

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 311
By: Deuell
Health and Human Services
3/9/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 311 provides for the licensure of academic language teachers and therapists in order to establish quality control criteria in the preparation of professionals who are trained to instruct or remediate individuals with dyslexia and related disorders.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Sections 403.052, 403.106, 403.112, 403.113, and 403.204, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subtitle G, Title 3, Occupations Code, to read as follows:

SUBTITLE G. PROFESSIONS RELATED TO HEARING, LANGUAGE, AND SPEECH

SECTION 2. Amends Subtitle G, Title 3, Occupations Code, by adding Chapter 403, as follows:

CHAPTER 403. ACADEMIC LANGUAGE AND THERAPISTS SUBCHAPTER A. GENERAL PROVISIONS

Sec. 403.001. DEFINITIONS. Defines "academic language," "department," "executive commissioner," and "license holder."

Sec. 403.002. ADMINISTRATION BY DEPARTMENT OF STATE HEALTH SERVICES. Requires the Department of State Health Services (department) to administer this chapter.

[Reserves Sections 403.003-403.050 for expansion.]

SUBCHAPTER B. POWERS AND DUTIES

Sec. 403.051. ADVISORY COMMITTEE. Authorizes the department to appoint an advisory committee to advise the department in administering this chapter.

Sec. 403.052. RULES. Requires the executive commissioner of the Health and Human Services Commission (commissioner) to adopt rules necessary to administer and enforce this chapter, including rules that establish standards of ethical practice.

Sec. 403.053. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. Prohibits the commissioner from adopting rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices. Prohibits the commissioner from including certain restrictions in the commissioner's rules relating to prohibiting false, misleading, or deceptive practices.

[Reserves Sections 403.054-403.100.]

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 403.101. LICENSE REQUIRED. Prohibits a person from using the title "academic language teacher" or "academic language therapist" in this state unless the person holds the appropriate license under this chapter.

Sec. 403.102. ISSUANCE OF LICENSE. Requires the department to issue an academic language teaching or therapy license to an applicant who meets the requirement of this chapter.

Sec. 403.103. LICENSE APPLICATION. Requires a license applicant to apply to the department on a form and in the manner the department prescribes. Requires the application to be accompanied by a nonrefundable application fee.

Sec. 403.104. ELIGIBILITY FOR ACADEMIC LANGUAGE TEACHER LICENSE. Requires an applicant to have certain qualifications to be eligible for an academic language teacher license. Provides that clinical experience required under this section must be obtained in a certain manner.

Sec. 403.105. ELIGIBILITY FOR ACADEMIC LANGUAGE THERAPIST LICENSE. Requires an applicant to have certain qualifications to be eligible for an academic language therapist license. Provides that clinical experience required under this section to be acquired in a certain manner.

Sec. 403.106. EXAMINATION; RULES. Requires an applicant to take certain actions to obtain a license. Requires the department to perform certain functions relating to an examination under this section. Authorizes the commissioner by rule to implement the examination in a certain manner.

Sec. 403.107. EXAMINATION RESULTS. (a) Requires the department, not later than the 30th day after the date a person takes a licensing examination under this chapter, to notify the person of the results of the examination.

(b) Provides that if the examination is graded or reviewed by a testing service, the department is required to follow certain notification procedures.

(c) Authorizes the department to require a testing service to notify a person of the results of the person's examination.

(d) Requires the department, if requested in writing by a person who fails a licensing examination administered under this chapter, to furnish the person with an analysis of the person's performance on the examination.

Sec. 403.108. REEXAMINATION. (a) Authorizes a person who fails the examination to take a later examination on payment of a nonrefundable fee for the examination.

(b) Prohibits an applicant who fails two examinations from being reexamined until the applicant takes certain actions.

Sec. 403.109. WAIVER OF EXAMINATION REQUIREMENT. Authorizes the department to waive the examination requirement and issue a license to an applicant who holds an appropriate certificate or other accreditation from a national organization recognized by the department.

Sec. 403.110. PROVISIONAL LICENSE. (a) Authorizes the department to issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who fulfills certain requirements.

