

BILL ANALYSIS

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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Legislature created the Texas State Board of Examiners of Marriage and Family Therapists (board) in 1991 to ensure that safe and quality marriage and family therapy services are provided to the citizens of Texas. To accomplish its mission, the board licenses qualified individuals; sets standards relating to the practice of marriage and family therapy; and ensures compliance with the Act and board rules by investigating complaints and taking disciplinary action when necessary.

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 board, the Sunset Advisory Commission recommended continuation of the board and several statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Board of Examiners of Marriage and Family Therapists in SECTION 10 (Section 502.1565, Occupations Code), and SECTION 16 (Section 502.2541, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 502.002(2) and (3), Occupations Code, to redefine "commissioner" and "department."

SECTION 2. Amends Section 502.003, Occupations Code, to extend the sunset date for the Texas State Board of Examiners of Marriage and Family Therapists (board) to September 1, 2017.

SECTION 3. Amends Section 502.004, Occupations Code, to make modifications to the list of activities and services to which this chapter applies.

SECTION 4. Amends Section 502.052(c), Occupations Code, to include that an individual is not eligible for appointment as a public member of the board if the individual's spouse is registered, certified, or licensed by an occupational regulatory agency in the field of mental health or if the individual or the individual's spouse engages in certain activities. Makes nonsubstantive changes.

SECTION 5. Amends Section 502.053, Occupations Code, as follows:

- (a) Redefines "Texas trade association."
- (b) Prohibits a person, rather than an officer, employee, or paid consultant of a Texas trade association in the field of health care, from being a member of the board and or an employee of the Department of State Health Services (department) in a certain capacity if that person or that person's spouse is affiliated in certain ways with a Texas trade association in the field of mental health. Deletes existing text pertaining to individuals exempt from the state's position classification plan.
- (c) Deletes existing text pertaining to an individual's spouse being affiliated in certain ways with a Texas trade association in the field of health care. Redesignates Subsection

(d) as Subsection (c). Prohibits a person from being, rather than serving as, a member of the board or acting, rather than serving, as general counsel to the board or the department if the person is required to register as a lobbyist.

SECTION 6. Amends Sections 502.056(a) and (c), Occupations Code, as follows:

(a) Makes modifications to the existing list of grounds for removal from the board.

(c) Requires the executive director of the board (executive director), if the executive director has knowledge that a potential ground for removal exists, to notify the presiding officer of the board of the potential ground. Requires the presiding officer to then notify the governor and attorney general that a potential ground for removal exists. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the board, who is then required to notify the governor and attorney general that a potential ground for removal exists.

SECTION 7. Amends Section 502.057(b), Occupations Code, to delete existing text entitling a board member to a per diem. Makes a nonsubstantive change.

SECTION 8. Amends Section 502.059, Occupations Code, as follows:

(a) Prohibits a person who is appointed to and qualifies for office as a member of the board from voting, deliberating, or being counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section. Deletes existing text referring to a board member training program.

(b) Requires the training program to provide the person with certain information, rather than provide certain information to a participant. Makes modifications to the existing list of information.

(c) Entitles a person appointed to the board to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office. Deletes existing text pertaining to board consultation with the governor, the attorney general, and the Texas Ethics Commission. Deletes existing text of existing subsection (d) regarding another state agency or entity's training requirements.

SECTION 9. Amends Section 502.104, Occupations Code, to require the board to develop and implement policies that clearly separate, rather than define, the policy-making, rather than respective, responsibilities of the board and the management responsibilities of the executive director and staff of the department.

SECTION 10. Amends Subchapter D, Chapter 502, Occupations Code, by adding Sections 502.1565 and 502.161 through 502.163, as follows:

Sec. 502.1565. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. Requires the board to adopt rules necessary to comply with Chapter 53 (Consequences of a Criminal Conviction), and in its rules under this section to list the specific offenses for which a conviction would constitute grounds for the board to take action under Section 53.021 (Authority to Revoke, Suspend, or Deny License).

Sec. 502.161. BOARD COMMITTEES. Authorizes the board to appoint committees to assist the board with its functions under this chapter. Provides that only a member of the board may serve as a member of a board committee.

Sec. 502.162. USE OF TECHNOLOGY. Requires the board to implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the board on the Internet.

Sec. 502.163. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires the board to develop and implement a policy to encourage the use of certain procedures to assist in the adoption of board rules and in the resolution of internal and external disputes under the board's jurisdiction.

(b) Requires the board's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the department to designate a trained person to undertake certain responsibilities.

SECTION 11. Amends Section 502.204, Occupations Code, by adding Subsections (f)-(h), as follows:

(f) Requires the board to maintain a system to promptly and efficiently act on complaints filed with the board. Requires the board to maintain certain information pertaining to the complaint, its investigation, and its resolution.

