

1-1 By: Nelson S.B. No. 161
1-2 (In the Senate - Filed January 2, 2003; January 30, 2003,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 3, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 March 3, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 161 By: Zaffirini

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation and enforcement of certain licensing
1-11 programs by the Texas Department of Health; providing
1-12 administrative, civil, and criminal penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subchapter I, Chapter 203, Occupations Code, is
1-15 amended by adding Section 203.405 to read as follows:

1-16 Sec. 203.405. EMERGENCY SUSPENSION. (a) The midwifery
1-17 board or a three-member committee of midwifery board members
1-18 designated by the midwifery board shall temporarily suspend the
1-19 letter of documentation of a documented midwife if the midwifery
1-20 board or committee determines from the evidence or information
1-21 presented to it that continued practice by the documented midwife
1-22 would constitute a continuing and imminent threat to the public
1-23 welfare.

1-24 (b) A letter of documentation may be suspended under this
1-25 section without notice or hearing on the complaint if:

1-26 (1) action is taken to initiate proceedings for a
1-27 hearing before the State Office of Administrative Hearings
1-28 simultaneously with the temporary suspension; and

1-29 (2) a hearing is held as soon as practicable under this
1-30 chapter and Chapter 2001, Government Code.

1-31 (c) The State Office of Administrative Hearings shall hold a
1-32 preliminary hearing not later than the 14th day after the date of
1-33 the temporary suspension to determine if there is probable cause to
1-34 believe that a continuing and imminent threat to the public welfare
1-35 still exists. A final hearing on the matter shall be held not later
1-36 than the 61st day after the date of the temporary suspension.

1-37 SECTION 2. Subchapter F, Chapter 352, Occupations Code, is
1-38 amended by adding Section 352.254 to read as follows:

1-39 Sec. 352.254. EMERGENCY SUSPENSION. (a) The department
1-40 shall temporarily suspend the certificate of registration of a
1-41 certificate holder if the department determines from the evidence
1-42 or information presented to it that continued practice by the
1-43 certificate holder would constitute a continuing and imminent
1-44 threat to the public welfare.

1-45 (b) A certificate of registration may be suspended under
1-46 this section without notice or hearing on the complaint if:

1-47 (1) action is taken to initiate proceedings for a
1-48 hearing before the State Office of Administrative Hearings
1-49 simultaneously with the temporary suspension; and

1-50 (2) a hearing is held as soon as practicable under this
1-51 chapter and Chapter 2001, Government Code.

1-52 (c) The State Office of Administrative Hearings shall hold a
1-53 preliminary hearing not later than the 14th day after the date of
1-54 the temporary suspension to determine if there is probable cause to
1-55 believe that a continuing and imminent threat to the public welfare
1-56 still exists. A final hearing on the matter shall be held not later
1-57 than the 61st day after the date of the temporary suspension.

1-58 SECTION 3. Subchapter E, Chapter 353, Occupations Code, is
1-59 amended by adding Section 353.2025 to read as follows:

1-60 Sec. 353.2025. EMERGENCY SUSPENSION. (a) The department
1-61 shall temporarily suspend the permit of a permit holder if the
1-62 department determines from the evidence or information presented to
1-63 it that continued practice by the permit holder would constitute a

2-1 continuing and imminent threat to the public welfare.

2-2 (b) A permit may be suspended under this section without
2-3 notice or hearing on the complaint if:

2-4 (1) action is taken to initiate proceedings for a
2-5 hearing before the State Office of Administrative Hearings
2-6 simultaneously with the temporary suspension; and

2-7 (2) a hearing is held as soon as practicable under this
2-8 chapter and Chapter 2001, Government Code.

2-9 (c) The State Office of Administrative Hearings shall hold a
2-10 preliminary hearing not later than the 14th day after the date of
2-11 the temporary suspension to determine if there is probable cause to
2-12 believe that a continuing and imminent threat to the public welfare
2-13 still exists. A final hearing on the matter shall be held not later
2-14 than the 61st day after the date of the temporary suspension.

2-15 SECTION 4. Subchapter J, Chapter 401, Occupations Code, is
2-16 amended by adding Section 401.460 to read as follows:

2-17 Sec. 401.460. EMERGENCY SUSPENSION. (a) The board or a
2-18 three-member committee of board members designated by the board
2-19 shall temporarily suspend the license of a license holder if the
2-20 board or committee determines from the evidence or information
2-21 presented to it that continued practice by the license holder would
2-22 constitute a continuing and imminent threat to the public welfare.

2-23 (b) A license may be suspended under this section without
2-24 notice or hearing on the complaint if:

2-25 (1) action is taken to initiate proceedings for a
2-26 hearing before the State Office of Administrative Hearings
2-27 simultaneously with the temporary suspension; and

2-28 (2) a hearing is held as soon as practicable under this
2-29 chapter and Chapter 2001, Government Code.

2-30 (c) The State Office of Administrative Hearings shall hold a
2-31 preliminary hearing not later than the 14th day after the date of
2-32 the temporary suspension to determine if there is probable cause to
2-33 believe that a continuing and imminent threat to the public welfare
2-34 still exists. A final hearing on the matter shall be held not later
2-35 than the 61st day after the date of the temporary suspension.

2-36 SECTION 5. Chapter 401, Occupations Code, is amended by
2-37 adding Subchapter L to read as follows:

2-38 SUBCHAPTER L. ADMINISTRATIVE PENALTY

2-39 Sec. 401.551. IMPOSITION OF ADMINISTRATIVE PENALTY. The
2-40 board may impose an administrative penalty on a person licensed
2-41 under this chapter who violates this chapter or a rule or order
2-42 adopted under this chapter.

2-43 Sec. 401.552. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
2-44 amount of the administrative penalty may not be less than \$50 or
2-45 more than \$5,000 for each violation. Each day a violation continues
2-46 or occurs is a separate violation for the purpose of imposing a
2-47 penalty.

2-48 (b) The amount shall be based on:

2-49 (1) the seriousness of the violation, including the
2-50 nature, circumstances, extent, and gravity of the violation;

2-51 (2) the economic harm caused by the violation;

2-52 (3) the history of previous violations;

2-53 (4) the amount necessary to deter a future violation;

2-54 (5) efforts to correct the violation; and

2-55 (6) any other matter that justice may require.

2-56 Sec. 401.553. REPORT AND NOTICE OF VIOLATION AND PENALTY.
2-57 (a) If the commissioner of public health or the commissioner's
2-58 designee determines that a violation occurred, the commissioner or
2-59 the designee may issue to the board a report stating:

2-60 (1) the facts on which the determination is based; and

2-61 (2) the commissioner's or the designee's
2-62 recommendation on the imposition of an administrative penalty,
2-63 including a recommendation on the amount of the penalty.

2-64 (b) Within 14 days after the date the report is issued, the
2-65 commissioner of public health or the commissioner's designee shall
2-66 give written notice of the report to the person. The notice must:

2-67 (1) include a brief summary of the alleged violation;

2-68 (2) state the amount of the recommended administrative
2-69 penalty; and

3-1 (3) inform the person of the person's right to a
3-2 hearing on the occurrence of the violation, the amount of the
3-3 penalty, or both.
3-4 Sec. 401.554. PENALTY TO BE PAID OR HEARING REQUESTED
3-5 (a) Within 10 days after the date the person receives the notice,
3-6 the person in writing may:
3-7 (1) accept the determination and recommended
3-8 administrative penalty of the commissioner of public health or the
3-9 commissioner's designee; or
3-10 (2) make a request for a hearing on the occurrence of
3-11 the violation, the amount of the penalty, or both.
3-12 (b) If the person accepts the determination and recommended
3-13 penalty of the commissioner of public health or the commissioner's
3-14 designee, the board by order shall approve the determination and
3-15 impose the recommended penalty.
3-16 Sec. 401.555. HEARING. (a) If the person requests a
3-17 hearing or fails to respond in a timely manner to the notice, the
3-18 commissioner of public health or the commissioner's designee shall
3-19 set a hearing and give written notice of the hearing to the person.
3-20 (b) An administrative law judge of the State Office of
3-21 Administrative Hearings shall hold the hearing.
3-22 (c) The administrative law judge shall make findings of fact
3-23 and conclusions of law and promptly issue to the board a proposal
3-24 for a decision about the occurrence of the violation and the amount
3-25 of a proposed administrative penalty.
3-26 Sec. 401.556. DECISION BY BOARD. (a) Based on the
3-27 findings of fact, conclusions of law, and proposal for decision,
3-28 the board by order may determine that:
3-29 (1) a violation occurred and impose an administrative
3-30 penalty; or
3-31 (2) a violation did not occur.
3-32 (b) The notice of the board's order given to the person must
3-33 include a statement of the right of the person to judicial review of
3-34 the order.
3-35 Sec. 401.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.
3-36 (a) Within 30 days after the date the board's order becomes final,
3-37 the person shall:
3-38 (1) pay the administrative penalty; or
3-39 (2) file a petition for judicial review contesting the
3-40 occurrence of the violation, the amount of the penalty, or both.
3-41 (b) Within the 30-day period prescribed by Subsection (a), a
3-42 person who files a petition for judicial review may:
3-43 (1) stay enforcement of the penalty by:
3-44 (A) paying the penalty to the court for placement
3-45 in an escrow account; or
3-46 (B) giving the court a supersedeas bond approved
3-47 by the court that:
3-48 (i) is for the amount of the penalty; and
3-49 (ii) is effective until all judicial review
3-50 of the board's order is final; or
3-51 (2) request the court to stay enforcement of the
3-52 penalty by:
3-53 (A) filing with the court a sworn affidavit of
3-54 the person stating that the person is financially unable to pay the
3-55 penalty and is financially unable to give the supersedeas bond; and
3-56 (B) giving a copy of the affidavit to the
3-57 commissioner of public health or the commissioner's designee by
3-58 certified mail.
3-59 (c) If the commissioner of public health or the
3-60 commissioner's designee receives a copy of an affidavit under
3-61 Subsection (b)(2), the commissioner or the designee may file with
3-62 the court, within five days after the date the copy is received, a
3-63 contest to the affidavit.
3-64 (d) The court shall hold a hearing on the facts alleged in
3-65 the affidavit as soon as practicable and shall stay the enforcement
3-66 of the penalty on finding that the alleged facts are true. The
3-67 person who files an affidavit has the burden of proving that the
3-68 person is financially unable to pay the penalty and to give a
3-69 supersedeas bond.

