

BILL ANALYSIS

C.S.H.B. 1218

By: Chisum

Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas State Board of Public Accountancy regulates the accounting profession in an effort to provide competent, objective accountants and auditors for Texas' financial markets, banking systems, and businesses. The Board's major functions include administering the Uniform Certified Public Accountant Examination, licensing individuals and firms, and enforcing the Public Accountancy Act, including investigating and resolving complaints.

The Board is subject to the Sunset Act and will be abolished on September 1, 2003, unless continued by the Legislature. As a result of its review of the Texas State Board of Public Accountancy, the Sunset Advisory Commission recommended continuation of the Board and several statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

It is the opinion of this committee that rulemaking authority is expressly delegated to the Texas State Board of Public Accountancy in SECTION 8 (Section 901.1525(g), Occupations Code); SECTION 9 (Section 901.153(e), Occupations Code); SECTION 10 (Section 901.1565, Occupations Code); SECTION 11 (Section 901.160(e), Occupations Code); SECTION 17 (Section 901.403(b), Occupations Code); SECTION 23 (Section 901.552(c), Occupations Code); SECTION 24 (Section 901.601(c), Occupations Code) of this bill.

ANALYSIS

SECTION 1. C.S.H.B. 1218 amends Section 901.006, Occupations Code, to update the Texas Board of Public Accountancy's Sunset date to September 1, 2015, which provides for the standard 12-year review.

SECTION 2. Amends Section 901.053, Occupations Code, to update standard Sunset language prohibiting persons from being Board members or high-level employees, if they or their spouses serve as an officer, executive board or committee member, or employee of a related Texas trade association.

SECTION 3. Amends Section 901.056(a) and (c), Occupations Code, to update standard language developed by the Sunset Commission specifying the grounds for removing a Board member.

SECTION 4. Amends Subchapter B, Chapter 901, Occupations Code, by adding Section 901.059, to add standard language adopted by the Sunset Commission requiring members of the Board to complete training before assuming their duties.

SECTION 5. Amends Section 901.102, Occupations Code, to update standard language adopted by the Sunset Commission requiring the Board to separate its policymaking duties from the agency's management functions.

SECTION 6. Amends Section 901.105, Occupations Code, to update standard language adopted by the Sunset Commission requiring the Board to have a current equal employment opportunity policy.

SECTION 7. Amends Subchapter C, Chapter 901, Occupations Code, to add 901.106, which is standard language developed by the Sunset Commission requiring the Board to inform employees about the State Employee Incentive Program.

SECTION 8. Amends Subchapter D, Chapter 901, Occupations Code, to add Section 901.1525, which authorizes the Board to establish policymaking and working committees to assist the Board in performing its responsibilities. Specifies that the Board's policymaking committees shall assist the Board with policy matters, drafting rules, establishing budgets, and other oversight functions, and restricts membership on the policymaking committees to Board members. Specifies that the working committees shall assist with Board functions, such as reviewing enforcement cases and other licensing matters. Authorizes the Board to appoint non-Board members, with full voting privileges, to its working committees, but requires the non-Board members to meet the same qualifications as Board members, including the restriction against serving on an executive board or committee of a related Texas trade association. Provides that the Board shall adopt rules to prevent committee members from voting on issues before the committee in which the member has a personal or financial interest.

SECTION 9. Amends Section 901.153(a) and adds Subsections (d) and (e), Occupations Code, to clarify that the Board's enforcement committees are working committees, and license holders who have been the subject of any disciplinary action under the Public Accountancy Act may not serve on an enforcement committee. Prohibits Board members who serve on a Board enforcement committee, and have participated in the investigation of a specific complaint, from participating in any subsequent disciplinary proceeding pertaining to the complaint, including voting on the final disposition of the case. Requires the Board to adopt rules to implement this provision.

SECTION 10. Amends Subchapter D, Chapter 901, Occupations Code, to add Section 901.1565, which requires the Board to adopt rules to comply with Chapter 53, Occupations Code, regarding criminal convictions, and develop a list of the specific misdemeanor offenses for which a conviction would constitute grounds for the Board to take action under Section 53.021. Requires the Board to develop a process for determining which out-of-state misdemeanor convictions would be similar to the convictions listed in Board rules.

SECTION 11. Amends Section 901.160, Occupations Code, to add Subsection (e), to authorize the Board to disclose confidential information to governmental, regulatory, or law enforcement agencies for joint investigation purposes. Requires the Board to adopt guidelines to assist in exercising this authority. Provides that subsections (a) and (c) do not apply to information disclosed under this subsection.

SECTION 12. Amends Subchapter D, Chapter 901, Occupations Code, to add Section 901.166, to authorize the Board to issue subpoenas to compel the attendance of a witness or the production of documents and other evidence. Requires the Board to pay a reasonable fee for photocopies subpoenaed under this Section, and reimburse the expenses of witnesses in accordance with Section 2001.103, Government Code. Authorizes the Board, acting through the Attorney General, to file suit in district court to enforce a subpoena.

SECTION 13. Amends Subchapter D, Chapter 901, Occupations Code, to add Section 901.167, which is standard language developed by the Sunset Commission requiring the Board to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

SECTION 14. Amends Subchapter D, Chapter 901, Occupations Code, to add Section 901.168, which is standard Sunset language requiring the Board to make effective use of technology in its delivery of services and provision of information to the public.

SECTION 15. Amends Section 901.203, Occupations Code, to update standard Sunset language requiring the Board to maintain information on written complaints and notify the parties about the policies for and status of complaints.

SECTION 16. Amends Section 901.304(a), Occupations Code, to eliminate the requirement that the Board collect exam fees. Authorizes the Board to delegate the collection of an exam fee to the person conducting the exam.

