

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 \$500 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 determines that a violation occurred, the commissioner may issue to the board a report stating:

- (1) the facts on which the determination is based; and
- (2) the commissioner'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 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

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

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

6 Sec. 401.555. HEARING. (a) If the person requests a
7 hearing or fails to respond in a timely manner to the notice, the
8 commissioner of public health shall set a hearing and give written
9 notice of the hearing to the person.

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

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

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

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

21 (2) a violation did not occur.

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

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

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

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

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

6 (1) stay enforcement of the penalty by:

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

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

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

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

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

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

19 (B) giving a copy of the affidavit to the
20 commissioner of public health by certified mail.

21 (c) If the commissioner of public health receives a copy of
22 an affidavit under Subsection (b)(2), the commissioner may file
23 with the court, within five days after the date the copy is
24 received, a 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. 401.558. 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. 401.559. 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. 401.560. 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. 401.561. ADMINISTRATIVE PROCEDURE. A proceeding under
6 this subchapter is a contested case under Chapter 2001, Government
7 Code.

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

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

17 (b) A license or permit may be suspended under this section
18 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 7. Subchapter L, Chapter 402, Occupations Code, is
4 amended by adding Section 402.553 to read as follows:

5 Sec. 402.553. CIVIL PENALTY. (a) A person who violates
6 this chapter or a rule or order adopted by the board under this
7 chapter is liable for a civil penalty not to exceed \$1,000 a day.

8 (b) At the request of the board or department, the attorney
9 general shall bring an action to recover a civil penalty authorized
10 under this section.

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

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

19 (b) A license may be suspended under this section without
20 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 chapter 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 SECTION 9. Subchapter F, Chapter 455, Occupations Code, is
6 amended by adding Section 455.254 to read as follows:

7 Sec. 455.254. 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 10. Subchapter H, Chapter 502, Occupations Code, is
27 amended by adding Section 502.356 to read as follows:

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

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

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

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

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

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

22 SUBCHAPTER K. ADMINISTRATIVE PENALTY

23 Sec. 503.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The
24 board may impose an administrative penalty on a person licensed
25 under this chapter who violates this chapter or a rule or order
26 adopted under this chapter.

27 Sec. 503.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The

1 amount of the administrative penalty may not be less than \$50 or
2 more than \$500 for each violation. Each day a violation continues
3 or occurs is a separate violation for the purpose of imposing a
4 penalty.

5 (b) The amount shall be based on:

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

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

9 (3) the history of previous violations;

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

11 (5) efforts to correct the violation; and

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

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

14 (a) If the commissioner of public health determines that a
15 violation occurred, the commissioner may issue to the board a
16 report stating:

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

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

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

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

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

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

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

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

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

6 (1) accept the determination and recommended
7 administrative penalty of the commissioner of public health; 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 of public health, the board by order
12 shall approve the determination and impose the recommended penalty.

13 Sec. 503.505. HEARING. (a) If the person requests a
14 hearing or fails to respond in a timely manner to the notice, the
15 commissioner of public health shall set a hearing and give written
16 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. 503.506. 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. 503.507. 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 of public health by certified mail.

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

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

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

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

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

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

22 Sec. 503.510. REMITTANCE OF PENALTY AND INTEREST. (a) If
23 the person paid the administrative penalty and if the amount of the
24 penalty is reduced or the penalty is not upheld by the court, the
25 court shall order, when the court's judgment becomes final, that
26 the appropriate amount plus accrued interest be remitted to the
27 person.

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

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

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

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

12 Sec. 503.511. ADMINISTRATIVE PROCEDURE. A proceeding under
13 this subchapter is a contested case under Chapter 2001, Government
14 Code.

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

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

21 (b) An offense under Subsection (a) is a Class B
22 misdemeanor.

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

25 Sec. 601.306. EMERGENCY SUSPENSION. (a) The department
26 shall temporarily suspend the certificate of a certificate holder
27 if the department determines from the evidence or information

1 presented to it that continued practice by the certificate holder
2 would constitute a continuing and imminent threat to the public
3 welfare.

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

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

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

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

17 SECTION 14. Subchapter F, Chapter 602, Occupations Code, is
18 amended by adding Section 602.254 to read as follows:

19 Sec. 602.254. EMERGENCY SUSPENSION. (a) The board or a
20 three-member committee of board members designated by the board
21 shall temporarily suspend the license of a license holder if the
22 board or committee determines from the evidence or information
23 presented to it that continued practice by the license holder would
24 constitute a continuing and imminent threat to the public welfare.

