

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1218
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Government Organization
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Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, the Texas State Board of Public Accountancy (TSBPA) regulates the accounting profession in an effort to provide competent, objective accountants, and auditors for Texas' financial markets, banking systems, and businesses. TSBPA's major functions include administering the Uniform Certified Public Accountant Examination, licensing accountants and accounting firms, and enforcing the Public Accountancy Act, including investigating and resolving complaints. C.S.H.B. 1218 continues TSBPA for the standard 12-year period and adds stronger enforcement mechanisms.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Board of Public Accountancy in SECTION 8 (Section 901.1525, Occupations Code), SECTION 9 (Section 901.153, Occupations Code), SECTION 10 (Section 901.1565, Occupations Code), SECTION 11 (Section 901.160, Occupations Code), SECTION 17 (Section 901.403, Occupations Code), SECTION 23 (Section 901.552, Occupations Code), and SECTION 24 (Section 901.601, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 901.006, Occupations Code, to continue the Texas State Board of Public Accountancy (TSBPA) for the 12-year period until September 1, 2015.

SECTION 2. Amends Section 901.053, Occupations Code, as follows:

- (a) Defines "Texas trade association."
- (b) Updates standard Sunset language relating to membership and employee restrictions.

SECTION 3. Amends Sections 901.056(a) and (c), Occupations Code, to update standard Sunset language relating to grounds for removal of TSBPA members.

SECTION 4. Amends Subchapter B, Chapter 901, Occupations Code, by adding Section 901.059, as follows:

Sec. 901.059. TRAINING. Adds standard Sunset language relating to training of TSBPA members.

SECTION 5. Amends Section 901.102, Occupations Code, to apply standard Sunset language requiring TSBPA to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.

SECTION 6. Amends Section 901.105, Occupations Code, to update standard Sunset language requiring the executive director to develop an equal employment opportunity program.

SECTION 7. Amends Subchapter C, Section 901, Occupations Code, by adding Section 901.106, as follows:

Sec. 901.106. INFORMATION ON STATE EMPLOYEE INCENTIVE PROGRAM.

Applies standard Sunset language requiring training on participation in the state employee incentive program.

SECTION 8. Amends Subchapter D, Chapter 901, Occupations Code, by adding Section 901.1525, as follows:

Sec. 901.1525. APPOINTMENT OF BOARD COMMITTEES. Applies standard Sunset language relating to the appointment of board committees.

SECTION 9. Amends Section 901.153, Occupations Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Provides that an enforcement committee operates as a TSBPA working committee.

(d) Requires TSBP, in appointing the members of an enforcement committee, to determine whether a prospective committee member who is a license holder under this chapter has been the subject of any disciplinary action under this chapter. Prohibits a license holder who has been found in violation of this chapter from serving on an enforcement committee.

(e) Prohibits a TSBPA member who serves on an enforcement committee that participates in the investigation of a specific complaint from participating in any subsequent disciplinary proceeding of TSBPA that pertains to the complaint and from voting on the final disposition of the case. Requires TSBPA to adopt rules necessary to implement the requirements of this subsection.

SECTION 10. Amends Subchapter D, Chapter 901, Occupations Code, by adding Section 901.1565, as follows:

Sec. 901.1565. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. (a) Requires TSBPA to adopt rules necessary to comply with Chapter 53.

(b) Requires TSBPA, in its rules under this section, to list the specific misdemeanor offenses for which a conviction would constitute grounds for TSBPA to take action under Section 53.021. Requires TSBPA, with regard to a misdemeanor conviction in another state, to develop a process for determining whether the conviction is for an offense listed in the rules required by this subsection.

SECTION 11. Amends Section 901.160, Occupations Code, by adding Subsection (e), to authorize TSBPA to disclose information that is confidential under this section to another governmental, regulatory, or law enforcement agency engaged in an enforcement action. Requires TSBPA by rule to adopt guidelines to assist TSBPA in exercising its authority to share information under this subsection. Provides that Subsections (a) and (c) do not apply to information disclosed under this subsection.

