

By: Davis of Dallas

H.B. No. 44

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of clinical nutritionists and nutrition counselors; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle M, Title 3, Occupations Code, is amended by adding Chapter 703 to read as follows:

CHAPTER 703. CLINICAL NUTRITIONISTS AND NUTRITION COUNSELORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 703.001. GENERAL DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Health.

(2) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(3) "Nutritionists board" means the Texas State Board of Examiners of Clinical Nutritionists.

(4) "Nutrition counseling" means the recommendation of a diet, including specific foods, and the recommendation of lifestyle changes to prevent disease and optimize health.

Sec. 703.002. DEFINITION OF CLINICAL NUTRITION. (a) In this section:

(1) "Nutritional assessment" means the evaluation of individual nutritional needs, recognizing biochemical individuality, to determine factors necessary to restore or maintain healthy physiological function. The term includes the use of appropriate tests and observations interpreted in terms of

1 optimal values and nutrition and lifestyle analysis to determine an
2 appropriate nutritional program, including:

3 (A) a case history;

4 (B) anthropometric measurements;

5 (C) physical signs; and

6 (D) biochemical data, including specialty
7 nutritional laboratory tests of blood, urine, saliva, and feces.

8 (2) "Nutritional supplements" includes food,
9 vitamins, minerals, botanicals, nutraceuticals, amino acids, trace
10 elements, biochemical supplements, homeopathics, macronutrients,
11 micronutrients, herbs, accessory food factors, and metabolites
12 designed to correct clinical deficiencies in the human body.

13 (3) "Whole food" means a food in its naturally grown
14 state, prepared for human consumption with minimal or no processing
15 and preserving.

16 (b) "Clinical nutrition" means a specialization in
17 nutrition that requires advanced training, including training in:

18 (1) the interpretation of nutrition assessments for
19 the evaluation of nutritional status; and

20 (2) recommendations for therapeutic intervention to
21 correct identified nutritional imbalances using specific whole
22 foods, nutritional supplements, and other nutrition counseling.

23 Sec. 703.003. SUNSET PROVISION. The Texas State Board of
24 Examiners of Clinical Nutritionists is subject to Chapter 325,
25 Government Code (Texas Sunset Act). Unless continued in existence
26 as provided by that chapter, the nutritionists board is abolished
27 and this chapter expires September 1, 2015.

1 [Sections 703.004-703.050 reserved for expansion]

2 SUBCHAPTER B. BOARD OF EXAMINERS OF CLINICAL NUTRITIONISTS

3 Sec. 703.051. NUTRITIONISTS BOARD; MEMBERSHIP. (a) The
4 Texas State Board of Examiners of Clinical Nutritionists consists
5 of nine members appointed by the governor as follows:

6 (1) six members who are clinical nutritionists who
7 hold a license issued under this chapter and who have been licensed
8 under this chapter for at least the three years preceding
9 appointment to the nutritionists board; and

10 (2) three members who represent the public.

11 (b) Appointments to the nutritionists board shall be made
12 without regard to the race, color, disability, sex, religion, age,
13 or national origin of the appointee.

14 (c) In appointing clinical nutritionists to the
15 nutritionists board, the governor shall attempt to maintain a
16 continuing balance of representation among the clinical, research,
17 management, and educational areas of expertise in clinical
18 nutrition.

19 Sec. 703.052. ELIGIBILITY OF PUBLIC MEMBERS. A person may
20 not be a public member of the nutritionists board if the person or
21 the person's spouse:

22 (1) is registered, certified, or licensed by a
23 regulatory agency in the field of clinical nutrition;

24 (2) is employed by or participates in the management
25 of a business entity or other organization regulated by or
26 receiving money from the nutritionists board;

27 (3) owns or controls, directly or indirectly, more

1 than a 10 percent interest in a business entity or other
2 organization regulated by or receiving money from the nutritionists
3 board; or

4 (4) uses or receives a substantial amount of tangible
5 goods, services, or funds from the nutritionists board, other than
6 compensation or reimbursement authorized by law for nutritionists
7 board membership, attendance, or expenses.

8 Sec. 703.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In
9 this section, "Texas trade association" means a cooperative and
10 voluntarily joined statewide association of business or
11 professional competitors in this state designed to assist its
12 members and its industry or profession in dealing with mutual
13 business or professional problems and in promoting their common
14 interest.

