

BILL ANALYSIS

Senate Research Center

S.B. 403
By: Nelson
Government Organization
6/28/2005
Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The 73rd Legislature, Regular Session, 1993, created the Texas State Board of Examiners of Perfusionists (board) to ensure that health care professionals who operate cardiopulmonary bypass equipment during open-heart surgeries provide safe and quality services to the public. The board oversees the profession by licensing qualified individuals to practice perfusion, setting rules, and enforcing the Perfusionist Act by investigating and resolving complaints. The board, through its administrative attachment to the Department of State Health Services, currently licenses about 300 perfusionists, with one employee and an annual budget of \$35,000.

The board is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the legislature. The Sunset Commission (commission) found that while the licensing and regulation of perfusionists is needed to protect the public, the governor-appointed board is unnecessary and its functions could be carried out by an advisory committee. In addition, the commission recommended changes to the Perfusionist Act to improve the licensing and enforcement processes of the Department of State Health Services. S.B. 403 replaces the Texas State Board of Examiners of Perfusionists with the Texas State Perfusionist Advisory Committee and provides enforcement powers consistent with other health licensing bodies.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 23 (Section 603.1535, Occupations Code), SECTION 37 (Section 603.2535, Occupations Code), and SECTION 60 (Section 603.502, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas State Board of Examiners of Perfusionists is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 21 (Section 603.152, Occupations Code), SECTION 25 (Section 603.155, Occupations Code), SECTION 30 (Section 603.202, Occupations Code), SECTION 32 (Section 603.204, Occupations Code), SECTION 35 (Section 603.252, Occupations Code), SECTION 40 (Section 603.257, Occupations Code), SECTION 42 (Section 603.301, Occupations Code), SECTION 50 (Section 603.404, Occupations Code), SECTION 52 (Section 603.406, Occupations Code) and SECTION 53 (Section 603.407, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 603.002, Occupations Code, to delete existing text defining "board." Defines "committee" and "executive commissioner" and redefines "commissioner" and "department."

SECTION 2. Amends Section 603.004, Occupations Code, as follows:

Sec. 603.004. APPLICATION OF CHAPTER. Deletes existing text providing that the chapter is inapplicable to a person who is not a resident of this state and meets certain criteria. Makes conforming and nonsubstantive changes.

SECTION 3. Amends Section 603.005, Occupations Code, as follows:

Sec. 603.005. APPLICATION OF SUNSET ACT. Provides that the Texas Perfusionist Advisory Committee (committee), rather than the Board of Examiners of Perfusionists

(board), is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides that, unless continued in existence as provided by that chapter, the committee, rather than the board, is abolished September 1, 2017, rather than 2005.

SECTION 4. Amends Subchapter A, Chapter 603, Occupations Code, by adding Section 603.006, as follows:

Sec. 603.006. **APPLICABILITY OF OTHER LAW.** Provides that Chapter 2110 (State Agency Advisory Committee), Government Code, is inapplicable to the committee.

SECTION 5. Amends the heading to Subchapter B, Chapter 603, Occupations Code, to read as follows:

SUBCHAPTER B. TEXAS STATE PERFUSIONIST ADVISORY COMMITTEE

SECTION 6. Amends Section 603.051, Occupations Code, as follows:

Sec. 603.051. New heading: **COMMITTEE MEMBERSHIP.** Sets forth that the committee consists of five members appointed by the State Health Services Council (council). Sets forth the requirements for the committee's composition. Requires that appointments be made without regard to the color, disability, or age, rather than creed or geographical distribution, of the appointee. Deletes existing text providing that the board consists of nine members appointed by the governor with the advice and consent of the Senate. Makes conforming and nonsubstantive changes.

SECTION 7. Amends Subchapter B, Chapter 603, Occupations Code, by adding Section 603.0511, as follows:

Sec. 603.0511. **ELIGIBILITY OF PUBLIC MEMBERS.** Prohibits a person from being a public member of the committee if the person or the person's spouse meets certain criteria.

SECTION 8. Amends Section 603.052, Occupations Code, to redefine "Texas trade association." Prohibits a person from being a committee member and a Department of State Health Services (department) employee 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.) if the person or the person's spouse meets certain criteria. Deletes existing text relating to the spouse of a officer, manager, or consultant, of the Texas trade association. Makes conforming and nonsubstantive changes.

