

BILL ANALYSIS

Senate Research Center
79R10336 E

C.S.S.B. 415
By: Shapleigh
Government Organization
3/16/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas State Board of Social Work Examiners (board) is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the legislature. The Sunset Commission found that licensing and regulation of social workers is needed, but some of the board's processes could be improved to make them more fair and efficient for both licensees and the public. C.S.S.B. 415, among other provisions, strengthens the board's enforcement program by increasing the maximum administrative penalty from \$500 to \$5,000, grant the board authority to issue cease-and-desist orders to quickly stop unlicensed activity, and authorizes the board to require refunds as a part of settlements. This legislation also improves the board's licensing program by removing exemptions for non-Texas residents to practice without a temporary license, requiring applicants to pass a jurisprudence exam, and applying standard guidelines on the use of criminal convictions to the licensing of social workers.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Board of Social Worker Examiners in SECTION 14 (Section 505.209, Occupations Code), SECTION 19 (Section 505.3545, Occupations Code), and SECTION 29 (Section 505.552, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 505.002, Occupations Code, to define "commissioner" and to redefine "department."

SECTION 2. Amends Section 505.003(a), Occupations Code, to delete text from items to which this chapter does not apply (referring to a service performed by a person who does not reside in this state if the service is performed for fewer than 30 days in a calendar year, and the person is authorized to perform the service under the laws of the state or country in which the person resides). Makes a nonsubstantive change.

SECTION 3. Amends Section 505.005, Occupations Code, to extend the sunset date for the Texas State Board of Social Worker Examiners (board) to September 1, 2017.

SECTION 4. Amends Section 505.101(b), Occupations Code, to require appointments to the board to be made without regard to the race, color, disability, sex, religion, age or national origin of the appointee. Deletes text pertaining to the governor making appointments to the board.

SECTION 5. Amends Section 505.102, 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 6. Amends Section 505.103, 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 text pertaining to individuals exempt from the state's position classification plan.

(c) Deletes 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 7. Amends Sections 505.105(a) and (c), Occupations Code, as follows:

(a) Provides that it is ground for removal from the board that a member does not have at the time of taking office, rather than appointment, certain qualifications, is ineligible for membership under, rather than violates a prohibition established by, Section 505.103 (Membership and Employee Restrictions), or is absent from more than half of the regularly schedule board meetings that the member is eligible to attend during a calendar year without an excuse provided by a, rather than unless the absence is excused by, majority vote of 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 8. Amends Section 505.109, Occupations Code, as follows:

Sec. 505.109. TRAINING. (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 text referring to a board member training program.

(b) Requires the training program to provide the person with information, rather than provide information to a participant, regarding the legislation that created the board and the board's programs, functions, rules, and budget, the results of the most recent formal audit of the board, the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest, and any applicable ethics policies adopted by the board or the Texas Ethics Commission. Makes nonsubstantive changes.

(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 text pertaining to board consultation with the governor, the attorney general, and the Texas Ethics Commission. Deletes text of existing subsection (d) regarding another state agency or entity's training requirements.

SECTION 9. Amends Subchapter B, Chapter 505, Occupations Code, by adding Section 505.110, as follows:

Sec. 505.110. 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.

SECTION 10. Amends Section 505.151(a), Occupations Code, to require that the commissioner of state health services (commissioner), rather than the commissioner of public health, designate an employee of the department to serve as executive director of the board.

SECTION 11. Amends Subchapter C, Chapter 505, Occupations Code, by adding Section 505.155, as follows:

Sec. 505.155. DIVISION OF RESPONSIBILITIES. Requires the board to develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the board and the management responsibilities of the executive director and staff of the department.

SECTION 12. Amends Section 505.203, Occupations Code, by adding Subsection (c), to require the board to set certain renewal fees, unless the board determines that the fees would not cover the costs associated with administering the renewal of licenses and orders of recognition of specialty under this chapter.

SECTION 13. Amends Section 505.207, Occupations Code, to make a conforming change.

SECTION 14. Amends Subchapter D, Chapter 505, Occupations Code, by adding Sections 505.209 through 505.211, as follows:

Sec. 505.209. 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. 505.210. 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. 505.211. 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 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 tasks.

SECTION 15. Amends Section 505.253, Occupations Code, as follows:

Sec. 505.253. RECORDS OF COMPLAINTS. (a) 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. Deletes text regarding an information file for a complaint.