15 (b) A person may not be a member of the nutritionists board
16 and may not be a board employee employed in a "bona fide executive,
17 administrative, or professional capacity," as that phrase is used
18 for purposes of establishing an exemption to the overtime
19 provisions of the federal Fair Labor Standards Act of 1938 (29
20 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

21 (1) the person is an officer, employee, or paid
22 consultant of a Texas trade association in a field regulated by the
23 nutritionists board; or

24 (2) the person's spouse is an officer, manager, or paid
25 consultant of a Texas trade association in a field regulated by the
26 nutritionists board.

27 (c) A person may not be a member of the nutritionists board

1 or act as the general counsel to the nutritionists board if the
2 person is required to register as a lobbyist under Chapter 305,
3 Government Code, because of the person's activities for
4 compensation on behalf of a profession related to the operation of
5 the nutritionists board.

6 Sec. 703.054. TERMS. Members of the nutritionists board
7 serve staggered six-year terms, with three members' terms expiring
8 on February 1 of each odd-numbered year.

9 Sec. 703.055. GROUNDS FOR REMOVAL FROM NUTRITIONISTS BOARD.

10 (a) It is a ground for removal from the nutritionists board that a
11 member:

12 (1) does not have at the time of appointment the
13 qualifications required by Section 703.051;

14 (2) does not maintain during service on the
15 nutritionists board the qualifications required by Section
16 703.051;

17 (3) is ineligible for membership under Section 703.052
18 or 703.053;

19 (4) cannot, because of illness or disability,
20 discharge the member's duties for a substantial part of the member's
21 term; or

22 (5) is absent from more than half of the regularly
23 scheduled nutritionists board meetings that the member is eligible
24 to attend during a calendar year without an excuse approved by a
25 majority vote of the nutritionists board.

26 (b) The validity of an action of the nutritionists board is
27 not affected by the fact that it is taken when a ground for removal

1 of a nutritionists board member exists.

2 (c) If the executive director has knowledge that a potential
3 ground for removal exists, the executive director shall notify the
4 presiding officer of the nutritionists board of the potential
5 ground. The presiding officer shall then notify the governor and
6 the attorney general that a potential ground for removal exists. If
7 the potential ground for removal involves the presiding officer,
8 the executive director shall notify the next highest ranking
9 officer of the nutritionists board, who shall then notify the
10 governor and the attorney general that a potential ground for
11 removal exists.

12 Sec. 703.056. PER DIEM; REIMBURSEMENT. (a) Each member of
13 the nutritionists board is entitled to receive a per diem at the
14 rate set by the legislature for state employees in the General
15 Appropriations Act for each day the member engages in the business
16 of the nutritionists board.

17 (b) A member is entitled to reimbursement for
18 transportation expenses as provided by the General Appropriations
19 Act.

20 Sec. 703.057. FIXED SALARY PROHIBITED. A nutritionists
21 board member may not receive a fixed salary for the member's
22 services.

23 Sec. 703.058. OFFICERS. (a) The governor shall designate a
24 member of the nutritionists board as the presiding officer of the
25 board to serve in that capacity at the pleasure of the governor.

26 (b) The nutritionists board shall elect an assistant
27 presiding officer from its membership as provided by nutritionists

1 board rule.

2 Sec. 703.059. MEETINGS. The nutritionists board shall hold
3 at least two regular meetings each year as provided by rules adopted
4 by the nutritionists board.

5 Sec. 703.060. TRAINING. (a) A person who is appointed to
6 and qualifies for office as a member of the nutritionists board may
7 not vote, deliberate, or be counted as a member in attendance at a
8 meeting of the nutritionists board until the person completes a
9 training program that complies with this section.

10 (b) The training program must provide the person with
11 information regarding:

12 (1) this chapter;

13 (2) the programs operated by the nutritionists board;

14 (3) the role and functions of the nutritionists board;

15 (4) the rules of the nutritionists board, with an
16 emphasis on the rules that relate to disciplinary and investigatory
17 authority;

18 (5) the current budget for the nutritionists board;

19 (6) the results of the most recent formal audit of the
20 nutritionists board;

21 (7) the requirements of:

22 (A) the open meetings law, Chapter 551,
23 Government Code;

24 (B) the public information law, Chapter 552,
25 Government Code;

26 (C) the administrative procedure law, Chapter
27 2001, Government Code; and

1 (D) other laws relating to public officials,
2 including conflict-of-interest laws; and

3 (8) any applicable ethics policies adopted by the
4 nutritionists board or the Texas Ethics Commission.