SECTION 9. Amends Section 603.053, Occupations Code, to require that the terms of one or two members of the committee, rather than three members, expire on February 1 of each odd-numbered year. Makes a conforming change.

SECTION 10. Amends Section 603.054, Occupations Code, to provide that it is a ground for removal from the committee that a member does not have the qualifications required by Section 603.051 (Board Membership), Occupations Code, or is ineligible under Section 603.0511 (Eligibility Of Public Members) or 603.052 (Membership And Employee Restrictions), Occupations Code, or is absent from more than half of regularly scheduled meetings that the member is eligible to attend during the calendar year without an excuse approved by a majority of the committee. Requires the executive secretary, if the executive secretary has knowledge that a potential ground for removal exists, to notify the presiding officer of the committee of the potential ground. Requires the presiding officer to notify the commissioner of state health services (commissioner) and the attorney general, rather than the governor, that the potential ground for removal exists. Requires the executive secretary, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the committee, who is then required to notify the commissioner and the attorney general that a potential ground for removal exists. Makes conforming and nonsubstantive changes.

SECTION 11. Amends Section 603.055, Occupations Code, as follows:

Sec. 603.055. New heading: REIMBURSEMENT. Provides that a member is entitled to reimbursement for expenses as provided by the General Appropriations Act. Deletes existing text relating to per diem. Makes nonsubstantive changes.

SECTION 12. Amends Section 603.056, Occupations Code, as follows:

Sec. 603.056. OFFICERS. Requires the commissioner, not later than the 30th day after the date the commissioner, rather than the governor, appoints new committee members, to designate a presiding officer. Provides that the presiding officer serves at the pleasure of the commissioner. Authorizes the committee to appoint additional officers as necessary. Deletes existing text relating to an assistant presiding officer.

SECTION 13. Amends Section 603.057, Occupations Code, to require the committee to meet subject to the call of the commissioner, rather than at least twice each year.

SECTION 14. Amends Section 603.058, Occupations Code, as follows:

Sec. 603.058. TRAINING. Prohibits a person who is appointed and qualifies for office as a member of the committee from taking certain actions until the person completes a training program that complies with this section. Requires the training program to provide certain information to the person relating to the programs, rules, laws, and policies of the committee. Provides that the person is entitled to reimbursement for travel expenses incurred while attending the training program. Deletes existing text relating to training requirements for the board.

SECTION 15. Amends Section 603.101, Occupations Code, to make a conforming change.

SECTION 16. Amends Section 603.102, Occupations Code, to make conforming changes.

SECTION 17. Amends Section 603.105, Occupations Code, to make conforming and nonsubstantive changes.

SECTION 18. Amends Section 603.106, Occupations Code, to require the commissioner, rather than the executive secretary, to develop an intra-agency career ladder program. Makes conforming changes.

SECTION 19. Amends Section 603.107(a), Occupations Code, to make conforming changes.

SECTION 20. Amends Section 603.151, Occupations Code, as follows:

Sec. 603.151. New heading: GENERAL POWERS AND DUTIES OF COMMISSIONER. Requires the commissioner, rather than the board, to take certain actions and exercise certain powers. Makes conforming and nonsubstantive changes.

SECTION 21. Amends Section 603.152, Occupations Code, to authorize the executive commissioner of the Health and Human Services Commission, rather than the board, to adopt necessary rules to regulate the practice of perfusion, enforce this chapter, and perform department duties. Deletes existing text relating to rulemaking considerations.

SECTION 22. Amends Section 603.153, Occupations Code, to make conforming changes.

SECTION 23. Amends Subchapter D, Chapter 603, Occupations Code, by adding Section 603.1535, as follows:

Sec. 603.1535. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. Requires the executive commissioner to adopt rules necessary to comply with Chapter 53 (Consequences Of Criminal Conviction). Requires the executive commissioner to list specific offenses for which a conviction would constitute grounds for the executive commissioner to take action under Section 53.021 (Authority To Revoke, Suspend, Or Deny License).

SECTION 24. Amends Section 603.154, Occupations Code, to make a conforming change.

SECTION 25. Amends Section 603.155, Occupations Code, as follows:

Sec. 603.155. New heading: EXECUTIVE COMMISSIONER AND DEPARTMENT DUTIES REGARDING COMPLAINTS. Requires the executive commissioner, rather than the board, by rule to take certain actions relating to complaints made to the department. Makes conforming changes.

