

By: Capelo

H.B. No. 2987

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the regulation and enforcement of certain licensing  
3 programs by the Texas Department of Health; providing  
4 administrative, civil, and criminal penalties.

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

6 SECTION 1. Subchapter I, Chapter 203, Occupations Code, is  
7 amended by adding Section 203.405 to read as follows:

8 Sec. 203.405. EMERGENCY SUSPENSION. (a) The midwifery  
9 board or a three-member committee of midwifery board members  
10 designated by the midwifery board shall temporarily suspend the  
11 letter of documentation of a documented midwife if the midwifery  
12 board or committee determines from the evidence or information  
13 presented to it that continued practice by the documented midwife  
14 would constitute a continuing and imminent threat to the public  
15 welfare.

16 (b) A letter of documentation may be suspended under this  
17 section without notice or hearing on the complaint if:

18 (1) action is taken to initiate proceedings for a  
19 hearing before the State Office of Administrative Hearings  
20 simultaneously with the temporary suspension; and

21 (2) a hearing is held as soon as practicable under this  
22 chapter and Chapter 2001, Government Code.

23 (c) The State Office of Administrative Hearings shall hold a  
24 preliminary hearing not later than the 14th day after the date of

1 the temporary suspension to determine if there is probable cause to  
2 believe that a continuing and imminent threat to the public welfare  
3 still exists. A final hearing on the matter shall be held not later  
4 than the 61st day after the date of the temporary suspension.

5 SECTION 2. Subchapter F, Chapter 352, Occupations Code, is  
6 amended by adding Section 352.254 to read as follows:

7 Sec. 352.254. EMERGENCY SUSPENSION. (a) The department  
8 shall temporarily suspend the certificate of registration of a  
9 certificate holder if the department determines from the evidence  
10 or information presented to it that continued practice by the  
11 certificate holder would constitute a continuing and imminent  
12 threat to the public welfare.

13 (b) A certificate of registration may be suspended under  
14 this section without notice or hearing on the complaint if:

15 (1) action is taken to initiate proceedings for a  
16 hearing before the State Office of Administrative Hearings  
17 simultaneously with the temporary suspension; and

18 (2) a hearing is held as soon as practicable under this  
19 chapter and Chapter 2001, Government Code.

20 (c) The State Office of Administrative Hearings shall hold a  
21 preliminary hearing not later than the 14th day after the date of  
22 the temporary suspension to determine if there is probable cause to  
23 believe that a continuing and imminent threat to the public welfare  
24 still exists. A final hearing on the matter shall be held not later  
25 than the 61st day after the date of the temporary suspension.

26 SECTION 3. Subchapter E, Chapter 353, Occupations Code, is  
27 amended by adding Section 353.2025 to read as follows:

1       Sec. 353.2025. EMERGENCY SUSPENSION. (a) The department  
2 shall temporarily suspend the permit of a permit holder if the  
3 department determines from the evidence or information presented to  
4 it that continued practice by the permit holder would constitute a  
5 continuing and imminent threat to the public welfare.

6       (b) A permit may be suspended under this section without  
7 notice or hearing on the complaint if:

8           (1) action is taken to initiate proceedings for a  
9 hearing before the State Office of Administrative Hearings  
10 simultaneously with the temporary suspension; and

11           (2) a hearing is held as soon as practicable under this  
12 chapter and Chapter 2001, Government Code.

13       (c) The State Office of Administrative Hearings shall hold a  
14 preliminary hearing not later than the 14th day after the date of  
15 the temporary suspension to determine if there is probable cause to  
16 believe that a continuing and imminent threat to the public welfare  
17 still exists. A final hearing on the matter shall be held not later  
18 than the 61st day after the date of the temporary suspension.

19       SECTION 4. Subchapter J, Chapter 401, Occupations Code, is  
20 amended by adding Section 401.460 to read as follows:

21       Sec. 401.460. EMERGENCY SUSPENSION. (a) The board or a  
22 three-member committee of board members designated by the board  
23 shall temporarily suspend the license of a license holder if the  
24 board or committee determines from the evidence or information  
25 presented to it that continued practice by the license holder would  
26 constitute a continuing and imminent threat to the public welfare.

27       (b) A license may be suspended under this section without

1 notice or hearing on the complaint if:

2 (1) action is taken to initiate proceedings for a  
3 hearing before the State Office of Administrative Hearings  
4 simultaneously with the temporary suspension; and

5 (2) a hearing is held as soon as practicable under this  
6 chapter and Chapter 2001, Government Code.

7 (c) The State Office of Administrative Hearings shall hold a  
8 preliminary hearing not later than the 14th day after the date of  
9 the temporary suspension to determine if there is probable cause to  
10 believe that a continuing and imminent threat to the public welfare  
11 still exists. A final hearing on the matter shall be held not later  
12 than the 61st day after the date of the temporary suspension.

13 SECTION 5. Chapter 401, Occupations Code, is amended by  
14 adding Subchapter L to read as follows:

15 SUBCHAPTER L. ADMINISTRATIVE PENALTY

16 Sec. 401.551. IMPOSITION OF ADMINISTRATIVE PENALTY. The  
17 board may impose an administrative penalty on a person licensed  
18 under this chapter who violates this chapter or a rule or order  
19 adopted under this chapter.

20 Sec. 401.552. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The  
21 amount of the administrative penalty may not be less than \$50 or  
22 more than \$5,000 for each violation. Each day a violation continues  
23 or occurs is a separate violation for the purpose of imposing a  
24 penalty.

25 (b) The amount shall be based on:

26 (1) the seriousness of the violation, including the  
27 nature, circumstances, extent, and gravity of the violation;

- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

Sec. 401.553. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the commissioner of public health or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the board a report stating:

- (1) the facts on which the determination is based; and
- (2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee shall give written notice of the report to the person. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended administrative penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 401.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

- (1) accept the determination and recommended

1 administrative penalty of the commissioner of public health or the  
2 commissioner's designee; or

3 (2) make a request for a hearing on the occurrence of  
4 the violation, the amount of the penalty, or both.

5 (b) If the person accepts the determination and recommended  
6 penalty of the commissioner of public health or the commissioner's  
7 designee, the board by order shall approve the determination and  
8 impose the recommended penalty.

9 Sec. 401.555. HEARING. (a) If the person requests a  
10 hearing or fails to respond in a timely manner to the notice, the  
11 commissioner of public health or the commissioner's designee shall  
12 set a hearing and give written notice of the hearing to the person.

13 (b) An administrative law judge of the State Office of  
14 Administrative Hearings shall hold the hearing.

15 (c) The administrative law judge shall make findings of fact  
16 and conclusions of law and promptly issue to the board a proposal  
17 for a decision about the occurrence of the violation and the amount  
18 of a proposed administrative penalty.

19 Sec. 401.556. DECISION BY BOARD. (a) Based on the  
20 findings of fact, conclusions of law, and proposal for decision,  
21 the board by order may determine that:

22 (1) a violation occurred and impose an administrative  
23 penalty; or

24 (2) a violation did not occur.

25 (b) The notice of the board's order given to the person must  
26 include a statement of the right of the person to judicial review of  
27 the order.

1           Sec. 401.557. OPTIONS FOLLOWING DECISION: PAY OR  
2 APPEAL. (a) Within 30 days after the date the board's order  
3 becomes final, the person shall:

4                   (1) pay the administrative penalty; or

5                   (2) file a petition for judicial review contesting the  
6 occurrence of the violation, the amount of the penalty, or both.

7           (b) Within the 30-day period prescribed by Subsection (a), a  
8 person who files a petition for judicial review may:

9                   (1) stay enforcement of the penalty by:

10                   (A) paying the penalty to the court for placement  
11 in an escrow account; or

12                   (B) giving the court a supersedeas bond approved  
13 by the court that:

14                           (i) is for the amount of the penalty; and

15                           (ii) is effective until all judicial review  
16 of the board's order is final; or

17                   (2) request the court to stay enforcement of the  
18 penalty by:

19                   (A) filing with the court a sworn affidavit of  
20 the person stating that the person is financially unable to pay the  
21 penalty and is financially unable to give the supersedeas bond; and

22                   (B) giving a copy of the affidavit to the  
23 commissioner of public health or the commissioner's designee by  
24 certified mail.

25           (c) If the commissioner of public health or the  
26 commissioner's designee receives a copy of an affidavit under  
27 Subsection (b)(2), the commissioner or the designee may file with

1 the court, within five days after the date the copy is received, a  
2 contest to the affidavit.

3 (d) The court shall hold a hearing on the facts alleged in  
4 the affidavit as soon as practicable and shall stay the enforcement  
5 of the penalty on finding that the alleged facts are true. The  
6 person who files an affidavit has the burden of proving that the  
7 person is financially unable to pay the penalty and to give a  
8 supersedeas bond.

