A) prosecutors and law enforcement and~~
16 ~~correctional officers who prosecuted, arrested, or had custodial~~
17 ~~responsibility for the person;~~

18 ~~[(B) the sheriff or chief of police in the~~
19 ~~community where the person resides; and~~

20 ~~[(C) any other person in contact with the~~
21 ~~convicted person].~~

22 (b) The applicant has the responsibility, to the extent
23 possible, to obtain and provide to the licensing authority the
24 recommendations described ~~[of the prosecution, law enforcement,~~
25 ~~and correctional authorities as required]~~ by Subsection (a)(7)
26 ~~[(a)(6)]~~.

27 SECTION 9. Subchapter B, Chapter 53, Occupations Code, is

1 amended by adding Sections 53.0231 and 53.026 to read as follows:

2 Sec. 53.0231. NOTICE OF PENDING DENIAL OF LICENSE. (a)
3 Notwithstanding any other law, a licensing authority may not deny a
4 person a license or the opportunity to be examined for a license
5 because of the person's prior conviction of an offense unless the
6 licensing authority:

7 (1) provides written notice to the person of the
8 reason for the intended denial; and

9 (2) allows the person not less than 30 days to submit
10 any relevant information to the licensing authority.

11 (b) A notice required under Subsection (a) must contain, as
12 applicable:

13 (1) a statement that the person is disqualified from
14 receiving the license or being examined for the license because of
15 the person's prior conviction of an offense specified in the
16 notice; or

17 (2) a statement that:

18 (A) the final decision of the licensing authority
19 to deny the person a license or the opportunity to be examined for
20 the license will be based on the factors listed in Section
21 53.023(a); and

22 (B) it is the person's responsibility to obtain
23 and provide to the licensing authority evidence regarding the
24 factors listed in Section 53.023(a).

25 Sec. 53.026. APPLICANT BEST PRACTICES GUIDE. (a) The state
26 auditor shall, in collaboration with licensing authorities,
27 develop a guide of best practices for an applicant with a prior

1 conviction to use when applying for a license. The state auditor
2 shall publish the guide on the state auditor's Internet website.

3 (b) A licensing authority shall include a link to the guide
4 on the authority's Internet website and in each notice described by
5 Section 53.051 and letter described by Section 53.104.

6 SECTION 10. Section 53.051, Occupations Code, is amended to
7 read as follows:

8 Sec. 53.051. NOTICE. A licensing authority that suspends
9 or revokes a license or denies a person a license or the opportunity
10 to be examined for a license because of the person's prior
11 conviction of an offense [~~a crime and the relationship of the crime~~
12 ~~to the license~~] shall notify the person in writing of:

13 (1) the reason for the suspension, revocation, denial,
14 or disqualification, including any factor considered under Section
15 53.022 or 53.023 that served as the basis for the suspension,
16 revocation, denial, or disqualification;

17 (2) the review procedure provided by Section 53.052;
18 and

19 (3) the earliest date the person may appeal the action
20 of the licensing authority.

21 SECTION 11. Section 53.104(b), Occupations Code, is amended
22 to read as follows:

23 (b) If a licensing authority determines that the requestor
24 is ineligible for a license, the licensing authority shall issue a
25 letter setting out each basis for potential ineligibility,
26 including any factor considered under Section 53.022 or 53.023 that
27 served as the basis for potential ineligibility, and the

1 authority's determination as to eligibility. In the absence of new
2 evidence known to but not disclosed by the requestor or not
3 reasonably available to the licensing authority at the time the
4 letter is issued, the authority's ruling on the request determines
5 the requestor's eligibility with respect to the grounds for
6 potential ineligibility set out in the letter.

7 SECTION 12. Section 53.023(c), Occupations Code, is
8 repealed.

9 SECTION 13. Not later than September 1, 2020, the state
10 auditor shall develop and publish the guide as required by Section
11 53.026, Occupations Code, as added by this Act.

12 SECTION 14. The changes in law made by this Act apply only
13 to an application for a license submitted on or after the effective
14 date of this Act. An application for a license submitted before the
15 effective date of this Act is governed by the law in effect on the
16 date the application was submitted, and the former law is continued
17 in effect for that purpose.

18 SECTION 15. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 1342 was passed by the House on May 8, 2019, by the following vote: Yeas 147, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1342 was passed by the Senate on May 22, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to notice to applicants to and enrollees in certain educational programs regarding the consequences of a criminal conviction on eligibility for an occupational license.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 53, Occupations Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. NOTICE OF POTENTIAL INELIGIBILITY FOR LICENSE

Sec. 53.151. DEFINITIONS. Notwithstanding Section 53.001, in this subchapter, "licensing authority" and "occupational license" have the meanings assigned to those terms by Section 58.001.

Sec. 53.152. NOTICE BY ENTITIES PROVIDING EDUCATIONAL PROGRAMS. (a) An entity that provides an educational program to prepare an individual for issuance of an initial occupational license shall notify each applicant to and enrollee in the educational program of:

(1) the potential ineligibility of an individual who has been convicted of an offense for issuance of an occupational license on completion of the educational program;

(2) the current guidelines issued under Section 53.025 by any licensing authority that may issue an occupational license to an individual who completes the educational program;

(3) any other state or local restriction or guideline

1 used by a licensing authority described by Subdivision (2) to
2 determine the eligibility of an individual who has been convicted
3 of an offense for an occupational license issued by the licensing
4 authority; and

5 (4) the right to request a criminal history evaluation
6 letter under Section 53.102.

7 (b) The entity shall provide the notice required under
8 Subsection (a) to each applicant and enrollee regardless of whether
9 the applicant or enrollee has been convicted of an offense.

10 Sec. 53.153. REFUND AND ORDERED PAYMENTS. A licensing
11 authority that determines that an entity regulated by the licensing
12 authority has failed to provide the notice required by Section
13 53.152 to an individual entitled to receive the notice and that the
14 individual's application for an occupational license for which the
15 entity's educational program prepares the individual was denied
16 because the individual has been convicted of an offense shall order
17 the entity to:

18 (1) refund the amount of any tuition paid by the
19 individual to the entity; and

20 (2) pay to the individual an amount equal to the total
21 of the following, as applicable:

22 (A) the amount of any application fees paid by
23 the individual to the licensing authority; and

24 (B) the amount of any examination fees paid by
25 the individual to the licensing authority or an examination
26 provider approved by the licensing authority.

27 SECTION 2. Section 53.152, Occupations Code, as added by

1 this Act, applies only with respect to:

2 (1) an individual who is enrolled in an educational
3 program subject to that section on or after the effective date of
4 this Act; and

5 (2) an applicant for enrollment in an educational
6 program subject to that section who applies for enrollment in the
7 program on or after that date.

8 SECTION 3. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 1508 was passed by the House on April 13, 2017, by the following vote: Yeas 131, Nays 7, 3 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1508 on May 26, 2017, by the following vote: Yeas 134, Nays 7, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1508 was passed by the Senate, with amendments, on May 24, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

AN ACT

relating to a prohibition on the use of student loan default or breach of a student loan repayment or scholarship contract as a ground for refusal to grant or renew an occupational license or other disciplinary action in relation to an occupational license.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 56, Occupations Code, is amended to read as follows:

CHAPTER 56. DISCIPLINARY ACTION AGAINST RECIPIENTS OF STUDENT FINANCIAL ASSISTANCE PROHIBITED

SECTION 2. Sections 56.001(3), (4), (5), and (6), Occupations Code, are amended to read as follows:

(3) "Licensing authority" means a department, commission, board, office, or other agency of the state or of a political subdivision of the state that issues a license.

(4) "Scholarship contract" means an agreement by this state, an agency of this state, a political subdivision of this state, or the United States to make a grant to a person to support the person while attending a public or private institution of higher education or other postsecondary educational establishment in exchange for the person's agreement to perform a service obligation.