SECTION 26. Amends Section 603.156, Occupations Code, to make a conforming change.

SECTION 27. Amends Section 603.157(a), Occupations Code, to make conforming changes.

SECTION 28. Amends Subchapter D, Chapter 603, Occupations Code, by adding Sections 603.158 and 603.159, as follows:

Sec. 603.158. USE OF TECHNOLOGY. Requires the executive commissioner to implement a policy requiring the department to use appropriate technological solutions to improve the department's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the department on the Internet.

Sec. 603.159. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. Requires the executive commissioner to develop and implement a policy to encourage the use of certain procedures. Requires the department's procedures relating to alternative dispute resolution, to the extent possible, to conform to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. Requires the commissioner to designate a trained person to take certain actions relating to implementation, training, and evaluation of said procedures.

SECTION 29. Amends Section 603.201, Occupations Code, to make conforming changes.

SECTION 30. Amends Section 603.202, Occupations Code, to require the executive commissioner, rather than the board, by rule to establish certain measures relating to directing complaints to the department. Makes conforming changes.

SECTION 31. Amends Section 603.203, Occupations Code, to require the department to maintain a system to promptly and efficiently act on complaints filed with the department. Requires the department to maintain specific information relating to information, investigation, and disposition of complaints. Requires the department to make information available describing its procedures for complaint investigation and resolution. Requires the department to periodically notify the parties of the status of the complaint until the final disposition of the complaint. Deletes existing text relating to information that must be maintained and notice requirements related to written complaints.

SECTION 32. Amends Sections 603.204(a), (b), and (d), Occupations Code, to require the executive commissioner, rather than the board, to adopt rules concerning the investigation of a complaint filed with the department. Makes conforming changes.

SECTION 33. Amends Section 603.2041(a), (c), (e), (f), (h), and (i), Occupations Code, to make conforming changes.

SECTION 34. Amends Section 603.205, Occupations Code, to require the State Health Services Council (council) to develop and implement policies that provide the public with reasonable opportunity to appear before the council and to speak on any issue related to the practice of perfusion. Makes conforming and nonsubstantive changes.

SECTION 35. Amends Section 603.252(b), Occupations Code to authorize the executive commissioner, rather than the board, by rule to establish dates by which applications and fees must be received.

SECTION 36. Amends Section 603.253, Occupations Code, as follows:

Sec. 603.253. New heading: COMPETENCY EXAMINATION. Makes conforming changes.

SECTION 37. Amends Subchapter F, Chapter 603, Occupations Code, by adding Section 603.2535, as follows:

Sec. 603.2535. JURISPRUDENCE EXAMINATION. Requires an applicant to pass a jurisprudence examination to qualify for a license under this chapter. Requires the department to develop and administer, at least twice each calendar year, a jurisprudence examination to determine an applicant's knowledge in certain areas. Requires the executive commissioner to adopt rules to implement this section, including rules relating to aspects of the examination and its administration.

SECTION 38. Amends Section 603.254, Occupations Code, to make conforming changes.

SECTION 39. Amends Section 603.255(a), Occupations Code, to make a conforming change.

SECTION 40. Amends Section 603.257, Occupations Code, to require the executive commissioner, rather than the board, by rule to establish certain guidelines relating to taking, retaking, and alternatives to the competency examination.

SECTION 41. Amends Sections 603.259(a), (c), and (d), Occupations Code, to make conforming changes.

SECTION 42. Amends Section 603.301, Occupations Code, as follows:

Sec. 603.301. LICENSE RENEWAL. Provides that a license is valid for two years, rather than one, and must be renewed biennially, rather than annually. Authorizes the executive commissioner, rather than the Texas Board of Health, to adopt by rule a system under which licenses expire on various dates during the year. Authorizes a person whose license has been expired for 90 days or less to renew the license by paying to the department a fee that is equal to 1-1/4 times, rather than half, the amount of the renewal fee. Provides that if the license has been expired for more than 90 days but less than one year the person may renew the license by paying a fee that is equal to 1-1/2 of the amount of the renewal fee. Makes conforming changes.

SECTION 43. Amends Section 603.303, Occupations Code, to require a person who was licensed in this state whose license has expired but has been licensed or certified in another state and has been in practice for the two years preceding the application for renewal to pay an amount equal to a renewal, rather than an examination fee for the license.

SECTION 44. Amends Section 603.304, Occupations Code, to make conforming changes.

