

OCCUPATIONS CODE

TITLE 2. GENERAL PROVISIONS RELATING TO LICENSING

CHAPTER 57. REQUIREMENTS FOR LICENSING AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 57.001. DEFINITIONS. In this chapter:

(1) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business, occupation, or profession.

(2) "State agency" means a department, board, bureau, commission, committee, division, office, council, or agency of the state.

Added by Acts 2001, 77th Leg., ch. 1092, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. GOVERNING BOARD MEMBERSHIP

Sec. 57.051. REQUIREMENTS FOR GOVERNING BOARD MEMBERSHIP. A person may not be required to be a member of a private trade association as a precondition to serving as a member of the governing board of a state agency that issues a license or otherwise regulates a business, occupation, or profession.

Added by Acts 2001, 77th Leg., ch. 1092, Sec. 1, eff. Sept. 1, 2001.
Transferred and redesignated from Occupations Code, Section 57.002 by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 3, eff. September 1, 2019.

SUBCHAPTER C. REVIEW OF STATE AGENCY RULES

Sec. 57.101. DEFINITION. In this subchapter, "division" means the division of the governor's office established under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 4, eff. September 1, 2019.

Sec. 57.102. APPLICABILITY. This subchapter applies only

to a state agency with a governing board that is controlled by persons who provide services that are regulated by the agency.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 4, eff. September 1, 2019.

Sec. 57.103. ESTABLISHMENT OF DIVISION. (a) The governor shall:

(1) establish a division to review state agency rules in accordance with this subchapter; and

(2) appoint a director for the division with the advice and consent of the senate.

(b) The director must be licensed to practice law in this state and have experience in antitrust law.

(c) The director serves a two-year term expiring February 1 of each odd-numbered year.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 4, eff. September 1, 2019.

Sec. 57.104. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be appointed as director or employed by the division in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association.

(c) A person may not be appointed as director or act as the general counsel to the division if the person is required to register as a lobbyist under Chapter 305, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 4, eff. September 1, 2019.

Sec. 57.105. SUBMISSION OF CERTAIN STATE AGENCY RULES.

(a) A state agency that issues a license must submit any proposed rule affecting market competition in this state relating to the business, occupation, or profession for which a license is issued to the division for review before the rule is adopted or implemented.

(b) A state agency that issues a license must submit to the division for review any rule that the agency proposes to repeal or readopt with amendment after a review under Section 2001.039, Government Code, if the rule affects market competition as described by this section.

(c) The state agency must include with the submission a statement of the purpose for the proposed rule, copies of all administrative records regarding the proposed rule, including any information or comments the agency received from the public, and any other information required by the division.

(d) For purposes of this section, a rule affects market competition if the rule would, if implemented or readopted:

(1) create a barrier to market participation in this state; or

(2) result in higher prices or reduced competition for a product or service provided by or to a license holder in this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 4, eff. September 1, 2019.

Sec. 57.106. REVIEW BY DIVISION. (a) The division shall conduct a thorough, independent review of each proposed rule submitted under Section 57.105 to determine:

(1) if the effect of the proposed rule on market competition is consistent with state policy as established by the applicable state agency's governing statute; and

(2) whether the proposed rule promotes a clearly articulated and affirmatively expressed policy as established by

the legislature to displace competition with government action.

(b) In conducting the review, the division may:

- (1) request information from the state agency;
- (2) require the state agency to conduct an analysis of possible implications of the rule;
- (3) solicit public comments; or
- (4) hold public hearings.

(c) The division shall complete the review not later than the 90th day after the date the proposed rule is submitted under Section 57.105.

(d) After review, the division shall:

- (1) approve the proposed rule; or
- (2) reject the proposed rule and return the rule to the state agency with instructions for revising the rule to be consistent with applicable state policy.

(e) A state agency may not finally adopt or implement a proposed rule required to be submitted for review under this subchapter unless the division has approved the rule under this section.

(f) The division shall, for each proposed rule submitted under this subchapter, provide to the state agency and make available to the public an explanation of the division's reasons for approving or rejecting the rule, including a discussion of the division's determination regarding the consistency of the rule with applicable state policy.

(g) The division may initiate a review of a proposed rule that was not submitted for review under this subchapter if the division has reason to believe that the proposed rule may have an anticompetitive market effect. A state agency may not finally adopt or implement a proposed rule for which the division has initiated a review under this subsection unless the division approves the rule in accordance with this section.

(h) When conducting a review of a proposed rule or deciding whether to initiate a review, the division shall only consider evidence or communications that are:

- (1) submitted to the division in writing from an identified person or entity and made available to the public;

(2) submitted in a public hearing; or

(3) generally known to the public.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. [1995](#)), Sec. 4, eff. September 1, 2019.

Sec. 57.107. RULEMAKING AUTHORITY. The division may adopt rules to carry out this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. [1995](#)), Sec. 4, eff. September 1, 2019.