5 (c) A person appointed to the nutritionists board is
6 entitled to reimbursement, as provided by the General
7 Appropriations Act, for the travel expenses incurred in attending
8 the training program regardless of whether the attendance at the
9 program occurs before or after the person qualifies for office.

10 Sec. 703.061. USE OF TECHNOLOGY. The nutritionists board
11 shall develop and implement a policy requiring the executive
12 director and nutritionists board employees to research and propose
13 appropriate technological solutions to improve the nutritionists
14 board's ability to perform its functions. The technological
15 solutions must:

16 (1) ensure that the public is able to easily find
17 information about the nutritionists board on the Internet;

18 (2) ensure that persons who want to use the
19 nutritionists board's services are able to:

20 (A) interact with the nutritionists board
21 through the Internet; and

22 (B) access any service that can be provided
23 effectively through the Internet; and

24 (3) be cost-effective and developed through the
25 nutritionists board's planning processes.

26 Sec. 703.062. NEGOTIATED RULEMAKING AND ALTERNATIVE
27 DISPUTE RESOLUTION PROCEDURES. (a) The nutritionists board shall

1 develop and implement a policy to encourage the use of:

2 (1) negotiated rulemaking procedures under Chapter
3 2008, Government Code, for the adoption of nutritionists board
4 rules; and

5 (2) appropriate alternative dispute resolution
6 procedures under Chapter 2009, Government Code, to assist in the
7 resolution of internal and external disputes under the
8 nutritionists board's jurisdiction.

9 (b) The nutritionists board's procedures relating to
10 alternative dispute resolution must conform, to the extent
11 possible, to any model guidelines issued by the State Office of
12 Administrative Hearings for the use of alternative dispute
13 resolution by state agencies.

14 (c) The nutritionists board shall designate a trained
15 person to:

16 (1) coordinate the implementation of the policy
17 adopted under Subsection (a);

18 (2) serve as a resource for any training needed to
19 implement the procedures for negotiated rulemaking or alternative
20 dispute resolution; and

21 (3) collect data concerning the effectiveness of
22 those procedures, as implemented by the nutritionists board.

23 [Sections 703.063-703.100 reserved for expansion]

24 SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

25 Sec. 703.101. EXECUTIVE DIRECTOR. The nutritionists board
26 shall employ an executive director.

27 Sec. 703.102. EXECUTIVE DIRECTOR POWERS AND DUTIES. In

1 addition to other duties prescribed by this chapter and by the
2 department, the executive director shall:

3 (1) administer licensing activities for the
4 nutritionists board;

5 (2) keep full and accurate minutes of the transactions
6 and proceedings of the nutritionists board;

7 (3) serve as custodian of the files and records of the
8 nutritionists board;

9 (4) prepare and recommend to the nutritionists board
10 plans and procedures necessary to implement the purposes and
11 objectives of this chapter, including rules and proposals on
12 administrative procedures;

13 (5) exercise general oversight of persons employed by
14 the department in the administration of this chapter;

15 (6) investigate complaints and present formal
16 complaints;

17 (7) attend all meetings of the nutritionists board as
18 a nonvoting participant;

19 (8) handle the correspondence of the nutritionists
20 board; and

21 (9) obtain, assemble, or prepare reports and
22 information as directed or authorized by the nutritionists board.

23 Sec. 703.103. PERSONNEL AND FACILITIES. (a) The
24 department shall provide the basic personnel and facilities
25 required to administer this chapter. The department personnel
26 administering this chapter act as agents of the nutritionists
27 board.

1 (b) The department by agreement may secure services as it
2 considers necessary to administer this chapter and provide
3 compensation for those services.

4 (c) The department may employ, on a full-time or part-time
5 basis, the professional consultants, technical assistants, and
6 employees necessary to administer this chapter.

7 Sec. 703.104. DIVISION OF RESPONSIBILITIES. The
8 nutritionists board shall develop and implement policies that
9 clearly separate the policymaking responsibilities of the
10 nutritionists board and the management responsibilities of the
11 executive director and the staff of the nutritionists board.