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

27 (1) action is taken to initiate proceedings for a

1 hearing before the State Office of Administrative Hearings
2 simultaneously with the temporary suspension; and

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

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

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

13 Sec. 602.3015. CIVIL PENALTY. (a) A person who violates
14 this chapter or a rule or order adopted by the board under this
15 chapter is liable for a civil penalty not to exceed \$1,000 a day.

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

19 SECTION 16. Section 602.302, Occupations Code, is amended
20 to read as follows:

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

23 (1) practices medical physics without holding a
24 license under this chapter;

25 (2) practices a specialty of medical physics without
26 holding a license for the specialty;

27 (3) knowingly practices medical physics in violation

1 of this chapter; or

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

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

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

10 Sec. 603.408. EMERGENCY SUSPENSION. (a) The board or a
11 three-member committee of board members designated by the board
12 shall temporarily suspend the license of a license holder if the
13 board or committee determines from the evidence or information
14 presented to it that continued practice by the license holder would
15 constitute a continuing and imminent threat to the public welfare.

16 (b) A license may be suspended under this section without
17 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
25 the temporary suspension to determine if there is probable cause to
26 believe that a continuing and imminent threat to the public welfare
27 still exists. A final hearing on the matter shall be held not later

1 than the 61st day after the date of the temporary suspension.

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

4 Sec. 603.4515. CIVIL PENALTY. (a) A person who violates
5 this chapter or a rule or order adopted by the board under this
6 chapter is liable for a civil penalty not to exceed \$1,000 a day.

7 (b) At the request of the board or department, the attorney
8 general shall bring an action to recover a civil penalty authorized
9 under this section.

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

12 SUBCHAPTER K. ADMINISTRATIVE PENALTY

13 Sec. 603.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The
14 board may impose an administrative penalty on a person licensed
15 under this chapter who violates this chapter or a rule or order
16 adopted under this chapter.

17 Sec. 603.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
18 amount of the administrative penalty may not be less than \$50 or
19 more than \$500 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;

- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

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

(a) If the commissioner determines that a violation occurred, the commissioner may issue to the board a report stating:

- (1) the facts on which the determination is based; and
- (2) the commissioner'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 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. 603.504. 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
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the commissioner, the board by order shall approve the

1 determination and impose the recommended penalty.

2 Sec. 603.505. HEARING. (a) If the person requests a
3 hearing or fails to respond in a timely manner to the notice, the
4 commissioner shall set a hearing and give written notice of the
5 hearing to the person.

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

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

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

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

17 (2) a violation did not occur.

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

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

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

24 (1) pay the administrative penalty; or

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

27 (b) Within the 30-day period prescribed by Subsection (a), a

1 person who files a petition for judicial review may:

2 (1) stay enforcement of the penalty by:

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

5 (B) giving the court a supersedeas bond approved
6 by the court that:

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

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

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

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

15 (B) giving a copy of the affidavit to the
16 commissioner by certified mail.

17 (c) If the commissioner receives a copy of an affidavit
18 under Subsection (b)(2), the commissioner may file with the court,
19 within five days after the date the copy is received, a contest to
20 the affidavit.

21 (d) The court shall hold a hearing on the facts alleged in
22 the affidavit as soon as practicable and shall stay the enforcement
23 of the penalty on finding that the alleged facts are true. The
24 person who files an affidavit has the burden of proving that the
25 person is financially unable to pay the penalty and to give a
26 supersedeas bond.

27 Sec. 603.508. COLLECTION OF PENALTY. (a) If the person

1 does not pay the administrative penalty and the enforcement of the
2 penalty is not stayed, the penalty may be collected.

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

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

8 (b) If the court does not sustain the finding that a
9 violation occurred, the court shall order that a penalty is not
10 owed.

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

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

19 (c) The interest shall be paid for the period beginning on
20 the date the penalty is paid and ending on the date the penalty is
21 remitted.

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

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

1 Sec. 603.511. ADMINISTRATIVE PROCEDURE. A proceeding under
2 this subchapter is a contested case under Chapter 2001, Government
3 Code.

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

6 Sec. 605.3535. EMERGENCY SUSPENSION. (a) The board or a
7 three-member committee of board members designated by the board
8 shall temporarily suspend the license of a license holder if the
9 board or committee determines from the evidence or information
10 presented to it that continued practice by the license holder would
11 constitute a continuing and imminent threat to the public welfare.

