

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.