SECTION 12. Amends Subchapter D, Chapter 901, Occupations Code, by adding Section 901.166, as follows:

Sec. 901.166. AUTHORITY TO ISSUE SUBPOENA, ADMINISTER OATH, AND RECEIVE EVIDENCE. (a) Authorizes TSBPA to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection and copying, of relevant documents, records, and other evidence, maintained by electronic or other means, that is in this state.

(b) Authorizes TSBPA to administer oaths and take testimony and other evidence regarding any matter under TSBPA's jurisdiction.

(c) Authorizes TSBPA, if a person fails to comply with a subpoena, acting

through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by TSBPA may be held.

(d) Requires the court, on finding that good cause exists for issuing the subpoena, to order the person to comply with the subpoena. Authorizes the court to punish a person who fails to obey the court order.

(e) Requires TSBPA to pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount it may charge for copies of its own records.

(f) Provides that the reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103 (Expenses of Witness or Deponent), Government Code.

SECTION 13. Amends Subchapter D, Chapter 901, Occupations Code, by adding Section 901.167, as follows:

Sec. 901.167. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. Applies standard Sunset language requiring TSBPA to develop and implement a policy to encourage the use of negotiated rulemaking and alternative dispute resolution procedures.

SECTION 14. Amends Subchapter D, Chapter 901, Occupations Code, by adding Section 901.168, as follows:

Sec. 901.168. TECHNOLOGY POLICY. Applies standard Sunset language requiring TSBPA to develop and implement a technology policy.

SECTION 15. Amends Section 901.203, Occupations Code, to update standard Sunset language requiring information to be maintained on complaints.

SECTION 16. Reenacts and amends Section 901.304(a), Occupations Code, to authorize TSBPA to delegate the collection of an examination fee to the person who conducts the examination.

SECTION 17. Amends Section 901.403, Occupations Code, to update standard Sunset language relating to the application for and renewal of a license.

SECTION 18. Amends Section 901.404(a), Occupations Code, to update standard Sunset language requiring notice of the impending license expiration.

SECTION 19. Amends Section 901.405, Occupations Code, to update standard Sunset language relating to the procedure for renewal of a license.

SECTION 20. Amends Section 901.501(a), Occupations Code, to update standard Sunset language authorizing a full range of penalties for TSBPA licensees on determination that a ground for discipline exists.

SECTION 21. Amends Section 901.503(c), Occupations Code, to require TSBPA to provide for the refund of the examination fee paid by a person whose application for examination is denied under this section.

SECTION 22. Amends Subchapter K, Chapter 901, Occupations Code, by adding Section 901.5045, as follows:

Sec. 901.5045. EMERGENCY SUSPENSION. (a) Authorizes TSBPA, on determining that a license holder is engaged in or about to engage in an act of fraud or a violation of

this chapter and that the license holder's continued practice constitutes an immediate threat to the public welfare, to issue an order suspending the license holder's license without notice or a hearing. Requires TSBPA to immediately serve notice of the suspension on the license holder.

(b) Requires the notice required by Subsection (a) to follow certain procedures.

(c) Provides that a license holder whose license is suspended under this section is entitled to request a hearing on the suspension not later than the 30th day after the date of receipt of notice of the suspension. Requires TSBPA, not later than the 10th day after the date a hearing is requested, to issue a notice of hearing as provided by Section 901.509.

(d) Requires the hearing to be held on a date as soon as practicable after the date of the request for a hearing. Provides that a hearing on a suspension order under this section is subject to Chapter 2001 (Administrative Procedure), Government Code. Requires the hearings officer after the hearing, if the hearing is before a hearings officer, to recommend to TSBPA whether to uphold, vacate, or modify the suspension order.

(e) Provides that a suspension order issued under this section remains in effect until further action is taken by TSBPA.

SECTION 23. Amends Section 901.552, Occupations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Prohibits the amount of an administrative penalty from exceeding \$100,000, rather than \$1,000, for each violation.

(c) Requires TSBPA by rule to adopt a schedule for purposes of this subchapter that prescribes ranges in the amounts of administrative penalties to be imposed for specified types of conduct and circumstances.

