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AND THE STATE BAR OF TEXAS

# OCCUPATIONAL LICENSES IN TEXAS







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“Occupational Licenses in Texas” was prepared as a public service by the Texas Young Lawyers Association and is distributed by the State Bar of Texas. This publication is intended for educational and informational purposes only. It is designed to provide a brief overview of Texas law as it pertains to occupational licenses and is not intended to replace legal advice from an attorney. If you have specific legal questions, you should seek counsel from an attorney in your area.

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Many occupations and professions in the State of Texas require that the individual or business maintain an occupational license. These licenses are meant to secure the public's safety by ensuring that individuals and businesses providing services to the public have a minimum level of education or training.

This pamphlet is designed to provide a basic introduction to the governmental structure for regulating occupational licenses, the process for obtaining and maintaining occupational licenses, and the potential pitfalls that may cause a person or business to be denied, or lose, a license.

## **Regulation of Occupational Licenses in Texas**

The Texas Department of Licensing and Regulation ("TDLR") is the agency responsible for regulating occupational licenses covering twenty-nine different professions and industries. The statute governing the TDLR is Chapter 51 of the Texas Occupations Code. The TDLR is governed by a commission of seven members who are appointed by the governor for six-year terms. To avoid any conflicts of interest, neither a Commissioner nor his or her spouse is permitted (1) to have an occupational license; (1) to be employed by or manage a business that the TDLR regulates; (3) to own or control more than ten percent of a business that the TDLR regulates; or (4) to work for the TDLR.

## **Occupations and Industries Regulated by the TDLR**

The TDLR regulates businesses, industries, general trades, and occupations that are regulated by the state and assigned to the TDLR by state law passed by the Legislature. The following occupations and industries currently fall under the TDLR's jurisdiction:

- (1) Air Conditioning and Refrigeration

- (2) Architectural Barriers
- (3) Auctioneers
- (4) Barbers
- (5) Boiler Safety
- (6) Combative Sports
- (7) Cosmetologists
- (8) Electricians
- (9) Elevator/Elevator Safety
- (10) For-Profit Legal Services
- (11) Identity Recovery Service Contract Providers
- (12) Industrialized Housing and Buildings
- (13) Court Interpreters
- (14) Loss Damage Waivers
- (15) Personnel Employment Services
- (16) Polygraph Examiners
- (17) Property Tax Consultants
- (18) Property Tax Professionals
- (19) Service Contract Providers
- (20) Staff Leasing Services
- (21) Talent Agencies
- (22) Temporary common Worker Providers
- (23) Tow Truck Operators
- (24) Vehicle Storage Employees
- (25) Used Auto Parts Recyclers
- (26) Vehicle Protection Product Warrantors
- (27) Water Well Drillers and Pump Installers
- (28) Weather Modification

This list does not include all occupations or professions that require a license, such as lawyers, doctors, and dentists. These professions, and several others, are governed by other state agencies and laws. For example, the Texas Medical Board controls licensing of most healthcare-related occupations. Other examples include pharmacists, veterinarians, peace officers, and emergency medical services personnel. This publication will focus primarily on the occupations governed by the TDLR as each of the other boards and agencies have their own rules, policies, and standards that are beyond the scope of this material.

## **Applying for an Occupational License**

An individual or business seeking a license for the first time must complete the TDLR's application form, submit the application fee, and complete all requirements for the particular occupation within 1 year after submitting the application. If the applicant does not complete the licensing requirements before that year expires, then the applicant will have to submit a new application and another application fee. Because each industry or profession has its own application requirements and fees, a potential licensee must contact the TDLR or visit its website at **[www.license.state.tx.us](http://www.license.state.tx.us)** to determine the requirements for a particular license.

## **Renewing an Occupational License**

To maintain a license beyond its initial term, a license holder must apply for renewal. The renewal application and renewal fees must be filed with the TDLR or be postmarked before the current license expires. Otherwise, the applicant will have to pay an additional late-renewal fee. If a license has been expired for fewer than 90 days, then the late fee will be 1.5 times the regular renewal fee. If a license has been expired for more than 90 days but less than 1 year, then the late fee will be twice the regular renewal fee. If the license has been expired for more than 1 year, the license cannot be renewed and the applicant will have to submit a new application.