9 Sec. 401.558. COLLECTION OF PENALTY. (a) If the person  
10 does not pay the administrative penalty and the enforcement of the  
11 penalty is not stayed, the penalty may be collected.

12 (b) The attorney general may sue to collect the penalty.

13 Sec. 401.559. DETERMINATION BY COURT. (a) If the court  
14 sustains the determination that a violation occurred, the court may  
15 uphold or reduce the amount of the administrative penalty and order  
16 the person to pay the full or reduced amount of the penalty.

17 (b) If the court does not sustain the finding that a  
18 violation occurred, the court shall order that a penalty is not  
19 owed.

20 Sec. 401.560. REMITTANCE OF PENALTY AND INTEREST. (a) If  
21 the person paid the administrative penalty and if the amount of the  
22 penalty is reduced or the penalty is not upheld by the court, the  
23 court shall order, when the court's judgment becomes final, that  
24 the appropriate amount plus accrued interest be remitted to the  
25 person.

26 (b) The interest accrues at the rate charged on loans to  
27 depository institutions by the New York Federal Reserve Bank.



1       (c) The interest shall be paid for the period beginning on  
2 the date the penalty is paid and ending on the date the penalty is  
3 remitted.

4       (d) If the person gave a supersedeas bond and the penalty is  
5 not upheld by the court, the court shall order, when the court's  
6 judgment becomes final, the release of the bond.

7       (e) If the person gave a supersedeas bond and the amount of  
8 the penalty is reduced, the court shall order the release of the  
9 bond after the person pays the reduced amount.

10       Sec. 401.561. ADMINISTRATIVE PROCEDURE. A proceeding  
11 under this subchapter is a contested case under Chapter 2001,  
12 Government Code.

13       SECTION 6. Subchapter K, Chapter 402, Occupations Code, is  
14 amended by adding Section 402.504 to read as follows:

15       Sec. 402.504. EMERGENCY SUSPENSION. (a) The committee or  
16 a three-member subcommittee of committee members designated by the  
17 committee shall temporarily suspend the license or permit of a  
18 license or permit holder if the committee or subcommittee  
19 determines from the evidence or information presented to it that  
20 continued practice by the license or permit holder would constitute  
21 a continuing and imminent threat to the public welfare.

22       (b) A license or permit may be suspended under this section  
23 without notice or hearing on the complaint if:

24           (1) action is taken to initiate proceedings for a  
25 hearing before the State Office of Administrative Hearings  
26 simultaneously with the temporary suspension; and

27           (2) a hearing is held as soon as practicable under this

1 chapter and Chapter 2001, Government Code.

2 (c) The State Office of Administrative Hearings shall hold a  
3 preliminary hearing not later than the 14th day after the date of  
4 the temporary suspension to determine if there is probable cause to  
5 believe that a continuing and imminent threat to the public welfare  
6 still exists. A final hearing on the matter shall be held not later  
7 than the 61st day after the date of the temporary suspension.

8 SECTION 7. Subchapter L, Chapter 402, Occupations Code, is  
9 amended by adding Section 402.553 to read as follows:

10 Sec. 402.553. CIVIL PENALTY. (a) A person who violates  
11 this chapter or a rule or order adopted by the committee under this  
12 chapter is liable for a civil penalty not to exceed \$5,000 a day.

13 (b) At the request of the committee, the attorney general  
14 shall bring an action to recover a civil penalty authorized under  
15 this section.

16 SECTION 8. Subchapter F, Chapter 451, Occupations Code, is  
17 amended by adding Section 451.255 to read as follows:

18 Sec. 451.255. EMERGENCY SUSPENSION. (a) The board or a  
19 three-member committee of board members designated by the board  
20 shall temporarily suspend the license of a license holder if the  
21 board or committee determines from the evidence or information  
22 presented to it that continued practice by the license holder would  
23 constitute a continuing and imminent threat to the public welfare.

24 (b) A license may be suspended under this section without  
25 notice or hearing on the complaint if:

26 (1) action is taken to initiate proceedings for a  
27 hearing before the State Office of Administrative Hearings

1 simultaneously with the temporary suspension; and

2 (2) a hearing is held as soon as practicable under this  
3 chapter and Chapter 2001, Government Code.

4 (c) The State Office of Administrative Hearings shall hold a  
5 preliminary hearing not later than the 14th day after the date of  
6 the temporary suspension to determine if there is probable cause to  
7 believe that a continuing and imminent threat to the public welfare  
8 still exists. A final hearing on the matter shall be held not later  
9 than the 61st day after the date of the temporary suspension.

10 SECTION 9. Subchapter F, Chapter 455, Occupations Code, is  
11 amended by adding Section 455.254 to read as follows:

12 Sec. 455.254. EMERGENCY SUSPENSION. (a) The department  
13 shall temporarily suspend the certificate of registration of a  
14 certificate holder if the department determines from the evidence  
15 or information presented to it that continued practice by the  
16 certificate holder would constitute a continuing and imminent  
17 threat to the public welfare.

18 (b) A certificate of registration may be suspended under  
19 this section without notice or hearing on the complaint if:

20 (1) action is taken to initiate proceedings for a  
21 hearing before the State Office of Administrative Hearings  
22 simultaneously with the temporary suspension; and

23 (2) a hearing is held as soon as practicable under this  
24 chapter and Chapter 2001, Government Code.

25 (c) The State Office of Administrative Hearings shall hold a  
26 preliminary hearing not later than the 14th day after the date of  
27 the temporary suspension to determine if there is probable cause to

1 believe that a continuing and imminent threat to the public welfare  
2 still exists. A final hearing on the matter shall be held not later  
3 than the 61st day after the date of the temporary suspension.

4 SECTION 10. Subchapter H, Chapter 502, Occupations Code, is  
5 amended by adding Section 502.356 to read as follows:

6 Sec. 502.356. EMERGENCY SUSPENSION. (a) The board or a  
7 three-member committee of board members designated by the board  
8 shall temporarily suspend the license of a license holder if the  
9 board or committee determines from the evidence or information  
10 presented to it that continued practice by the license holder would  
11 constitute a continuing and imminent threat to the public welfare.

12 (b) A license may be suspended under this section without  
13 notice or hearing on the complaint if:

14 (1) action is taken to initiate proceedings for a  
15 hearing before the State Office of Administrative Hearings  
16 simultaneously with the temporary suspension; and

17 (2) a hearing is held as soon as practicable under this  
18 chapter and Chapter 2001, Government Code.

19 (c) The State Office of Administrative Hearings shall hold a  
20 preliminary hearing not later than the 14th day after the date of  
21 the temporary suspension to determine if there is probable cause to  
22 believe that a continuing and imminent threat to the public welfare  
23 still exists. A final hearing on the matter shall be held not later  
24 than the 61st day after the date of the temporary suspension.

25 SECTION 11. Chapter 503, Occupations Code, is amended by  
26 adding Subchapter K to read as follows:

27 SUBCHAPTER K. ADMINISTRATIVE PENALTY

1       Sec. 503.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The  
2 board may impose an administrative penalty on a person licensed  
3 under this chapter who violates this chapter or a rule or order  
4 adopted under this chapter.

5       Sec. 503.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The  
6 amount of the administrative penalty may not be less than \$50 or  
7 more than \$5,000 for each violation. Each day a violation continues  
8 or occurs is a separate violation for the purpose of imposing a  
9 penalty.

10       (b) The amount shall be based on:

11           (1) the seriousness of the violation, including the  
12 nature, circumstances, extent, and gravity of the violation;

13           (2) the economic harm caused by the violation;

14           (3) the history of previous violations;

15           (4) the amount necessary to deter a future violation;

16           (5) efforts to correct the violation; and

17           (6) any other matter that justice may require.

18       Sec. 503.503. REPORT AND NOTICE OF VIOLATION AND  
19 PENALTY. (a) If the commissioner of public health or the  
20 commissioner's designee determines that a violation occurred, the  
21 commissioner or the designee may issue to the board a report  
22 stating:

23           (1) the facts on which the determination is based; and

24           (2) the commissioner's or the designee's  
25 recommendation on the imposition of an administrative penalty,  
26 including a recommendation on the amount of the penalty.

27       (b) Within 14 days after the date the report is issued, the

1 commissioner of public health or the commissioner's designee shall  
2 give written notice of the report to the person. The notice must:

3 (1) include a brief summary of the alleged violation;  
4 (2) state the amount of the recommended administrative  
5 penalty; and

6 (3) inform the person of the person's right to a  
7 hearing on the occurrence of the violation, the amount of the  
8 penalty, or both.

9 Sec. 503.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a)  
10 Within 10 days after the date the person receives the notice, the  
11 person in writing may:

12 (1) accept the determination and recommended  
13 administrative penalty of the commissioner of public health or the  
14 commissioner's designee; or

15 (2) make a request for a hearing on the occurrence of  
16 the violation, the amount of the penalty, or both.