4-1 Sec. 401.558. COLLECTION OF PENALTY. (a) If the person
4-2 does not pay the administrative penalty and the enforcement of the
4-3 penalty is not stayed, the penalty may be collected.

4-4 (b) The attorney general may sue to collect the penalty.

4-5 Sec. 401.559. DETERMINATION BY COURT. (a) If the court
4-6 sustains the determination that a violation occurred, the court may
4-7 uphold or reduce the amount of the administrative penalty and order
4-8 the person to pay the full or reduced amount of the penalty.

4-9 (b) If the court does not sustain the finding that a
4-10 violation occurred, the court shall order that a penalty is not
4-11 owed.

4-12 Sec. 401.560. REMITTANCE OF PENALTY AND INTEREST. (a) If
4-13 the person paid the administrative penalty and if the amount of the
4-14 penalty is reduced or the penalty is not upheld by the court, the
4-15 court shall order, when the court's judgment becomes final, that
4-16 the appropriate amount plus accrued interest be remitted to the
4-17 person.

4-18 (b) The interest accrues at the rate charged on loans to
4-19 depository institutions by the New York Federal Reserve Bank.

4-20 (c) The interest shall be paid for the period beginning on
4-21 the date the penalty is paid and ending on the date the penalty is
4-22 remitted.

4-23 (d) If the person gave a supersedeas bond and the penalty is
4-24 not upheld by the court, the court shall order, when the court's
4-25 judgment becomes final, the release of the bond.

4-26 (e) If the person gave a supersedeas bond and the amount of
4-27 the penalty is reduced, the court shall order the release of the
4-28 bond after the person pays the reduced amount.

4-29 Sec. 401.561. ADMINISTRATIVE PROCEDURE. A proceeding under
4-30 this subchapter is a contested case under Chapter 2001, Government
4-31 Code.

4-32 SECTION 6. Subchapter K, Chapter 402, Occupations Code, is
4-33 amended by adding Section 402.504 to read as follows:

4-34 Sec. 402.504. EMERGENCY SUSPENSION. (a) The committee or
4-35 a three-member subcommittee of committee members designated by the
4-36 committee shall temporarily suspend the license or permit of a
4-37 license or permit holder if the committee or subcommittee
4-38 determines from the evidence or information presented to it that
4-39 continued practice by the license or permit holder would constitute
4-40 a continuing and imminent threat to the public welfare.

4-41 (b) A license or permit may be suspended under this section
4-42 without notice or hearing on the complaint if:

4-43 (1) action is taken to initiate proceedings for a
4-44 hearing before the State Office of Administrative Hearings
4-45 simultaneously with the temporary suspension; and

4-46 (2) a hearing is held as soon as practicable under this
4-47 chapter and Chapter 2001, Government Code.

4-48 (c) The State Office of Administrative Hearings shall hold a
4-49 preliminary hearing not later than the 14th day after the date of
4-50 the temporary suspension to determine if there is probable cause to
4-51 believe that a continuing and imminent threat to the public welfare
4-52 still exists. A final hearing on the matter shall be held not later
4-53 than the 61st day after the date of the temporary suspension.

4-54 SECTION 7. Subchapter L, Chapter 402, Occupations Code, is
4-55 amended by adding Section 402.553 to read as follows:

4-56 Sec. 402.553. CIVIL PENALTY. (a) A person who violates
4-57 this chapter or a rule or order adopted by the committee under this
4-58 chapter is liable for a civil penalty not to exceed \$5,000 a day.

4-59 (b) At the request of the committee, the attorney general
4-60 shall bring an action to recover a civil penalty authorized under
4-61 this section.

4-62 SECTION 8. Subchapter F, Chapter 451, Occupations Code, is
4-63 amended by adding Section 451.255 to read as follows:

4-64 Sec. 451.255. EMERGENCY SUSPENSION. (a) The board or a
4-65 three-member committee of board members designated by the board
4-66 shall temporarily suspend the license of a license holder if the
4-67 board or committee determines from the evidence or information
4-68 presented to it that continued practice by the license holder would
4-69 constitute a continuing and imminent threat to the public welfare.

5-1 (b) A license may be suspended under this section without
 5-2 notice or hearing on the complaint if:

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

5-6 (2) a hearing is held as soon as practicable under this
 5-7 chapter and Chapter 2001, Government Code.

5-8 (c) The State Office of Administrative Hearings shall hold a
 5-9 preliminary hearing not later than the 14th day after the date of
 5-10 the temporary suspension to determine if there is probable cause to
 5-11 believe that a continuing and imminent threat to the public welfare
 5-12 still exists. A final hearing on the matter shall be held not later
 5-13 than the 61st day after the date of the temporary suspension.

5-14 SECTION 9. Subchapter F, Chapter 455, Occupations Code, is
 5-15 amended by adding Section 455.254 to read as follows:

5-16 Sec. 455.254. EMERGENCY SUSPENSION. (a) The department
 5-17 shall temporarily suspend the certificate of registration of a
 5-18 certificate holder if the department determines from the evidence
 5-19 or information presented to it that continued practice by the
 5-20 certificate holder would constitute a continuing and imminent
 5-21 threat to the public welfare.

5-22 (b) A certificate of registration may be suspended under
 5-23 this section without notice or hearing on the complaint if:

5-24 (1) action is taken to initiate proceedings for a
 5-25 hearing before the State Office of Administrative Hearings
 5-26 simultaneously with the temporary suspension; and

5-27 (2) a hearing is held as soon as practicable under this
 5-28 chapter and Chapter 2001, Government Code.

5-29 (c) The State Office of Administrative Hearings shall hold a
 5-30 preliminary hearing not later than the 14th day after the date of
 5-31 the temporary suspension to determine if there is probable cause to
 5-32 believe that a continuing and imminent threat to the public welfare
 5-33 still exists. A final hearing on the matter shall be held not later
 5-34 than the 61st day after the date of the temporary suspension.

5-35 SECTION 10. Subchapter H, Chapter 502, Occupations Code, is
 5-36 amended by adding Section 502.356 to read as follows:

5-37 Sec. 502.356. EMERGENCY SUSPENSION. (a) The board or a
 5-38 three-member committee of board members designated by the board
 5-39 shall temporarily suspend the license of a license holder if the
 5-40 board or committee determines from the evidence or information
 5-41 presented to it that continued practice by the license holder would
 5-42 constitute a continuing and imminent threat to the public welfare.

5-43 (b) A license may be suspended under this section without
 5-44 notice or hearing on the complaint if:

5-45 (1) action is taken to initiate proceedings for a
 5-46 hearing before the State Office of Administrative Hearings
 5-47 simultaneously with the temporary suspension; and

5-48 (2) a hearing is held as soon as practicable under this
 5-49 chapter and Chapter 2001, Government Code.

5-50 (c) The State Office of Administrative Hearings shall hold a
 5-51 preliminary hearing not later than the 14th day after the date of
 5-52 the temporary suspension to determine if there is probable cause to
 5-53 believe that a continuing and imminent threat to the public welfare
 5-54 still exists. A final hearing on the matter shall be held not later
 5-55 than the 61st day after the date of the temporary suspension.

5-56 SECTION 11. Chapter 503, Occupations Code, is amended by
 5-57 adding Subchapter K to read as follows:

5-58 SUBCHAPTER K. ADMINISTRATIVE PENALTY

5-59 Sec. 503.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The
 5-60 board may impose an administrative penalty on a person licensed
 5-61 under this chapter who violates this chapter or a rule or order
 5-62 adopted under this chapter.

5-63 Sec. 503.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
 5-64 amount of the administrative penalty may not be less than \$50 or
 5-65 more than \$5,000 for each violation. Each day a violation continues
 5-66 or occurs is a separate violation for the purpose of imposing a
 5-67 penalty.

5-68 (b) The amount shall be based on:

5-69 (1) the seriousness of the violation, including the

6-1 nature, circumstances, extent, and gravity of the violation;

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

6-3 (3) the history of previous violations;

6-4 (4) the amount necessary to deter a future violation;

6-5 (5) efforts to correct the violation; and

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

6-7 Sec. 503.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.