SECTION 45. Amends Subchapter G, Chapter 603, Occupations Code, by adding Section 603.305, as follows:

Sec. 603.305. GROUNDS FOR REFUSING RENEWAL. Authorizes the department to refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter K unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

SECTION 46. Amends Section 603.353, Occupations Code, to make conforming changes.

SECTION 47. Amends Section 603.401, Occupations Code, to require that the department, if a license holder violates this chapter or a rule or code of ethics adopted by the executive commissioner, to refuse to renew the license. Makes conforming and nonsubstantive changes.

SECTION 48. Amends Section 603.402, Occupations Code, to provide that a person is entitled to a hearing before a hearings officer, if the department proposes to refuse to renew that person's license. Makes conforming changes.

SECTION 49. Amends Section 603.403, Occupations Code, to make conforming and nonsubstantive changes.

SECTION 50. Amends Section 603.404(a), Occupations Code, to require the executive commissioner, rather than the board, to adopt by rule a broad schedule of sanctions for a violation of this chapter.

SECTION 51. Amends Section 603.405, Occupations Code, to make conforming changes.

SECTION 52. Amends Section 603.406, Occupations Code, to require the executive commissioner, rather than the board, to develop by rule a system for monitoring a license holder's compliance with the requirements of this chapter.

SECTION 53. Amends Section 603.407, Occupations Code, to require the executive commissioner, rather than the board, to adopt by rule procedures governing informal depositions and proceedings. Makes conforming changes.

SECTION 54. Amends Section 603.408(a), Occupations Code, to make conforming and nonsubstantive changes.

SECTION 55. Amends Subchapter I, Chapter 603, Occupations Code, by adding Section 603.409, as follows:

Sec. 603.409. REFUND. Authorizes the department 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. 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 department from requiring payment of other damages or estimating harm in a refund order.

SECTION 56. Amends Section 603.451(a), Occupations Code, to make a conforming change.

SECTION 57. Amends Section 603.4515, Occupations Code, to provide that a person who violates this chapter, a rule adopted by the executive commissioner, or an order adopted by the commissioner under this chapter is liable for a civil penalty not to exceed \$5,000 a day. Makes conforming changes.

SECTION 58. Amends Subchapter J, Chapter, 603, Occupations Code, by adding Section 603.453, as follows:

Sec. 603.453. CEASE AND DESIST ORDER. Authorizes the commissioner, if it appears to the commissioner that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of perfusion, after notice and an opportunity for a hearing, to issue a cease and desist order prohibiting the person from engaging in the activity. Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

SECTION 59. Amends Section 603.501, Occupations Code, to make a conforming change.

SECTION 60. Amends Section 603.502, Occupations Code, by adding Subsection (c), to require the executive commissioner, by rule, to adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or applicable rules to ensure that the amounts of penalties imposed are appropriate to the violation. Requires the executive commissioner to provide the administrative penalty schedule to the public on request.

SECTION 61. Amends Section 603.503(a), Occupations Code, to make a conforming change.

SECTION 62. Amends Section 603.504(b), Occupations Code, to make a conforming change.

SECTION 63. Amends Section 603.505(c), Occupations Code, to make a conforming change.

SECTION 64. Amends Section 603.506, Occupations Code, as follows:

Sec. 603.506. New heading: DECISION BY COMMISSIONER. Makes conforming changes.

SECTION 65. Amends Sections 603.507(a) and (b), Occupations Code, to make conforming changes.

SECTION 66. Repealer: Sections 603.103(b) (Other Personnel and Facilities) and 604.104 (Division of Responsibilities), Occupations Code.

SECTION 67. Abolishes the Texas State Board of Examiners of Perfusionists on the effective date of this Act. Requires the council, as soon as possible after the effective date of this Act, to appoint the members of the committee. Requires the committee, in making initial appointments, to designate one member for a term expiring February 1, 2009, and two members for terms expiring February 1, 2011.

SECTION 68. Requires the executive commissioner, not later than January 1, 2006, to take certain actions relating to adopting policies and rules. Requires the department, not later than March 1, 2006 to develop the jurisprudence examination required by Section 603.2535, Occupations Code, as added by this Act.

SECTION 69. Makes application of this Act prospective.

SECTION 70. Makes application of this Act prospective to September 1, 2007, in regard to fees.

SECTION 71. Effective date: September 1, 2005.