(5) "Student loan" means a loan made to a person by a public or private entity to support the person while attending a

1 public or private institution of higher education or other
2 postsecondary educational establishment [~~that is:~~

3 [~~(A) owed to this state, an agency of this state,~~
4 ~~or the United States, or~~

5 [~~(B) guaranteed by this state, an agency of this~~
6 ~~state, or the United States]~~.

7 (6) "Student loan repayment contract" means an
8 agreement by this state, an agency of this state, a political
9 subdivision of this state, or the United States to repay all or part
10 of a person's student loan in exchange for the person's agreement to
11 perform a service obligation.

12 SECTION 3. Section 56.003, Occupations Code, is amended to
13 read as follows:

14 Sec. 56.003. DISCIPLINARY [~~AUTHORITY TO TAKE~~] ACTION IN
15 EVENT OF DEFAULT OR BREACH PROHIBITED. A [~~On receipt of information~~
16 ~~from an administering entity that a person has defaulted on a~~
17 ~~student loan or has breached a student loan repayment contract or~~
18 ~~scholarship contract by failing to perform the person's service~~
19 ~~obligation under the contract, a]~~ licensing authority may not take
20 disciplinary action against a person based on the person's default
21 on a student loan or breach of a student loan repayment contract or
22 scholarship contract, including by:

23 (1) denying [~~deny~~] the person's application for a
24 license or license renewal;

25 (2) suspending [~~suspend~~] the person's license; or

26 (3) taking [~~take~~] other disciplinary action against
27 the person.

1 SECTION 4. Sections 157.015(f) and (g), Finance Code, are
2 amended to read as follows:

3 (f) The commissioner may deny the renewal application for a
4 residential mortgage loan originator license for the same reasons
5 and grounds on which the commissioner could have denied an original
6 application for a license, other than on the basis of the person's
7 default on a student loan.

8 (g) The commissioner may deny the renewal application for a
9 residential mortgage loan originator license if:

10 (1) the person seeking the renewal of the residential
11 mortgage loan originator license is in violation of this chapter,
12 Chapter 156, or Chapter 180, an applicable rule adopted under this
13 chapter, Chapter 156, or Chapter 180, or any order previously
14 issued to the person by the commissioner;

15 (2) the person seeking renewal of the residential
16 mortgage loan originator license is in default in the payment of any
17 administrative penalty, fee, charge, or other indebtedness owed
18 under this title; or

19 ~~(3) [the person seeking the renewal of the residential~~
20 ~~mortgage loan originator license is in default on a student loan~~
21 ~~administered by the Texas Guaranteed Student Loan Corporation,~~
22 ~~under Section 57.491, Education Code, or~~

23 ~~[(4)]~~ during the current term of the license, the
24 commissioner becomes aware of any fact that would have been grounds
25 for denial of an original license if the fact had been known by the
26 commissioner on the date the license was granted.

27 SECTION 5. Section 180.055(d), Finance Code, is amended to

1 read as follows:

2 (d) For purposes of Subsection (a)(3), an individual is
3 considered not to be financially responsible if the individual has
4 shown a lack of regard in managing the individual's own financial
5 affairs or condition. A determination that an individual has not
6 shown financial responsibility may not be based on the individual's
7 default on a student loan but may include:

8 (1) an outstanding judgment against the individual,
9 other than a judgment imposed solely as a result of medical
10 expenses;

11 (2) an outstanding tax lien or other governmental
12 liens and filings;

13 (3) a foreclosure during the three-year period
14 preceding the date of the license application; and

15 (4) a pattern of seriously delinquent accounts, other
16 than student loan accounts, during the three-year period preceding
17 the date of the application.

18 SECTION 6. Sections 466.155(a) and (g), Government Code,
19 are amended to read as follows:

20 (a) After a hearing, the director shall deny an application
21 for a license or the commission shall suspend or revoke a license if
22 the director or commission, as applicable, finds that the applicant
23 or sales agent:

24 (1) is an individual who:

25 (A) has been convicted of a felony, criminal
26 fraud, gambling or a gambling-related offense, or a misdemeanor
27 involving moral turpitude, if less than 10 years has elapsed since

1 the termination of the sentence, parole, mandatory supervision, or
2 probation served for the offense;

3 (B) is or has been a professional gambler;

4 (C) is married to an individual:

5 (i) described in Paragraph (A) or (B); or

6 (ii) who is currently delinquent in the
7 payment of any state tax;

8 (D) is an officer or employee of the commission
9 or a lottery operator; or

10 (E) is a spouse, child, brother, sister, or
11 parent residing as a member of the same household in the principal
12 place of residence of a person described by Paragraph (D);

13 (2) is not an individual, and an individual described
14 in Subdivision (1):

15 (A) is an officer or director of the applicant or
16 sales agent;

17 (B) holds more than 10 percent of the stock in the
18 applicant or sales agent;

19 (C) holds an equitable interest greater than 10
20 percent in the applicant or sales agent;

21 (D) is a creditor of the applicant or sales agent
22 who holds more than 10 percent of the applicant's or sales agent's
23 outstanding debt;

24 (E) is the owner or lessee of a business that the
25 applicant or sales agent conducts or through which the applicant
26 will conduct a ticket sales agency;

27 (F) shares or will share in the profits, other

1 than stock dividends, of the applicant or sales agent; or

2 (G) participates in managing the affairs of the
3 applicant or sales agent;

4 (3) has been finally determined to be~~+~~

5 [~~(A)~~] delinquent in the payment of a tax or other
6 money collected by the comptroller, the Texas Workforce Commission,
7 or the Texas Alcoholic Beverage Commission;

8 [~~(B) in default on a loan made under Chapter 52,~~
9 ~~Education Code; or~~

10 [~~(C) in default on a loan guaranteed under~~
11 ~~Chapter 57, Education Code;~~]

12 (4) is a person whose location for the sales agency is:

13 (A) a location licensed for games of bingo under
14 Chapter 2001, Occupations Code;

15 (B) on land that is owned by:

16 (i) this state; or

17 (ii) a political subdivision of this state
18 and on which is located a public primary or secondary school, an
19 institution of higher education, or an agency of the state; or

20 (C) a location for which a person holds a wine and
21 beer retailer's permit, mixed beverage permit, mixed beverage late
22 hours permit, private club registration permit, or private club
23 late hours permit issued under Chapter 25, 28, 29, 32, or 33,
24 Alcoholic Beverage Code, other than a location for which a person
25 holds a wine and beer retailer's permit issued under Chapter 25,
26 Alcoholic Beverage Code, that derives less than 30 percent of the
27 location's gross receipts from the sale or service of alcoholic

1 beverages; or

2 (5) has violated this chapter or a rule adopted under
3 this chapter.

4 (g) For purposes of Subsection (a)(3), the comptroller,
5 Texas Workforce Commission, and Texas Alcoholic Beverage
6 Commission[~~, Texas Higher Education Coordinating Board, and Texas~~
7 ~~Guaranteed Student Loan Corporation~~] shall each provide the
8 executive director with a report of persons who have been finally
9 determined to be delinquent in the payment of any money owed to or
10 collected by that agency. The commission shall adopt rules
11 regarding the form and frequency of reports under this subsection.

12 SECTION 7. The following laws are repealed:

- 13 (1) Section 57.491, Education Code;
14 (2) Section 82.022(c), Government Code;
15 (3) Section 154.110(e), Government Code; and
16 (4) Sections 56.001(1), 56.002, 56.004, 56.005, and
17 56.006, Occupations Code.

18 SECTION 8. A disciplinary action proceeding under Chapter
19 56, Occupations Code, that was initiated before the effective date
20 of this Act and that is pending on the effective date of this Act is
21 terminated on that date.