An individual who has previously obtained an occupational license in Texas and then moved to another state is able to renew his or her Texas license upon returning to the state if he or she (1) was licensed in the other state and working in the profession for at least two years prior to applying to renew the Texas license, and (2) pays a fee equal to two times the normal renewal fee for the license.

The TDLR will send a renewal notice at least 30 days before a license is scheduled to expire. However, the fact that a license holder did not receive the notice does not excuse any of the requirements for renewal. The license holder is responsible for ensuring that all paperwork is submitted, requirements are satisfied, and fees are paid in a timely manner to maintain the license. A license holder who does not complete the renewal requirements before the applicable deadlines will have to reapply for a new license, including payment of all fees and completion of all exams associated with a new license application.

### **Inactive Status**

A license holder can apply for inactive status. The license holder must submit an application for inactive status before the license expires and pay the required fee. When a license is on inactive status, the license holder does not have to complete the continuing education normally required for the license. However, the license holder cannot engage in any activity for which a license is required and cannot employ anyone to perform an activity for which a license is required.

To have the license returned to active status, the license holder must (1) submit the required form and pay the associated fee and (2) provide satisfactory evidence that the license holder has completed the continuing education that would have been required for an active licensee during the period in which the license was on inactive status.

### **Impact of a Criminal Conviction on an Occupational License**

The TDLR may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to receive a license if the person has been convicted of certain crimes, which are listed in Section 53.021(a) of the Texas Occupations Code. Those crimes include

(1) an offense that directly relates to the duties and responsibilities of the licensed occupation; (2) an offense that does not directly relate to the duties and responsibilities of the licensed occupation but was committed fewer than five years before the person applies for the license; (3) an offense for which a person is not eligible for probation or community supervision; or (4) a sexually violent offenses, as defined by Article 62.001 of the Code of Criminal Procedure. The TDLR cannot consider an offense if an applicant successfully completed a court-imposed deferred adjudication of that offense, unless the TDLR determines that (1) the person may pose a continued threat to public safety; or (2) employing the person in the licensed occupation would create a situation in which the person could repeat the prohibited conduct. A person who is incarcerated because of a felony conviction is not eligible to obtain or renew a license from the TDLR.

Depending on the license being sought, an applicant may have to provide information about past criminal convictions. The TDLR will also perform its own criminal background search on each applicant for a new or renewal license. If any relevant convictions or deferred adjudications are disclosed or discovered, the application will be sent to the TDLR Enforcement Division for further review.

A TDLR Enforcement lawyer will review the application. If that lawyer decides that the conviction should not cause the license to be denied, the application will be returned to the TDLR Licensing Division for further processing. If the lawyer determines that the license should be denied because of the conviction, then the lawyer will obtain certified copies of the relevant convictions and related documents and prepare a denial letter. The denial letter will identify the convictions, refer to the laws that require denial, and inform the applicant that he or she can request a hearing to challenge the denial. A TDLR

lawyer will schedule the requested hearing at the earliest possible date and send a notice of the date and time of the hearing to the applicant. The applicant will have an opportunity to be heard by an Administrative Law Judge, who will issue a Proposal for Decision after the hearing. The Commission will review the Proposal for Decision and decide whether to grant or deny the license.

If a past criminal conviction is discovered after an individual has been granted a license, the process for reviewing the conviction works in essentially the same manner as for a new applicant. The primary difference is that instead of a decision to grant or deny the license, the Commission will decide whether to suspend or revoke the license.

The applicant has the responsibility to collect the necessary information from law enforcement authorities and probation or parole officials to support the argument that the license should not be denied because of the conviction. The applicant should provide evidence to the TDLR that he or she has (1) been steadily employed; (2) supported his or her 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.

When determining whether a criminal conviction should be grounds to deny a license, the TDLR will consider: (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 the same type of criminal activity in which the applicant was previously involved; and (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

When determining the applicant's fitness to perform the duties and discharge the responsibil-

ities of the licensed occupation, the TDLR will consider: (1) the extent and nature of the applicant's past criminal activity; (2) the applicant's age when the crime was committed; (3) the amount of time that has elapsed since the applicant's last criminal activity; (4) the applicant's conduct and work history before and after the criminal activity; (5) evidence of the applicant's rehabilitation or rehabilitative effort while imprisoned or after release; and (6) other evidence of the applicant's fitness, including letters of recommendation from prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff or chief of police in the community where the applicant resides; and any other person who has had contact with the applicant.