(g) Requires the board to make information available describing its procedures for complaint investigation and resolution.

(h) Requires the board to periodically notify the parties of the status of the complaint until the final disposition of the complaint.

SECTION 12. Amends Subchapter E, Chapter 502, Occupations Code, by adding Section 502.2041, as follows:

Sec. 502.2041. COMPLAINT COMMITTEE. Requires the board to appoint at least one public member of the board to any board committee established to review a complaint filed with the board or review an enforcement action against a license holder related to a complaint filed with the board.

SECTION 13. Amends Section 502.252(b), Occupations Code, to require an individual to pass the licensing examination and the jurisprudence examination to qualify as for a license as a licensed marriage and family therapist.

SECTION 14. Amends the heading to Section 502.254, Occupations Code, to read as follows:

Sec. 502.254. LICENSE EXAMINATION.

SECTION 15. Amends Section 502.254(c), Occupations Code, to make modifications to the list of the examination's components.

SECTION 16. Amends Subchapter F, Chapter 502, Occupations Code, by adding Section 502.2541, as follows:

Sec. 502.2541. JURISPRUDENCE EXAMINATION. (a) Requires the board to develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, board rules, and any other applicable laws of this state affecting the applicant's practice of marriage and family therapy.

(b) Requires the board to adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

SECTION 17. Amends Sections 502.301(a) and (d), Occupations Code, as follows:

(a) Provides that a license issued under this chapter is subject to biennial, rather than annual, renewal.

(d) Makes modifications to the amount an individual whose license has been expired for certain time periods is authorized to pay for renewal.

SECTION 18. Amends Section 502.302(b), Occupations Code, to require a person to pay to the board a fee that is equal to the amount of the renewal, rather than examination, fee.

SECTION 19. Amends Section 502.351, Occupations Code, to include refusal to renew a person's license amongst the potential penalties for certain violations.

SECTION 20. Amends Subchapter H, Chapter 502, Occupations Code, by adding Sections 502.357 and 502.358, as follows:

Sec. 502.357. GROUND FOR REFUSING RENEWAL. Authorizes the board to refuse to renew the license of a person who fails to pay an administrative penalty unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

Sec. 502.358. REFUND. (a) Authorizes the board, subject to Subsection (b), to order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) Prohibits the amount of a refund ordered as provided in an agreement resulting from an informal settlement conference from exceeding the amount the consumer paid to the license holder for a service regulated by this chapter. Prohibits the board from requiring payment of other damages or estimating harm in a refund order.

SECTION 21. Amends Section 502.402(a), Occupations Code, to prohibit the amount of an administrative penalty from exceeding \$5,000, rather than \$1,000, for each violation.

SECTION 22. Amends Subchapter J, Chapter 502, Occupations Code, by adding Section 502.455, as follows:

Sec. 502.455. CEASE AND DESIST ORDER. (a) Authorizes the board, if it appears to the board that a person who is not licensed under this chapter is violating this chapter, a rule adopted by this chapter, or another state statute or rule relating to the practice of marriage and family therapy, after notice and opportunity for a hearing to issue a cease and desist order prohibiting the person from engaging in the activity.

(b) Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

SECTION 23. (a) Requires the board, not later than January 1, 2006, to adopt the policies required by Sections 502.162 and 502.163, Occupations Code, as added by this Act and to adopt the rules required by Chapter 502, Occupations Code, as amended by this Act.

(b) Requires the board, not later than March 1, 2006, to develop the jurisprudence examination required by Section 502.2541, Occupations Code, as added by this Act.

SECTION 24. (a) Makes application of the changes in law made by Sections 502.052, 502.053, 502.056, and 502.059, Occupations Code, as amended by this Act prospective to September 1, 2005.

(b) Makes application of the changes in law made by this Act governing the eligibility of a person for a license under Chapter 502, Occupations Code, prospective.

(c) Makes application of the changes in law made by this Act with respect to conduct that is grounds for imposition of a disciplinary sanction prospective.

(d) Makes application of the changes in law made by Section 502.252(b), Occupations Code, as amended by this Act, and Section 502.2541, Occupations Code, as added by this Act, regarding the jurisprudence examination, prospective to September 1, 2006.

(e) Makes application Section 502.204, Occupations Code, as amended by this Act, regarding a complaint filed with the board, prospective.

SECTION 25. Provides that notwithstanding Section 502.301(d), Occupations Code, as amended by this Act, the fees for an applicant renewing an expired license under Chapter 502, Occupations Code, before September 1, 2007, are governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose. Provides that an applicant who renews an expired license under Chapter 502, Occupations Code, on or after September 1, 2007, is subject to the fees provided by Sections 502.301(d) or 502.302(b), Occupations Code, as amended by this Act.

SECTION 26. Effective date: September 1, 2005.