22 SECTION 9. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 37 passed the Senate on April 16, 2019, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

I hereby certify that S.B. No. 37 passed the House on May 21, 2019, by the following vote: Yeas 146, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

AN ACT

relating to the consideration of certain arrests in determining an applicant's eligibility for an occupational license.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 53, Occupations Code, is amended by adding Section 53.0231 to read as follows:

Sec. 53.0231. LIMITATION REGARDING CONSIDERATION OF CERTAIN ARRESTS. For purposes of determining a person's fitness to perform the duties and discharge the responsibilities of the licensed occupation, a licensing authority may not consider an arrest that did not result in the person's conviction or placement on deferred adjudication community supervision.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.

S.B. No. 1217

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1217 passed the Senate on May 8, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1217 passed the House on May 22, 2019, by the following vote: Yeas 141, Nays 3, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§30.20, 30.24, 30.33, 30.34, 30.36, 30.81, 30.95, 30.129, and 30.402; and new §30.29.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rulemaking would implement House Bill (HB) 1508 from the 85th Texas Legislature, 2017; and HB 1342, Senate Bill (SB) 37, and SB 1217 from the 86th Texas Legislature, 2019.

HB 1508 amended Texas Occupations Code, Chapter 53, Consequences of Criminal Conviction by adding Texas Occupations Code, §53.151 and §53.153. The amendments provide individuals the ability to petition the agency to seek reimbursement from a training provider if they were not notified that they may be ineligible for an initial occupational license due to their criminal history and were subsequently denied the license due to a criminal conviction. This rulemaking proposes new §30.29 to outline the requirements for training providers, eligibility for reimbursement, and procedures for requesting reimbursement.

HB 1342 amended Texas Occupations Code, Chapter 53, Consequences of Criminal Conviction, particularly Texas Occupations Code, §§53.021(a), 53.022, 53.023(a) and (b), 53.051, and 53.0231. Based on HB 1342, a licensing authority may no longer suspend or revoke a license, disqualify an individual from receiving a license, or deny

an individual the opportunity to take a licensing examination based on the individual's conviction of an offense that does not directly related to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applied for the license. HB 1342 also requires a licensing authority to notify the individual in writing if the licensing authority intends to deny them a license or the opportunity to be examined for a license because of the individual's prior conviction of an offense. The notice shall include the reason for the intended denial and allow the individual a chance to submit any relevant information for further consideration by the authority.

SB 37 amended Texas Occupations Code, Chapter 56, Disciplinary Action Against Recipients of Student Financial Assistance Prohibited, particularly Texas Occupations Code, §56.003. The amendment removed language that allowed licensing agencies to deny or take other disciplinary action against license holders or potential license holders who are in default of their student loans.

SB 1217 added Texas Occupations Code, Chapter 53, Consequences of Criminal Convictions, §53.0231. The new section prohibits a licensing authority to consider an arrest that did not result in the individual's conviction or placement on deferred adjudication community supervision in the denial of a new or renewal license. The agency already complies with intent of SB 1217 by not considering dismissals that did not result in a conviction or deferred adjudication. Therefore, only language based on

SB 1217 is proposed to clarify the intent.

Section by Section Discussion

Administrative Amendments

The commission proposes administrative amendments to multiple sections of Chapter 30. The proposed rulemaking includes various stylistic, non-substantive amendments to update rule language to current *Texas Register* style and format requirements and to correct section references in Chapter 30 to other chapters. Administrative amendments are proposed to ensure the consistency, clarity, and accuracy of the information within Chapter 30 (i.e., §30.402). The proposed administrative amendments include but are not limited to: correcting minor grammatical, spelling, and typographical errors; standardizing the use of acronyms; and updating section references.

§30.20, Examinations

The commission proposes to amend §30.20(k) to remove paragraph (2) to reflect statutory changes to Texas Occupations Code, §53.0231, Limitation Regarding Consideration of Certain Arrests. The subsequent paragraphs would be re-numbered accordingly. The proposed amendment would remove the individual's conviction of an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applied for the license as grounds on which a licensing authority may suspend or

revoke a license or disqualify an individual from receiving a license. This proposal would implement HB 1342.

The commission proposes §30.20(n) to clarify that the commission may not deny an individual the opportunity to take a licensing exam based on the individual's prior conviction of an offense unless the commission follows the notice requirements of §30.36. This proposal would implement HB 1342.

§30.24, License and Registration Applications for Renewal

The commission proposes §30.24(t) to clarify that the commission may not deny an individual the opportunity to renew a license based on the individual's prior conviction of an offense unless the commission follows the notice requirements of §30.36. This proposal would implement HB 1342.

§30.29, Notification Requirements for Training Providers of Initial Training

The commission proposes new §30.29 to reflect changes to the Texas Occupations Code, §53.152. Proposed §30.29 would require all entities that provide educational or instructional programs that prepare a student for an occupation or vocation that requires a Texas occupational license to inform the student or program participant that their eligibility for an occupational license could be impacted by the student's criminal history. Proposed §30.29 would also provide individuals the ability to petition the agency to seek reimbursement from a training provider if they were not notified

and were subsequently denied the license due to a criminal conviction. Requiring training providers to notify students of their potential ineligibility prevents former offenders from spending unnecessary time and resources on training and educational courses that may not yield a professional pathway for employment. This proposal would implement HB 1508.

Proposed new §30.29(a) would define "Initial training," "Student," and "Training provider" for the purpose of §30.29.

Proposed new §30.29(b) would outline the notification requirements for the training provider. The training provider is required to notify its students that an individual may be ineligible for an occupational license based on their criminal conviction history, the current guidelines, the circumstances under which the executive directory may consider an individual's conviction in the denial of a license, and that the student may request a criminal history evaluation from the agency.

Proposed new §30.29(c) would require each student to sign an acknowledgment that the trainer notified the student as outlined in §30.29(b).

Proposed new §30.29(d) would require the trainer to retain records of the signed acknowledgment.

Proposed new §30.29(e) would allow a student to request the commission to order the training provider to reimburse the student if the student was denied an initial occupational license due to the student's criminal conviction history and the training provider did not provide the notification required in §30.29(b). The student may request reimbursement for the tuition paid to the training provider and the amount of any application or examination fees the student may have paid. This will benefit the student by recovering any unnecessary investments made to obtain a license and by holding the training provider accountable for failing to meet the notification requirement.

Proposed §30.29(f) - (j) would outline the process for a student to pursue reimbursement. The proposed subsections would require a student seeking a refund to submit a written request and supporting documentation to the agency and at the same time allow the training provider to file an objection and provide documentation that they had met the notification requirements and are not liable to refund any fees.

§30.33, License or Registration Denial, Warning, Suspension, or Revocation

The commission proposes to delete §30.33(a)(2)(G) to reflect changes to Texas Occupations Code, Chapter 56, Disciplinary Action Against Recipients of Student Financial Assistance Prohibited and Chapter 57, Requirements for Licensing Agencies. This proposed amendment eliminates the agency's authority to deny, revoke, suspend, or fail to renew a professional license due to the licensee or applicant being in default

on a student loan. License holders who are in default on their student loan repayment would no longer be at risk of losing their occupational license or facing other disciplinary action in the event they are unable to pay back their student loans. This proposal would implement SB 37.

The commission proposes to delete §30.33(h)(1)(B) to reflect changes to Texas Occupations Code, §53.0231. The subsequent subparagraphs would be re-lettered accordingly. Based on the amendment, the commission may not deny an individual the opportunity to take a licensing examination based on the individual's conviction of an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license. This proposal would implement HB 1342.

The commission proposes §30.33(k) to clarify that the commission may not deny an initial license or renewal based on the individual's prior conviction of an offense unless the commission follows the notice requirements of §30.36. This proposal would implement HB 1342.

§30.34, Factors in Determining Whether Conviction Relates to Occupation

The commission proposes amendments to §30.34 to reflect changes to Texas Occupations Code, §53.022, Factors in Determining Whether Conviction Relates to Occupation.

The commission proposes to amend the title of §30.34 to add the words "Directly" and "Licensed." This will help clarify that the factors used are to determine whether a criminal conviction is "directly" related to the duties and responsibilities of the "licensed" occupation. Additionally, the commission proposes the articles "a" and "the" in the title for clarity purposes. This proposal would implement HB 1342.