(b) Authorizes the department to waive the requirement of Subsection (a)(3) for an applicant if the department determines that compliance with that subsection would be a hardship to the applicant.

(c) Provides that a provisional license is valid until the date the department approves or denies the provisional license holder's application for a license.

(d) Requires the department to issue a license under this chapter to the provisional license holder if certain conditions are met.

(e) Requires the department to approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. Authorizes the department to extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

Sec. 403.111. ENDORSEMENT OF OUT-OF-STATE CREDENTIALS; RECIPROcity. (a) Authorizes the department to waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(b) Authorizes the department to waive any prerequisite to obtaining a license for an applicant who holds a license issued by another jurisdiction with which this state has a reciprocity agreement. Authorizes the department to make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

Sec. 403.112. TEMPORARY LICENSE; RULES. Authorizes the commissioner by rule to provide for the issuance of a temporary license.

Sec. 403.113. INACTIVE STATUS; RULES. Authorizes the commissioner by rule to provide for a license holder to be placed on inactive status. Requires rules adopted under this section to include a time limit for a license holder to remain on inactive status.

Sec. 403.114. LICENSE RENEWAL. (a) Authorizes a person who is otherwise eligible to renew a license to renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. Prohibits a person whose license has expired from engaging in activities that require a license until the license has been renewed.

(b) Authorizes a person whose license has been expired for 90 days or less to renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) Authorizes a person whose license has been expired for more than 90 days but less than one year to renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) Prohibits a person whose license has been expired for one year or more from renewing the license. Authorizes the person to obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) Authorizes a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application to obtain a new license without reexamination. Requires the person to pay to the department a fee that is equal to two times the normally required renewal fee for the license.

(f) Requires the department, not later than the 30th day before the date a person's license is scheduled to expire, to send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

[Reserves Sections 403.115-403.150 for expansion.]

SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

Sec. 403.151. CONTINUING EDUCATION. (a) Requires the department to recognize, prepare, or administer continuing education programs for its license holders under this chapter. Prohibits a license holder from renewing the person's license unless the person meets the continuing education requirements.

(b) Requires the department to establish the requirements in a manner that allows a license holder to comply without an extended absence from the license holder's county of residence.

(c) Requires the department to perform certain functions.

[Reserves Sections 403.152-403.200 for expansion.]

SUBCHAPTER E. LICENSE DENIAL; COMPLAINT AND DISCIPLINARY PROCEDURES

Sec. 403.201. ADMINISTRATIVE SANCTIONS. (a) Requires the department to revoke, suspend, or refuse to renew a license or reprimand a license holder for a violation of this chapter or a department rule.

(b) Authorizes the department to place on probation a person whose license is suspended. Authorizes the department, if a license suspension is probated, to require the person to take certain actions.

Sec. 403.202. COMPLAINTS. Authorizes any person to file a complaint with the department alleging a violation of this chapter or a rule adopted under this chapter.

Sec. 403.203. PROHIBITED ACTIONS. Prohibits a license holder from engaging in certain activities.

Sec. 403.204. MONITORING OF LICENSE HOLDERS; RULES. Requires the commissioner by rule to develop a system for monitoring a license holder's compliance with this chapter. Requires rules adopted under this section to include procedures to perform certain functions.

Sec. 403.205. LICENSE DENIAL, REVOCATION, OR SUSPENSION FOR CRIMINAL CONVICTION. (a) Authorizes the department to deny a license or suspend or revoke a license if the applicant or license holder has been convicted of a misdemeanor involving moral turpitude or a felony. Authorizes the department to take action authorized by this section under certain circumstances.

(b) Provides that a plea or verdict of guilty or a conviction following a plea of nolo contendere is a conviction for purposes of this section.

Sec. 403.206. SCHEDULE OF SANCTIONS; RULES. Requires the department to use the schedule of sanctions adopted by commissioner rule for any sanction imposed as the result of a hearing conducted by the department.