12 Sec. 703.105. QUALIFICATIONS AND STANDARDS OF CONDUCT
13 INFORMATION. The executive director or the executive director's
14 designee shall provide to members of the nutritionists board and to
15 board employees, as often as necessary, information regarding the
16 requirements for office or employment under this chapter, including
17 information regarding a person's responsibilities under applicable
18 laws relating to standards of conduct for state officers or
19 employees.

20 Sec. 703.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.
21 (a) The executive director or the executive director's designee
22 shall prepare and maintain a written policy statement that
23 implements a program of equal employment opportunity to ensure that
24 all personnel decisions are made without regard to race, color,
25 disability, sex, religion, age, or national origin.

26 (b) The policy statement must include:
27 (1) personnel policies, including policies relating

1 to recruitment, evaluation, selection, training, and promotion of
2 personnel, that show the intent of the nutritionists board to avoid
3 the unlawful employment practices described by Chapter 21, Labor
4 Code; and

5 (2) an analysis of the extent to which the composition
6 of the nutritionists board's personnel is in accordance with state
7 and federal law and a description of reasonable methods to achieve
8 compliance with state and federal law.

9 (c) The policy statement must:

10 (1) be updated annually;

11 (2) be reviewed by the Texas Workforce Commission for
12 compliance with Subsection (b)(1); and

13 (3) be filed with the governor's office.

14 Sec. 703.107. STATE EMPLOYEE INCENTIVE PROGRAM. The
15 executive director or the executive director's designee shall
16 provide to nutritionists board employees information and training
17 on the benefits and methods of participation in the state employee
18 incentive program.

19 [Sections 703.108-703.150 reserved for expansion]

20 SUBCHAPTER D. POWERS AND DUTIES

21 Sec. 703.151. GENERAL POWERS AND DUTIES OF NUTRITIONISTS
22 BOARD. The nutritionists board shall:

23 (1) adopt an official seal;

24 (2) adopt and publish a code of ethics; and

25 (3) establish the qualifications and fitness of
26 applicants for licenses, including renewal and reciprocal
27 licenses.

1 Sec. 703.152. GENERAL RULEMAKING AUTHORITY. (a) The
2 nutritionists board may adopt rules consistent with this chapter.

3 (b) In adopting rules, the nutritionists board shall
4 consider the rules and procedures of the Texas Board of Health and
5 the department and shall adopt procedural rules consistent with
6 similar rules and procedures of those entities.

7 Sec. 703.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE
8 BIDDING. (a) The nutritionists board may not adopt a rule
9 restricting advertising or competitive bidding by a person
10 regulated by the nutritionists board except to prohibit a false,
11 misleading, or deceptive practice.

12 (b) In its rules to prohibit false, misleading, or deceptive
13 practices, the nutritionists board may not include a rule that:

14 (1) restricts a person's use of any medium for
15 advertising;

16 (2) restricts a person's personal appearance or voice
17 in an advertisement;

18 (3) relates to the size or duration of an
19 advertisement by a person; or

20 (4) restricts a person's advertisement under a trade
21 name.

22 Sec. 703.154. FEES. After consulting the commissioner of
23 public health or the department, the nutritionists board by rule
24 shall set fees in amounts reasonable and necessary to cover the
25 cost of administering this chapter.

26 Sec. 703.155. MONEY. (a) The department shall account for
27 money received under this chapter.

1 (b) The department shall deposit all money received under
2 this chapter to the credit of the licensed clinical nutritionists
3 account in the general revenue fund. Money in the account may be
4 appropriated only to the department for administration of this
5 chapter.

6 Sec. 703.156. SEAL. (a) The nutritionists board by rule
7 may require a license holder to:

8 (1) obtain a seal authorized by the nutritionists
9 board, bearing the license holder's name and the legend "Licensed
10 Clinical Nutritionist" or "Licensed Nutrition Counselor"; and

11 (2) affix the seal to formal documentation of
12 nutrition services provided by the license holder.

13 (b) If the nutritionists board adopts rules under
14 Subsection (a), the rules must require a license holder to comply
15 with Subsection (a)(2) by maintaining a facsimile of the license
16 holder's seal on file at the location where services are provided
17 if:

18 (1) the services are provided:

19 (A) in a facility licensed under the Health and
20 Safety Code;

21 (B) on behalf of a local, state, or federal
22 government agency; or

23 (C) under other circumstances determined
24 reasonable and necessary by the nutritionists board; and

25 (2) the facsimile is maintained on file at all times
26 during which the services are provided.