17 (b) If the person accepts the determination and recommended  
18 penalty of the commissioner of public health or the commissioner's  
19 designee, the board by order shall approve the determination and  
20 impose the recommended penalty.

21 Sec. 503.505. HEARING. (a) If the person requests a  
22 hearing or fails to respond in a timely manner to the notice, the  
23 commissioner of public health or the commissioner's designee shall  
24 set a hearing and give written notice of the hearing to the person.

25 (b) An administrative law judge of the State Office of  
26 Administrative Hearings shall hold the hearing.

27 (c) The administrative law judge shall make findings of fact

1 and conclusions of law and promptly issue to the board a proposal  
2 for a decision about the occurrence of the violation and the amount  
3 of a proposed administrative penalty.

4 Sec. 503.506. DECISION BY BOARD. (a) Based on the  
5 findings of fact, conclusions of law, and proposal for decision,  
6 the board by order may determine that:

7 (1) a violation occurred and impose an administrative  
8 penalty; or

9 (2) a violation did not occur.

10 (b) The notice of the board's order given to the person must  
11 include a statement of the right of the person to judicial review of  
12 the order.

13 Sec. 503.507. OPTIONS FOLLOWING DECISION: PAY OR  
14 APPEAL. (a) Within 30 days after the date the board's order  
15 becomes final, the person shall:

16 (1) pay the administrative penalty; or

17 (2) file a petition for judicial review contesting the  
18 occurrence of the violation, the amount of the penalty, or both.

19 (b) Within the 30-day period prescribed by Subsection (a), a  
20 person who files a petition for judicial review may:

21 (1) stay enforcement of the penalty by:

22 (A) paying the penalty to the court for placement  
23 in an escrow account; or

24 (B) giving the court a supersedeas bond approved  
25 by the court that:

26 (i) is for the amount of the penalty; and

27 (ii) is effective until all judicial review

1 of the board's order is final; or

2 (2) request the court to stay enforcement of the  
3 penalty by:

4 (A) filing with the court a sworn affidavit of  
5 the person stating that the person is financially unable to pay the  
6 penalty and is financially unable to give the supersedeas bond; and

7 (B) giving a copy of the affidavit to the  
8 commissioner of public health or the commissioner's designee by  
9 certified mail.

10 (c) If the commissioner of public health or the  
11 commissioner's designee receives a copy of an affidavit under  
12 Subsection (b)(2), the commissioner or the designee may file with  
13 the court, within five days after the date the copy is received, a  
14 contest to the affidavit.

15 (d) The court shall hold a hearing on the facts alleged in  
16 the affidavit as soon as practicable and shall stay the enforcement  
17 of the penalty on finding that the alleged facts are true. The  
18 person who files an affidavit has the burden of proving that the  
19 person is financially unable to pay the penalty and to give a  
20 supersedeas bond.

21 Sec. 503.508. COLLECTION OF PENALTY. (a) If the person  
22 does not pay the administrative penalty and the enforcement of the  
23 penalty is not stayed, the penalty may be collected.

24 (b) The attorney general may sue to collect the penalty.

25 Sec. 503.509. DETERMINATION BY COURT. (a) If the court  
26 sustains the determination that a violation occurred, the court may  
27 uphold or reduce the amount of the administrative penalty and order



1 the person to pay the full or reduced amount of the penalty.

2 (b) If the court does not sustain the finding that a  
3 violation occurred, the court shall order that a penalty is not  
4 owed.

5 Sec. 503.510. REMITTANCE OF PENALTY AND INTEREST. (a) If  
6 the person paid the administrative penalty and if the amount of the  
7 penalty is reduced or the penalty is not upheld by the court, the  
8 court shall order, when the court's judgment becomes final, that  
9 the appropriate amount plus accrued interest be remitted to the  
10 person.

11 (b) The interest accrues at the rate charged on loans to  
12 depository institutions by the New York Federal Reserve Bank.

13 (c) The interest shall be paid for the period beginning on  
14 the date the penalty is paid and ending on the date the penalty is  
15 remitted.

16 (d) If the person gave a supersedeas bond and the penalty is  
17 not upheld by the court, the court shall order, when the court's  
18 judgment becomes final, the release of the bond.

19 (e) If the person gave a supersedeas bond and the amount of  
20 the penalty is reduced, the court shall order the release of the  
21 bond after the person pays the reduced amount.

22 Sec. 503.511. ADMINISTRATIVE PROCEDURE. A proceeding  
23 under this subchapter is a contested case under Chapter 2001,  
24 Government Code.

25 SECTION 12. Subchapter J, Chapter 505, Occupations Code, is  
26 amended by adding Section 505.507 to read as follows:

27 Sec. 505.507. CRIMINAL PENALTY. (a) A person required to

1 hold a license under this chapter commits an offense if the person  
2 knowingly acts as a social worker without holding a license issued  
3 under this chapter.

4 (b) An offense under Subsection (a) is a Class A  
5 misdemeanor.

6 SECTION 13. Subchapter G, Chapter 601, Occupations Code, is  
7 amended by adding Section 601.306 to read as follows:

8 Sec. 601.306. EMERGENCY SUSPENSION. (a) The department  
9 shall temporarily suspend the certificate of a certificate holder  
10 if the department determines from the evidence or information  
11 presented to it that continued practice by the certificate holder  
12 would constitute a continuing and imminent threat to the public  
13 welfare.

14 (b) A certificate may be suspended under this section  
15 without notice or hearing on the complaint if:

16 (1) action is taken to initiate proceedings for a  
17 hearing before the State Office of Administrative Hearings  
18 simultaneously with the temporary suspension; and

19 (2) a hearing is held as soon as practicable under this  
20 chapter and Chapter 2001, Government Code.

21 (c) The State Office of Administrative Hearings shall hold a  
22 preliminary hearing not later than the 14th day after the date of  
23 the temporary suspension to determine if there is probable cause to  
24 believe that a continuing and imminent threat to the public welfare  
25 still exists. A final hearing on the matter shall be held not later  
26 than the 61st day after the date of the temporary suspension.

27 SECTION 14. Subchapter F, Chapter 602, Occupations Code, is

1 amended by adding Section 602.254 to read as follows:

2 Sec. 602.254. EMERGENCY SUSPENSION. (a) The board or a  
3 three-member committee of board members designated by the board  
4 shall temporarily suspend the license of a license holder if the  
5 board or committee determines from the evidence or information  
6 presented to it that continued practice by the license holder would  
7 constitute a continuing and imminent threat to the public welfare.

8 (b) A license may be suspended under this section without  
9 notice or hearing on the complaint if:

10 (1) action is taken to initiate proceedings for a  
11 hearing before the State Office of Administrative Hearings  
12 simultaneously with the temporary suspension; and

13 (2) a hearing is held as soon as practicable under this  
14 chapter and Chapter 2001, Government Code.

15 (c) The State Office of Administrative Hearings shall hold a  
16 preliminary hearing not later than the 14th day after the date of  
17 the temporary suspension to determine if there is probable cause to  
18 believe that a continuing and imminent threat to the public welfare  
19 still exists. A final hearing on the matter shall be held not later  
20 than the 61st day after the date of the temporary suspension.

21 SECTION 15. Subchapter G, Chapter 602, Occupations Code, is  
22 amended by adding Section 602.3015 to read as follows:

23 Sec. 602.3015. CIVIL PENALTY. (a) A person who violates  
24 this chapter or a rule or order adopted by the board under this  
25 chapter is liable for a civil penalty not to exceed \$5,000 a day.

26 (b) At the request of the board, the attorney general shall  
27 bring an action to recover a civil penalty authorized under this

1 section.

2 SECTION 16. Section 602.302, Occupations Code, is amended  
3 to read as follows:

4 Sec. 602.302. OFFENSE. (a) A person commits an offense if  
5 the person [~~knowingly~~]:

6 (1) practices medical physics without holding a  
7 license under this chapter;

8 (2) practices a specialty of medical physics without  
9 holding a license for the specialty;

10 (3) practices medical physics in violation of this  
11 chapter; or

12 (4) [~~(2)~~] uses in any manner letters, terminology,  
13 symbols, or signs to indicate or imply that the person is qualified  
14 or licensed to practice medical physics in a manner for which the  
15 person is not licensed under this chapter.

16 (b) An offense under this section is a Class A [~~B~~]  
17 misdemeanor.

18 SECTION 17. Subchapter I, Chapter 603, Occupations Code, is  
19 amended by adding Section 603.408 to read as follows:

20 Sec. 603.408. EMERGENCY SUSPENSION. (a) The board or a  
21 three-member committee of board members designated by the board  
22 shall temporarily suspend the license of a license holder if the  
23 board or committee determines from the evidence or information  
24 presented to it that continued practice by the license holder would  
25 constitute a continuing and imminent threat to the public welfare.

