

## **BILL ANALYSIS**

Senate Research Center

S.B. 402  
By: Nelson  
Government Organization  
6/3/2005  
Enrolled

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Currently, the Texas State Board of Podiatric Medical Examiners (board) is responsible for ensuring that safe and quality podiatric services are provided to the citizens of Texas. The board is subject to the Sunset Act and is scheduled to be abolished on September 1, 2005, unless continued by the legislature. The sunset review found that the licensing and regulation of podiatrists is needed and that the board is successful in its mission, but that some of the board's processes could be improved to make them more efficient for both licensees and the public. The board currently licenses about 850 podiatrists, employs four staff persons, and operates on an annual budget of \$204,792. The board licenses individuals for the practice of podiatry; enforces the Podiatric Medical Act; and investigates and resolves complaints.

S.B. 402 strengthens the board's enforcement program and continues the board until September 1, 2017.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas State Board of Podiatric Medical Examiners in SECTION 9 (Section 202.1525, Occupations Code), SECTION 19 (Section 202.552, Occupations Code) and SECTION 20 (Section 202.6015, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas State Board of Podiatric Medical Examiners is modified in SECTION 17 (Section 202.508, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 202.002, Occupations Code, as follows:

Sec. 202.002. APPLICATION OF SUNSET ACT. Provides that the Texas State Board of Podiatric Medical Examiners is subject to Chapter 325, Government Code (Texas Sunset Act), and, unless continued in existence as provided by that chapter, the board is abolished September 1, 2017.

SECTION 2. Amends Section 202.051(b), Occupations Code, to include that appointments to the Texas State Board of Podiatric Medical Examiners (board) be made without regard to the age of the appointees.

SECTION 3. Amends Section 202.054, Occupations Code, as follows:

Sec. 202.054. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. Redefines "Texas trade association" and prohibits certain persons from being members of the board or board employees employed in a "bona fide executive, administrative, or professional capacity" as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.). Deletes existing text prohibiting certain persons from being members of the board or employees of the board. Makes nonsubstantive changes.

SECTION 4. Amends Sections 202.056(a) and (c), Occupations Code, to provide that it is a ground for removal from the board that a member does not have at the time of taking office, rather than appointment, the qualifications required by Section 202.051 or 202.053 or is

ineligible for membership under, rather than violates a prohibition established by, Section 202.054. Provides that the attorney general is included among those who must be notified when a potential ground for removal exists and sets forth alternate notification requirements if the potential ground for removal involves the board president.

SECTION 5. Amends Section 202.057(b), Occupations Code, to authorize a board member may receive reimbursement for all travel expenses as prescribed by the General Appropriations Act, rather than prohibiting reimbursement for all travel expenses, other than transportation.

SECTION 6. Amends Section 202.058, Occupations Code, as follows:

Sec. 202.058. OFFICERS. Requires the governor to designate a member of the board as the president of the board to serve in that capacity at the pleasure of the governor and deletes existing text requiring the board to elect a president from its members.

SECTION 7. Amends Section 202.061, Occupations Code, as follows:

Sec. 202.061. TRAINING. 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. Sets forth specific information which must be included in the training session and authorizes a person appointed to the board to be entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance occurs before or after the person qualifies for office. Deletes existing text requiring each board member, if another state agency is given authority to establish training requirements for the board, to comply with those training requirements.

SECTION 8. Amends Section 202.101, Occupations Code, as follows:

Sec. 202.101. DIVISION OF RESPONSIBILITIES. Requires the board to develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board, rather than policies that define the respective responsibilities of the board and staff.

SECTION 9. Amends Subchapter D, Chapter 202, Occupations Code, by adding Section 202.1525, as follows:

Sec. 202.1525. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. Requires the board to adopt rules as necessary to comply with Chapter 53 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.

SECTION 10. Amends Subchapter D, Chapter 202, Occupations Code, by adding Section 202.1545, as follows:

Sec. 202.1545. ADVISORY COMMITTEE MEMBERSHIP. Provides that this section does not apply to a committee created under Section 202.154 exclusively composed of board members and that a board member is not eligible to serve as a voting member on a task force or advisory committee that makes recommendations to the board.

SECTION 11. Amends Subchapter D, Chapter 202, Occupations Code, by adding Sections 202.162 and 202.163, as follows:

Sec. 202.162. 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 and requires those policies to ensure that the public is able to interact with the board on the Internet.

Sec. 202.163. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) Requires the board to develop and implement a

policy to encourage the use of negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules, and appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist 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 board to designate a trained person to coordinate the implementation of the policy adopted under Subsection (a), serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 12. Amends Section 202.202, Occupations Code, by adding Subsection (c), to require the board to make information available describing its procedures for complaint investigation and resolution.

SECTION 13. Amends Section 202.203, Occupations Code, as follows:

Sec. 202.203. COMPLAINT RECORDS. Requires the board to maintain a system to promptly and efficiently act on complaints filed with the board and to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint and the disposition of the complaint. Deletes existing text requiring the board to keep an information file about each complaint filed with the board and specific records which must be kept in the file. Requires the board to periodically notify the complaint parties of the status of the complaint until final disposition, unless the notification would jeopardize an undercover investigation, and deletes existing text requiring quarterly notification.

SECTION 14. Amends Section 202.260, Occupations Code, by amending Subsection (c) and adding Subsection (e), as follows:

(c) Requires the board, except as provided by Subsection (e), to issue a license under this chapter to a provisional license holder who meets certain requirements, rather than requiring the board to issue a license to a provisional license holder who meets certain requirements.

(e) Provides that a provisional license holder is not required to pass a part of an examination related to the testing of clinical skills that an applicant for an original license under this chapter with substantially equivalent experience is not required to pass.

