

By: Nelson

S.B. No. 161

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 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 board by order shall approve the determination and  
7 impose the recommended penalty.

8 Sec. 401.555. 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 board a proposal  
16 for a decision about the occurrence of the violation and the amount  
17 of a proposed administrative penalty.

18 Sec. 401.556. DECISION BY BOARD. (a) Based on the  
19 findings of fact, conclusions of law, and proposal for decision,  
20 the board 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 board's order given to the person must  
25 include a statement of the right of the person to judicial review of  
26 the order.

27 Sec. 401.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

1 (a) Within 30 days after the date the board's order becomes final,  
2 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 board'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. 401.558. 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. 401.559. 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. 401.560. 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. 401.561. ADMINISTRATIVE PROCEDURE. A proceeding under  
10 this subchapter is a contested case under Chapter 2001, Government  
11 Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24           (c) The State Office of Administrative Hearings shall hold a  
25 preliminary hearing not later than the 14th day after the date of  
26 the temporary suspension to determine if there is probable cause to  
27 believe that a continuing and imminent threat to the public welfare

1 still exists. A final hearing on the matter shall be held not later  
2 than the 61st day after the date of the temporary suspension.

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

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

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

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

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

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

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

26 SUBCHAPTER K. ADMINISTRATIVE PENALTY

27 Sec. 503.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The

1 board may impose an administrative penalty on a person licensed  
2 under this chapter who violates this chapter or a rule or order  
3 adopted under this chapter.

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

9 (b) The amount shall be based on:

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

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

13 (3) the history of previous violations;

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

15 (5) efforts to correct the violation; and

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

17 Sec. 503.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.

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

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

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

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

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

7           Sec. 503.504. PENALTY TO BE PAID OR HEARING REQUESTED.

8           (a) Within 10 days after the date the person receives the notice,  
9 the person in writing may:

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

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

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

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

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

25           (c) The administrative law judge shall make findings of fact  
26 and conclusions of law and promptly issue to the board a proposal  
27 for a decision about the occurrence of the violation and the amount

1 of a proposed administrative penalty.

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

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

7 (2) a violation did not occur.

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

11 Sec. 503.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

12 (a) Within 30 days after the date the board's order becomes final,  
13 the person shall:

14 (1) pay the administrative penalty; or

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

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

19 (1) stay enforcement of the penalty by:

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

22 (B) giving the court a supersedeas bond approved  
23 by the court that:

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

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

27 (2) request the court to stay enforcement of the

1 penalty by:

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

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

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

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

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

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

23 Sec. 503.509. DETERMINATION BY COURT. (a) If the court  
24 sustains the determination that a violation occurred, the court may  
25 uphold or reduce the amount of the administrative penalty and order  
26 the person to pay the full or reduced amount of the penalty.

27 (b) If the court does not sustain the finding that a



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

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

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

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

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

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

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

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

25 Sec. 505.507. CRIMINAL PENALTY. (a) A person required to  
26 hold a license under this chapter commits an offense if the person  
27 knowingly acts as a social worker without holding a license issued

1 under this chapter.

2 (b) An offense under Subsection (a) is a Class A  
3 misdemeanor.

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

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

12 (b) A certificate may be suspended under this section  
13 without 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 14. Subchapter F, Chapter 602, Occupations Code, is  
26 amended by adding Section 602.254 to read as follows:

27 Sec. 602.254. EMERGENCY SUSPENSION. (a) The board or a

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

6 (b) A license 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 15. Subchapter G, Chapter 602, Occupations Code, is  
20 amended by adding Section 602.3015 to read as follows:

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

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

27 SECTION 16. Section 602.302, Occupations Code, is amended

1 to read as follows:

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

4           (1) practices medical physics without holding a  
5 license under this chapter;

6           (2) practices a specialty of medical physics without  
7 holding a license for the specialty;

8           (3) practices medical physics in violation of this  
9 chapter; or

10           (4) [~~(2)~~] uses in any manner letters, terminology,  
11 symbols, or signs to indicate or imply that the person is qualified  
12 or licensed to practice medical physics in a manner for which the  
13 person is not licensed under this chapter.