6-8 (a) If the commissioner of public health or the commissioner's
6-9 designee determines that a violation occurred, the commissioner or
6-10 the designee may issue to the board a report stating:

6-11 (1) the facts on which the determination is based; and

6-12 (2) the commissioner's or the designee's
6-13 recommendation on the imposition of an administrative penalty,
6-14 including a recommendation on the amount of the penalty.

6-15 (b) Within 14 days after the date the report is issued, the
6-16 commissioner of public health or the commissioner's designee shall
6-17 give written notice of the report to the person. The notice must:

6-18 (1) include a brief summary of the alleged violation;

6-19 (2) state the amount of the recommended administrative
6-20 penalty; and

6-21 (3) inform the person of the person's right to a
6-22 hearing on the occurrence of the violation, the amount of the
6-23 penalty, or both.

6-24 Sec. 503.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
6-25 Within 10 days after the date the person receives the notice, the
6-26 person in writing may:

6-27 (1) accept the determination and recommended
6-28 administrative penalty of the commissioner of public health or the
6-29 commissioner's designee; or

6-30 (2) make a request for a hearing on the occurrence of
6-31 the violation, the amount of the penalty, or both.

6-32 (b) If the person accepts the determination and recommended
6-33 penalty of the commissioner of public health or the commissioner's
6-34 designee, the board by order shall approve the determination and
6-35 impose the recommended penalty.

6-36 Sec. 503.505. HEARING. (a) If the person requests a
6-37 hearing or fails to respond in a timely manner to the notice, the
6-38 commissioner of public health or the commissioner's designee shall
6-39 set a hearing and give written notice of the hearing to the person.

6-40 (b) An administrative law judge of the State Office of
6-41 Administrative Hearings shall hold the hearing.

6-42 (c) The administrative law judge shall make findings of fact
6-43 and conclusions of law and promptly issue to the board a proposal
6-44 for a decision about the occurrence of the violation and the amount
6-45 of a proposed administrative penalty.

6-46 Sec. 503.506. DECISION BY BOARD. (a) Based on the
6-47 findings of fact, conclusions of law, and proposal for decision,
6-48 the board by order may determine that:

6-49 (1) a violation occurred and impose an administrative
6-50 penalty; or

6-51 (2) a violation did not occur.

6-52 (b) The notice of the board's order given to the person must
6-53 include a statement of the right of the person to judicial review of
6-54 the order.

6-55 Sec. 503.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

6-56 (a) Within 30 days after the date the board's order becomes final,
6-57 the person shall:

6-58 (1) pay the administrative penalty; or

6-59 (2) file a petition for judicial review contesting the
6-60 occurrence of the violation, the amount of the penalty, or both.

6-61 (b) Within the 30-day period prescribed by Subsection (a), a
6-62 person who files a petition for judicial review may:

6-63 (1) stay enforcement of the penalty by:

6-64 (A) paying the penalty to the court for placement
6-65 in an escrow account; or

6-66 (B) giving the court a supersedeas bond approved
6-67 by the court that:

6-68 (i) is for the amount of the penalty; and

6-69 (ii) is effective until all judicial review

7-1 of the board's order is final; or

7-2 (2) request the court to stay enforcement of the
7-3 penalty by:

7-4 (A) filing with the court a sworn affidavit of
7-5 the person stating that the person is financially unable to pay the
7-6 penalty and is financially unable to give the supersedeas bond; and

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

7-10 (c) If the commissioner of public health or the
7-11 commissioner's designee receives a copy of an affidavit under
7-12 Subsection (b)(2), the commissioner or the designee may file with
7-13 the court, within five days after the date the copy is received, a
7-14 contest to the affidavit.

7-15 (d) The court shall hold a hearing on the facts alleged in
7-16 the affidavit as soon as practicable and shall stay the enforcement
7-17 of the penalty on finding that the alleged facts are true. The
7-18 person who files an affidavit has the burden of proving that the
7-19 person is financially unable to pay the penalty and to give a
7-20 supersedeas bond.

7-21 Sec. 503.508. COLLECTION OF PENALTY. (a) If the person
7-22 does not pay the administrative penalty and the enforcement of the
7-23 penalty is not stayed, the penalty may be collected.

7-24 (b) The attorney general may sue to collect the penalty.

7-25 Sec. 503.509. DETERMINATION BY COURT. (a) If the court
7-26 sustains the determination that a violation occurred, the court may
7-27 uphold or reduce the amount of the administrative penalty and order
7-28 the person to pay the full or reduced amount of the penalty.

7-29 (b) If the court does not sustain the finding that a
7-30 violation occurred, the court shall order that a penalty is not
7-31 owed.

7-32 Sec. 503.510. REMITTANCE OF PENALTY AND INTEREST. (a) If
7-33 the person paid the administrative penalty and if the amount of the
7-34 penalty is reduced or the penalty is not upheld by the court, the
7-35 court shall order, when the court's judgment becomes final, that
7-36 the appropriate amount plus accrued interest be remitted to the
7-37 person.

7-38 (b) The interest accrues at the rate charged on loans to
7-39 depository institutions by the New York Federal Reserve Bank.

7-40 (c) The interest shall be paid for the period beginning on
7-41 the date the penalty is paid and ending on the date the penalty is
7-42 remitted.

7-43 (d) If the person gave a supersedeas bond and the penalty is
7-44 not upheld by the court, the court shall order, when the court's
7-45 judgment becomes final, the release of the bond.

7-46 (e) If the person gave a supersedeas bond and the amount of
7-47 the penalty is reduced, the court shall order the release of the
7-48 bond after the person pays the reduced amount.

7-49 Sec. 503.511. ADMINISTRATIVE PROCEDURE. A proceeding under
7-50 this subchapter is a contested case under Chapter 2001, Government
7-51 Code.

7-52 SECTION 12. Subchapter J, Chapter 505, Occupations Code, is
7-53 amended by adding Section 505.507 to read as follows:

7-54 Sec. 505.507. CRIMINAL PENALTY. (a) A person required to
7-55 hold a license under this chapter commits an offense if the person
7-56 knowingly acts as a social worker without holding a license issued
7-57 under this chapter.

7-58 (b) An offense under Subsection (a) is a Class A
7-59 misdemeanor.

7-60 SECTION 13. Subchapter G, Chapter 601, Occupations Code, is
7-61 amended by adding Section 601.306 to read as follows:

7-62 Sec. 601.306. EMERGENCY SUSPENSION. (a) The department
7-63 shall temporarily suspend the certificate of a certificate holder
7-64 if the department determines from the evidence or information
7-65 presented to it that continued practice by the certificate holder
7-66 would constitute a continuing and imminent threat to the public
7-67 welfare.

7-68 (b) A certificate may be suspended under this section
7-69 without notice or hearing on the complaint if:

8-1 (1) action is taken to initiate proceedings for a
8-2 hearing before the State Office of Administrative Hearings
8-3 simultaneously with the temporary suspension; and

8-4 (2) a hearing is held as soon as practicable under this
8-5 chapter and Chapter 2001, Government Code.

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

8-12 SECTION 14. Subchapter F, Chapter 602, Occupations Code, is
8-13 amended by adding Section 602.254 to read as follows:

8-14 Sec. 602.254. EMERGENCY SUSPENSION. (a) The board or a
8-15 three-member committee of board members designated by the board
8-16 shall temporarily suspend the license of a license holder if the
8-17 board or committee determines from the evidence or information
8-18 presented to it that continued practice by the license holder would
8-19 constitute a continuing and imminent threat to the public welfare.

8-20 (b) A license may be suspended under this section without
8-21 notice or hearing on the complaint if:

8-22 (1) action is taken to initiate proceedings for a
8-23 hearing before the State Office of Administrative Hearings
8-24 simultaneously with the temporary suspension; and

8-25 (2) a hearing is held as soon as practicable under this
8-26 chapter and Chapter 2001, Government Code.

8-27 (c) The State Office of Administrative Hearings shall hold a
8-28 preliminary hearing not later than the 14th day after the date of
8-29 the temporary suspension to determine if there is probable cause to
8-30 believe that a continuing and imminent threat to the public welfare
8-31 still exists. A final hearing on the matter shall be held not later
8-32 than the 61st day after the date of the temporary suspension.

8-33 SECTION 15. Subchapter G, Chapter 602, Occupations Code, is
8-34 amended by adding Section 602.3015 to read as follows:

8-35 Sec. 602.3015. CIVIL PENALTY. (a) A person who violates
8-36 this chapter or a rule or order adopted by the board under this
8-37 chapter is liable for a civil penalty not to exceed \$5,000 a day.

8-38 (b) At the request of the board, the attorney general shall
8-39 bring an action to recover a civil penalty authorized under this
8-40 section.

8-41 SECTION 16. Section 602.302, Occupations Code, is amended
8-42 to read as follows:

8-43 Sec. 602.302. OFFENSE. (a) A person commits an offense if
8-44 the person [~~knowingly~~]:

8-45 (1) practices medical physics without holding a
8-46 license under this chapter;

8-47 (2) practices a specialty of medical physics without
8-48 holding a license for the specialty;

8-49 (3) practices medical physics in violation of this
8-50 chapter; or

8-51 (4) [~~2~~] uses in any manner letters, terminology,
8-52 symbols, or signs to indicate or imply that the person is qualified
8-53 or licensed to practice medical physics in a manner for which the
8-54 person is not licensed under this chapter.

