

BILL ANALYSIS

C.S.H.B. 1283
By: Truitt
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Legislature created the Texas State Board of Examiners of Professional Counselors (Board) in 1981 to ensure that safe and quality professional counseling services are provided to the citizens of Texas. To accomplish its mission, the Board licenses qualified individuals to provide professional counseling services; sets standards relating to the practice of counseling; ensures compliance with the Licensed Professional Counselor Act and Board rules by investigating and resolving complaints, and taking disciplinary action when necessary; and provides information to licensees and the public.

The Board is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the Legislature. As a result of its review of the Professional Counselor Board, the Sunset Advisory Commission recommended continuation of the Board and several statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas State Board of Examiners of Professional Counselors in SECTION 10, SECTION 17, and SECTION 24 of this bill. In addition, under the general rulemaking authority already granted to the policymaking body, rules may be developed to implement other new provisions found in this bill.

ANALYSIS

Continuation of the Board

The substitute continues the regulation of professional counselors until September 1, 2017.

Enforcement Authority and Complaints

The substitute requires the Board to adopt a penalty matrix associating administrative fine amounts with the severity of violations. The substitute authorizes the Board to require refunds as part of the informal-settlement conference process. The substitute authorizes the Board to issue cease-and-desist orders against unlicensed activity after providing notice and opportunity for hearing. The substitute also updates standard Sunset language requiring the Board to maintain information on all complaints, and notify all parties to a complaint about investigation procedures and status of the investigation.

Qualifications for Licensure

The substitute removes the Professional Counselor Board's authority to develop a separate state licensing exam, and requires the Board to contract with a nationally recognized organization to develop and administer a written professional counselor licensing exam. The substitute provides that licensed professional counselors must have graduate semester hours required by board rule, which may not be less than 48 graduate hours. The substitute also deletes the requirement for 36 months of supervision and sets the completed number of supervised experience hours required by board rule, which may not be less than 3,000 hours working in a counselling setting. The substitute removes the Board's authority to allow an exam exemption for licensure applicants who meet the requirements for a provisional license. The substitute also removes the Board's authority to substitute a field exam or other type of examination as the examination determining eligibility for licensure. The applicant is required to pass a jurisprudence exam on the Texas Professional Counselor Act, rules, and any other Texas law applicable to the practice of

professional counseling. Professional counselors who apply for licensure on or after September 1, 2005 are subject to passing the jurisprudence exam.

Conflict of Interest and Board Member Provisions

The substitute updates standard Sunset across-the-board language prohibiting Board members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association. The substitute updates standard Sunset language requiring members of the Board to complete training before assuming their duties and specifies the grounds for removing a Board member.

Licensing Process

The substitute clarifies that the Board must address felony and misdemeanor convictions by applicants and licensees in the standard manner defined within the chapter. The substitute removes exemptions from temporary licensure requirements for out of state professional counselors practicing for fewer than 31 days in Texas. The bill also removes the Board's authority to issue a temporary license to practice art therapy and the authority for a counselor intern pursuing a course in art therapy to use the designation "art therapy intern". For licenses expired for 90 days or less the renewal fee would be equal to 1¼ times the normal renewal fee, while for licenses expired for more than 90 days the fee would be equal to 1½ times the normal renewal fee, instead of the examination fee.

Board Member Provisions

The substitute removes authority for the Board members to receive compensatory per diem payments. The substitute removes statutory authority for the Board to delegate its authority to a single member and clarifies the Board's authority to appoint Board committees, but only comprised of Board members. The substitute adds that a person may not be a member of the Board or serve as general counsel to the department if they are required to register as a lobbyist under the Government Code, because their activities for compensation are on behalf of a profession related to the operation of the board. The substitute also requires the Board to include a public member on all complaint committees that review enforcement cases.

Administrative Functions

The substitute updates statutory language to reflect H.B. 2292, 78th Legislative Session, that transformed the Department of Health into the Department of State Health Services. The substitute adds standard Sunset language requiring separation of policy and agency-staff functions. The substitute also adds standard Sunset language requiring the Board to make effective use of technology in the delivery of services and information to the public, and to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute states that the Governor cannot appoint a public member to the Board whose spouse is licensed in by an occupational regulatory agency in the field of mental health. It would not allow a Board member's spouse to be an officer or paid consultant in the field of mental health. The substitute establishes the minimum education requirement of 48 graduate hours for licensure and allows the Board, by rule, to increase the number of graduate hours necessary for licensure. The substitute deletes a requirement for applicants to have 36 months of supervision to be licensed, and makes the 3000-hour requirement a minimum standard that the Board may increase by rule. The substitute deletes a provision allowing counselor interns pursuing a course of study in an art therapy program to use the designation "art therapy intern." The substitute makes a technical change that moves effective date for applicants to take and pass a jurisprudence exam as a condition of licensure to September 1, 2005.