26 (b) A license may be suspended under this section without  
27 notice or hearing on the complaint if:

1           (1) action is taken to initiate proceedings for a  
2 hearing before the State Office of Administrative Hearings  
3 simultaneously with the temporary suspension; and

4           (2) a hearing is held as soon as practicable under this  
5 chapter and Chapter 2001, Government Code.

6           (c) The State Office of Administrative Hearings shall hold a  
7 preliminary hearing not later than the 14th day after the date of  
8 the temporary suspension to determine if there is probable cause to  
9 believe that a continuing and imminent threat to the public welfare  
10 still exists. A final hearing on the matter shall be held not later  
11 than the 61st day after the date of the temporary suspension.

12           SECTION 18. Subchapter J, Chapter 603, Occupations Code, is  
13 amended by adding Section 603.4515 to read as follows:

14           Sec. 603.4515. CIVIL PENALTY. (a) A person who violates  
15 this chapter or a rule or order adopted by the board under this  
16 chapter is liable for a civil penalty not to exceed \$5,000 a day.

17           (b) At the request of the board, the attorney general shall  
18 bring an action to recover a civil penalty authorized under this  
19 section.

20           SECTION 19. Chapter 603, Occupations Code, is amended by  
21 adding Subchapter K to read as follows:

22           SUBCHAPTER K. ADMINISTRATIVE PENALTY

23           Sec. 603.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The  
24 board may impose an administrative penalty on a person licensed  
25 under this chapter who violates this chapter or a rule or order  
26 adopted under this chapter.

27           Sec. 603.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The

1 amount of the administrative penalty may not be less than \$50 or  
2 more than \$5,000 for each violation. Each day a violation continues  
3 or occurs is a separate violation for the purpose of imposing a  
4 penalty.

5 (b) The amount shall be based on:

6 (1) the seriousness of the violation, including the  
7 nature, circumstances, extent, and gravity of the violation;

8 (2) the economic harm caused by the violation;

9 (3) the history of previous violations;

10 (4) the amount necessary to deter a future violation;

11 (5) efforts to correct the violation; and

12 (6) any other matter that justice may require.

13 Sec. 603.503. REPORT AND NOTICE OF VIOLATION AND  
14 PENALTY. (a) If the commissioner or the commissioner's designee  
15 determines that a violation occurred, the commissioner or the  
16 designee may issue to the board a report stating:

17 (1) the facts on which the determination is based; and

18 (2) the commissioner's or the designee's  
19 recommendation on the imposition of an administrative penalty,  
20 including a recommendation on the amount of the penalty.

21 (b) Within 14 days after the date the report is issued, the  
22 commissioner or the commissioner's designee shall give written  
23 notice of the report to the person. The notice must:

24 (1) include a brief summary of the alleged violation;

25 (2) state the amount of the recommended administrative  
26 penalty; and

27 (3) inform the person of the person's right to a

1 hearing on the occurrence of the violation, the amount of the  
2 penalty, or both.

3 Sec. 603.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a)  
4 Within 10 days after the date the person receives the notice, the  
5 person in writing may:

6 (1) accept the determination and recommended  
7 administrative penalty of the commissioner or the commissioner's  
8 designee; or

9 (2) make a request for a hearing on the occurrence of  
10 the violation, the amount of the penalty, or both.

11 (b) If the person accepts the determination and recommended  
12 penalty of the commissioner or the commissioner's designee, the  
13 board by order shall approve the determination and impose the  
14 recommended penalty.

15 Sec. 603.505. HEARING. (a) If the person requests a  
16 hearing or fails to respond in a timely manner to the notice, the  
17 commissioner or the commissioner's designee shall set a hearing and  
18 give written notice of the hearing to the person.

19 (b) An administrative law judge of the State Office of  
20 Administrative Hearings shall hold the hearing.

21 (c) The administrative law judge shall make findings of fact  
22 and conclusions of law and promptly issue to the board a proposal  
23 for a decision about the occurrence of the violation and the amount  
24 of a proposed administrative penalty.

25 Sec. 603.506. DECISION BY BOARD. (a) Based on the  
26 findings of fact, conclusions of law, and proposal for decision,  
27 the board by order may determine that:

1           (1) a violation occurred and impose an administrative  
2 penalty; or

3           (2) a violation did not occur.

4           (b) The notice of the board's order given to the person must  
5 include a statement of the right of the person to judicial review of  
6 the order.

7           Sec. 603.507. OPTIONS FOLLOWING DECISION: PAY OR  
8 APPEAL. (a) Within 30 days after the date the board's order  
9 becomes final, the person shall:

10           (1) pay the administrative penalty; or

11           (2) file a petition for judicial review contesting the  
12 occurrence of the violation, the amount of the penalty, or both.

13           (b) Within the 30-day period prescribed by Subsection (a), a  
14 person who files a petition for judicial review may:

15           (1) stay enforcement of the penalty by:

16                   (A) paying the penalty to the court for placement  
17 in an escrow account; or

18                   (B) giving the court a supersedeas bond approved  
19 by the court that:

20                           (i) is for the amount of the penalty; and

21                           (ii) is effective until all judicial review  
22 of the board's order is final; or

23           (2) request the court to stay enforcement of the  
24 penalty by:

25                   (A) filing with the court a sworn affidavit of  
26 the person stating that the person is financially unable to pay the  
27 penalty and is financially unable to give the supersedeas bond; and



1           (B) giving a copy of the affidavit to the  
2 commissioner or the commissioner's designee by certified mail.

3           (c) If the commissioner or the commissioner's designee  
4 receives a copy of an affidavit under Subsection (b)(2), the  
5 commissioner or the designee may file with the court, within five  
6 days after the date the copy is received, a contest to the  
7 affidavit.

8           (d) The court shall hold a hearing on the facts alleged in  
9 the affidavit as soon as practicable and shall stay the enforcement  
10 of the penalty on finding that the alleged facts are true. The  
11 person who files an affidavit has the burden of proving that the  
12 person is financially unable to pay the penalty and to give a  
13 supersedeas bond.

14           Sec. 603.508. COLLECTION OF PENALTY. (a) If the person  
15 does not pay the administrative penalty and the enforcement of the  
16 penalty is not stayed, the penalty may be collected.

17           (b) The attorney general may sue to collect the penalty.

18           Sec. 603.509. DETERMINATION BY COURT. (a) If the court  
19 sustains the determination that a violation occurred, the court may  
20 uphold or reduce the amount of the administrative penalty and order  
21 the person to pay the full or reduced amount of the penalty.

22           (b) If the court does not sustain the finding that a  
23 violation occurred, the court shall order that a penalty is not  
24 owed.

25           Sec. 603.510. REMITTANCE OF PENALTY AND INTEREST. (a) If  
26 the person paid the administrative penalty and if the amount of the  
27 penalty is reduced or the penalty is not upheld by the court, the

1 court shall order, when the court's judgment becomes final, that  
2 the appropriate amount plus accrued interest be remitted to the  
3 person.

4 (b) The interest accrues at the rate charged on loans to  
5 depository institutions by the New York Federal Reserve Bank.

6 (c) The interest shall be paid for the period beginning on  
7 the date the penalty is paid and ending on the date the penalty is  
8 remitted.

9 (d) If the person gave a supersedeas bond and the penalty is  
10 not upheld by the court, the court shall order, when the court's  
11 judgment becomes final, the release of the bond.

12 (e) If the person gave a supersedeas bond and the amount of  
13 the penalty is reduced, the court shall order the release of the  
14 bond after the person pays the reduced amount.

15 Sec. 603.511. ADMINISTRATIVE PROCEDURE. A proceeding  
16 under this subchapter is a contested case under Chapter 2001,  
17 Government Code.

18 SECTION 20. Subchapter H, Chapter 605, Occupations Code, is  
19 amended by adding Section 605.3535 to read as follows:

20 Sec. 605.3535. EMERGENCY SUSPENSION. (a) The board or a  
21 three-member committee of board members designated by the board  
22 shall temporarily suspend the license of a license holder if the  
23 board or committee determines from the evidence or information  
24 presented to it that continued practice by the license holder would  
25 constitute a continuing and imminent threat to the public welfare.

26 (b) A license may be suspended under this section without  
27 notice or hearing on the complaint if:

1           (1) action is taken to initiate proceedings for a  
2 hearing before the State Office of Administrative Hearings  
3 simultaneously with the temporary suspension; and

4           (2) a hearing is held as soon as practicable under this  
5 chapter and Chapter 2001, Government Code.

6           (c) The State Office of Administrative Hearings shall hold a  
7 preliminary hearing not later than the 14th day after the date of  
8 the temporary suspension to determine if there is probable cause to  
9 believe that a continuing and imminent threat to the public welfare  
10 still exists. A final hearing on the matter shall be held not later  
11 than the 61st day after the date of the temporary suspension.