8-55 (b) An offense under this section is a Class A [~~B~~]
8-56 misdemeanor.

8-57 SECTION 17. Subchapter I, Chapter 603, Occupations Code, is
8-58 amended by adding Section 603.408 to read as follows:

8-59 Sec. 603.408. EMERGENCY SUSPENSION. (a) The board or a
8-60 three-member committee of board members designated by the board
8-61 shall temporarily suspend the license of a license holder if the
8-62 board or committee determines from the evidence or information
8-63 presented to it that continued practice by the license holder would
8-64 constitute a continuing and imminent threat to the public welfare.

8-65 (b) A license may be suspended under this section without
8-66 notice or hearing on the complaint if:

8-67 (1) action is taken to initiate proceedings for a
8-68 hearing before the State Office of Administrative Hearings
8-69 simultaneously with the temporary suspension; and

9-1 (2) a hearing is held as soon as practicable under this
 9-2 chapter and Chapter 2001, Government Code.

9-3 (c) The State Office of Administrative Hearings shall hold a
 9-4 preliminary hearing not later than the 14th day after the date of
 9-5 the temporary suspension to determine if there is probable cause to
 9-6 believe that a continuing and imminent threat to the public welfare
 9-7 still exists. A final hearing on the matter shall be held not later
 9-8 than the 61st day after the date of the temporary suspension.

9-9 SECTION 18. Subchapter J, Chapter 603, Occupations Code, is
 9-10 amended by adding Section 603.4515 to read as follows:

9-11 Sec. 603.4515. CIVIL PENALTY. (a) A person who violates
 9-12 this chapter or a rule or order adopted by the board under this
 9-13 chapter is liable for a civil penalty not to exceed \$5,000 a day.

9-14 (b) At the request of the board, the attorney general shall
 9-15 bring an action to recover a civil penalty authorized under this
 9-16 section.

9-17 SECTION 19. Chapter 603, Occupations Code, is amended by
 9-18 adding Subchapter K to read as follows:

9-19 SUBCHAPTER K. ADMINISTRATIVE PENALTY

9-20 Sec. 603.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The
 9-21 board may impose an administrative penalty on a person licensed
 9-22 under this chapter who violates this chapter or a rule or order
 9-23 adopted under this chapter.

9-24 Sec. 603.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
 9-25 amount of the administrative penalty may not be less than \$50 or
 9-26 more than \$5,000 for each violation. Each day a violation continues
 9-27 or occurs is a separate violation for the purpose of imposing a
 9-28 penalty.

9-29 (b) The amount shall be based on:

9-30 (1) the seriousness of the violation, including the
 9-31 nature, circumstances, extent, and gravity of the violation;

9-32 (2) the economic harm caused by the violation;

9-33 (3) the history of previous violations;

9-34 (4) the amount necessary to deter a future violation;

9-35 (5) efforts to correct the violation; and

9-36 (6) any other matter that justice may require.

9-37 Sec. 603.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.

9-38 (a) If the commissioner or the commissioner's designee determines
 9-39 that a violation occurred, the commissioner or the designee may
 9-40 issue to the board a report stating:

9-41 (1) the facts on which the determination is based; and

9-42 (2) the commissioner's or the designee's
 9-43 recommendation on the imposition of an administrative penalty,
 9-44 including a recommendation on the amount of the penalty.

9-45 (b) Within 14 days after the date the report is issued, the
 9-46 commissioner or the commissioner's designee shall give written
 9-47 notice of the report to the person. The notice must:

9-48 (1) include a brief summary of the alleged violation;

9-49 (2) state the amount of the recommended administrative
 9-50 penalty; and

9-51 (3) inform the person of the person's right to a
 9-52 hearing on the occurrence of the violation, the amount of the
 9-53 penalty, or both.

9-54 Sec. 603.504. PENALTY TO BE PAID OR HEARING REQUESTED.

9-55 (a) Within 10 days after the date the person receives the notice,
 9-56 the person in writing may:

9-57 (1) accept the determination and recommended
 9-58 administrative penalty of the commissioner or the commissioner's
 9-59 designee; or

9-60 (2) make a request for a hearing on the occurrence of
 9-61 the violation, the amount of the penalty, or both.

9-62 (b) If the person accepts the determination and recommended
 9-63 penalty of the commissioner or the commissioner's designee, the
 9-64 board by order shall approve the determination and impose the
 9-65 recommended penalty.

9-66 Sec. 603.505. HEARING. (a) If the person requests a
 9-67 hearing or fails to respond in a timely manner to the notice, the
 9-68 commissioner or the commissioner's designee shall set a hearing and
 9-69 give written notice of the hearing to the person.

10-1 (b) An administrative law judge of the State Office of
 10-2 Administrative Hearings shall hold the hearing.

10-3 (c) The administrative law judge shall make findings of fact
 10-4 and conclusions of law and promptly issue to the board a proposal
 10-5 for a decision about the occurrence of the violation and the amount
 10-6 of a proposed administrative penalty.

10-7 Sec. 603.506. DECISION BY BOARD. (a) Based on the
 10-8 findings of fact, conclusions of law, and proposal for decision,
 10-9 the board by order may determine that:

10-10 (1) a violation occurred and impose an administrative
 10-11 penalty; or

10-12 (2) a violation did not occur.

10-13 (b) The notice of the board's order given to the person must
 10-14 include a statement of the right of the person to judicial review of
 10-15 the order.

10-16 Sec. 603.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

10-17 (a) Within 30 days after the date the board's order becomes final,
 10-18 the person shall:

10-19 (1) pay the administrative penalty; or

10-20 (2) file a petition for judicial review contesting the
 10-21 occurrence of the violation, the amount of the penalty, or both.

10-22 (b) Within the 30-day period prescribed by Subsection (a), a
 10-23 person who files a petition for judicial review may:

10-24 (1) stay enforcement of the penalty by:

10-25 (A) paying the penalty to the court for placement
 10-26 in an escrow account; or

10-27 (B) giving the court a supersedeas bond approved
 10-28 by the court that:

10-29 (i) is for the amount of the penalty; and

10-30 (ii) is effective until all judicial review
 10-31 of the board's order is final; or

10-32 (2) request the court to stay enforcement of the
 10-33 penalty by:

10-34 (A) filing with the court a sworn affidavit of
 10-35 the person stating that the person is financially unable to pay the
 10-36 penalty and is financially unable to give the supersedeas bond; and

10-37 (B) giving a copy of the affidavit to the
 10-38 commissioner or the commissioner's designee by certified mail.

10-39 (c) If the commissioner or the commissioner's designee
 10-40 receives a copy of an affidavit under Subsection (b)(2), the
 10-41 commissioner or the designee may file with the court, within five
 10-42 days after the date the copy is received, a contest to the
 10-43 affidavit.

10-44 (d) The court shall hold a hearing on the facts alleged in
 10-45 the affidavit as soon as practicable and shall stay the enforcement
 10-46 of the penalty on finding that the alleged facts are true. The
 10-47 person who files an affidavit has the burden of proving that the
 10-48 person is financially unable to pay the penalty and to give a
 10-49 supersedeas bond.

10-50 Sec. 603.508. COLLECTION OF PENALTY. (a) If the person
 10-51 does not pay the administrative penalty and the enforcement of the
 10-52 penalty is not stayed, the penalty may be collected.

10-53 (b) The attorney general may sue to collect the penalty.

10-54 Sec. 603.509. DETERMINATION BY COURT. (a) If the court
 10-55 sustains the determination that a violation occurred, the court may
 10-56 uphold or reduce the amount of the administrative penalty and order
 10-57 the person to pay the full or reduced amount of the penalty.

10-58 (b) If the court does not sustain the finding that a
 10-59 violation occurred, the court shall order that a penalty is not
 10-60 owed.

10-61 Sec. 603.510. REMITTANCE OF PENALTY AND INTEREST. (a) If
 10-62 the person paid the administrative penalty and if the amount of the
 10-63 penalty is reduced or the penalty is not upheld by the court, the
 10-64 court shall order, when the court's judgment becomes final, that
 10-65 the appropriate amount plus accrued interest be remitted to the
 10-66 person.

10-67 (b) The interest accrues at the rate charged on loans to
 10-68 depository institutions by the New York Federal Reserve Bank.

10-69 (c) The interest shall be paid for the period beginning on

11-1 the date the penalty is paid and ending on the date the penalty is
 11-2 remitted.

11-3 (d) If the person gave a supersedeas bond and the penalty is
 11-4 not upheld by the court, the court shall order, when the court's
 11-5 judgment becomes final, the release of the bond.

11-6 (e) If the person gave a supersedeas bond and the amount of
 11-7 the penalty is reduced, the court shall order the release of the
 11-8 bond after the person pays the reduced amount.

11-9 Sec. 603.511. ADMINISTRATIVE PROCEDURE. A proceeding under
 11-10 this subchapter is a contested case under Chapter 2001, Government
 11-11 Code.

11-12 SECTION 20. Subchapter H, Chapter 605, Occupations Code, is
 11-13 amended by adding Section 605.3535 to read as follows:

11-14 Sec. 605.3535. EMERGENCY SUSPENSION. (a) The board or a
 11-15 three-member committee of board members designated by the board
 11-16 shall temporarily suspend the license of a license holder if the
 11-17 board or committee determines from the evidence or information
 11-18 presented to it that continued practice by the license holder would
 11-19 constitute a continuing and imminent threat to the public welfare.