Sec. 403.207. REINSTATEMENT. Authorizes a person to apply for reinstatement of a revoked license on or after the first anniversary of the date of revocation. Authorizes the department to accept or reject the applications and require an examination as a condition for the reinstatement of a license.

Sec. 403.208. REPRIMAND; CONTINUING EDUCATION. (a) Authorizes the department, in addition to other disciplinary action authorized by this subchapter, to take certain disciplinary actions.

(b) Authorizes the department to specify the number of hours of continuing education that must be completed by a license holder to fulfill the requirement of Subsection (a)(2).

Sec. 403.209. EMERGENCY SUSPENSION. (a) Requires the department or a three-member committee of members designated by the department to temporarily suspend the license of a license holder if the department or committee determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) Authorizes a license to be suspended under this section without notice or hearing on the complaint if certain conditions are met.

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

[Reserves Sections 403.210-403.250 for expansion.]

SUBCHAPTER F. PENALTIES AND OTHER ENFORCEMENT PROCEDURES

Sec. 403.251. DECEPTIVE TRADE PRACTICE. Provides that a violation of Section 403.101 is a deceptive trade practice.

Sec. 403.252. INJUNCTION. Authorizes the department to apply to a district court in any county for an injunction or another order to restrain the violation of this chapter by a person other than a license holder under this chapter.

Sec. 403.253. CRIMINAL OFFENSE. Provides that a person commits an offense if the person violates Section 403.101. Provides that an offense under this section is a Class B misdemeanor.

[Reserves Sections 403.254-403.300 for expansion.]

SUBCHAPTER G. ADMINISTRATIVE PENALTY

Sec. 403.301. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the department to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 403.302. AMOUNT OF ADMINISTRATIVE PENALTY. Prohibits the amount of the administrative penalty from being less than \$50 or more than \$5,000 for each violation. Provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. Sets forth the factors that determine the amount of the penalty.

Sec. 403.303. REPORT AND NOTICE OF VIOLATION AND PENALTY. Authorizes the department, if the department determines that a violation occurred, to issue a report containing certain information. Requires the department, within 14 days after the date the report is issued, to give written notice of the report to the person. Sets forth the information that the notice must contain.

Sec. 403.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person, within 10 days after the date the person receives the notice, to take certain actions.

(b) Requires the department by order, if the person accepts the determination and recommended penalty of the department, to approve the determination and impose the recommended penalty.

Sec. 403.305. HEARING. (a) Requires the department, if the person requests a hearing or fails to respond in a timely manner to the notice, to set a hearing and give written notice of the hearing to the person.

(b) Requires an administrative law judge of the State Office of Administrative Hearings to hold the hearing.

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

Sec. 403.306. DECISION BY DEPARTMENT. (a) Authorizes the department by order, based on the findings of fact, conclusions of law, and proposal for decision, to determine whether a violation occurred and to impose an administrative penalty.

(b) Requires the notice of the department's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 403.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person, within 30 days after the date the department's order becomes final, to take certain actions.

(b) Authorizes a person who files a petition for a judicial review, within the 30-day period prescribed by Subsection (a), to stay enforcement of a penalty by taking certain actions.

(c) Authorizes the department, if it receives a copy of an affidavit under Subsection (b)(2), to file with the court a contest to the affidavit within five days after the date the copy is received.

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

Sec. 403.308. COLLECTION OF PENALTY. (a) Authorizes the penalty to be collected if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed.

(b) Authorizes the attorney general to sue to collect the penalty.

Sec. 403.309. DETERMINATION BY COURT. (a) Authorizes the court, if the court sustains the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) Requires the court, if the court does not sustain the finding that a violation occurred, to order that a penalty is not owed.

Sec. 403.310. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court, if the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

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

- (c) Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.
- (d) Requires the court, if the person gave a supersedeas bond and the penalty is not upheld by the court, to order, when the court's judgment becomes final, the release of the bond.
- (e) Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

SECTION 3. (a) Effective date: September 1, 2005, except as required by Subsection (b).

- (b) Provides that Section 403.101 and Subchapters E, F, and G, Chapter 403, Occupations Code, as added by this Act, take effect February 1, 2006.