The commission proposes to amend §30.34(a) to reflect changes to Texas Occupations Code, §53.022. The proposed amendment would specify that the criminal conviction must directly relate to the duties and responsibilities of a licensed occupation and removes the relationship of the crime to the "fitness" required to perform the duties of the licensed occupation as a factor in determining whether a criminal conviction relates to the duties and responsibilities of a licensed occupation. This proposal would implement HB 1342.

The commission proposes §30.34(a)(5) to require the commission to consider any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation in determining whether a criminal conviction directly relates to the occupation. This proposal would implement HB 1342.

The commission proposes §30.34(b)(6) to require the commission to consider an individual's compliance with any conditions of community supervision, parole, or

mandatory supervision in considering if a criminal conviction directly relates to the duties and responsibilities of the licensed occupation. The subsequent paragraphs would be re-numbered accordingly. This proposal would implement HB 1342.

The commission proposes to amend re-numbered §30.34(b)(7) to remove the more prescriptive requirement that other evidence of an individual's fitness may only include letters of recommendation from specific entities or individuals. This proposed amendment would provide applicants more flexibility to provide recommendations from sources other than those previously specified in the rule. This proposal would implement HB 1342.

The commission proposes to delete §30.34(d). The applicant is no longer required to submit proof that the applicant has maintained a record of steady employment and good conduct. This proposal would implement HB 1342.

While the agency has never considered straight dismissals as part of a criminal history evaluation screening, the commission proposes §30.34(d) to specifically prohibit the use of an arrest that did not result in the individual's conviction or placement on deferred adjudication community supervision in the commission's determination of whether a criminal conviction directly relates to the licensed occupation. As false arrests may happen, this proposed amendment would clarify that arrests that end up being quickly dismissed are not considered as part of a criminal history review. This

proposal would implement SB 1217.

§30.36, Notice

The commission proposes to amend §30.36 to reflect changes to Texas Occupations Code, §53.051, Factors in Determining Whether Conviction Directly Relates to Occupation and new §53.023, Additional Factors for Licensing Authority to Consider After Determining the Conviction Directly Relates to the Occupation. The proposed amendment to §30.36 would require the commission to send two notifications, the notice of intent to deny and the final decision to deny, to an individual if the commission decides to proceed with suspension or revocation of a license or deny the opportunity to be examined for a license because of the individual's criminal history. The amendment would also allow the individual up to 30 days to submit any relevant information to the agency for further consideration in response to the notice of intent to deny. The proposal would implement HB 1342.

Proposed §30.36(a)(1) would require that the notice of intent to deny include any factors that were used to determine whether the conviction directly relates to the occupation and list any additional factors the licensing authority considered to determine that the conviction directly relates to the occupation that served as the basis for the suspension, revocation, denial, or disqualification.

Proposed §30.36(a)(2) would require that the notice of intent to deny, suspend, or

revoke must notify the applicant or licensee that it is the individual's responsibility to obtain and provide the agency with any additional supporting information documenting sufficient rehabilitative efforts for further consideration by the agency in the denial process.

Proposed §30.36(a)(3) would allow the individual up to 30 days to submit any relevant information to the agency for further consideration.

Proposed §30.36(b) would require the executive director to notify the individual in writing of the final decision to suspend or revoke a license or deny the individual a license or the opportunity to be examined for the license.

Proposed §30.36(b)(1) would require the notification to state that the individual is disqualified from receiving the license or being examined for the license because of the individual's prior conviction of an offense specified in the notice of intent and must include any factors considered under §30.34 that served as the basis for the suspension, revocation, denial, or disqualification.

Proposed §30.36(b)(2) would require the final notice to suspend or revoke a license to notify the individual of the review procedure provided by §30.35 (Guidelines). Section 30.36(b)(2) would replace existing §30.36(2).

Proposed §30.36(b)(3) would require the final notice to suspend or revoke a license to include the earliest date that the individual may appeal the action of the commission. Section 30.36(b)(3) would replace existing §30.36(3).

§30.81, Purpose and Applicability

The commission proposes to amend §30.81(d) to remove language that specifically refers to the Texas Board of Plumbing Examiners in reference to the Texas Occupations Code chapter governing plumbing licenses. This is to prevent the need to revise the rules should any changes be made to the agency designated to administer Texas Occupations Code, Chapter 1301 during a future legislative session.

§30.95, Exemptions

The commission proposes to amend §30.95 to address language that specifically references the Texas State Board of Plumbing Examiners. The proposed changes would remove specific references to the Texas State Board of Plumbing Examiners and replace them with more generic language to avoid needing to amend the rules should the licensing of plumbers move from the Texas Board of Plumbing Examiners to an alternate agency in a future legislative session.

§30.129, Exemptions

The commission proposes to amend §30.129(a)(1) to address language that specifically references the Texas State Board of Plumbing Examiners. The proposed changes would

remove specific references to the Texas State Board of Plumbing Examiners and replace them with more generic language to avoid needing to amend the rules should the licensing of plumbers move from the Texas State Board of Plumbing Examiners to an alternate agency in a future legislative session.

Fiscal Note: Costs to State and Local Government

Jené Bearse, analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency.

This rulemaking addresses necessary changes in order to implement new laws affecting Chapter 30. Specifically, TCEQ may no longer suspend or revoke a license, disqualify an individual from receiving a license, or deny the opportunity to take a licensing exam based on a previous conviction that is not directly related to the duties of a licensee and was committed less than five years before the application date. This could potentially increase the number of applicants and the costs associated with processing the applications. However, at this time, the costs are not anticipated to be significant.

No fiscal implications are anticipated for units of local government as a result of administration or enforcement of the proposed rules.

Public Benefits and Costs

Ms. Bears determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with state law. The proposed rulemaking is not anticipated to result in significant fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does expand an existing regulation to allow certain individuals to take licensing exams when they were previously disqualified, and this may increase the number of individuals subject to the regulation's applicability. During the first five years, the proposed rulemaking should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the

proposed rules are not subject to that statute because the proposed rules do not meet the criteria for a "Major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The purpose of the proposed rules is to implement HB 1508 (85th Texas Legislature) and HB 1342, SB 37, 1200, and 1217 (86th Texas Legislature.)

The specific intent of the proposed rules is: to ensure consistency between the rules and their applicable statutes as amended by recent legislation; to remove language giving the agency authority to suspend or revoke a license, disqualify an individual from receiving a license, or deny an individual the opportunity to take a licensing examination based on the individual's conviction of an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license; to address the agency's procedure for providing written notice to individuals for whom the agency intends to deny a license or the opportunity to be examined for a license because of the individual's prior conviction of an offense; to address the procedure for individuals to petition the agency to seek reimbursement from a training provider if they were not notified that they may be ineligible for an initial occupational license

due to their criminal history and were subsequently denied the license due to a criminal conviction; and to remove language allowing the agency to deny or take other disciplinary action against license holders or potential license holders who are in default of their student loans.

The proposed rules would clarify and update the agency's licensing and registration programs and would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the proposed rules would only modify existing licensing and registration requirements. Therefore, the proposed rules do not meet the definition of a "Major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3).

Furthermore, even if the proposed rules did meet the definition of a major environmental rule, the proposed rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicability requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies to rules proposed by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to

implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these requirements: there are no federal standards for the occupational licenses and registrations program administered by the commission; the rules do not exceed an express requirement of state law; there is no delegation agreement that would be exceeded by the rules; and the proposed rules would implement requirements of HB 1508 (85th Texas Legislature), and HB 1342, SB 37, and SB 1217 (86th Texas Legislature).