12           SECTION 21. Subchapter H, Chapter 605, Occupations Code, is  
13 amended by adding Section 605.356 to read as follows:

14           Sec. 605.356. CRIMINAL PENALTY (a) A person required to  
15 hold a license under this chapter commits an offense if the person  
16 knowingly practices, attempts to practice, or offers to practice  
17 orthotics or prosthetics without holding a license issued under  
18 this chapter.

19           (b) An offense under Subsection (a) is a Class A  
20 misdemeanor.

21           SECTION 22. Chapter 605, Occupations Code, is amended by  
22 adding Subchapter I to read as follows:

23           SUBCHAPTER I. ADMINISTRATIVE PENALTY

24           Sec. 605.401. IMPOSITION OF ADMINISTRATIVE PENALTY. The  
25 board may impose an administrative penalty on a person licensed  
26 under this chapter who violates this chapter or a rule or order  
27 adopted under this chapter.

1       Sec. 605.402. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The  
2 amount of the administrative penalty may not be less than \$50 or  
3 more than \$5,000 for each violation. Each day a violation continues  
4 or occurs is a separate violation for the purpose of imposing a  
5 penalty.

6       (b) The amount shall be based on:

7           (1) the seriousness of the violation, including the  
8 nature, circumstances, extent, and gravity of the violation;

9           (2) the economic harm caused by the violation;

10          (3) the history of previous violations;

11          (4) the amount necessary to deter a future violation;

12          (5) efforts to correct the violation; and

13          (6) any other matter that justice may require.

14       Sec. 605.403. REPORT AND NOTICE OF VIOLATION AND  
15 PENALTY. (a) If the commissioner or the commissioner's designee  
16 determines that a violation occurred, the commissioner or the  
17 designee may issue to the board a report stating:

18           (1) the facts on which the determination is based; and

19           (2) the commissioner's or the designee's  
20 recommendation on the imposition of an administrative penalty,  
21 including a recommendation on the amount of the penalty.

22       (b) Within 14 days after the date the report is issued, the  
23 commissioner or the commissioner's designee shall give written  
24 notice of the report to the person. The notice must:

25           (1) include a brief summary of the alleged violation;

26           (2) state the amount of the recommended administrative  
27 penalty; and

1           (3) inform the person of the person's right to a  
2 hearing on the occurrence of the violation, the amount of the  
3 penalty, or both.

4           Sec. 605.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a)  
5 Within 10 days after the date the person receives the notice, the  
6 person in writing may:

7           (1) accept the determination and recommended  
8 administrative penalty of the commissioner or the commissioner's  
9 designee; or

10           (2) make a request for a hearing on the occurrence of  
11 the violation, the amount of the penalty, or both.

12           (b) If the person accepts the determination and recommended  
13 penalty of the commissioner or the commissioner's designee, the  
14 board by order shall approve the determination and impose the  
15 recommended penalty.

16           Sec. 605.405. HEARING. (a) If the person requests a  
17 hearing or fails to respond in a timely manner to the notice, the  
18 commissioner or the commissioner's designee shall set a hearing and  
19 give written notice of the hearing to the person.

20           (b) An administrative law judge of the State Office of  
21 Administrative Hearings shall hold the hearing.

22           (c) The administrative law judge shall make findings of fact  
23 and conclusions of law and promptly issue to the board a proposal  
24 for a decision about the occurrence of the violation and the amount  
25 of a proposed administrative penalty.

26           Sec. 605.406. DECISION BY BOARD. (a) Based on the  
27 findings of fact, conclusions of law, and proposal for decision,

1 the board by order may determine that:

2 (1) a violation occurred and impose an administrative  
3 penalty; or

4 (2) a violation did not occur.

5 (b) The notice of the board's order given to the person must  
6 include a statement of the right of the person to judicial review of  
7 the order.

8 Sec. 605.407. OPTIONS FOLLOWING DECISION: PAY OR  
9 APPEAL. (a) Within 30 days after the date the board's order  
10 becomes final, the person shall:

11 (1) pay the administrative penalty; or

12 (2) file a petition for judicial review contesting the  
13 occurrence of the violation, the amount of the penalty, or both.

14 (b) Within the 30-day period prescribed by Subsection (a), a  
15 person who files a petition for judicial review may:

16 (1) stay enforcement of the penalty by:

17 (A) paying the penalty to the court for placement  
18 in an escrow account; or

19 (B) giving the court a supersedeas bond approved  
20 by the court that:

21 (i) is for the amount of the penalty; and

22 (ii) is effective until all judicial review  
23 of the board's order is final; or

24 (2) request the court to stay enforcement of the  
25 penalty by:

26 (A) filing with the court a sworn affidavit of  
27 the person stating that the person is financially unable to pay the

1 penalty and is financially unable to give the supersedeas bond; and

2 (B) giving a copy of the affidavit to the  
3 commissioner or the commissioner's designee by certified mail.

4 (c) If the commissioner or the commissioner's designee  
5 receives a copy of an affidavit under Subsection (b)(2), the  
6 commissioner or the designee may file with the court, within five  
7 days after the date the copy is received, a contest to the  
8 affidavit.

9 (d) The court shall hold a hearing on the facts alleged in  
10 the affidavit as soon as practicable and shall stay the enforcement  
11 of the penalty on finding that the alleged facts are true. The  
12 person who files an affidavit has the burden of proving that the  
13 person is financially unable to pay the penalty and to give a  
14 supersedeas bond.

15 Sec. 605.408. COLLECTION OF PENALTY. (a) If the person  
16 does not pay the administrative penalty and the enforcement of the  
17 penalty is not stayed, the penalty may be collected.

18 (b) The attorney general may sue to collect the penalty.

19 Sec. 605.409. DETERMINATION BY COURT. (a) If the court  
20 sustains the determination that a violation occurred, the court may  
21 uphold or reduce the amount of the administrative penalty and order  
22 the person to pay the full or reduced amount of the penalty.

23 (b) If the court does not sustain the finding that a  
24 violation occurred, the court shall order that a penalty is not  
25 owed.

26 Sec. 605.410. REMITTANCE OF PENALTY AND INTEREST. (a) If  
27 the person paid the administrative penalty and if the amount of the

1 penalty is reduced or the penalty is not upheld by the court, the  
2 court shall order, when the court's judgment becomes final, that  
3 the appropriate amount plus accrued interest be remitted to the  
4 person.

5 (b) The interest accrues at the rate charged on loans to  
6 depository institutions by the New York Federal Reserve Bank.

7 (c) The interest shall be paid for the period beginning on  
8 the date the penalty is paid and ending on the date the penalty is  
9 remitted.

10 (d) If the person gave a supersedeas bond and the penalty is  
11 not upheld by the court, the court shall order, when the court's  
12 judgment becomes final, the release of the bond.

13 (e) If the person gave a supersedeas bond and the amount of  
14 the penalty is reduced, the court shall order the release of the  
15 bond after the person pays the reduced amount.

16 Sec. 605.411. ADMINISTRATIVE PROCEDURE. A proceeding  
17 under this subchapter is a contested case under Chapter 2001,  
18 Government Code.

19 SECTION 23. Subchapter I, Chapter 701, Occupations Code, is  
20 amended by adding Section 701.408 to read as follows:

21 Sec. 701.408. EMERGENCY SUSPENSION. (a) The dietitians  
22 board or a three-member committee of board members designated by  
23 the board shall temporarily suspend the license of a license holder  
24 if the board or committee determines from the evidence or  
25 information presented to it that continued practice by the license  
26 holder would constitute a continuing and imminent threat to the  
27 public welfare.



1        (b) A license may be suspended under this section without  
2 notice or hearing on the complaint if:

3            (1) action is taken to initiate proceedings for a  
4 hearing before the State Office of Administrative Hearings  
5 simultaneously with the temporary suspension; and

6            (2) a hearing is held as soon as practicable under this  
7 chapter and Chapter 2001, Government Code.

8        (c) The State Office of Administrative Hearings shall hold a  
9 preliminary hearing not later than the 14th day after the date of  
10 the temporary suspension to determine if there is probable cause to  
11 believe that a continuing and imminent threat to the public welfare  
12 still exists. A final hearing on the matter shall be held not later  
13 than the 61st day after the date of the temporary suspension.

14        SECTION 24. Chapter 701, Occupations Code, is amended by  
15 adding Subchapter K to read as follows:

16            SUBCHAPTER K. ADMINISTRATIVE PENALTY

17        Sec. 701.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The  
18 dietitians board may impose an administrative penalty on a person  
19 licensed under this chapter who violates this chapter or a rule or  
20 order adopted under this chapter.