11-20 (b) A license may be suspended under this section without
 11-21 notice or hearing on the complaint if:

11-22 (1) action is taken to initiate proceedings for a
 11-23 hearing before the State Office of Administrative Hearings
 11-24 simultaneously with the temporary suspension; and

11-25 (2) a hearing is held as soon as practicable under this
 11-26 chapter and Chapter 2001, Government Code.

11-27 (c) The State Office of Administrative Hearings shall hold a
 11-28 preliminary hearing not later than the 14th day after the date of
 11-29 the temporary suspension to determine if there is probable cause to
 11-30 believe that a continuing and imminent threat to the public welfare
 11-31 still exists. A final hearing on the matter shall be held not later
 11-32 than the 61st day after the date of the temporary suspension.

11-33 SECTION 21. Subchapter H, Chapter 605, Occupations Code, is
 11-34 amended by adding Section 605.356 to read as follows:

11-35 Sec. 605.356. CRIMINAL PENALTY. (a) A person required to
 11-36 hold a license under this chapter commits an offense if the person
 11-37 knowingly practices, attempts to practice, or offers to practice
 11-38 orthotics or prosthetics without holding a license issued under
 11-39 this chapter.

11-40 (b) An offense under Subsection (a) is a Class A
 11-41 misdemeanor.

11-42 SECTION 22. Chapter 605, Occupations Code, is amended by
 11-43 adding Subchapter I to read as follows:

11-44 SUBCHAPTER I. ADMINISTRATIVE PENALTY

11-45 Sec. 605.401. IMPOSITION OF ADMINISTRATIVE PENALTY. The
 11-46 board may impose an administrative penalty on a person licensed
 11-47 under this chapter who violates this chapter or a rule or order
 11-48 adopted under this chapter.

11-49 Sec. 605.402. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
 11-50 amount of the administrative penalty may not be less than \$50 or
 11-51 more than \$5,000 for each violation. Each day a violation continues
 11-52 or occurs is a separate violation for the purpose of imposing a
 11-53 penalty.

11-54 (b) The amount shall be based on:

11-55 (1) the seriousness of the violation, including the
 11-56 nature, circumstances, extent, and gravity of the violation;

11-57 (2) the economic harm caused by the violation;

11-58 (3) the history of previous violations;

11-59 (4) the amount necessary to deter a future violation;

11-60 (5) efforts to correct the violation; and

11-61 (6) any other matter that justice may require.

11-62 Sec. 605.403. REPORT AND NOTICE OF VIOLATION AND PENALTY.
 11-63 (a) If the commissioner or the commissioner's designee determines
 11-64 that a violation occurred, the commissioner or the designee may
 11-65 issue to the board a report stating:

11-66 (1) the facts on which the determination is based; and

11-67 (2) the commissioner's or the designee's
 11-68 recommendation on the imposition of an administrative penalty,
 11-69 including a recommendation on the amount of the penalty.

12-1 (b) Within 14 days after the date the report is issued, the
 12-2 commissioner or the commissioner's designee shall give written
 12-3 notice of the report to the person. The notice must:

- 12-4 (1) include a brief summary of the alleged violation;
 12-5 (2) state the amount of the recommended administrative
 12-6 penalty; and
 12-7 (3) inform the person of the person's right to a
 12-8 hearing on the occurrence of the violation, the amount of the
 12-9 penalty, or both.

12-10 Sec. 605.404. PENALTY TO BE PAID OR HEARING REQUESTED.

12-11 (a) Within 10 days after the date the person receives the notice,
 12-12 the person in writing may:

- 12-13 (1) accept the determination and recommended
 12-14 administrative penalty of the commissioner or the commissioner's
 12-15 designee; or
 12-16 (2) make a request for a hearing on the occurrence of
 12-17 the violation, the amount of the penalty, or both.

12-18 (b) If the person accepts the determination and recommended
 12-19 penalty of the commissioner or the commissioner's designee, the
 12-20 board by order shall approve the determination and impose the
 12-21 recommended penalty.

12-22 Sec. 605.405. HEARING. (a) If the person requests a
 12-23 hearing or fails to respond in a timely manner to the notice, the
 12-24 commissioner or the commissioner's designee shall set a hearing and
 12-25 give written notice of the hearing to the person.

12-26 (b) An administrative law judge of the State Office of
 12-27 Administrative Hearings shall hold the hearing.

12-28 (c) The administrative law judge shall make findings of fact
 12-29 and conclusions of law and promptly issue to the board a proposal
 12-30 for a decision about the occurrence of the violation and the amount
 12-31 of a proposed administrative penalty.

12-32 Sec. 605.406. DECISION BY BOARD. (a) Based on the
 12-33 findings of fact, conclusions of law, and proposal for decision,
 12-34 the board by order may determine that:

- 12-35 (1) a violation occurred and impose an administrative
 12-36 penalty; or
 12-37 (2) a violation did not occur.

12-38 (b) The notice of the board's order given to the person must
 12-39 include a statement of the right of the person to judicial review of
 12-40 the order.

12-41 Sec. 605.407. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

12-42 (a) Within 30 days after the date the board's order becomes final,
 12-43 the person shall:

- 12-44 (1) pay the administrative penalty; or
 12-45 (2) file a petition for judicial review contesting the
 12-46 occurrence of the violation, the amount of the penalty, or both.

12-47 (b) Within the 30-day period prescribed by Subsection (a), a
 12-48 person who files a petition for judicial review may:

- 12-49 (1) stay enforcement of the penalty by:
 12-50 (A) paying the penalty to the court for placement
 12-51 in an escrow account; or
 12-52 (B) giving the court a supersedeas bond approved
 12-53 by the court that:

12-54 (i) is for the amount of the penalty; and
 12-55 (ii) is effective until all judicial review
 12-56 of the board's order is final; or

12-57 (2) request the court to stay enforcement of the
 12-58 penalty by:

12-59 (A) filing with the court a sworn affidavit of
 12-60 the person stating that the person is financially unable to pay the
 12-61 penalty and is financially unable to give the supersedeas bond; and

12-62 (B) giving a copy of the affidavit to the
 12-63 commissioner or the commissioner's designee by certified mail.

12-64 (c) If the commissioner or the commissioner's designee
 12-65 receives a copy of an affidavit under Subsection (b)(2), the
 12-66 commissioner or the designee may file with the court, within five
 12-67 days after the date the copy is received, a contest to the
 12-68 affidavit.

12-69 (d) The court shall hold a hearing on the facts alleged in

13-1 the affidavit as soon as practicable and shall stay the enforcement
 13-2 of the penalty on finding that the alleged facts are true. The
 13-3 person who files an affidavit has the burden of proving that the
 13-4 person is financially unable to pay the penalty and to give a
 13-5 supersedeas bond.

13-6 Sec. 605.408. COLLECTION OF PENALTY. (a) If the person
 13-7 does not pay the administrative penalty and the enforcement of the
 13-8 penalty is not stayed, the penalty may be collected.

13-9 (b) The attorney general may sue to collect the penalty.

13-10 Sec. 605.409. DETERMINATION BY COURT. (a) If the court
 13-11 sustains the determination that a violation occurred, the court may
 13-12 uphold or reduce the amount of the administrative penalty and order
 13-13 the person to pay the full or reduced amount of the penalty.

13-14 (b) If the court does not sustain the finding that a
 13-15 violation occurred, the court shall order that a penalty is not
 13-16 owed.

13-17 Sec. 605.410. REMITTANCE OF PENALTY AND INTEREST. (a) If
 13-18 the person paid the administrative penalty and if the amount of the
 13-19 penalty is reduced or the penalty is not upheld by the court, the
 13-20 court shall order, when the court's judgment becomes final, that
 13-21 the appropriate amount plus accrued interest be remitted to the
 13-22 person.

13-23 (b) The interest accrues at the rate charged on loans to
 13-24 depository institutions by the New York Federal Reserve Bank.

13-25 (c) The interest shall be paid for the period beginning on
 13-26 the date the penalty is paid and ending on the date the penalty is
 13-27 remitted.

13-28 (d) If the person gave a supersedeas bond and the penalty is
 13-29 not upheld by the court, the court shall order, when the court's
 13-30 judgment becomes final, the release of the bond.

13-31 (e) If the person gave a supersedeas bond and the amount of
 13-32 the penalty is reduced, the court shall order the release of the
 13-33 bond after the person pays the reduced amount.

13-34 Sec. 605.411. ADMINISTRATIVE PROCEDURE. A proceeding under
 13-35 this subchapter is a contested case under Chapter 2001, Government
 13-36 Code.

13-37 SECTION 23. Subchapter I, Chapter 701, Occupations Code, is
 13-38 amended by adding Section 701.408 to read as follows:

13-39 Sec. 701.408. EMERGENCY SUSPENSION. (a) The dietitians
 13-40 board or a three-member committee of board members designated by
 13-41 the board shall temporarily suspend the license of a license holder
 13-42 if the board or committee determines from the evidence or
 13-43 information presented to it that continued practice by the license
 13-44 holder would constitute a continuing and imminent threat to the
 13-45 public welfare.