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these proposed rules pursuant to Texas Government Code, §2007.043. The specific purpose of these proposed rules is: to ensure consistency between the rules and their applicable statutes as amended by recent legislation; to remove language giving the agency authority to suspend or revoke a license, disqualify an individual from receiving a license, or deny an individual the opportunity to take a licensing examination based on the individual's conviction of an offense that does not directly relate to the duties and

responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license; to address the agency's procedure for providing written notice to individuals for whom the agency intends to deny a license or the opportunity to be examined for a license because of the individual's prior conviction of an offense; to address the procedure for individuals to petition the agency to seek reimbursement from a training provider if they were not notified that they may be ineligible for an initial occupational license due to their criminal history and were subsequently denied the license due to a criminal conviction; and to remove language allowing the agency to deny or take other disciplinary action against license holders or potential license holders who are in default of their student loans.

The proposed regulations do not affect a landowner's rights in private real property because this proposed rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rules do not constitute a taking because they would not burden private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act

implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Submittal of Comments

Written comments may be submitted to Ms. Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2018-024-030-WS. The comment period closes on August 31, 2020. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Rebecca Moore, Registration and Reporting Section, (512) 239-2463.

**SUBCHAPTER A: ADMINISTRATION OF OCCUPATIONAL LICENSES AND
REGISTRATIONS**

§§30.20, 30.24, 30.29, 30.33, 30.34, 30.36

Statutory Authority

The amended and new sections are proposed under: Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, concerning General Policy, which provides the commission authority to establish and approve all general policy of the commission by rule; TWC, §37.002, concerning Rules, which provides the commission authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.005, concerning Issuance and Denial of Licenses and Registration, which requires the commission to establish requirements and uniform procedures for issuing licenses and registrations; TWC, §37.006, concerning Renewal of License or Registration, which requires the commission to establish requirements and uniform procedures for renewing licenses and registrations; Texas Occupations Code, §53.021, concerning Authority to Revoke, Suspend, or Deny License, which allows the commission to revoke, suspend, or deny a

license to a person who has been convicted of certain offenses; Texas Occupations Code, §53.022, concerning Factors in Determining Whether Conviction Directly Relates to Occupation, which provides the factors the commission shall consider in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation; Texas Occupations Code, §53.023, concerning Additional Factors for Licensing Authority to Consider After Determining Conviction Directly Relates to Occupation, which provides additional factors the commission shall consider if it determines that an individual's criminal conviction directly relates to the duties and responsibilities of a licensed occupation; Texas Occupations Code, §53.0231, concerning Notice of Pending Denial of License, which provides the procedure for the commission's written notice to individuals for whom the commission intends to deny a license or the opportunity to be examined for a license because of the individual's prior conviction of an offense; Texas Occupations Code, §53.051, concerning Notice, which requires to the commission to provide to an individual written notice of the reason for suspension, revocation, denial, or disqualification of a license based on the individual's prior criminal conviction; Texas Occupations Code, §53.152, concerning Notice by Entities Providing Educational Programs, which gives individuals the right to petition the commission to seek reimbursement from a training provider if they were not notified that they may be ineligible for an initial occupational license due to their criminal history and were subsequently denied the license due to a criminal conviction; and Texas Occupations Code, §53.153, concerning Refund and Ordered Payments, which requires the

commission to order a training provider to reimburse individuals the amount of application and examination fees to the commission if the commission determines a training provider did not notify individuals that they may be ineligible for an initial occupational license due to criminal history and individuals were subsequently denied the license due to a criminal conviction.

The proposed amended and new sections implement House Bill (HB) 1508, 85th Texas Legislature, 2017, which added Texas Occupations Code, §§53.151, 53.152, and 53.153; HB 1342, 86th Texas Legislature, 2019, which amended Texas Occupations Code, §§51.355, 53.021(a), 53.022, 53.023, 53.051, and 53.104(b) and added Texas Occupations Code, §51.357 51.358, 51.4041(a-1), 53.003, 53.0231, and 53.026; Senate Bill (SB) 37, 86th Texas Legislature, 2019, which amended Texas Occupations Code, Chapter 56, Texas Finance Code, §157.015(f) and (g) and §180.055(d), and Texas Government Code, §466.155(a) and (g); and SB 1217, 86th Texas Legislature, 2019, which added Texas Occupations Code, §53.0231.

§30.20. Examinations.

(a) The executive director shall prescribe the content of licensing examinations. Examinations shall be based on laws, rules, job duties, and standards relating to the particular license. The contents of any examination required for licensure under this chapter are confidential and examinees may not share them with anyone.

(b) Examinations shall be graded and the results forwarded to the applicant no later than 45 days after the examination date. The minimum passing score for an examination is 70%.

(c) An individual with an approved application who fails an examination may not repeat an examination until receiving notification of examination results for that particular examination.

(d) The application becomes void either after 365 days from date of application or failing the same examination four times, whichever occurs first. If an application becomes void, a new fee and a new application must be submitted before the applicant may take the same examination again.

(e) Any scores for repeat examinations taken after an application becomes void will not be applied to the issuance of the license.

(f) Any qualified applicant with a physical, mental, or developmental disability may request reasonable accommodations to take an examination.

(g) Examinations shall be given at places and times approved by the executive director.

(h) Examinees must comply with all written and verbal instructions of the proctor and shall not:

(1) bring any unauthorized written material, in either printed or electronic formats, into the examination room;

(2) bring any electronic devices, including any device with a camera, into the examination room;

(3) share, copy, or in any way reproduce any part of the examination;

(4) engage in any deceptive or fraudulent act; or

(5) solicit, encourage, direct, assist, or aid another person to violate any provision of this section or compromise the confidentiality of the examination.

(i) The executive director shall provide an analysis of an examination when requested in writing by the applicant. The executive director shall ensure that an examination analysis does not compromise the fair and impartial administration of future examinations.

(j) An individual who wishes to observe a religious holy day on which the individual's religious beliefs prevent the individual from taking an examination scheduled by the agency on that religious holy day shall be allowed to take the examination on an alternate date.

(k) The executive director may deny an individual the opportunity to take a licensing examination on the grounds that the individual has been convicted of an offense, other than an offense punishable as a Class C misdemeanor, that:

(1) directly relates to the duties and responsibilities of the licensed occupation;

[(2) does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license;]

(2) [(3)] is an offense listed in Texas Code of Criminal Procedure, Article 42.12, Section 3g; or

(3) [(4)] is a sexually violent offense, as defined by Texas Code of Criminal Procedure, Article 62.001.

(l) The executive director may deny an individual the opportunity to take a licensing examination on the grounds that:

(1) the individual was charged with:

(A) any offense described by Texas Code of Criminal Procedure, Article 62.001(5); or

(B) an offense other than an offense described by subparagraph (A) of this paragraph if:

(i) the individual has not completed the period of supervision or the individual completed the period of supervision less than five years before the date the individual applied for the license; or

(ii) a conviction for the offense would make the individual ineligible for the license by operation of law; and

(2) after consideration of the factors described by Texas Occupations Code, §§53.021(d), 53.022, and 53.023(a), the executive director determines that:

(A) the individual may pose a continued threat to public safety; or

(B) employment of the individual in the licensed occupation would create a situation in which the individual has an opportunity to repeat the prohibited conduct.

(m) After notice and opportunity for a hearing, the commission may deny or revoke any license or registration held by a person who violates any of the provisions of this section. The commission may file a criminal complaint against any individual who removes or attempts to remove any portion of the examination, reproduces without permission any part of the examination, or who engages in any fraudulent act relating to the examination process.

(n) The commission shall follow the notification requirements in §30.36 of this title (relating to Notice) prior to denying an individual the opportunity to take a licensing examination based on the individual's prior conviction of an offense.

§30.24. License and Registration Applications for Renewal.

(a) A license or registration may not be renewed if it has been:

(1) expired for more than 30 days and an application has not been received by the executive director or postmarked within 30 days after the expiration date of the license or registration;

(2) revoked; or

(3) replaced by a higher class of license.

(b) Applications for renewal must be made on a standard form provided by the executive director.