SECTION 15. Amends Section 202.301(d), Occupations Code, to authorize a person whose license has been expired for no more than 90 days to renew the license by paying a fee equal to one and a half times the required renewal fee to the board, rather than the required renewal fee and a fee equal to half of the amount charged for an examination for the license. Authorizes a person whose license has been expired for more than 90 days but less than one year to renew the license by paying a fee equal to two times the required renewal fee, rather than all unpaid renewal fees and a fee equal to the amount charged for examination for the license.

SECTION 16. Amends Section 202.302(b), Occupations Code, to require a person to pay to the board a fee equal to the amount charged for renewal of, rather than examination for, the license.

SECTION 17. Amends Section 202.508(b), Occupations Code, to require the presence of a public member of the board at an informal settlement conference.

SECTION 18. Amends Subchapter K, Chapter 202, Occupations Code, by adding Sections 202.5085 and 202.510, as follows:

Sec. 202.5085. REFUND. Authorizes the board, subject to Subsection (b), to order a person licensed under this chapter 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. Prohibits the amount of a refund ordered under this section from exceeding the amount the consumer paid to the person for a service regulated by this chapter and prohibits the board from requiring payment of other damages or estimating harm in a refund order.

Sec. 202.510. TEMPORARY SUSPENSION OF LICENSE. (a) Requires the president of the board to appoint a disciplinary panel of three board members to determine whether a person's license to practice podiatry should be temporarily suspended.

(b) Requires the disciplinary panel to temporarily suspend the license of a person upon determining from the evidence presented to the panel that the person's continuation in practice would constitute a continuing threat to the public welfare.

(c) Authorizes a license to be suspended by a disciplinary panel under this section without notice or hearing if the board immediately provides notice of the suspension to the license holder and a hearing on the temporary suspension is scheduled for the earliest possible date after the 10th day after the notice of hearing.

(d) Authorizes the disciplinary panel, notwithstanding Chapter 551, Government Code, to hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

(e) Requires the board, after the hearing, if the disciplinary panel affirms the temporary suspension of the license holder's license, to schedule an informal compliance meeting that meets the requirements of Section 2001.054(c), Government Code, and Section 202.508 of this code to be held as soon as practicable, with certain exceptions.

(f) Requires a board representative, if the license holder is unable to show compliance at the informal meeting described by Subsection (e) regarding the issues that are the basis for the temporary suspension, to initiate a disciplinary procedure under Section 202.501 as soon as practicable.

(g) Provides that if, after the hearing described by Subsection (c), the disciplinary panel does not temporarily suspend the license holder's license, the facts that were the basis for the temporary suspension may not be the sole basis of another proceeding to temporarily suspend the license holder's license. Authorizes the board to use those same facts in a subsequent investigation to obtain new information that may be the basis for the temporary suspension of the license holder's license. Provides that, for purposes of this subsection, facts that are the basis for the temporary suspension of a license holder's license include facts presented to the disciplinary panel and facts presented by the board or a representative of the board at the time evidence was presented to the disciplinary panel.

SECTION 19. Amends Section 202.552, Occupations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Prohibits the amount of an administrative penalty from exceeding \$5,000, rather than \$2,500.

(c) Requires the board, by rule, to develop a standardized penalty schedule based on the criteria listed in Subsection (b).

SECTION 20. Amends Subchapter M, Chapter 202, Occupations Code, by adding Section 202.6015, as follows:

Sec. 202.6015. CEASE AND DESIST ORDER. (a) Authorizes the board to, if it appears that a person who is not licensed under this chapter is violating or has violated this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of podiatry, after providing to the person notice and the opportunity for a hearing, issue a cease and desist order prohibiting the conduct described in the notice.

(b) Authorizes the board to take certain action if the person does not request a hearing before the 22nd day after the date of receiving notice under Subsection (a).

(c) Requires the board, if the person requesting a hearing before the 22nd day after the date of receiving notice under Subsection (a), to hold the hearing not later than the 30th day after the date the board receives the request for the hearing.

(d) Provides that a hearing under this section is subject to Chapter 2001, Government Code.

(e) Authorizes the board to impose, notwithstanding Section 202.551, an administrative penalty under Subchapter L against a person who violates an order issued under this section.

(f) Requires the board to adopt rules necessary to implement this section.

SECTION 21. Amends Section 202.602, Occupations Code, as follows:

Sec. 202.602. New heading: MONITORING AND INSPECTION OF LICENSE HOLDER. Authorizes the board, during reasonable business hours, to enter the business premises of a person regulated by the board without notice to investigate a complaint filed with the board, or determine compliance with an order of the board.

SECTION 22. (a) Requires the board to adopt rules as required by this Act by March 1, 2006.

(b) Makes application of Section 202.301(d), Occupations Code, as amended by this Act, prospective.

(c) Makes application of the changes in law made by this Act, relating to the prohibitions or qualifications applying to a member of the board, prospective.

(d) Makes application of Section 202.1545, Occupations Code, as added by this Act, prospective.

(e) Makes application of Chapter 202, Occupations Code, relating to the investigation of a complaint filed with board, of this Act, prospective.

(f) Makes application of the changes in law made to Chapter 202, Occupations Code, governing eligibility of a person for a license under this chapter, of this Act, prospective.

(g) Makes application of the changes in law made by this Act, relating to imposition of an administrative penalty, prospective.

(h) Makes application of the changes in law made by this Act, with respect to conduct that is grounds for imposition of a disciplinary sanction, including a refund, temporary license suspension, or cease and desist order, prospective.

SECTION 23. Effective date: September 1, 2005.