27 Sec. 703.157. POWERS AND DUTIES OF BOARD OF HEALTH. To

1 implement this chapter, the Texas Board of Health:

2 (1) shall request and receive any necessary assistance
3 from state institutions of higher education or other state
4 agencies;

5 (2) shall prepare information of consumer interest
6 describing the regulatory functions of the nutritionists board, the
7 procedures by which consumer complaints are filed and resolved, and
8 the profession of clinical nutrition;

9 (3) shall prepare a list of persons holding licenses
10 under this chapter, including the type of license held, and make the
11 information available to the public, license holders, and
12 appropriate state agencies; and

13 (4) may require the attorney general or the
14 appropriate county or district attorney to sue to enjoin a
15 violation of this chapter in addition to any other action,
16 proceeding, or remedy authorized by law.

17 [Sections 703.158-703.200 reserved for expansion]

18 SUBCHAPTER E. PUBLIC INTEREST INFORMATION

19 AND COMPLAINT PROCEDURES

20 Sec. 703.201. PUBLIC INTEREST INFORMATION. (a) The
21 nutritionists board shall prepare information of public interest
22 describing the functions of the nutritionists board and the
23 nutritionists board's procedures by which complaints are filed with
24 and resolved by the nutritionists board.

25 (b) The nutritionists board shall make the information
26 available to the public and appropriate state agencies.

27 Sec. 703.202. CONTACT INFORMATION. (a) The nutritionists

1 board by rule shall establish methods by which consumers and
2 service recipients are notified of the name, mailing address, and
3 telephone number of the nutritionists board for the purpose of
4 directing complaints to the nutritionists board. The nutritionists
5 board may provide for that notification:

6 (1) on each license form, application, or written
7 contract for services of a person regulated by the nutritionists
8 board;

9 (2) on a sign prominently displayed in the place of
10 business of each person regulated by the nutritionists board; or

11 (3) in a bill for services provided by a person
12 regulated by the nutritionists board.

13 (b) The nutritionists board shall list along with its
14 regular telephone number any toll-free telephone number
15 established under state law that may be called to present a
16 complaint about a health professional.

17 Sec. 703.203. RECORDS OF COMPLAINTS. (a) The
18 nutritionists board shall maintain a file on each written complaint
19 filed with the nutritionists board. The file must include:

20 (1) the name of the person who filed the complaint;

21 (2) the date the complaint is received by the
22 nutritionists board;

23 (3) the subject matter of the complaint;

24 (4) the name of each person contacted in relation to
25 the complaint;

26 (5) a summary of the results of the review or
27 investigation of the complaint; and

1 (6) an explanation of the reason the file was closed,
2 if the nutritionists board closed the file without taking action
3 other than to investigate the complaint.

4 (b) The nutritionists board shall provide to the person
5 filing the complaint and to each person who is a subject of the
6 complaint a copy of the nutritionists board's policies and
7 procedures relating to complaint investigation and resolution.

8 (c) The nutritionists board, at least quarterly until final
9 disposition of the complaint, shall notify the person filing the
10 complaint and each person who is a subject of the complaint of the
11 status of the complaint unless the notice would jeopardize an
12 undercover investigation.

13 (d) The nutritionists board shall review a complaint
14 regarding:

15 (1) incompetency, misconduct, gross negligence,
16 fraud, misrepresentation, or dishonesty in the performance of the
17 functions or duties of a license holder; and

18 (2) the use of any controlled substance or drug or the
19 use of alcoholic beverages to an extent that the use impairs a
20 person's ability to perform the work of a clinical nutritionist.

21 Sec. 703.204. GENERAL RULES REGARDING COMPLAINT
22 INVESTIGATION AND DISPOSITION. (a) The nutritionists board shall
23 adopt rules concerning the investigation of a complaint filed with
24 the nutritionists board. The rules adopted under this subsection
25 shall:

26 (1) distinguish between categories of complaints;

27 (2) ensure that a complaint is not dismissed without

1 appropriate consideration;

2 (3) require that the nutritionists board be advised of
3 a complaint that is dismissed and that a letter be sent to the
4 person who filed the complaint explaining the action taken on the
5 dismissed complaint;

6 (4) ensure that the person who filed the complaint has
7 an opportunity to explain the allegations made in the complaint;
8 and

9 (5) prescribe guidelines concerning the categories of
10 complaints that require the use of a private investigator and the
11 procedures for the nutritionists board to obtain the services of a
12 private investigator.