SECTION 17. Amends Section 901.403, Occupations Code, to add Subsection (b), which adds standard Sunset language allowing the Board to adopt a staggered license renewal system.

SECTION 18. Amends Section 901.404(a), Occupations Code, to update standard Sunset language specifying the time frame during which the Board must send renewal notices to license holders.

SECTION 19. Amends Section 901.405, Occupations Code, to update standard Sunset language establishing a method for license renewal, and a time frame and penalty structure for delinquent renewals. Modifies standard Sunset language by extending the time allowed to renew a delinquent license from one year to two years, and creating a penalty, equal to three times the normally required renewal fee, for renewing a license that has been expired at least one year but less than two years. Prohibits a person from renewing a license that has been expired for two years or more.

SECTION 20. Amends Section 901.501(a), Occupations Code, to grant the Board the authority to impose disciplinary sanctions, including an order of restitution. Modifies standard Sunset language authorizing the Board to use a full range of penalties for violations of state laws or agency rules, by instead allowing the Board to use a combination of existing penalties.

SECTION 21. Amends Section 901.503(c), Occupations Code, to eliminate the provision requiring the Board to refund the exam fee of a person whose application for examination has been denied, and instead requires the Board to provide for a refund.

SECTION 22. Amends Subchapter K, Chapter 901, Occupations Code, to add Section 901.5045, which authorizes the Board to suspend a license on an emergency basis upon determining that the license holder is engaged in, or about to engage in, an act of fraud or a violation of the Public Accountancy Act. Provides for an appeals process in accordance with the Administrative Procedure Act. Requires the Board to issue notice of a hearing within five days of appeal, and to hold the appeal hearing within five days of notice, unless otherwise agreed to by the parties. Provides that the Board must act within two days if the hearing results in a recommendation to vacate the emergency suspension order.

SECTION 23. Amends Section 901.552(a) and adds Subsection (c), Occupations Code, to increase the maximum administrative penalty from \$1,000 to \$100,000 per violation. Requires the Board to adopt a schedule that prescribes ranges of administrative penalties to be imposed for specified types of conduct and circumstances.

SECTION 24. Amends Section 901.601, Occupations Code, to eliminate the Board's injunctive authority, and grant the Board cease-and-desist authority to prohibit a person from the unauthorized practice of accountancy. Imposes an administrative penalty, up to \$25,000, for violating a cease-and-desist order and requires the Board to adopt a schedule prescribing the ranges of administrative penalties to be imposed for specified types of conduct and circumstances.

SECTION 25. Amends Subchapter M, Chapter 901, Occupations Code, to add Section 901.6015, which authorizes the Board to order a license holder to pay restitution to a person harmed by the license holder's violation of the Public Accountancy Act and failure to fulfill the terms of a contract. Restricts the amount of restitution to the actual amount paid under the contract.

SECTION 26. Amends Sections 901.602(b), Occupations Code, to increase the penalty for intentional, fraud-related violations of the Public Accountancy Act from a Class B misdemeanor to a felony, and provides that the range of penalty is determined by the amount of monetary loss resulting from the violation. Maintains the current Class B penalty for all other violations of the Act.

SECTION 27. Amends Subchapter M, Chapter 901, Occupations Code, to add Section 901.606, which

grants immunity from civil and criminal liability to persons who voluntarily report, or assist in investigations of, alleged violations of the Public Accountancy Act.

SECTION 28. Repeals the provision requiring applicants to pay the exam fee to the Board at the time of application for examination.

SECTION 29. Instructional provision which requires the Board to report, by December 31, 2005, on federal requirements in the Sarbanes-Oxley Act, the General Accounting Office study on audit firm rotation, and rules adopted by the Board that are intended to comply with the federal standards.

SECTION 30. Effective date: September 1, 2003.

SECTION 31. Provides that the Board shall adopt rules as required by this Act by March 1, 2004. Specifies that changes in Board member qualifications do not affect the entitlement of a member serving on the Board before September 1, 2003, from continuing to serve the remainder of the member's term. Specifies that the changes relating to the imposition of disciplinary sanctions, including restitution, administrative penalties, and cease-and-desist orders, apply only to violations occurring on or after the effective date, September 1, 2003. Provides that the changes relating to immunity from civil and criminal liability apply only to reports made after the effective date, September 1, 2003.

SECTION 32. Specifies that the changes made relating to penalties for violations of the Act, apply only to offenses committed on or after the effective date, September 1, 2003.

EFFECTIVE DATE

Establishes the effective date of the Act as September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 1218 clarifies that Board personnel are prohibited from serving on the executive Board or executive committee of a related Texas Trade Association. The original applied to any board or committee of a related Texas trade association.

The substitute corrects the spelling of the word *subsection*.

The substitute extends the time allowed for renewing a delinquent license from one year to two years, and creates a penalty for renewing a license during this extended period, by requiring payment equal to three times the normally required renewal fee. The substitute prohibits a person from renewing a license that has been expired at least two years.

The substitute modifies a provision in the original version, relating to notice and hearing on the emergency suspension of a license, by requiring the Board to issue notice of a hearing within five days of appeal, and to hold a hearing on the appeal within five days of notice, unless otherwise agreed to by the parties. The original version required the Board to issue notice within 10 days of receiving a hearing request, and to hold the hearing "as soon as practicable." The substitute adds new language requiring the Board to take action within two days if the hearing results in a recommendation to vacate the emergency suspension order. The substitute removes the term *hearings officer* and substitutes *administrative law judge*, for consistency with the Government Code.

The substitute removes the language in the original which made all violations of the Accountancy Act subject to enhanced criminal penalties, and instead subjects only intentional, fraud-related violations to the enhanced criminal penalties. The substitute maintains the current Class B penalty for all other violations. C.S.H.B. 1218 also replaces the penalty language in the original with standard penal code terminology.