A person can request a preliminary criminal history evaluation letter from the TDLR even before filing an application. This letter will offer the potential applicant some insight into how the TDLR would evaluate the convictions once an application is filed. The potential applicant must submit a request form, a criminal history questionnaire for each conviction or deferred adjudication, and a \$25 fee. The TDLR will process the request just as if it were evaluating an application. It will issue an evaluation letter with a recommendation as to whether the license should be granted or denied. The recommendation is not final and is not binding on the TDLR or the Commission.

### **Transfer or Sale of an Occupational License**

A license holder may transfer or assign an occupational license to another person. The person who acquires the license may engage in the occupation using that license until the license expires, but only if the person who acquired the license has completed all of the legal requirements found in an original application for that type of license. However, only one person at a time may engage in an occupation under one license. Once a license is transferred, the original license holder

can no longer engage in that occupation under the transferred license.

Texas law recognizes an occupational license as property of the owner that may be sold in the same manner as any other asset or property if the business operating under the license is closed by the legal process. A person who buys a license from an individual under those circumstances may engage in the occupation under the license or transfer it to another person, but the license may be transferred only once in this situation.

## **Complaints and Resolution Process for Occupational Licenses**

Members of the public may submit complaints to the TDLR related to occupations and industries governed by the agency. These complaints are assigned to the Enforcement Division, and each complaint is researched and analyzed to determine whether the TDLR has legal jurisdiction and, if so, whether there is reason to believe a violation may have occurred.

If the TDLR determines that it does not have jurisdiction or that the complaint does not represent a possible violation, it will send a letter to the complaining person explaining the reason why it will not investigate. If the TDLR determines that it has jurisdiction and that a violation may have occurred, it opens an investigation and sends a letter to the complaining party letting them know that the investigation is under way. It also sends a letter to the person against whom the complaint was filed if that person is licensed by the TDLR. An investigator will interview the complaining party, the license holder, and any witnesses. These interviews may be performed by telephone or in person. The investigator will also collect copies of any relevant documents and may inspect the business or location where the alleged violation occurred. The investigator will prepare a report, which is reviewed by a TDLR

Enforcement lawyer who determines how the case should proceed.

If the lawyer determines that a formal enforcement action is improper because there isn't sufficient evidence, the TDLR will close the case by sending a closing letter to the license holder. If the lawyer determines that a formal enforcement action is proper, the TDLR will send a Notice of Alleged Violation ("NOAV"). The NOAV will seek administrative penalties and possible sanctions against the individual's license. A penalty consists of a fine while a sanction includes an action against the individual's license including suspension, probation, written reprimand, or revocation. When determining the penalty or sanction, the TDLR considers: (1) the severity or seriousness of the violation; (2) whether the violation was willful or intentional; (3) whether the individual acted in good faith to avoid or mitigate the violation or to correct the violation after it became apparent; (4) whether the individual has engaged in similar violations in the past; (5) the level of penalty or sanction necessary to deter future violations, both by the individual and by the industry as a whole; and (6) any other matter that justice may require.

The NOAV that is sent to a license holder may include a settlement offer to provide the license holder an opportunity to resolve the situation without further administrative or legal action. If the license holder accepts the settlement offer, the TDLR issues an Agreed Order, which generally requires the license holder to perform certain actions including payment of an administrative fee, payment of restitution or repair costs, or completion of additional continuing education. If the license holder does not accept the settlement offer and does not make a timely request for a hearing, the TDLR may, without a hearing, enter a Default Order granting penalties or sanctions against the license holder.

A license holder who does not want to accept the settlement offer may request a hearing within 20 days after receiving the NOAV. The hearing will take place before an administrative law judge with the State Office of Administrative Hearings. After the hearing is completed, the judge will prepare a Proposal for Decision that will include the judge's proposed findings of fact and conclusions of law and a recommendation for resolving the case. The Proposal for Decision is not final and is reviewed by the Commission. The license holder will be notified of the date and time that the Commission will review the Proposal for Decision, and the license holder will have an opportunity to speak before the Commission. The Commission will then accept or reject the recommendation contained in the Proposal for Decision.

A license holder who does not agree with the Commission's decision has 20 days to file a motion for rehearing or the Commission's decision will become final. The Commission can grant a rehearing, deny a rehearing motion, or do nothing. If the Commission does nothing, the motion is automatically denied after 45 days. If the Commission denies a rehearing, the license holder has 30 days following the denial to file a request for judicial review by a District Court.



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