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

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

18           Sec. 603.408. 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 18. Subchapter J, Chapter 603, Occupations Code, is  
11 amended by adding Section 603.4515 to read as follows:

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

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

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

20 SUBCHAPTER K. ADMINISTRATIVE PENALTY

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

25 Sec. 603.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The  
26 amount of the administrative penalty may not be less than \$50 or  
27 more than \$5,000 for each violation. Each day a violation continues

1 or occurs is a separate violation for the purpose of imposing a  
2 penalty.

3 (b) The amount shall be based on:

4 (1) the seriousness of the violation, including the  
5 nature, circumstances, extent, and gravity of the violation;

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

7 (3) the history of previous violations;

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

9 (5) efforts to correct the violation; and

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

11 Sec. 603.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.

12 (a) If the commissioner or the commissioner's designee determines  
13 that a violation occurred, the commissioner or the designee may  
14 issue to the board a report stating:

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

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

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

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

23 (2) state the amount of the recommended administrative  
24 penalty; and

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

1       Sec. 603.504. PENALTY TO BE PAID OR HEARING REQUESTED.

2       (a) Within 10 days after the date the person receives the notice,  
3 the person in writing may:

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

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

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

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

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

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

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

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

1           (2) a violation did not occur.

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

5           Sec. 603.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

6           (a) Within 30 days after the date the board's order becomes final,  
7 the person shall:

8                   (1) pay the administrative penalty; or

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

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

13                   (1) stay enforcement of the penalty by:

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

16                           (B) giving the court a supersedeas bond approved  
17 by the court that:

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

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

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

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

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



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

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

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

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

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

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

23       Sec. 603.510. REMITTANCE OF PENALTY AND INTEREST. (a) If  
24 the person paid the administrative penalty and if the amount of the  
25 penalty is reduced or the penalty is not upheld by the court, the  
26 court shall order, when the court's judgment becomes final, that  
27 the appropriate amount plus accrued interest be remitted to the

1 person.

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

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

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

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

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

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

18 Sec. 605.3535. 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 21. Subchapter H, Chapter 605, Occupations Code, is  
11 amended by adding Section 605.356 to read as follows:

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

17 (b) An offense under Subsection (a) is a Class A  
18 misdemeanor.

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

21 SUBCHAPTER I. ADMINISTRATIVE PENALTY

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

26 Sec. 605.402. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The  
27 amount of the administrative penalty may not be less than \$50 or

1 more than \$5,000 for each violation. Each day a violation continues  
2 or occurs is a separate violation for the purpose of imposing a  
3 penalty.

4 (b) The amount shall be based on:

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

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

8 (3) the history of previous violations;

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

10 (5) efforts to correct the violation; and

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

12 Sec. 605.403. REPORT AND NOTICE OF VIOLATION AND PENALTY.

13 (a) If the commissioner or the commissioner's designee determines  
14 that a violation occurred, the commissioner or the designee may  
15 issue to the board a report stating:

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

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

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

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

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

26 (3) inform the person of the person's right to a  
27 hearing on the occurrence of the violation, the amount of the

1 penalty, or both.

2 Sec. 605.404. PENALTY TO BE PAID OR HEARING REQUESTED.

3 (a) Within 10 days after the date the person receives the notice,  
4 the person in writing may:

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

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

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

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

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

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

24 Sec. 605.406. DECISION BY BOARD. (a) Based on the  
25 findings of fact, conclusions of law, and proposal for decision,  
26 the board by order may determine that:

27 (1) a violation occurred and impose an administrative

1 penalty; or

2 (2) a violation did not occur.

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

6 Sec. 605.407. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

7 (a) Within 30 days after the date the board's order becomes final,  
8 the person shall:

9 (1) pay the administrative penalty; or

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

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

14 (1) stay enforcement of the penalty by:

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

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

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

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

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

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

27 (B) giving a copy of the affidavit to the

1 commissioner or the commissioner's designee by certified mail.

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

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

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

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

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

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

24 Sec. 605.410. REMITTANCE OF PENALTY AND INTEREST. (a) If  
25 the person paid the administrative penalty and if the amount of the  
26 penalty is reduced or the penalty is not upheld by the court, the  
27 court shall order, when the court's judgment becomes final, that

1 the appropriate amount plus accrued interest be remitted to the  
2 person.