21        Sec. 701.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The  
22 amount of the administrative penalty may not be less than \$50 or  
23 more than \$5,000 for each violation. Each day a violation continues  
24 or occurs is a separate violation for the purpose of imposing a  
25 penalty.

26        (b) The amount shall be based on:

27            (1) the seriousness of the violation, including the

1 nature, circumstances, extent, and gravity of the violation;

2 (2) the economic harm caused by the violation;

3 (3) the history of previous violations;

4 (4) the amount necessary to deter a future violation;

5 (5) efforts to correct the violation; and

6 (6) any other matter that justice may require.

7 Sec. 701.503. REPORT AND NOTICE OF VIOLATION AND  
8 PENALTY. (a) If the commissioner or the commissioner's designee  
9 determines that a violation occurred, the commissioner or the  
10 designee may issue to the dietitians board a report stating:

11 (1) the facts on which the determination is based; and

12 (2) the commissioner's or the designee's  
13 recommendation on the imposition of an administrative penalty,  
14 including a recommendation on the amount of the penalty.

15 (b) Within 14 days after the date the report is issued, the  
16 commissioner or the commissioner's designee shall give written  
17 notice of the report to the person. The notice must:

18 (1) include a brief summary of the alleged violation;

19 (2) state the amount of the recommended administrative  
20 penalty; and

21 (3) inform the person of the person's right to a  
22 hearing on the occurrence of the violation, the amount of the  
23 penalty, or both.

24 Sec. 701.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a)  
25 Within 10 days after the date the person receives the notice, the  
26 person in writing may:

27 (1) accept the determination and recommended

1 administrative penalty of the commissioner or the commissioner's  
2 designee; or

3 (2) make a request for a hearing on the occurrence of  
4 the violation, the amount of the penalty, or both.

5 (b) If the person accepts the determination and recommended  
6 penalty of the commissioner or the commissioner's designee, the  
7 dietitians board by order shall approve the determination and  
8 impose the recommended penalty.

9 Sec. 701.505. HEARING. (a) If the person requests a  
10 hearing or fails to respond in a timely manner to the notice, the  
11 commissioner or the commissioner's designee shall set a hearing and  
12 give written notice of the hearing to the person.

13 (b) An administrative law judge of the State Office of  
14 Administrative Hearings shall hold the hearing.

15 (c) The administrative law judge shall make findings of fact  
16 and conclusions of law and promptly issue to the dietitians board a  
17 proposal for a decision about the occurrence of the violation and  
18 the amount of a proposed administrative penalty.

19 Sec. 701.506. DECISION BY DIETITIANS BOARD. (a) Based on  
20 the findings of fact, conclusions of law, and proposal for  
21 decision, the dietitians board by order may determine that:

22 (1) a violation occurred and impose an administrative  
23 penalty; or

24 (2) a violation did not occur.

25 (b) The notice of the dietitians board's order given to the  
26 person must include a statement of the right of the person to  
27 judicial review of the order.

1           Sec. 701.507. OPTIONS FOLLOWING DECISION: PAY OR  
2 APPEAL. (a) Within 30 days after the date the dietitians board's  
3 order becomes final, the person shall:

4                   (1) pay the administrative penalty; or

5                   (2) file a petition for judicial review contesting the  
6 occurrence of the violation, the amount of the penalty, or both.

7           (b) Within the 30-day period prescribed by Subsection (a), a  
8 person who files a petition for judicial review may:

9                   (1) stay enforcement of the penalty by:

10                           (A) paying the penalty to the court for placement  
11 in an escrow account; or

12                           (B) giving the court a supersedeas bond approved  
13 by the court that:

14   (i) is for the amount of the penalty; and

15   (ii) is effective until all judicial review  
16 of the dietitians board's order is final; or

17                   (2) request the court to stay enforcement of the  
18 penalty by:

19                           (A) filing with the court a sworn affidavit of  
20 the person stating that the person is financially unable to pay the  
21 penalty and is financially unable to give the supersedeas bond; and

22                           (B) giving a copy of the affidavit to the  
23 commissioner or the commissioner's designee by certified mail.

24           (c) If the commissioner or the commissioner's designee  
25 receives a copy of an affidavit under Subsection (b)(2), the  
26 commissioner or the designee may file with the court, within five  
27 days after the date the copy is received, a contest to the

1 affidavit.

2 (d) The court shall hold a hearing on the facts alleged in  
3 the affidavit as soon as practicable and shall stay the enforcement  
4 of the penalty on finding that the alleged facts are true. The  
5 person who files an affidavit has the burden of proving that the  
6 person is financially unable to pay the penalty and to give a  
7 supersedeas bond.

8 Sec. 701.508. COLLECTION OF PENALTY. (a) If the person  
9 does not pay the administrative penalty and the enforcement of the  
10 penalty is not stayed, the penalty may be collected.

11 (b) The attorney general may sue to collect the penalty.

12 Sec. 701.509. DETERMINATION BY COURT. (a) If the court  
13 sustains the determination that a violation occurred, the court may  
14 uphold or reduce the amount of the administrative penalty and order  
15 the person to pay the full or reduced amount of the penalty.

16 (b) If the court does not sustain the finding that a  
17 violation occurred, the court shall order that a penalty is not  
18 owed.

19 Sec. 701.510. REMITTANCE OF PENALTY AND INTEREST. (a) If  
20 the person paid the administrative penalty and if the amount of the  
21 penalty is reduced or the penalty is not upheld by the court, the  
22 court shall order, when the court's judgment becomes final, that  
23 the appropriate amount plus accrued interest be remitted to the  
24 person.

25 (b) The interest accrues at the rate charged on loans to  
26 depository institutions by the New York Federal Reserve Bank.

27 (c) The interest shall be paid for the period beginning on

1 the date the penalty is paid and ending on the date the penalty is  
2 remitted.

3 (d) If the person gave a supersedeas bond and the penalty is  
4 not upheld by the court, the court shall order, when the court's  
5 judgment becomes final, the release of the bond.

6 (e) If the person gave a supersedeas bond and the amount of  
7 the penalty is reduced, the court shall order the release of the  
8 bond after the person pays the reduced amount.

9 Sec. 701.511. ADMINISTRATIVE PROCEDURE. A proceeding  
10 under this subchapter is a contested case under Chapter 2001,  
11 Government Code.

12 SECTION 25. Chapter 1952, Occupations Code, is amended by  
13 adding Subchapter F to read as follows:

14 SUBCHAPTER F. ADMINISTRATIVE PENALTY

15 Sec. 1952.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The  
16 department may impose an administrative penalty on a person  
17 registered under this chapter who violates this chapter or a rule or  
18 order adopted under this chapter.

19 Sec. 1952.252. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The  
20 amount of the administrative penalty may not be less than \$50 or  
21 more than \$5,000 for each violation. Each day a violation continues  
22 or occurs is a separate violation for the purpose of imposing a  
23 penalty.

24 (b) The amount shall be based on:

25 (1) the seriousness of the violation, including the  
26 nature, circumstances, extent, and gravity of the violation;

27 (2) the economic harm caused by the violation;

- 1           (3) the history of previous violations;
- 2           (4) the amount necessary to deter a future violation;
- 3           (5) efforts to correct the violation; and
- 4           (6) any other matter that justice may require.

5           Sec. 1952.253. REPORT AND NOTICE OF VIOLATION AND  
6 PENALTY. (a) If the commissioner of public health or the  
7 commissioner's designee determines that a violation occurred, the  
8 commissioner or the designee may issue to the department a report  
9 stating:

- 10           (1) the facts on which the determination is based; and
- 11           (2) the commissioner's or the designee's  
12 recommendation on the imposition of an administrative penalty,  
13 including a recommendation on the amount of the penalty.

14           (b) Within 14 days after the date the report is issued, the  
15 commissioner of public health or the commissioner's designee shall  
16 give written notice of the report to the person. The notice must:

- 17           (1) include a brief summary of the alleged violation;
- 18           (2) state the amount of the recommended administrative  
19 penalty; and
- 20           (3) inform the person of the person's right to a  
21 hearing on the occurrence of the violation, the amount of the  
22 penalty, or both.

23           Sec. 1952.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a)  
24 Within 10 days after the date the person receives the notice, the  
25 person in writing may:

- 26           (1) accept the determination and recommended  
27 administrative penalty of the commissioner of public health or the

1 commissioner's designee; or

2 (2) make a request for a hearing on the occurrence of  
3 the violation, the amount of the penalty, or both.

4 (b) If the person accepts the determination and recommended  
5 penalty of the commissioner of public health or the commissioner's  
6 designee, the department by order shall approve the determination  
7 and impose the recommended penalty.

8 Sec. 1952.255. HEARING. (a) If the person requests a  
9 hearing or fails to respond in a timely manner to the notice, the  
10 commissioner of public health or the commissioner's designee shall  
11 set a hearing and give written notice of the hearing to the person.