SECTION 24. Amends Section 901.601, Occupations Code, as follows:

Sec. 901.601. New heading: CEASE AND DESIST ORDER. (a) Authorizes TSBPA, if it appears to TSBPA that a person is engaging in certain actions without license, after notice and an opportunity for a hearing, to issue a cease and desist order prohibiting the person from engaging in that activity.

(b) Provides that a violation of an order under this section constitutes grounds for imposition of an administrative penalty under Subchapter L. Provides that notwithstanding Section 901.552, the amount of an administrative penalty for a violation of an order under this section may not exceed \$25,000.

(c) Requires TSBPA by rule to adopt a schedule for purposes of this section that prescribes ranges in the amounts of administrative penalties to be imposed for specified types of conduct and circumstances that violate an order under this section.

SECTION 25. Amends Subchapter M, Chapter 901, Occupations Code, by adding Section 901.6015, as follows:

Sec. 901.6015. RESTITUTION. (a) Authorizes TSBPA to order a license holder to pay restitution under Section 901.501(a)(10) to a person harmed by the license holder's violation of this chapter and failure to fulfill the terms of a contract with the person.

(b) Prohibits the amount of restitution ordered under this section from exceeding the actual amount paid by the person to the license holder under the contract.

SECTION 26. Amends Sections 901.602(b), Occupations Code, to provide that an offense under this section is a Class B misdemeanor, except as otherwise provided by this subsection, and an offense under this section that involves intentional fraud is punishable as a felony for a certain term.

SECTION 27. Amends Subchapter M, Chapter 901, Occupations Code, by adding Section 901.606, as follows:

Sec. 901.606. IMMUNITY FROM LIABILITY. (a) Provides that a person acting in good faith who voluntarily reports or assists in the investigation of a report of an alleged violation of this chapter or who testifies or otherwise participates in an administrative or judicial proceeding arising from a report or investigation of an alleged violation of this chapter is immune from civil or criminal liability that might otherwise be incurred or imposed.

(b) Provides that a person who reports the person's own violation of this chapter or who acts in bad faith or with malicious purpose in reporting an alleged violation of this chapter is not immune from civil or criminal liability.

SECTION 28. Repealer: Section 901.304(b) (Examination Fee), Occupations Code.

SECTION 29. Requires TSBPA to report to the governor, the lieutenant governor, and the speaker of the house of representatives, not later than December 31, 2004, regarding certain issues.

SECTION 30. Effective date: September 1, 2003.

SECTION 31. (a) Requires TSBPA to adopt rules as required by this Act not later than March 1, 2004.

(b) Provides that the changes in law made by this Act by Section 901.053, Occupations Code, as amended by this Act, and Section 901.059, Occupations Code, as added by this Act, in the prohibitions on or qualifications of members of TSBPA do not affect the entitlement of a member serving on the TSBPA board immediately before September 1, 2003, to continue to serve and function as a member of the board for the remainder of the member's term. Provides that those changes in law apply only to a member appointed on or after September 1, 2003.

(c) Provides that the change in law made by this Act with respect to conduct that is grounds for imposition of a disciplinary sanction, including an administrative penalty, restitution, or a cease and desist order, applies to conduct that occurs on or after the effective date of this Act. Provides that conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

(d) Provides that the change in law made by this Act by the addition of Section 901.606, Occupations Code, applies only to the immunity or liability of a person who voluntarily reports or assists in the investigation of a report of an alleged violation of Chapter 901, Occupations Code, or who testifies or otherwise participates in an administrative or judicial proceeding arising from a report or investigation of an alleged violation of that chapter on or after the effective date of this Act. Provides that the immunity or liability of a person who makes a report, assists in an investigation, testifies, or otherwise participates in a proceeding before the effective date of this Act is governed by the law in effect at the time those activities occurred, and the former law is continued in effect for that purpose.

SECTION 32. (a) Provides that the change in law made by this Act to Section 901.602, Occupations Code, applies only to an offense committed on or after the effective date of this Act. Provides that for purposes of this section, an offense is committed before the effective date of

this Act if any element of the offense occurs before that date.

(b) Makes application of this Act prospective.