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

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

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

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

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

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

19 Sec. 701.408. EMERGENCY SUSPENSION. (a) The dietitians  
20 board or a three-member committee of board members designated by  
21 the board shall temporarily suspend the license of a license holder  
22 if the board or committee determines from the evidence or  
23 information presented to it that continued practice by the license  
24 holder would constitute a continuing and imminent threat to the  
25 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 24. Chapter 701, Occupations Code, is amended by  
13 adding Subchapter K to read as follows:

14                   SUBCHAPTER K. ADMINISTRATIVE PENALTY

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

19           Sec. 701.502. 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. 701.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.

(a) If the commissioner or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the dietitians 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 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. 701.504. 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 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 or the commissioner's designee, the  
5 dietitians board by order shall approve the determination and  
6 impose the recommended penalty.

7           Sec. 701.505. HEARING. (a) If the person requests a  
8 hearing or fails to respond in a timely manner to the notice, the  
9 commissioner or the commissioner's designee shall set a hearing and  
10 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 dietitians board a  
15 proposal for a decision about the occurrence of the violation and  
16 the amount of a proposed administrative penalty.

17           Sec. 701.506. DECISION BY DIETITIANS BOARD. (a) Based on  
18 the findings of fact, conclusions of law, and proposal for  
19 decision, the dietitians 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 dietitians board's order given to the  
24 person must include a statement of the right of the person to  
25 judicial review of the order.

26           Sec. 701.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

27           (a) Within 30 days after the date the dietitians board's order

1 becomes final, 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 dietitians 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 or the commissioner's designee by certified mail.

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

27 (d) The court shall hold a hearing on the facts alleged in

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

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

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

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

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

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

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

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

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

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

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

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

12                    SUBCHAPTER F. ADMINISTRATIVE PENALTY

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

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

22            (b) The amount shall be based on:

23                    (1) the seriousness of the violation, including the  
24 nature, circumstances, extent, and gravity of the violation;

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

26                    (3) the history of previous violations;

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

1           (5) efforts to correct the violation; and

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

3           Sec. 1952.253. REPORT AND NOTICE OF VIOLATION AND PENALTY.

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

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

8                   (2) the commissioner's or the designee's  
9 recommendation on the imposition of an administrative penalty,  
10 including a recommendation on the amount of the penalty.

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

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

15                   (2) state the amount of the recommended administrative  
16 penalty; and

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

20           Sec. 1952.254. PENALTY TO BE PAID OR HEARING REQUESTED.

21           (a) Within 10 days after the date the person receives the notice,  
22 the person in writing may:

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

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

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

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

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

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

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

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

20                (2) a violation did not occur.

21        (b) The notice of the department's order given to the person  
22 must include a statement of the right of the person to judicial  
23 review of the order.

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

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

27                (1) pay the administrative penalty; or



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

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

5                 (1) stay enforcement of the penalty by:

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

8                         (B) giving the court a supersedeas bond approved  
9 by the court that:

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

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

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

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

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

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

26                 (d) The court shall hold a hearing on the facts alleged in  
27 the affidavit as soon as practicable and shall stay the enforcement

1 of the penalty on finding that the alleged facts are true. The  
2 person who files an affidavit has the burden of proving that the  
3 person is financially unable to pay the penalty and to give a  
4 supersedeas bond.

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

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

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

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

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

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

24 (c) The interest shall be paid for the period beginning on  
25 the date the penalty is paid and ending on the date the penalty is  
26 remitted.

27 (d) If the person gave a supersedeas bond and the penalty is

1 not upheld by the court, the court shall order, when the court's  
2 judgment becomes final, the release of the bond.

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

6 Sec. 1952.261. ADMINISTRATIVE PROCEDURE. A proceeding  
7 under this subchapter is a contested case under Chapter 2001,  
8 Government Code.

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

11 SUBCHAPTER G. ADMINISTRATIVE PENALTY

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

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

21 (b) The amount shall be based on:

22 (1) the seriousness of the violation, including the  
23 nature, circumstances, extent, and gravity of the violation;

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

25 (3) the history of previous violations;

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

27 (5) efforts to correct the violation; and

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

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

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

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

7                   (2) the commissioner's or the designee's  
8 recommendation on the imposition of an administrative penalty,  
9 including a recommendation on the amount of the penalty.