12 (b) An administrative law judge of the State Office of  
13 Administrative Hearings shall hold the hearing.

14 (c) The administrative law judge shall make findings of fact  
15 and conclusions of law and promptly issue to the department a  
16 proposal for a decision about the occurrence of the violation and  
17 the amount of a proposed administrative penalty.

18 Sec. 1952.256. DECISION BY DEPARTMENT. (a) Based on the  
19 findings of fact, conclusions of law, and proposal for decision,  
20 the department by order may determine that:

21 (1) a violation occurred and impose an administrative  
22 penalty; or

23 (2) a violation did not occur.

24 (b) The notice of the department's order given to the person  
25 must include a statement of the right of the person to judicial  
26 review of the order.

27 Sec. 1952.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.



1 (a) Within 30 days after the date the department's order becomes  
2 final, the person shall:

3 (1) pay the administrative penalty; or

4 (2) file a petition for judicial review contesting the  
5 occurrence of the violation, the amount of the penalty, or both.

6 (b) Within the 30-day period prescribed by Subsection (a), a  
7 person who files a petition for judicial review may:

8 (1) stay enforcement of the penalty by:

9 (A) paying the penalty to the court for placement  
10 in an escrow account; or

11 (B) giving the court a supersedeas bond approved  
12 by the court that:

13 (i) is for the amount of the penalty; and

14 (ii) is effective until all judicial review  
15 of the department's order is final; or

16 (2) request the court to stay enforcement of the  
17 penalty by:

18 (A) filing with the court a sworn affidavit of  
19 the person stating that the person is financially unable to pay the  
20 penalty and is financially unable to give the supersedeas bond; and

21 (B) giving a copy of the affidavit to the  
22 commissioner of public health or the commissioner's designee by  
23 certified mail.

24 (c) If the commissioner of public health or the  
25 commissioner's designee receives a copy of an affidavit under  
26 Subsection (b)(2), the commissioner or the designee may file with  
27 the court, within five days after the date the copy is received, a

1 contest to the affidavit.

2 (d) The court shall hold a hearing on the facts alleged in  
3 the affidavit as soon as practicable and shall stay the enforcement  
4 of the penalty on finding that the alleged facts are true. The  
5 person who files an affidavit has the burden of proving that the  
6 person is financially unable to pay the penalty and to give a  
7 supersedeas bond.

8 Sec. 1952.258. COLLECTION OF PENALTY. (a) If the person  
9 does not pay the administrative penalty and the enforcement of the  
10 penalty is not stayed, the penalty may be collected.

11 (b) The attorney general may sue to collect the penalty.

12 Sec. 1952.259. DETERMINATION BY COURT. (a) If the court  
13 sustains the determination that a violation occurred, the court may  
14 uphold or reduce the amount of the administrative penalty and order  
15 the person to pay the full or reduced amount of the penalty.

16 (b) If the court does not sustain the finding that a  
17 violation occurred, the court shall order that a penalty is not  
18 owed.

19 Sec. 1952.260. REMITTANCE OF PENALTY AND INTEREST. (a) If  
20 the person paid the administrative penalty and if the amount of the  
21 penalty is reduced or the penalty is not upheld by the court, the  
22 court shall order, when the court's judgment becomes final, that  
23 the appropriate amount plus accrued interest be remitted to the  
24 person.

25 (b) The interest accrues at the rate charged on loans to  
26 depository institutions by the New York Federal Reserve Bank.

27 (c) The interest shall be paid for the period beginning on

1 the date the penalty is paid and ending on the date the penalty is  
2 remitted.

3 (d) If the person gave a supersedeas bond and the penalty is  
4 not upheld by the court, the court shall order, when the court's  
5 judgment becomes final, the release of the bond.

6 (e) If the person gave a supersedeas bond and the amount of  
7 the penalty is reduced, the court shall order the release of the  
8 bond after the person pays the reduced amount.

9 Sec. 1952.261. ADMINISTRATIVE PROCEDURE. A proceeding  
10 under this subchapter is a contested case under Chapter 2001,  
11 Government Code.

12 SECTION 26. Chapter 1953, Occupations Code, is amended by  
13 adding Subchapter G to read as follows:

14 SUBCHAPTER G. ADMINISTRATIVE PENALTY

15 Sec. 1953.301. IMPOSITION OF ADMINISTRATIVE PENALTY. The  
16 board may impose an administrative penalty on a person registered  
17 under this chapter who violates this chapter or a rule or order  
18 adopted under this chapter.

19 Sec. 1953.302. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The  
20 amount of the administrative penalty may not be less than \$50 or  
21 more than \$5,000 for each violation. Each day a violation continues  
22 or occurs is a separate violation for the purpose of imposing a  
23 penalty.

24 (b) The amount shall be based on:

25 (1) the seriousness of the violation, including the  
26 nature, circumstances, extent, and gravity of the violation;

27 (2) the economic harm caused by the violation;

- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

Sec. 1953.303. REPORT AND NOTICE OF VIOLATION AND PENALTY.

(a) If the commissioner of public health or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the board a report stating:

- (1) the facts on which the determination is based; and
- (2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner of public health or the commissioner's designee shall give written notice of the report to the person. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 1953.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a)

Within 10 days after the date the person receives the notice, the person in writing may:

- (1) accept the determination and recommended administrative penalty of the commissioner of public health or the commissioner's designee; or

1           (2) make a request for a hearing on the occurrence of  
2 the violation, the amount of the penalty, or both.

3           (b) If the person accepts the determination and recommended  
4 penalty of the commissioner of public health or the commissioner's  
5 designee, the board by order shall approve the determination and  
6 impose the recommended penalty.

7           Sec. 1953.305. HEARING. (a) If the person requests a  
8 hearing or fails to respond in a timely manner to the notice, the  
9 commissioner of public health or the commissioner's designee shall  
10 set a hearing and give written notice of the hearing to the person.

11           (b) An administrative law judge of the State Office of  
12 Administrative Hearings shall hold the hearing.

13           (c) The administrative law judge shall make findings of fact  
14 and conclusions of law and promptly issue to the board a proposal  
15 for a decision about the occurrence of the violation and the amount  
16 of a proposed administrative penalty.

17           Sec. 1953.306. DECISION BY BOARD. (a) Based on the  
18 findings of fact, conclusions of law, and proposal for decision,  
19 the board by order may determine that:

20           (1) a violation occurred and impose an administrative  
21 penalty; or

22           (2) a violation did not occur.

23           (b) The notice of the board's order given to the person must  
24 include a statement of the right of the person to judicial review of  
25 the order.

26           Sec. 1953.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

27           (a) Within 30 days after the date the board's order becomes final,

1 the person shall:

2 (1) pay the administrative penalty; or

3 (2) file a petition for judicial review contesting the  
4 occurrence of the violation, the amount of the penalty, or both.

5 (b) Within the 30-day period prescribed by Subsection (a), a  
6 person who files a petition for judicial review may:

7 (1) stay enforcement of the penalty by:

8 (A) paying the penalty to the court for placement  
9 in an escrow account; or

10 (B) giving the court a supersedeas bond approved  
11 by the court that:

12 (i) is for the amount of the penalty; and

13 (ii) is effective until all judicial review  
14 of the board's order is final; or

15 (2) request the court to stay enforcement of the  
16 penalty by:

17 (A) filing with the court a sworn affidavit of  
18 the person stating that the person is financially unable to pay the  
19 penalty and is financially unable to give the supersedeas bond; and

20 (B) giving a copy of the affidavit to the  
21 commissioner of public health or the commissioner's designee by  
22 certified mail.

23 (c) If the commissioner of public health or the  
24 commissioner's designee receives a copy of an affidavit under  
25 Subsection (b)(2), the commissioner or the designee may file with  
26 the court, within five days after the date the copy is received, a  
27 contest to the affidavit.

1       (d) The court shall hold a hearing on the facts alleged in  
2 the affidavit as soon as practicable and shall stay the enforcement  
3 of the penalty on finding that the alleged facts are true. The  
4 person who files an affidavit has the burden of proving that the  
5 person is financially unable to pay the penalty and to give a  
6 supersedeas bond.

7       Sec. 1953.308. COLLECTION OF PENALTY. (a) If the person  
8 does not pay the administrative penalty and the enforcement of the  
9 penalty is not stayed, the penalty may be collected.

10       (b) The attorney general may sue to collect the penalty.

11       Sec. 1953.309. DETERMINATION BY COURT. (a) If the court  
12 sustains the determination that a violation occurred, the court may  
13 uphold or reduce the amount of the administrative penalty and order  
14 the person to pay the full or reduced amount of the penalty.

15       (b) If the court does not sustain the finding that a  
16 violation occurred, the court shall order that a penalty is not  
17 owed.