(1) The executive director shall mail a renewal notification at least 60 days before the license or registration expires to the most recent address provided to the executive director. If a person does not receive a renewal notification, the person is not relieved of the responsibility to timely submit a renewal application.

(2) The person is responsible for ensuring that the completed renewal application, the renewal fee, and other required information are submitted to the executive director by the expiration date of the license or registration.

(c) All statements, qualifications, and attachments provided by the applicant that relate to a renewal application shall be true, accurate, complete, and contain no misrepresentation or falsification.

(d) Approved training to renew a license must be successfully completed after the issuance date and before the expiration date of the current license. Any training credits completed in excess of the amount required for the renewal period shall not be carried over to the next renewal period.

(e) An individual who holds a license prescribed by Texas Water Code, §26.0301, or Texas Health and Safety Code, §341.033 or §341.034, specifically the holder of a Class A or Class B public water system operator or Class A or B wastewater treatment facility operator license may certify compliance with continuing education requirements prior to or at the time the license is renewed by submitting a continuing education certification form available from the executive director.

(f) The executive director may renew a license or registration if the application is received by the executive director or is postmarked within 30 days after the expiration date of the license or registration, and the person meets the requirements for renewal by the expiration date of the license or registration and pays all appropriate fees. This subsection does not extend the validity period of the license or registration nor grant the person authorization to perform duties requiring a license or registration. This

subsection only allows an additional 30 days after the expiration of the license or registration for the person to submit the renewal application, any supporting documentation, and appropriate fees.

(g) An individual whose license renewal application is not received by the executive director or is not postmarked within 30 days after the license expiration date may not renew the license and must meet the current education, training, and experience requirements, submit a new application with the appropriate fee, and pass the examination. A person whose registration renewal application is not received by the executive director or is not postmarked within 30 days after the expiration date may not renew the registration and must submit a new application with the appropriate fee and meet all applicable requirements for a new registration.

(h) Persons failing to renew their license or registration in a timely manner due to serving as a military service member may renew their license within two years of returning from active duty by submitting the following:

(1) a completed renewal application;

(2) a copy of the military orders substantiating the military service during the time the license expired; and

(3) the applicable license renewal fee.

(i) For good cause the executive director may extend the two years period for a military service member seeking to renew their license. Good cause may include, but is not limited to, hospitalization or injury to the licensee.

(j) Completion of the required continuing education will be waived for the renewal cycle for military service members outside of this state who were unable to complete the requirements.

(k) These procedures apply only to military service members who are outside this state and not to military contractors.

(l) All licensees must notify the executive director of any change in the previously submitted application information within ten days from the date the change occurs.

(m) All registration holders must notify the executive director of any change in the previously submitted application information within ten days after the month in which the change occurs.

(n) Licenses and registrations that have renewal cycles in transition shall follow the renewal requirements in the applicable subchapter.

(o) The executive director shall determine whether an applicant meets the renewal requirements of this subchapter. If all requirements have been met, the executive director shall renew the license or registration.

(p) The license or registration shall be valid for the term specified.

(q) If the application does not meet the requirements, the executive director shall notify the applicant in writing of the deficiencies.

(r) All deficiencies must be corrected within 30 days of date printed on the notification, or the renewal application shall be considered void after the license expiration date.

(s) A person whose license or registration has expired shall not engage in activities that require a license or registration until the license or registration is renewed or a new license or registration has been obtained.

(t) The commission shall follow the notification requirements in §30.36 of this title (relating to Notice) prior to denying an individual the opportunity to renew a license based on the individual's prior conviction of an offense.

§30.29. Notification Requirements for Training Providers of Initial Training.

(a) Definitions. The following terms, when used in this section, shall have the following meaning:

(1) Initial training--Training, required by rule, to obtain an initial occupational license identified in Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers; Customer Service Inspectors; Landscape Irrigators, Irrigation Technicians and Irrigation Inspectors; Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists; Municipal Solid Waste Facility Supervisors; On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators; Water Treatment Specialists; Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration; Wastewater Operators and Operations Companies; Public Water System Operators and Operations Companies; Visible Emissions Evaluator Training and Certification).

(2) Student--An individual who is enrolled in an educational or instructional program that prepares the individual for an initial occupational license.

(3) Training provider--An administrative entity or individual that provides initial training.

(b) A training provider shall notify its students of:

(1) the potential ineligibility of an individual who has been convicted of an offense for issuance of an occupational license by the executive director upon completion by the individual of the initial training;

(2) the current guidelines adopted by the executive director;

(3) the circumstances described in §30.33 of this title (relating to License or Registration Denial, Warning, Suspension, or Revocation) under which the executive director may consider an individual to have been convicted of an offense, regardless of whether the proceedings were dismissed and the individual was discharged, for the purpose of denying, suspending, or revoking the license; and

(4) the right of an individual to request a criminal history evaluation letter from the agency under Texas Occupations Code, §53.102 as described in §30.13 of this title (relating to Eligibility of Certain Applicants for Occupational Licenses or Registrations).

(c) A training provider shall require each student to sign an acknowledgement that the training provider notified the student of the information described in subsection (b) of this section. This acknowledgement may be provided in an electronic form.

(d) A training provider shall retain records of the signed acknowledgment described in subsection (c) of this section for at least five years after the student confirms receipt of the information described in subsection (b) of this section.

(e) If the student's application for an initial occupational license is denied due to the student's criminal conviction history, and the training provider failed to provide the student the information described in subsection (b) of this section, the student may request that the commission order the training provider to:

(1) refund the student the amount of tuition paid to the training provider;

and

(2) pay the student an amount equal to the total of:

(A) the amount of any application fees paid by the student to the agency for the occupational license which the student was denied due to the student's conviction criminal history; and

(B) the amount of any examination fees paid by the student to the agency or an examination provider approved by the executive director for the occupational license which the student was denied due to the student's criminal conviction history.

(f) To be eligible for reimbursement pursuant to subsection (e) of this section, the student must submit a written request for recovery of costs to the Office of the Chief Clerk, Texas Commission on Environmental Quality, Mail Code, 105, P.O. Box 13087, Austin, Texas 78711-3087 and the training provider within:

(1) 60 days after the date the executive director mails the final notice of denial of the student's application for an initial occupational license; or

(2) if the final decision is contested, within 30 days of the final commission decision to deny the license, whichever is later.

(g) A student seeking reimbursement pursuant to subsection (e) of this section must provide documentation of the amount of tuition, application fees, and

examination fees that were incurred by the student.

(h) A training provider may file a response to a student's request for reimbursement with the chief clerk within 30 days after the delivery of the student's written request for reimbursement.

(i) After the deadline for the training provider to file a response to a student's request, the commission may consider the student's request at a commission meeting.

(j) The chief clerk shall mail notice to the student, training provider, executive director, and public interest counsel at least 30 days before the first meeting at which the commission considers the student's request for reimbursement.

§30.33. License or Registration Denial, Warning, Suspension, or Revocation.

(a) The executive director may deny an initial or renewal application for the following reasons.

(1) Insufficiency. The executive director shall notify the applicant of the executive director's intent to deny the application and advise the applicant of the opportunity to file a motion to overturn the executive director's decision under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision). The

executive director may determine that an application is insufficient for the following reasons:

(A) failing to meet the licensing or registration requirements of this chapter; or

(B) if an out-of-state licensing program does not have requirements substantially equivalent to those of this chapter.

(2) Cause. After notice and opportunity for a hearing, the commission may deny an application for a license or registration by an applicant who:

(A) provides fraudulent information or falsifies the application;

(B) has engaged in fraud or deceit in obtaining or applying for a license or registration;

(C) has demonstrated gross negligence, incompetence, or misconduct in the performance of activities authorized by a license or registration;

(D) made an intentional misstatement or misrepresentation of fact or information required to be maintained or submitted to the commission by the applicant or by the license or registration holder;

(E) failed to keep and transmit records as required by a statute within the commission's jurisdiction or a rule adopted under such a statute; or

(F) at the time the application is submitted, is indebted to the state for a fee, penalty, or tax imposed by a statute within the commission's jurisdiction or a rule adopted under such a statute.]; or]

[(G) is in default on loans guaranteed by Texas Guaranteed Student Loan Corporation (TGSLC) (the executive director shall proceed as described in Texas Education Code, Chapter 57) if identified by TGSLC and the application is for a renewal license or registration.]