13 (b) The nutritionists board shall:

14 (1) dispose of each complaint in a timely manner; and

15 (2) establish a schedule for conducting each phase of
16 a complaint that is under the control of the nutritionists board not
17 later than the 30th day after the date the complaint is received by
18 the nutritionists board.

19 (c) Each party to the complaint shall be notified of the
20 projected time requirements for pursuing the complaint. Each party
21 shall be notified of any change in the schedule established under
22 Subsection (b)(2) not later than the seventh day after the date the
23 change is made.

24 (d) The executive director shall notify the nutritionists
25 board of a complaint that is not resolved in the time prescribed by
26 the nutritionists board for resolving the complaint so that the
27 nutritionists board may take necessary action on the complaint.

1 Sec. 703.205. PUBLIC PARTICIPATION. The nutritionists
2 board shall develop and implement policies that provide the public
3 with a reasonable opportunity to appear before the nutritionists
4 board and to speak on any issue under the jurisdiction of the
5 nutritionists board.

6 Sec. 703.206. EXCEPTION TO OPEN RECORDS LAW FOR CERTAIN
7 COMPLAINT AND INVESTIGATION RECORDS. (a) Except as provided in
8 Subsection (b), information or material subpoenaed or compiled by
9 the nutritionists board in connection with a complaint and
10 investigation:

11 (1) is confidential and not subject to disclosure
12 under Chapter 552, Government Code; and

13 (2) is not subject to disclosure, discovery, subpoena,
14 or other means of legal compulsion for its release to anyone other
15 than the nutritionists board or its employees or agents involved in
16 discipline of the license holder.

17 (b) The information may be disclosed to:

18 (1) a person involved with the nutritionists board in
19 a disciplinary action against the license holder;

20 (2) a professional clinical nutritionist licensing or
21 disciplinary board in another jurisdiction;

22 (3) a peer assistance program approved by the
23 nutritionists board under Chapter 467, Health and Safety Code;

24 (4) a law enforcement agency; or

25 (5) a person engaged in bona fide research, if all
26 individual-identifying information has been deleted.

27 [Sections 703.207-703.250 reserved for expansion]

SUBCHAPTER F. LICENSE REQUIREMENTS

1 Sec. 703.251. LICENSE REQUIRED. (a) A person may not
2 practice clinical nutrition or nutrition counseling in this state
3 for compensation unless the person is licensed as provided by this
4 chapter.

5 (b) Unless the person holds an appropriate license issued
6 under this chapter, a person may not:

7 (1) use the title or represent or imply that the person
8 has the title "licensed clinical nutritionist," "provisional
9 licensed clinical nutritionist," or "licensed nutritional
10 counselor," or use the letters "LCN," "PLCN," or "LNC"; or

11 (2) use a facsimile of those titles to indicate that
12 the person is a licensed clinical nutritionist or licensed
13 nutritional counselor.

14 Sec. 703.252. EXEMPTIONS. (a) In this section, "license"
15 means a license, certificate, registration, title, or permit issued
16 in this state.

17 (b) This chapter does not prohibit or restrict:

18 (1) a person from using a title allowed by state law in
19 the field of nutrition;

20 (2) a person from conducting a class, seminar, or
21 other speech related to nutrition;

22 (3) a person from providing free oral nutrition
23 information as an operator or employee of a health food store or
24 business that sells health products, including dietary
25 supplements, food, or food materials, or distributing written
26 nutrition information in connection with the marketing and
27 nutrition information in connection with the marketing and

1 distribution of those products;

2 (4) nutritional instruction by members of a religious
3 or faith-based organization using a ministry of natural healing; or

4 (5) a person from distributing free information
5 related to nutrition if that person does not violate Section
6 703.251(b).