13-46 (b) A license may be suspended under this section without
 13-47 notice or hearing on the complaint if:

13-48 (1) action is taken to initiate proceedings for a
 13-49 hearing before the State Office of Administrative Hearings
 13-50 simultaneously with the temporary suspension; and

13-51 (2) a hearing is held as soon as practicable under this
 13-52 chapter and Chapter 2001, Government Code.

13-53 (c) The State Office of Administrative Hearings shall hold a
 13-54 preliminary hearing not later than the 14th day after the date of
 13-55 the temporary suspension to determine if there is probable cause to
 13-56 believe that a continuing and imminent threat to the public welfare
 13-57 still exists. A final hearing on the matter shall be held not later
 13-58 than the 61st day after the date of the temporary suspension.

13-59 SECTION 24. Chapter 701, Occupations Code, is amended by
 13-60 adding Subchapter K to read as follows:

13-61 SUBCHAPTER K. ADMINISTRATIVE PENALTY

13-62 Sec. 701.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The
 13-63 dietitians board may impose an administrative penalty on a person
 13-64 licensed under this chapter who violates this chapter or a rule or
 13-65 order adopted under this chapter.

13-66 Sec. 701.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
 13-67 amount of the administrative penalty may not be less than \$50 or
 13-68 more than \$5,000 for each violation. Each day a violation continues
 13-69 or occurs is a separate violation for the purpose of imposing a

14-1 penalty.

14-2 (b) The amount shall be based on:

14-3 (1) the seriousness of the violation, including the
14-4 nature, circumstances, extent, and gravity of the violation;

14-5 (2) the economic harm caused by the violation;

14-6 (3) the history of previous violations;

14-7 (4) the amount necessary to deter a future violation;

14-8 (5) efforts to correct the violation; and

14-9 (6) any other matter that justice may require.

14-10 Sec. 701.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.

14-11 (a) If the commissioner or the commissioner's designee determines
14-12 that a violation occurred, the commissioner or the designee may
14-13 issue to the dietitians board a report stating:

14-14 (1) the facts on which the determination is based; and

14-15 (2) the commissioner's or the designee's
14-16 recommendation on the imposition of an administrative penalty,
14-17 including a recommendation on the amount of the penalty.

14-18 (b) Within 14 days after the date the report is issued, the
14-19 commissioner or the commissioner's designee shall give written
14-20 notice of the report to the person. The notice must:

14-21 (1) include a brief summary of the alleged violation;

14-22 (2) state the amount of the recommended administrative
14-23 penalty; and

14-24 (3) inform the person of the person's right to a
14-25 hearing on the occurrence of the violation, the amount of the
14-26 penalty, or both.

14-27 Sec. 701.504. PENALTY TO BE PAID OR HEARING REQUESTED.

14-28 (a) Within 10 days after the date the person receives the notice,
14-29 the person in writing may:

14-30 (1) accept the determination and recommended

14-31 administrative penalty of the commissioner or the commissioner's
14-32 designee; or

14-33 (2) make a request for a hearing on the occurrence of
14-34 the violation, the amount of the penalty, or both.

14-35 (b) If the person accepts the determination and recommended
14-36 penalty of the commissioner or the commissioner's designee, the
14-37 dietitians board by order shall approve the determination and
14-38 impose the recommended penalty.

14-39 Sec. 701.505. HEARING. (a) If the person requests a
14-40 hearing or fails to respond in a timely manner to the notice, the
14-41 commissioner or the commissioner's designee shall set a hearing and
14-42 give written notice of the hearing to the person.

14-43 (b) An administrative law judge of the State Office of
14-44 Administrative Hearings shall hold the hearing.

14-45 (c) The administrative law judge shall make findings of fact
14-46 and conclusions of law and promptly issue to the dietitians board a
14-47 proposal for a decision about the occurrence of the violation and
14-48 the amount of a proposed administrative penalty.

14-49 Sec. 701.506. DECISION BY DIETITIANS BOARD. (a) Based on
14-50 the findings of fact, conclusions of law, and proposal for
14-51 decision, the dietitians board by order may determine that:

14-52 (1) a violation occurred and impose an administrative
14-53 penalty; or

14-54 (2) a violation did not occur.

14-55 (b) The notice of the dietitians board's order given to the
14-56 person must include a statement of the right of the person to
14-57 judicial review of the order.

14-58 Sec. 701.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

14-59 (a) Within 30 days after the date the dietitians board's order
14-60 becomes final, the person shall:

14-61 (1) pay the administrative penalty; or

14-62 (2) file a petition for judicial review contesting the
14-63 occurrence of the violation, the amount of the penalty, or both.

14-64 (b) Within the 30-day period prescribed by Subsection (a), a
14-65 person who files a petition for judicial review may:

14-66 (1) stay enforcement of the penalty by:

14-67 (A) paying the penalty to the court for placement
14-68 in an escrow account; or

14-69 (B) giving the court a supersedeas bond approved

15-1 by the court that:

15-2 (i) is for the amount of the penalty; and
 15-3 (ii) is effective until all judicial review
 15-4 of the dietitians board's order is final; or

15-5 (2) request the court to stay enforcement of the
 15-6 penalty by:

15-7 (A) filing with the court a sworn affidavit of
 15-8 the person stating that the person is financially unable to pay the
 15-9 penalty and is financially unable to give the supersedeas bond; and

15-10 (B) giving a copy of the affidavit to the
 15-11 commissioner or the commissioner's designee by certified mail.

15-12 (c) If the commissioner or the commissioner's designee
 15-13 receives a copy of an affidavit under Subsection (b)(2), the
 15-14 commissioner or the designee may file with the court, within five
 15-15 days after the date the copy is received, a contest to the
 15-16 affidavit.

15-17 (d) The court shall hold a hearing on the facts alleged in
 15-18 the affidavit as soon as practicable and shall stay the enforcement
 15-19 of the penalty on finding that the alleged facts are true. The
 15-20 person who files an affidavit has the burden of proving that the
 15-21 person is financially unable to pay the penalty and to give a
 15-22 supersedeas bond.

15-23 Sec. 701.508. COLLECTION OF PENALTY. (a) If the person
 15-24 does not pay the administrative penalty and the enforcement of the
 15-25 penalty is not stayed, the penalty may be collected.

15-26 (b) The attorney general may sue to collect the penalty.

15-27 Sec. 701.509. DETERMINATION BY COURT. (a) If the court
 15-28 sustains the determination that a violation occurred, the court may
 15-29 uphold or reduce the amount of the administrative penalty and order
 15-30 the person to pay the full or reduced amount of the penalty.

15-31 (b) If the court does not sustain the finding that a
 15-32 violation occurred, the court shall order that a penalty is not
 15-33 owed.

15-34 Sec. 701.510. REMITTANCE OF PENALTY AND INTEREST. (a) If
 15-35 the person paid the administrative penalty and if the amount of the
 15-36 penalty is reduced or the penalty is not upheld by the court, the
 15-37 court shall order, when the court's judgment becomes final, that
 15-38 the appropriate amount plus accrued interest be remitted to the
 15-39 person.

15-40 (b) The interest accrues at the rate charged on loans to
 15-41 depository institutions by the New York Federal Reserve Bank.

15-42 (c) The interest shall be paid for the period beginning on
 15-43 the date the penalty is paid and ending on the date the penalty is
 15-44 remitted.

15-45 (d) If the person gave a supersedeas bond and the penalty is
 15-46 not upheld by the court, the court shall order, when the court's
 15-47 judgment becomes final, the release of the bond.

15-48 (e) If the person gave a supersedeas bond and the amount of
 15-49 the penalty is reduced, the court shall order the release of the
 15-50 bond after the person pays the reduced amount.

15-51 Sec. 701.511. ADMINISTRATIVE PROCEDURE. A proceeding under
 15-52 this subchapter is a contested case under Chapter 2001, Government
 15-53 Code.

15-54 SECTION 25. Chapter 1952, Occupations Code, is amended by
 15-55 adding Subchapter F to read as follows:

15-56 SUBCHAPTER F. ADMINISTRATIVE PENALTY

15-57 Sec. 1952.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The
 15-58 department may impose an administrative penalty on a person
 15-59 registered under this chapter who violates this chapter or a rule or
 15-60 order adopted under this chapter.

15-61 Sec. 1952.252. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
 15-62 amount of the administrative penalty may not be less than \$50 or
 15-63 more than \$5,000 for each violation. Each day a violation continues
 15-64 or occurs is a separate violation for the purpose of imposing a
 15-65 penalty.

15-66 (b) The amount shall be based on:

15-67 (1) the seriousness of the violation, including the
 15-68 nature, circumstances, extent, and gravity of the violation;

15-69 (2) the economic harm caused by the violation;

- 16-1 (3) the history of previous violations;
- 16-2 (4) the amount necessary to deter a future violation;
- 16-3 (5) efforts to correct the violation; and
- 16-4 (6) any other matter that justice may require.

16-5 Sec. 1952.253. REPORT AND NOTICE OF VIOLATION AND PENALTY.

16-6 (a) If the commissioner of public health or the commissioner's
 16-7 designee determines that a violation occurred, the commissioner or
 16-8 the designee may issue to the department a report stating:

- 16-9 (1) the facts on which the determination is based; and
- 16-10 (2) the commissioner's or the designee's
 16-11 recommendation on the imposition of an administrative penalty,
 16-12 including a recommendation on the amount of the penalty.