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

(c) Requires the board to periodically notify the parties of the status of the complaint until the final disposition of the complaint. Deletes text pertaining to quarterly notification.

SECTION 16. Amends Section 505.2545(a), Occupation Code, to make a conforming change.

SECTION 17. Amends Subchapter E, Chapter 505, Occupations Code, by adding Section 505.2547, as follows:

Sec. 505.2547. 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 18. Amends Section 505.353(a), Occupations Code, to include amongst eligibility requirements under this chapter, that an applicant must pass the licensing examination conducted by the board under Section 505.354 (Examination) and the jurisprudence examination conducted by the board under Section 505.3545.

SECTION 19. Amends Subchapter G, Chapter 505, Occupations Code, by adding Section 505.3545, as follows:

Sec. 505.3545. 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 social work practice.

(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 20. Amends Section 505.357, Occupations Code, to make conforming changes.

SECTION 21. Amends Sections 505.359(a) and (b), Occupations Code, to make conforming changes.

SECTION 22. Amends Sections 505.402(a) and (c), Occupations Code, as follows:

(a) Authorizes a person to renew an unexpired license or order of recognition of specialty by paying the appropriate, rather than required, renewal fee required by the board to the department before the expiration date of the license or order.

(c) Authorizes a person whose license or order of recognition of specialty has been expired for less than one year, rather than 90 days or less, to renew the license or order by paying to the department the appropriate renewal fee required by the board for the expired license or order. Deletes text referring to an additional fee and to renewing a license that has been expired for between 90 days and one year.

SECTION 23. Amends Section 505.403(b), Occupation Code, to require the person to pay to the department a fee that is equal to the amount of the appropriate renewal, rather than examination, fee for the license or order, as required by the board.

SECTION 24. Amends Subchapter H, Chapter 505, Occupations Code, by adding Section 505.405, as follows:

Sec. 505.405. GROUNDS FOR REFUSING RENEWAL. Authorizes the board to refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter K (Administrative Penalty) unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

SECTION 25. Amends Section 505.451, Occupations Code, as follows:

Sec. 505.451. New heading: GROUNDS FOR DENIAL OF LICENSE OR ORDER OF RECOGNITION OF SPECIALTY; DISCIPLINARY ACTION. Includes refusal to renew a person's license amongst the potential penalties for certain violations.

SECTION 26. Amends Subchapter I, Chapter 505, Occupations Code, by adding Section 505.458, as follows:

Sec. 505.458. 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. Prohibited the board from requiring payment of other damages or estimating harm in a refund order.

SECTION 27. Amends Subchapter J, Chapter 505, Occupations Code, by adding Section 505.508, as follows:

Sec. 505.508. CEASE AND DESIST ORDER. 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 social work, after notice and opportunity for a hearing to issue a cease and desist order prohibiting the person from engaging in the activity.

SECTION 28. Amends Section 505.551, Occupations Code, to include an individual who violates a cease and desist order issued by the board amongst those upon whom the board may impose an administrative penalty.

SECTION 29. Amends Section 505.552, Occupations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes the amount for the administrative penalty to be not less than \$50 or more than \$5,000, rather than \$500, for each violation.

(c) Requires the board, by rule, to adopt an administrative penalty schedule based on certain criteria for violations of this chapter or board rules to ensure that the amounts of penalties imposed are appropriate to the violation. Requires the board to provide the administrative penalty schedule to the public on request.

SECTION 30. (a) Requires the board, not later than January 1, 2006, to adopt the policies required by Sections 505.210 and 505.211, Occupations Code, as added by this Act and to adopt the rules required by Chapter 505, 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 505.3545, Occupations Code, as added by this Act.

SECTION 31. (a) Makes application of the changes in law made by Section 505.105, 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 505, 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 505.353(a), Occupations Code, as amended by this Act, and Section 505.3545, Occupations Code, as added by this Act, regarding the jurisprudence examination, prospective to September 1, 2006.

SECTION 32. (a) Requires the board, not later than September 1, 2007, by rule, to adjust the fees for renewal of an expired license under Chapter 505, Occupations Code, in accordance with Section 505.203(c), Occupations Code, as added by this Act.

(b) Makes application of the fees provided by the board and Chapter 505, as amended by this Act, prospective.

SECTION 33. Effective date: September 1, 2005.