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

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

14                   (2) state the amount of the recommended administrative  
15 penalty; and

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

19           Sec. 1953.304. PENALTY TO BE PAID OR HEARING REQUESTED.

20           (a) Within 10 days after the date the person receives the notice,  
21 the person in writing may:

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

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

27           (b) If the person accepts the determination and recommended

1 penalty of the commissioner of public health or the commissioner's  
2 designee, the board by order shall approve the determination and  
3 impose the recommended penalty.

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

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

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

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

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

19 (2) a violation did not occur.

20 (b) The notice of the board's order given to the person must  
21 include a statement of the right of the person to judicial review of  
22 the order.

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

24 (a) Within 30 days after the date the board's order becomes final,  
25 the person shall:

26 (1) pay the administrative penalty; or

27 (2) file a petition for judicial review contesting the

1 occurrence of the violation, the amount of the penalty, or both.

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

4 (1) stay enforcement of the penalty by:

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

7 (B) giving the court a supersedeas bond approved  
8 by the court that:

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

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

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

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

17 (B) giving a copy of the affidavit to the  
18 commissioner of public health or the commissioner's designee by  
19 certified mail.

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

25 (d) The court shall hold a hearing on the facts alleged in  
26 the affidavit as soon as practicable and shall stay the enforcement  
27 of the penalty on finding that the alleged facts are true. The

1 person who files an affidavit has the burden of proving that the  
2 person is financially unable to pay the penalty and to give a  
3 supersedeas bond.

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

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

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

12 (b) If the court does not sustain the finding that a  
13 violation occurred, the court shall order that a penalty is not  
14 owed.

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

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

23 (c) The interest shall be paid for the period beginning on  
24 the date the penalty is paid and ending on the date the penalty is  
25 remitted.

26 (d) If the person gave a supersedeas bond and the penalty is  
27 not upheld by the court, the court shall order, when the court's

1 judgment becomes final, the release of the bond.

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

5 Sec. 1953.311. ADMINISTRATIVE PROCEDURE. A proceeding  
6 under this subchapter is a contested case under Chapter 2001,  
7 Government Code.

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

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

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

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

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

26 (c) The State Office of Administrative Hearings shall hold a  
27 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 Sec. 13E. ADMINISTRATIVE PENALTY. (a) The council may  
6 impose an administrative penalty on a person registered under this  
7 Act who violates this Act or a rule or order adopted under this Act.

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

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

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

15 (3) the history of previous violations;

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

17 (5) efforts to correct the violation; and

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

19 (c) 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 council 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 (d) 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 (e) Within 10 days after the date the person receives the  
10 notice, the person in writing may:

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

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

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

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

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

26 (i) The administrative law judge shall make findings of fact  
27 and conclusions of law and promptly issue to the council a proposal

1 for a decision about the occurrence of the violation and the amount  
2 of a proposed administrative penalty.

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

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

7 (2) a violation did not occur.

8 (k) The notice of the council's order given to the person  
9 must include a statement of the right of the person to judicial  
10 review of the order.

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

13 (1) pay the administrative penalty; or

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

16 (m) Within the 30-day period prescribed by Subsection (l) of  
17 this section, a person who files a petition for judicial review may:

18 (1) stay enforcement of the penalty by:

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

21 (B) giving the court a supersedeas bond approved  
22 by the court that:

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

24 (ii) is effective until all judicial review  
25 of the council's order is final; or

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

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

4           (B) giving a copy of the affidavit to the  
5 commissioner of public health or the commissioner's designee by  
6 certified mail.

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

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

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

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

27           (r) If the person paid the administrative penalty and if the

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

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

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

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

18 (b) The change in law made by this Act to Sections 505.507,  
19 602.302, and 605.356, Occupations Code, applies only to an offense  
20 committed on or after the effective date of this Act. For purposes  
21 of this subsection, an offense is committed before the effective  
22 date of this Act if any element of the offense occurs before the  
23 effective date. An offense committed before the effective date of  
24 this Act is governed by the law in effect on the date the offense was  
25 committed, and the former law is continued in effect for that  
26 purpose.

27 (c) The change in law made by this Act relating to

1 imposition of an administrative penalty or civil penalty applies  
2 only to an act or omission that occurs on or after the effective  
3 date of this Act. An act or omission that occurs before the  
4 effective date of this Act is governed by the law in effect on the  
5 date the act or omission occurred, and the former law is continued  
6 in effect for that purpose.