16-13 (b) Within 14 days after the date the report is issued, the
 16-14 commissioner of public health or the commissioner's designee shall
 16-15 give written notice of the report to the person. The notice must:

- 16-16 (1) include a brief summary of the alleged violation;
- 16-17 (2) state the amount of the recommended administrative
 16-18 penalty; and
- 16-19 (3) inform the person of the person's right to a
 16-20 hearing on the occurrence of the violation, the amount of the
 16-21 penalty, or both.

16-22 Sec. 1952.254. PENALTY TO BE PAID OR HEARING REQUESTED.

16-23 (a) Within 10 days after the date the person receives the notice,
 16-24 the person in writing may:

- 16-25 (1) accept the determination and recommended
 16-26 administrative penalty of the commissioner of public health or the
 16-27 commissioner's designee; or
- 16-28 (2) make a request for a hearing on the occurrence of
 16-29 the violation, the amount of the penalty, or both.

16-30 (b) If the person accepts the determination and recommended
 16-31 penalty of the commissioner of public health or the commissioner's
 16-32 designee, the department by order shall approve the determination
 16-33 and impose the recommended penalty.

16-34 Sec. 1952.255. HEARING. (a) If the person requests a
 16-35 hearing or fails to respond in a timely manner to the notice, the
 16-36 commissioner of public health or the commissioner's designee shall
 16-37 set a hearing and give written notice of the hearing to the person.

16-38 (b) An administrative law judge of the State Office of
 16-39 Administrative Hearings shall hold the hearing.

16-40 (c) The administrative law judge shall make findings of fact
 16-41 and conclusions of law and promptly issue to the department a
 16-42 proposal for a decision about the occurrence of the violation and
 16-43 the amount of a proposed administrative penalty.

16-44 Sec. 1952.256. DECISION BY DEPARTMENT. (a) Based on the
 16-45 findings of fact, conclusions of law, and proposal for decision,
 16-46 the department by order may determine that:

- 16-47 (1) a violation occurred and impose an administrative
 16-48 penalty; or
- 16-49 (2) a violation did not occur.

16-50 (b) The notice of the department's order given to the person
 16-51 must include a statement of the right of the person to judicial
 16-52 review of the order.

16-53 Sec. 1952.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

16-54 (a) Within 30 days after the date the department's order becomes
 16-55 final, the person shall:

- 16-56 (1) pay the administrative penalty; or
- 16-57 (2) file a petition for judicial review contesting the
 16-58 occurrence of the violation, the amount of the penalty, or both.

16-59 (b) Within the 30-day period prescribed by Subsection (a), a
 16-60 person who files a petition for judicial review may:

- 16-61 (1) stay enforcement of the penalty by:
- 16-62 (A) paying the penalty to the court for placement
 16-63 in an escrow account; or
- 16-64 (B) giving the court a supersedeas bond approved
 16-65 by the court that:

16-66 (i) is for the amount of the penalty; and
 16-67 (ii) is effective until all judicial review
 16-68 of the department's order is final; or

- 16-69 (2) request the court to stay enforcement of the

17-1 penalty by:

17-2 (A) filing with the court a sworn affidavit of
 17-3 the person stating that the person is financially unable to pay the
 17-4 penalty and is financially unable to give the supersedeas bond; and

17-5 (B) giving a copy of the affidavit to the
 17-6 commissioner of public health or the commissioner's designee by
 17-7 certified mail.

17-8 (c) If the commissioner of public health or the
 17-9 commissioner's designee receives a copy of an affidavit under
 17-10 Subsection (b)(2), the commissioner or the designee may file with
 17-11 the court, within five days after the date the copy is received, a
 17-12 contest to the affidavit.

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

17-19 Sec. 1952.258. COLLECTION OF PENALTY. (a) If the person
 17-20 does not pay the administrative penalty and the enforcement of the
 17-21 penalty is not stayed, the penalty may be collected.

17-22 (b) The attorney general may sue to collect the penalty.

17-23 Sec. 1952.259. DETERMINATION BY COURT. (a) If the court
 17-24 sustains the determination that a violation occurred, the court may
 17-25 uphold or reduce the amount of the administrative penalty and order
 17-26 the person to pay the full or reduced amount of the penalty.

17-27 (b) If the court does not sustain the finding that a
 17-28 violation occurred, the court shall order that a penalty is not
 17-29 owed.

17-30 Sec. 1952.260. REMITTANCE OF PENALTY AND INTEREST. (a) If
 17-31 the person paid the administrative penalty and if the amount of the
 17-32 penalty is reduced or the penalty is not upheld by the court, the
 17-33 court shall order, when the court's judgment becomes final, that
 17-34 the appropriate amount plus accrued interest be remitted to the
 17-35 person.

17-36 (b) The interest accrues at the rate charged on loans to
 17-37 depository institutions by the New York Federal Reserve Bank.

17-38 (c) The interest shall be paid for the period beginning on
 17-39 the date the penalty is paid and ending on the date the penalty is
 17-40 remitted.

17-41 (d) If the person gave a supersedeas bond and the penalty is
 17-42 not upheld by the court, the court shall order, when the court's
 17-43 judgment becomes final, the release of the bond.

17-44 (e) If the person gave a supersedeas bond and the amount of
 17-45 the penalty is reduced, the court shall order the release of the
 17-46 bond after the person pays the reduced amount.

17-47 Sec. 1952.261. ADMINISTRATIVE PROCEDURE. A proceeding
 17-48 under this subchapter is a contested case under Chapter 2001,
 17-49 Government Code.

17-50 SECTION 26. Chapter 1953, Occupations Code, is amended by
 17-51 adding Subchapter G to read as follows:

17-52 SUBCHAPTER G. ADMINISTRATIVE PENALTY

17-53 Sec. 1953.301. IMPOSITION OF ADMINISTRATIVE PENALTY. The
 17-54 board may impose an administrative penalty on a person registered
 17-55 under this chapter who violates this chapter or a rule or order
 17-56 adopted under this chapter.

17-57 Sec. 1953.302. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
 17-58 amount of the administrative penalty may not be less than \$50 or
 17-59 more than \$5,000 for each violation. Each day a violation continues
 17-60 or occurs is a separate violation for the purpose of imposing a
 17-61 penalty.

17-62 (b) The amount shall be based on:

17-63 (1) the seriousness of the violation, including the
 17-64 nature, circumstances, extent, and gravity of the violation;

17-65 (2) the economic harm caused by the violation;

17-66 (3) the history of previous violations;

17-67 (4) the amount necessary to deter a future violation;

17-68 (5) efforts to correct the violation; and

17-69 (6) any other matter that justice may require.

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

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

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

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

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

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

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

- (1) accept the determination and recommended administrative penalty of the commissioner of public health or the commissioner's designee; or
- (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 of public health or the commissioner's designee, the board by order shall approve the determination and impose the recommended penalty.

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

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

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

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

- (1) a violation occurred and impose an administrative penalty; or
- (2) a violation did not occur.

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

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

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

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

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

- (1) stay enforcement of the penalty by:
 - (A) paying the penalty to the court for placement in an escrow account; or
 - (B) giving the court a supersedeas bond approved by the court that:

- (i) is for the amount of the penalty; and
 - (ii) is effective until all judicial review of the board's order is final; or

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

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

19-1 (B) giving a copy of the affidavit to the
 19-2 commissioner of public health or the commissioner's designee by
 19-3 certified mail.

19-4 (c) If the commissioner of public health or the
 19-5 commissioner's designee receives a copy of an affidavit under
 19-6 Subsection (b)(2), the commissioner or the designee may file with
 19-7 the court, within five days after the date the copy is received, a
 19-8 contest to the affidavit.

19-9 (d) The court shall hold a hearing on the facts alleged in
 19-10 the affidavit as soon as practicable and shall stay the enforcement
 19-11 of the penalty on finding that the alleged facts are true. The
 19-12 person who files an affidavit has the burden of proving that the
 19-13 person is financially unable to pay the penalty and to give a
 19-14 supersedeas bond.

19-15 Sec. 1953.308. COLLECTION OF PENALTY. (a) If the person
 19-16 does not pay the administrative penalty and the enforcement of the
 19-17 penalty is not stayed, the penalty may be collected.

19-18 (b) The attorney general may sue to collect the penalty.

19-19 Sec. 1953.309. DETERMINATION BY COURT. (a) If the court
 19-20 sustains the determination that a violation occurred, the court may
 19-21 uphold or reduce the amount of the administrative penalty and order
 19-22 the person to pay the full or reduced amount of the penalty.

19-23 (b) If the court does not sustain the finding that a
 19-24 violation occurred, the court shall order that a penalty is not
 19-25 owed.

19-26 Sec. 1953.310. REMITTANCE OF PENALTY AND INTEREST. (a) If
 19-27 the person paid the administrative penalty and if the amount of the
 19-28 penalty is reduced or the penalty is not upheld by the court, the
 19-29 court shall order, when the court's judgment becomes final, that
 19-30 the appropriate amount plus accrued interest be remitted to the
 19-31 person.

19-32 (b) The interest accrues at the rate charged on loans to
 19-33 depository institutions by the New York Federal Reserve Bank.