18       Sec. 1953.310. REMITTANCE OF PENALTY AND INTEREST. (a) If  
19 the person paid the administrative penalty and if the amount of the  
20 penalty is reduced or the penalty is not upheld by the court, the  
21 court shall order, when the court's judgment becomes final, that  
22 the appropriate amount plus accrued interest be remitted to the  
23 person.

24       (b) The interest accrues at the rate charged on loans to  
25 depository institutions by the New York Federal Reserve Bank.

26       (c) The interest shall be paid for the period beginning on  
27 the date the penalty is paid and ending on the date the penalty is

1 remitted.

2 (d) If the person gave a supersedeas bond and the penalty is  
3 not upheld by the court, the court shall order, when the court's  
4 judgment becomes final, the release of the bond.

5 (e) If the person gave a supersedeas bond and the amount of  
6 the penalty is reduced, the court shall order the release of the  
7 bond after the person pays the reduced amount.

8 Sec. 1953.311. ADMINISTRATIVE PROCEDURE. A proceeding  
9 under this subchapter is a contested case under Chapter 2001,  
10 Government Code.

11 SECTION 27. Chapter 462, Acts of the 68th Legislature,  
12 Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil  
13 Statutes), is amended by adding Sections 13D and 13E to read as  
14 follows:

15 Sec. 13D. EMERGENCY SUSPENSION. (a) The council or a  
16 three-member committee of council members designated by the council  
17 shall temporarily suspend the registration of a person registered  
18 under this Act if the council or committee determines from the  
19 evidence or information presented to it that continued practice by  
20 the person would constitute a continuing and imminent threat to the  
21 public welfare.

22 (b) A registration may be suspended under this section  
23 without notice or hearing on the complaint if:

24 (1) action is taken to initiate proceedings for a  
25 hearing before the State Office of Administrative Hearings  
26 simultaneously with the temporary suspension; and

27 (2) a hearing is held as soon as practicable under this



1 chapter and Chapter 2001, Government Code.

2 (c) The State Office of Administrative Hearings shall hold a  
3 preliminary hearing not later than the 14th day after the date of  
4 the temporary suspension to determine if there is probable cause to  
5 believe that a continuing and imminent threat to the public welfare  
6 still exists. A final hearing on the matter shall be held not later  
7 than the 61st day after the date of the temporary suspension.

8 Sec. 13E. ADMINISTRATIVE PENALTY. (a) The council may  
9 impose an administrative penalty on a person registered under this  
10 Act who violates this Act or a rule or order adopted under this Act.

11 (b) The amount of the administrative penalty may not be less  
12 than \$50 or more than \$5,000 for each violation. Each day a  
13 violation continues or occurs is a separate violation for the  
14 purpose of imposing a penalty. The amount shall be based on:

15 (1) the seriousness of the violation, including the  
16 nature, circumstances, extent, and gravity of the violation;

17 (2) the economic harm caused by the violation;

18 (3) the history of previous violations;

19 (4) the amount necessary to deter a future violation;

20 (5) efforts to correct the violation; and

21 (6) any other matter that justice may require.

22 (c) If the commissioner of public health or the  
23 commissioner's designee determines that a violation occurred, the  
24 commissioner or the designee may issue to the council a report  
25 stating:

26 (1) the facts on which the determination is based; and

27 (2) the commissioner's or the designee's

1 recommendation on the imposition of an administrative penalty,  
2 including a recommendation on the amount of the penalty.

3 (d) Within 14 days after the date the report is issued, the  
4 commissioner of public health or the commissioner's designee shall  
5 give written notice of the report to the person. The notice must:

6 (1) include a brief summary of the alleged violation;

7 (2) state the amount of the recommended administrative  
8 penalty; and

9 (3) inform the person of the person's right to a  
10 hearing on the occurrence of the violation, the amount of the  
11 penalty, or both.

12 (e) Within 10 days after the date the person receives the  
13 notice, the person in writing may:

14 (1) accept the determination and recommended  
15 administrative penalty of the commissioner of public health or the  
16 commissioner's designee; or

17 (2) make a request for a hearing on the occurrence of  
18 the violation, the amount of the penalty, or both.

19 (f) If the person accepts the determination and recommended  
20 penalty of the commissioner of public health or the commissioner's  
21 designee, the council by order shall approve the determination and  
22 impose the recommended penalty.

23 (g) If the person requests a hearing or fails to respond in a  
24 timely manner to the notice, the commissioner of public health or  
25 the commissioner's designee shall set a hearing and give written  
26 notice of the hearing to the person.

27 (h) An administrative law judge of the State Office of

1 Administrative Hearings shall hold the hearing.

2 (i) The administrative law judge shall make findings of fact  
3 and conclusions of law and promptly issue to the council a proposal  
4 for a decision about the occurrence of the violation and the amount  
5 of a proposed administrative penalty.

6 (j) Based on the findings of fact, conclusions of law, and  
7 proposal for decision, the council by order may determine that:

8 (1) a violation occurred and impose an administrative  
9 penalty; or

10 (2) a violation did not occur.

11 (k) The notice of the council's order given to the person  
12 must include a statement of the right of the person to judicial  
13 review of the order.

14 (l) Within 30 days after the date the council's order  
15 becomes final, the person shall:

16 (1) pay the administrative penalty; or

17 (2) file a petition for judicial review contesting the  
18 occurrence of the violation, the amount of the penalty, or both.

19 (m) Within the 30-day period prescribed by Subsection (l), a  
20 person who files a petition for judicial review may:

21 (1) stay enforcement of the penalty by:

22 (A) paying the penalty to the court for placement  
23 in an escrow account; or

24 (B) giving the court a supersedeas bond approved  
25 by the court that:

26 (i) is for the amount of the penalty; and

27 (ii) is effective until all judicial review

1 of the council's order is final; or

2 (2) request the court to stay enforcement of the  
3 penalty by:

4 (A) filing with the court a sworn affidavit of  
5 the person stating that the person is financially unable to pay the  
6 penalty and is financially unable to give the supersedeas bond; and

7 (B) giving a copy of the affidavit to the  
8 commissioner of public health or the commissioner's designee by  
9 certified mail.

10 (n) If the commissioner of public health or the  
11 commissioner's designee receives a copy of an affidavit under  
12 Subsection (m)(2), the commissioner or the designee may file with  
13 the court, within five days after the date the copy is received, a  
14 contest to the affidavit.

15 (o) The court shall hold a hearing on the facts alleged in  
16 the affidavit as soon as practicable and shall stay the enforcement  
17 of the penalty on finding that the alleged facts are true. The  
18 person who files an affidavit has the burden of proving that the  
19 person is financially unable to pay the penalty and to give a  
20 supersedeas bond.

21 (p) If the person does not pay the administrative penalty  
22 and the enforcement of the penalty is not stayed, the penalty may be  
23 collected. The attorney general may sue to collect the penalty.

24 (q) If the court sustains the determination that a violation  
25 occurred, the court may uphold or reduce the amount of the  
26 administrative penalty and order the person to pay the full or  
27 reduced amount of the penalty. If the court does not sustain the

1 finding that a violation occurred, the court shall order that a  
2 penalty is not owed.

3 (r) If the person paid the administrative penalty and if the  
4 amount of the penalty is reduced or the penalty is not upheld by the  
5 court, the court shall order, when the court's judgment becomes  
6 final, that the appropriate amount plus accrued interest be  
7 remitted to the person. The interest accrues at the rate charged on  
8 loans to depository institutions by the New York Federal Reserve  
9 Bank. The interest shall be paid for the period beginning on the  
10 date the penalty is paid and ending on the date the penalty is  
11 remitted.

12 (s) If the person gave a supersedeas bond and the penalty is  
13 not upheld by the court, the court shall order, when the court's  
14 judgment becomes final, the release of the bond. If the person gave  
15 a supersedeas bond and the amount of the penalty is reduced, the  
16 court shall order the release of the bond after the person pays the  
17 reduced amount.

18 (t) A proceeding under this section is a contested case  
19 under Chapter 2001, Government Code.

20 SECTION 28. (a) This Act takes effect September 1, 2003.

21 (b) The change in law made by this Act to Sections 505.507,  
22 602.302, and 605.356, Occupations Code, applies only to an offense  
23 committed on or after the effective date of this Act. For purposes  
24 of this subsection, an offense is committed before the effective  
25 date of this Act if any element of the offense occurs before the  
26 effective date. An offense committed before the effective date of  
27 this Act is governed by the law in effect on the date the offense was

1 committed, and the former law is continued in effect for that  
2 purpose.

3 (c) The change in law made by this Act relating to  
4 imposition of an administrative penalty or civil penalty applies  
5 only to an act or omission that occurs on or after the effective  
6 date of this Act. An act or omission that occurs before the  
7 effective date of this Act is governed by the law in effect on the  
8 date the act or omission occurred, and the former law is continued  
9 in effect for that purpose.