(b) If an individual causes, contributes to, or allows a violation of this chapter, the executive director may issue a warning letter. The letter shall be placed in the individual's permanent file maintained by the executive director. This letter shall be a warning that further violations or offenses by the individual may be grounds for suspension, revocation, enforcement action, or some combination. A warning is not a prerequisite for initiation of suspension, revocation, or enforcement proceedings.

(c) After notice and hearing, the commission may suspend or revoke a license, certificate, or registration on any of the grounds contained in Texas Water Code, §7.303(b).

(d) After notice and hearing a license or registration may be suspended for a period of up to one year, depending upon the seriousness of the violations. A license or registration shall be revoked after notice and hearing upon a second suspension.

(e) The commission may revoke a license or registration after notice and hearing for a designated term or permanently. If a license or registration is revoked a second time, the revocation shall be permanent.

(f) The following procedures for renewal apply to individuals that have had their license or registration suspended.

(1) If a license or registration expiration date falls within the suspension period, an individual may renew the license or registration during the suspension period according to §30.24 of this title (relating to License and Registration Applications for Renewal) and the applicable subchapters of this chapter.

(2) A license or registration suspended in accordance with subsection (j) of this section may not be renewed during the suspension period. The license or registration may only be renewed if the court or the Title IV-D agency renders an order vacating or staying an order suspending the license or registration and the license or registration has not expired during the suspension period.

(3) After the suspension period has ended, the license or registration shall be automatically reinstated unless the individual failed to renew the license or registration during the suspension period.

(g) Individuals that have had their license or registration revoked shall not have their license or registration reinstated after the revocation period. After the revocation period has ended, an individual may apply for a new license or registration according to this chapter.

(h) Criminal Conviction.

(1) After notice and hearing, the commission may deny, suspend, or revoke a license on the grounds that the individual has been convicted of an offense, other than a Class C misdemeanor that:

(A) directly relates to the duties and responsibilities of the licensed occupation;

[(B) does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license;]

(B) [(C)] is listed in Texas Code of Criminal Procedure, Article 42.12, Section 3g; or

(C) [(D)] is a sexually violent offense, as defined by Texas Code of Criminal Procedure, Article 62.001.

(2) The commission shall revoke the license or registration upon an individual's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(3) Prohibited Employment.

(A) Individuals subject to registration under the Texas Code of Criminal Procedure, Chapter 62 because of a reportable conviction or adjudication for which an affirmative finding is entered under Texas Code of Criminal Procedure,

Article 42.015(b) or Section 5(e)(2), Article 45.12, and licensed after September 1, 2013, may not, for compensation, provide or offer to provide any type of service in the residence of another person unless the provision of service will be supervised.

(B) For purposes of this subsection:

(i) "Residence" means a structure primarily used as a permanent dwelling and land that is contiguous to that permanent dwelling.

(ii) "Supervision" means direct, continuous visual observation of the individual at all times.

(4) Except as provided by paragraph (5) of this subsection, notwithstanding any other law, the executive director may not consider an individual to have been convicted of an offense for purposes of this section if, regardless of the statutory authorization:

(A) the individual entered a plea of guilty or *nolo contendere*;

(B) the judge deferred further proceedings without entering an adjudication of guilt and placed the individual under the supervision of the court or an officer under the supervision of the court; and

(C) at the end of the period of supervision, the judge dismissed the proceedings and discharged the individual.

(5) The executive director may consider an individual to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the individual was discharged as described by paragraph (4) of this subsection if:

(A) the individual was charged with:

(i) any offense described by Texas Code of Criminal Procedure, Article 62.001(5); or

(ii) an offense other than an offense described by clause (i) of this subparagraph if:

(I) the individual has not completed the period of supervision or the individual completed the period of supervision less than five years before the date the individual applied for the license; or

(II) a conviction for the offense would make the individual ineligible for the license by operation of law; and

(B) after consideration of the factors described by Texas Occupations Code, §53.022 and §53.023(a), the executive director determines that:

(i) the individual may pose a continued threat to public safety; or

(ii) employment of the individual in the licensed occupation would create a situation in which the individual has an opportunity to repeat the prohibited conduct.

(i) After notice and hearing, the commission may revoke a maintenance provider registration on any of the grounds in Texas Health and Safety Code, §366.0515(m).

(j) Failure to pay child support.

(1) The commission may suspend a license or registration if a licensed or registered individual has been identified by the Office of the Attorney General as being delinquent on child support payments (upon receipt of a final order suspending a

license or registration, the executive director shall proceed as described in Texas Family Code, Chapter 232).

(2) The commission shall refuse to accept an application for:

(A) issuance of a new license or registration to an individual; or

(B) renewal of an existing license or registration to an individual if:

(i) the individual has failed to pay child support for six months or more;

(ii) the commission is notified by a child support agency, as defined by Texas Family Code, §101.004; and

(iii) the child support agency requests the commission to refuse to accept the application.

(3) The commission shall not accept an application for a license that was refused under paragraph (2) of this subsection until notified by the child support agency that the individual has:

(A) paid all child support arrearages;

(B) made an immediate payment of not less than \$200 toward child support arrearages owed and established with the child support agency a satisfactory repayment schedule for the remainder or is in compliance with a court order for payment of the arrearages;

(C) been granted an exemption from this subsection as part of a court-supervised plan to improve the individual's earnings and child support payments; or

(D) successfully contested the child support agency's request for the commission's denial of issuance or renewal of the license or registration.

(4) The commission may charge a fee in an amount sufficient to recover the administrative costs incurred for denying or suspending that license.

(5) For purposes of this subsection, the suspension period for a license or registration shall be until:

(A) the court or the Title IV-D agency renders an order vacating or staying an order suspending the license or registration; or

(B) the expiration of the license or registration.

(k) The commission shall follow the notification requirements in §30.36 of this title (relating to Notice) prior to the denial of an initial license, the revocation of a license, or renewal of a license based on the individual's prior conviction of an offense.

§30.34. Factors in Determining Whether a Conviction Directly Relates to the Licensed Occupation.

(a) In determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed [an] occupation, the commission shall consider each of the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the individual previously had been involved; [and]

(4) the relationship of the crime to the ability, or capacity[, or fitness] required to perform the duties and discharge the responsibilities of the licensed occupation; and [.]

(5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(b) If the commission determines under subsection (a) of this section, that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, [In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of an individual who has been convicted of a crime,] the executive director shall consider, in addition to the factors listed in subsection (a) of this section:

(1) the extent and nature of the individual's past criminal activity;

(2) the age of the individual when the crime was committed;

(3) the amount of time that has elapsed since the individual's last criminal activity;

(4) the conduct and work activity of the individual before and after the criminal activity;

(5) evidence of the individual's rehabilitation or rehabilitative effort while incarcerated or after release; [and]

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) [(6)] other evidence of the individual's ability to perform the duties and responsibilities of the occupation [fitness], including letters of recommendation.
[from:]

[(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the individual;]

[(B) the sheriff or chief of police in the community where the individual resides; and]

[(C) any other individual in contact with the convicted individual.]

(c) The applicant has the responsibility, to the extent possible, to obtain and provide to the executive director the documentation described [recommendation of the prosecution, law enforcement, and correctional authorities as required] by subsection (b)(7) [(b)(6)] of this section.