19-34 (c) The interest shall be paid for the period beginning on
 19-35 the date the penalty is paid and ending on the date the penalty is
 19-36 remitted.

19-37 (d) If the person gave a supersedeas bond and the penalty is
 19-38 not upheld by the court, the court shall order, when the court's
 19-39 judgment becomes final, the release of the bond.

19-40 (e) If the person gave a supersedeas bond and the amount of
 19-41 the penalty is reduced, the court shall order the release of the
 19-42 bond after the person pays the reduced amount.

19-43 Sec. 1953.311. ADMINISTRATIVE PROCEDURE. A proceeding
 19-44 under this subchapter is a contested case under Chapter 2001,
 19-45 Government Code.

19-46 SECTION 27. Chapter 462, Acts of the 68th Legislature,
 19-47 Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil
 19-48 Statutes), is amended by adding Sections 13D and 13E to read as
 19-49 follows:

19-50 Sec. 13D. EMERGENCY SUSPENSION. (a) The council or a
 19-51 three-member committee of council members designated by the council
 19-52 shall temporarily suspend the registration of a person registered
 19-53 under this Act if the council or committee determines from the
 19-54 evidence or information presented to it that continued practice by
 19-55 the person would constitute a continuing and imminent threat to the
 19-56 public welfare.

19-57 (b) A registration may be suspended under this section
 19-58 without notice or hearing on the complaint if:

19-59 (1) action is taken to initiate proceedings for a
 19-60 hearing before the State Office of Administrative Hearings
 19-61 simultaneously with the temporary suspension; and

19-62 (2) a hearing is held as soon as practicable under this
 19-63 Act and Chapter 2001, Government Code.

19-64 (c) The State Office of Administrative Hearings shall hold a
 19-65 preliminary hearing not later than the 14th day after the date of
 19-66 the temporary suspension to determine if there is probable cause to
 19-67 believe that a continuing and imminent threat to the public welfare
 19-68 still exists. A final hearing on the matter shall be held not later
 19-69 than the 61st day after the date of the temporary suspension.

20-1 Sec. 13E. ADMINISTRATIVE PENALTY. (a) The council may
 20-2 impose an administrative penalty on a person registered under this
 20-3 Act who violates this Act or a rule or order adopted under this Act.

20-4 (b) The amount of the administrative penalty may not be less
 20-5 than \$50 or more than \$5,000 for each violation. Each day a
 20-6 violation continues or occurs is a separate violation for the
 20-7 purpose of imposing a penalty. The amount shall be based on:

20-8 (1) the seriousness of the violation, including the
 20-9 nature, circumstances, extent, and gravity of the violation;

20-10 (2) the economic harm caused by the violation;

20-11 (3) the history of previous violations;

20-12 (4) the amount necessary to deter a future violation;

20-13 (5) efforts to correct the violation; and

20-14 (6) any other matter that justice may require.

20-15 (c) If the commissioner of public health or the
 20-16 commissioner's designee determines that a violation occurred, the
 20-17 commissioner or the designee may issue to the council a report
 20-18 stating:

20-19 (1) the facts on which the determination is based; and

20-20 (2) the commissioner's or the designee's
 20-21 recommendation on the imposition of an administrative penalty,
 20-22 including a recommendation on the amount of the penalty.

20-23 (d) Within 14 days after the date the report is issued, the
 20-24 commissioner of public health or the commissioner's designee shall
 20-25 give written notice of the report to the person. The notice must:

20-26 (1) include a brief summary of the alleged violation;

20-27 (2) state the amount of the recommended administrative
 20-28 penalty; and

20-29 (3) inform the person of the person's right to a
 20-30 hearing on the occurrence of the violation, the amount of the
 20-31 penalty, or both.

20-32 (e) Within 10 days after the date the person receives the
 20-33 notice, the person in writing may:

20-34 (1) accept the determination and recommended
 20-35 administrative penalty of the commissioner of public health or the
 20-36 commissioner's designee; or

20-37 (2) make a request for a hearing on the occurrence of
 20-38 the violation, the amount of the penalty, or both.

20-39 (f) If the person accepts the determination and recommended
 20-40 penalty of the commissioner of public health or the commissioner's
 20-41 designee, the council by order shall approve the determination and
 20-42 impose the recommended penalty.

20-43 (g) If the person requests a hearing or fails to respond in a
 20-44 timely manner to the notice, the commissioner of public health or
 20-45 the commissioner's designee shall set a hearing and give written
 20-46 notice of the hearing to the person.

20-47 (h) An administrative law judge of the State Office of
 20-48 Administrative Hearings shall hold the hearing.

20-49 (i) The administrative law judge shall make findings of fact
 20-50 and conclusions of law and promptly issue to the council a proposal
 20-51 for a decision about the occurrence of the violation and the amount
 20-52 of a proposed administrative penalty.

20-53 (j) Based on the findings of fact, conclusions of law, and
 20-54 proposal for decision, the council by order may determine that:

20-55 (1) a violation occurred and impose an administrative
 20-56 penalty; or

20-57 (2) a violation did not occur.

20-58 (k) The notice of the council's order given to the person
 20-59 must include a statement of the right of the person to judicial
 20-60 review of the order.

20-61 (l) Within 30 days after the date the council's order
 20-62 becomes final, the person shall:

20-63 (1) pay the administrative penalty; or

20-64 (2) file a petition for judicial review contesting the
 20-65 occurrence of the violation, the amount of the penalty, or both.

20-66 (m) Within the 30-day period prescribed by Subsection (l) of
 20-67 this section, a person who files a petition for judicial review may:

20-68 (1) stay enforcement of the penalty by:

20-69 (A) paying the penalty to the court for placement

21-1 in an escrow account; or
 21-2 (B) giving the court a supersedeas bond approved
 21-3 by the court that:

21-4 (i) is for the amount of the penalty; and
 21-5 (ii) is effective until all judicial review
 21-6 of the council's order is final; or

21-7 (2) request the court to stay enforcement of the
 21-8 penalty by:

21-9 (A) filing with the court a sworn affidavit of
 21-10 the person stating that the person is financially unable to pay the
 21-11 penalty and is financially unable to give the supersedeas bond; and

21-12 (B) giving a copy of the affidavit to the
 21-13 commissioner of public health or the commissioner's designee by
 21-14 certified mail.

21-15 (n) If the commissioner of public health or the
 21-16 commissioner's designee receives a copy of an affidavit under
 21-17 Subsection (m)(2) of this section, the commissioner or the designee
 21-18 may file with the court, within five days after the date the copy is
 21-19 received, a contest to the affidavit.

21-20 (o) The court shall hold a hearing on the facts alleged in
 21-21 the affidavit as soon as practicable and shall stay the enforcement
 21-22 of the penalty on finding that the alleged facts are true. The
 21-23 person who files an affidavit has the burden of proving that the
 21-24 person is financially unable to pay the penalty and to give a
 21-25 supersedeas bond.

21-26 (p) If the person does not pay the administrative penalty
 21-27 and the enforcement of the penalty is not stayed, the penalty may be
 21-28 collected. The attorney general may sue to collect the penalty.

21-29 (q) If the court sustains the determination that a violation
 21-30 occurred, the court may uphold or reduce the amount of the
 21-31 administrative penalty and order the person to pay the full or
 21-32 reduced amount of the penalty. If the court does not sustain the
 21-33 finding that a violation occurred, the court shall order that a
 21-34 penalty is not owed.

21-35 (r) If the person paid the administrative penalty and if the
 21-36 amount of the penalty is reduced or the penalty is not upheld by the
 21-37 court, the court shall order, when the court's judgment becomes
 21-38 final, that the appropriate amount plus accrued interest be
 21-39 remitted to the person. The interest accrues at the rate charged on
 21-40 loans to depository institutions by the New York Federal Reserve
 21-41 Bank. The interest shall be paid for the period beginning on the
 21-42 date the penalty is paid and ending on the date the penalty is
 21-43 remitted.

21-44 (s) If the person gave a supersedeas bond and the penalty is
 21-45 not upheld by the court, the court shall order, when the court's
 21-46 judgment becomes final, the release of the bond. If the person gave
 21-47 a supersedeas bond and the amount of the penalty is reduced, the
 21-48 court shall order the release of the bond after the person pays the
 21-49 reduced amount.

21-50 (t) A proceeding under this section is a contested case
 21-51 under Chapter 2001, Government Code.

21-52 SECTION 28. (a) This Act takes effect September 1, 2003.

21-53 (b) The change in law made by this Act to Sections 505.507,
 21-54 602.302, and 605.356, Occupations Code, applies only to an offense
 21-55 committed on or after the effective date of this Act. For purposes
 21-56 of this subsection, an offense is committed before the effective
 21-57 date of this Act if any element of the offense occurs before the
 21-58 effective date. An offense committed before the effective date of
 21-59 this Act is governed by the law in effect on the date the offense was
 21-60 committed, and the former law is continued in effect for that
 21-61 purpose.

21-62 (c) The change in law made by this Act relating to
 21-63 imposition of an administrative penalty or civil penalty applies
 21-64 only to an act or omission that occurs on or after the effective
 21-65 date of this Act. An act or omission that occurs before the
 21-66 effective date of this Act is governed by the law in effect on the
 21-67 date the act or omission occurred, and the former law is continued
 21-68 in effect for that purpose.