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

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

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

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

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

27 Sec. 605.356. CRIMINAL PENALTY. (a) A person required to

1 hold a license under this chapter commits an offense if the person
2 knowingly practices, attempts to practice, or offers to practice
3 orthotics or prosthetics without holding a license issued under
4 this chapter.

5 (b) An offense under Subsection (a) is a Class B
6 misdemeanor.

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

9 SUBCHAPTER I. ADMINISTRATIVE PENALTY

10 Sec. 605.401. IMPOSITION OF ADMINISTRATIVE PENALTY. The
11 board may impose an administrative penalty on a person licensed
12 under this chapter who violates this chapter or a rule or order
13 adopted under this chapter.

14 Sec. 605.402. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
15 amount of the administrative penalty may not be less than \$50 or
16 more than \$500 for each violation. Each day a violation continues
17 or occurs is a separate violation for the purpose of imposing a
18 penalty.

19 (b) The amount shall be based on:

20 (1) the seriousness of the violation, including the
21 nature, circumstances, extent, and gravity of the violation;

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

23 (3) the history of previous violations;

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

25 (5) efforts to correct the violation; and

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

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

1 (a) If the executive director determines that a violation
2 occurred, the director may issue to the board a report stating:

- 3 (1) the facts on which the determination is based; and
4 (2) the director's recommendation on the imposition of
5 an administrative penalty, including a recommendation on the amount
6 of the penalty.

7 (b) Within 14 days after the date the report is issued, the
8 executive director shall give written notice of the report to the
9 person. The notice must:

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

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

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

- 19 (1) accept the determination and recommended
20 administrative penalty of the executive director; or
21 (2) make a request for a hearing on the occurrence of
22 the violation, the amount of the penalty, or both.

23 (b) If the person accepts the determination and recommended
24 penalty of the executive director, the board by order shall approve
25 the determination and impose the recommended penalty.

26 Sec. 605.405. HEARING. (a) If the person requests a
27 hearing or fails to respond in a timely manner to the notice, the

1 executive director shall set a hearing and give written notice of
2 the hearing to the person.

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

5 (c) The administrative law judge shall make findings of fact
6 and conclusions of law and promptly issue to the board a proposal
7 for a decision about the occurrence of the violation and the amount
8 of a proposed administrative penalty.

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

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

14 (2) a violation did not occur.

15 (b) The notice of the board's order given to the person must
16 include a statement of the right of the person to judicial review of
17 the order.

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

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

21 (1) pay the administrative penalty; or

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

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

26 (1) stay enforcement of the penalty by:

27 (A) paying the penalty to the court for placement

1 in an escrow account; or

2 (B) giving the court a supersedeas bond approved
3 by the court that:

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

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

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

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

12 (B) giving a copy of the affidavit to the
13 executive director by certified mail.

14 (c) If the executive director receives a copy of an
15 affidavit under Subsection (b)(2), the director may file with the
16 court, within five days after the date the copy is received, a
17 contest to the affidavit.

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

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

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

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

5 (b) If the court does not sustain the finding that a
6 violation occurred, the court shall order that a penalty is not
7 owed.

8 Sec. 605.410. REMITTANCE OF PENALTY AND INTEREST. (a) If
9 the person paid the administrative penalty and if the amount of the
10 penalty is reduced or the penalty is not upheld by the court, the
11 court shall order, when the court's judgment becomes final, that
12 the appropriate amount plus accrued interest be remitted to the
13 person.

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

16 (c) The interest shall be paid for the period beginning on
17 the date the penalty is paid and ending on the date the penalty is
18 remitted.

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

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

25 Sec. 605.411. ADMINISTRATIVE PROCEDURE. A proceeding under
26 this subchapter is a contested case under Chapter 2001, Government
27 Code.

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

3 Sec. 701.408. EMERGENCY SUSPENSION. (a) The dietitians
4 board or a three-member committee of board members designated by
5 the board shall temporarily suspend the license of a license holder
6 if the board or committee determines from the evidence or
7 information presented to it that continued practice by the license
8 holder would constitute a continuing and imminent threat to the
9 public welfare.

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

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

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

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

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

25 SUBCHAPTER K. ADMINISTRATIVE PENALTY

1 Sec. 701.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The
2 dietitians board may impose an administrative penalty on a person
3 licensed under this chapter who violates this chapter or a rule or
4 order adopted under this chapter.

5 Sec. 701.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
6 amount of the administrative penalty may not be less than \$50 or
7 more than \$500 for each violation. Each day a violation continues
8 or occurs is a separate violation for the purpose of imposing a
9 penalty.