(d) In determining whether a criminal conviction directly relates to the licensed occupation, the commission may not consider an arrest that did not result in the person's conviction or placement on deferred adjudication community supervision. [In addition to fulfilling the requirements of subsection (a)(2) of this section, the applicant shall furnish proof in the form required by the executive director that the applicant has:]

[(1) maintained a record of steady employment;]

[(2) supported the applicant's dependents;]

[(3) maintained a record of good conduct; and]

[(4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.]

§30.36. Notice.

(a) The executive director shall notify the individual in writing of the intent to suspend or revoke a license or deny the individual a license or the opportunity to be examined for a license (notice of intent) because of the individual's prior conviction of an offense [a crime and the relationship of the crime to the license]. The notice of intent [notification] shall [include, but not be limited to the]:

(1) include the reason for the suspension, revocation, denial, or disqualification, including any factor considered under §30.34 of this title (relating to Factors in Determining Whether a Conviction Directly Relates to the Licensed Occupation) that served as the basis for the suspension, revocation, denial, or disqualification;

(2) notify the individual that it is the individual's responsibility to obtain and provide to the licensing authority evidence regarding the factors listed in §30.34(b) of this title;

(3) allow the individual 30 days to submit any relevant information to the licensing authority for further consideration.

(b) The executive director shall notify the individual in writing of the final decision to suspend or revoke a license or deny the individual a license or the opportunity to be examined for the license (final notice) because of the individual's prior conviction of the offense(s) specified in the notice of intent. The final notice shall:

(1) include the reason for the suspension, revocation, denial, or disqualification, including any factor considered under §30.34 of this title that served as the basis for the suspension, revocation, denial, or disqualification;

(2) notify the individual of the review procedure provided by §30.35 of this title (relating to Guidelines); and

(3) include the deadline by which [earliest date that] the individual may appeal the action of the commission.

SUBCHAPTER C: CUSTOMER SERVICE INSPECTORS

§30.81, §30.95

Statutory Authority

The amendments are proposed under: Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, concerning General Policy, which provides the commission authority to establish and approve all general policy of the commission by rule; TWC, §37.002, concerning Rules, which provides the commission authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.005, concerning Issuance and Denial of Licenses and Registration, which requires the commission to establish requirements and uniform procedures for issuing licenses and registrations; and TWC, §37.006, concerning Renewal of License or Registration, which requires the commission to establish requirements and uniform procedures for renewing licenses and registrations.

The proposed amendments implement Texas Occupations Code, §1301.255 and

§1301.551.

§30.81. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses to individuals who conduct and certify customer service inspections.

(b) An individual who performs customer service inspections must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

(c) An endorsement for customer service inspections shall expire when an individual renews a water operators license or the license expires. To obtain a customer service inspector license, an individual holding an endorsement must submit a new application with the appropriate fee.

(d) A licensed customer service inspector shall not perform plumbing inspections required under Texas Occupations Code, Chapter 1301 [§1301.255 and §1301.551].

§30.95. Exemptions.

Plumbing inspectors and water supply protection specialists licensed by a plumbing licensing authority in the state of Texas [the State Board of Plumbing Examiners] are exempt from these requirements.

**SUBCHAPTER D: LANDSCAPE IRRIGATORS, IRRIGATION TECHNICIANS AND
IRRIGATION INSPECTORS**

§30.129

Statutory Authority

The amendment is proposed under: Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, concerning General Policy, which provides the commission authority to establish and approve all general policy of the commission by rule; TWC, §37.002, concerning Rules, which provides the commission authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.005, concerning Issuance and Denial of Licenses and Registration, which requires the commission to establish requirements and uniform procedures for issuing licenses and registrations; and TWC, §37.006, concerning Renewal of License or Registration, which requires the commission to establish requirements and uniform procedures for renewing licenses and registrations.

The proposed amendment implements Texas Occupations Code, Chapter 1301.

§30.129. Exemptions.

(a) The licensing requirements of this chapter do not apply to a person who:

(1) is licensed by a plumbing licensing authority in the state of Texas [the Texas State Board of Plumbing Examiners] and is working within the scope provided by the plumbing laws;

(2) is registered or licensed as a professional engineer or architect or landscape architect if the work is related to the pursuit of the profession;

(3) is under the direct supervision of a licensed irrigator and assists in the installation, maintenance, alteration, repair, or service of an irrigation system; or

(4) is an owner of a business that employs a licensed irrigator to supervise the business' sale, design, consultation, installation, maintenance, alteration, repair, and service of irrigation systems. For the purpose of this subchapter, employs means steadily, uniformly, or habitually working in an employer-employee relationship with the intent to earn a livelihood, as opposed to working casually or occasionally.

(b) The licensing requirements of this chapter do not apply to:

(1) irrigation or yard sprinkler work that is performed by a property owner in a building or on premises owned or occupied by the owner as the owner's home;

(2) irrigation or yard sprinkler repair work, other than extension of an existing irrigation or yard sprinkler system or installation of a replacement system that is:

(A) performed by a maintenance person who does not act as an irrigator or engage in yard sprinkler construction or maintenance for the public; and

(B) incidental to and on premises owned by the business in which the person is regularly employed or engaged;

(3) irrigation or yard sprinkler work that is performed:

(A) by a regular employee of a railroad who does not act as an irrigator or engage in yard sprinkler construction or maintenance for the public; and

(B) on the premises or equipment of the railroad;

(4) irrigation and yard sprinkler work that is performed on public property by a person who is regularly employed by a county, city, town, special district, or political subdivision of the state;

(5) irrigation or yard sprinkler work that is performed by a person using a garden hose, hose sprinkler, hose-end product, including soaker hose, or agricultural irrigation system;

(6) an activity that includes a commercial agricultural irrigation system;

(7) irrigation or yard sprinkler work that is performed by an agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, or grader or cultivator of land on land owned by the individual performing the work;

(8) irrigation or yard sprinkler work that is performed by a member of a property owners' association as defined by Texas Property Code, §202.001, on real property owned by the association or in common by the members of the association if the irrigation or yard sprinkler system water real property that is less than 1/2 acre in size and is used for aesthetic or recreational purposes.

(c) A person who is exempt from the license requirements of this subchapter shall comply with the standards established by Chapter 344 of this title (relating to Landscape Irrigation). The term irrigation system does not include a system used on or by an agricultural operation as defined in Texas Agriculture Code, §251.002.

SUBCHAPTER K: PUBLIC WATER SYSTEM OPERATORS AND OPERATIONS

COMPANIES

§30.402

Statutory Authority

The amendment is proposed under: Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, concerning General Policy, which provides the commission authority to establish and approve all general policy of the commission by rule; TWC, §37.002, concerning Rules, which provides the commission authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.005, concerning Issuance and Denial of Licenses and Registration, which requires the commission to establish requirements and uniform procedures for issuing licenses and registrations; and TWC, §37.006, concerning Renewal of License or Registration, which requires the commission to establish requirements and uniform procedures for renewing licenses and registrations.

The amendment implements TWC, §§5.013, 5.102, 5.103, 5.105, 37.002, 37.003, 37.005, and 37.006.

§30.402. Exemptions.

(a) An individual who performs process control duties in production or distribution of drinking water for a transient non-community water system as defined in §290.38 [§290.38(77)] of this title (relating to Definitions), is exempt from the licensing requirements of this subchapter, if the source water for the water system is purchased treated water or groundwater that is not under the direct influence of surface water.

(b) An operator-in-training under the direct supervision of a licensed public water system operator is exempt from the licensing requirements of this subchapter.

(c) A military operator-in-training under the direct supervision of a licensed public water system operator is exempt from the licensing requirements of this subchapter for the purpose of collecting microbiological samples or determining disinfection residuals at military facilities' water distribution systems. The military operator-in-training is not exempt from the licensing requirements of this subchapter for the purpose of performing any other process control duties in the distribution or treatment facilities of a public water system.

(d) An individual who holds a groundwater or surface water license may perform duties relating to the operation and maintenance of drinking water production, purchased water, and water distribution systems and is not required to hold a distribution license.