10 (b) The amount shall be based on:

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

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

14 (3) the history of previous violations;

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

16 (5) efforts to correct the violation; and

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

18 Sec. 701.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.

19 (a) If the commissioner determines that a violation occurred, the
20 commissioner may issue to the dietitians board a report stating:

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

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

25 (b) Within 14 days after the date the report is issued, the
26 commissioner shall give written notice of the report to the person.

27 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. 701.504. 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; or

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

14 (b) If the person accepts the determination and recommended
15 penalty of the commissioner, the dietitians board by order shall
16 approve the determination and impose the recommended penalty.

17 Sec. 701.505. HEARING. (a) If the person requests a
18 hearing or fails to respond in a timely manner to the notice, the
19 commissioner shall set a hearing and give written notice of the
20 hearing to the person.

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

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

27 Sec. 701.506. DECISION BY DIETITIANS BOARD. (a) Based on

1 the findings of fact, conclusions of law, and proposal for
2 decision, the dietitians board by order may determine that:

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

5 (2) a violation did not occur.

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

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

10 (a) Within 30 days after the date the dietitians board's order
11 becomes final, the person shall:

12 (1) pay the administrative penalty; or

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

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

17 (1) stay enforcement of the penalty by:

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

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

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

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

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

27 (A) filing with the court a sworn affidavit of

1 the person stating that the person is financially unable to pay the
2 penalty and is financially unable to give the supersedeas bond; and

3 (B) giving a copy of the affidavit to the
4 commissioner by certified mail.

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

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

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

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

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

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

26 Sec. 701.510. REMITTANCE OF PENALTY AND INTEREST. (a) If
27 the person paid the administrative penalty and if the amount of the

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

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

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

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

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

16 Sec. 701.511. ADMINISTRATIVE PROCEDURE. A proceeding under
17 this subchapter is a contested case under Chapter 2001, Government
18 Code.

19 SECTION 25. Chapter 462, Acts of the 68th Legislature,
20 Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil
21 Statutes), is amended by adding Sections 13D and 13E to read as
22 follows:

23 Sec. 13D. EMERGENCY SUSPENSION. (a) The council or a
24 three-member committee of council members designated by the council
25 shall temporarily suspend the registration of a registration holder
26 if the council or committee determines from the evidence or
27 information presented to it that continued practice by the

1 registration holder would constitute a continuing and imminent
2 threat to the public welfare.

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

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

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

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

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

19 (b) The amount of the administrative penalty may not be less
20 than \$50 or more than \$500 for each violation. Each day a violation
21 continues or occurs is a separate violation for the purpose of
22 imposing a penalty. 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 (c) If the executive director determines that a violation
4 occurred, the director may issue to the council a report stating:

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

6 (2) the director's recommendation on the imposition of
7 an administrative penalty, including a recommendation on the amount
8 of the penalty.

9 (d) Within 14 days after the date the report is issued, the
10 executive director shall give written notice of the report to the
11 person. The notice must:

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

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

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

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

20 (1) accept the determination and recommended
21 administrative penalty of the executive director; or

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

24 (f) If the person accepts the determination and recommended
25 penalty of the executive director, the council by order shall
26 approve the determination and impose the recommended penalty.

27 (g) If the person requests a hearing or fails to respond in a

1 timely manner to the notice, the executive director shall set a
2 hearing and give written notice of the hearing to the person.

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

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

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

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

13 (2) a violation did not occur.

14 (k) The notice of the council's order given to the person
15 must include a statement of the right of the person to judicial
16 review of the order.

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

19 (1) pay the administrative penalty; or

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

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

24 (1) stay enforcement of the penalty by:

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

27 (B) giving the court a supersedeas bond approved

1 by the court that:

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

3 (ii) is effective until all judicial review

4 of the council's order is final; or

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

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

10 (B) giving a copy of the affidavit to the
11 executive director by certified mail.

12 (n) If the executive director receives a copy of an
13 affidavit under Subsection (m)(2), the director may file with the
14 court, within five days after the date the copy is received, a
15 contest to the affidavit.

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

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

25 (q) If the court sustains the determination that a violation
26 occurred, the court may uphold or reduce the amount of the
27 administrative penalty and order the person to pay the full or

1 reduced amount of the penalty. If the court does not sustain the
2 finding that a violation occurred, the court shall order that a
3 penalty is not owed.

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

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

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

21 SECTION 26. (a) This Act takes effect September 1, 2003.

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

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

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