7 (c) This chapter does not prohibit or restrict the practice
8 of:

9 (1) a person licensed in this state to engage in the
10 practice for which the person is licensed, including a dietician
11 licensed under Chapter 701;

12 (2) clinical nutrition by a person who is performing
13 official duties as a United States employee;

14 (3) clinical nutrition by a cooperative extension home
15 economist, to the extent the activities are part of the economist's
16 employment;

17 (4) clinical nutrition or dietetics by a person
18 pursuing a course of study leading to a degree in dietetics,
19 nutrition science, or an equivalent major, as authorized by the
20 department and from a regionally accredited school or program, if:

21 (A) the activities and services are part of a
22 supervised course of study; and

23 (B) the person is designated by a title that
24 clearly indicates the person's status as a student or trainee;

25 (5) clinical nutrition or dietetics by a person
26 fulfilling the supervised practice experience component of a
27 nutrition or dietetics program;

1 (6) clinical nutrition or dietetics by a person with a
2 master's or doctorate degree with a major in nutrition, or an
3 equivalent major, from a regionally accredited school recognized by
4 the department for the purpose of education and research;

5 (7) clinical nutrition by an educator employed by a
6 nonprofit organization, as authorized by the department or any
7 other governmental entity; or

8 (8) clinical nutrition by a person who provides weight
9 control services.

10 Sec. 703.253. LICENSE APPLICATION. (a) Each applicant for
11 a license must submit a sworn application, accompanied by the
12 application fee. The applicant must specify the type of license for
13 which the person is applying.

14 (b) The nutritionists board shall prescribe the application
15 form and may by rule establish dates by which applications and fees
16 must be received. The rules must be consistent with department
17 rules related to application dates of other licenses or
18 registrations.

19 (c) Each license application must be accompanied by proof of
20 liability insurance coverage:

21 (1) issued by an insurer authorized by the Texas
22 Department of Insurance to engage in the business of liability
23 insurance in this state; and

24 (2) in amounts prescribed by the nutritionists board
25 as appropriate for the type of license for which the person is
26 applying.

27 Sec. 703.254. EXAMINATION. (a) An applicant must pass a

1 competency examination approved by the nutritionists board for each
2 type of license to qualify for that license under this chapter. The
3 board shall offer an examination for each type of license at least
4 twice a year.

5 (b) The nutritionists board shall prepare each examination
6 or adopt an examination prepared or given by an approved scientific
7 nutritionists board of clinical nutritionist experts or a testing
8 service. Any written portion of an examination must be validated by
9 an independent professional testing agency.

10 Sec. 703.255. QUALIFICATIONS FOR EXAMINATION. (a) To
11 qualify for the licensed clinical nutritionist examination, an
12 applicant must:

13 (1) possess a baccalaureate or postbaccalaureate
14 degree conferred by an accredited institution of higher education,
15 with:

16 (A) a major course of study approved by the
17 nutritionists board in human nutrition, nutrition, or nutrition
18 education; or

19 (B) an equivalent major course of study approved
20 by the nutritionists board; and

21 (2) have completed an internship or preplanned,
22 documented, professional experience program in clinical nutrition
23 practice of not less than 900 hours under the supervision of a
24 licensed clinical nutritionist or a licensed physician,
25 chiropractor, or dentist who holds credentials approved by the
26 nutritionists board in the field of clinical nutrition.

27 (b) To qualify for the licensed nutrition counselor

1 examination, an applicant must:

2 (1) possess at least a two-year vocational degree in
3 the nutrition sciences or other course of study approved by the
4 nutritionists board; and

5 (2) have completed an internship of not less than nine
6 months under the supervision of a licensed clinical nutritionist or
7 other person approved by the nutritionists board.

8 Sec. 703.256. INVESTIGATION. (a) Not later than the 45th
9 day after the date a properly and timely submitted application is
10 received and not later than the 30th day before the next examination
11 date, the department shall notify an applicant in writing of the
12 receipt and investigation of the applicant's application and any
13 other relevant evidence relating to applicant qualifications
14 established by nutritionists board rule.

15 (b) The notice must state whether the applicant has
16 qualified for examination based on the application and other
17 submitted evidence. If the applicant has not qualified, the notice
18 must state the reasons for the applicant's failure to qualify.

19 Sec. 703.257. EXAMINATION RESULTS. (a) Not later than the
20 30th day after the date a person takes a licensing examination under
21 this chapter, the nutritionists board shall notify the person of
22 the results of the examination.

23 (b) If the examination is graded or reviewed by an approved
24 scientific nutritionists board of clinical nutritionist experts or
25 a testing service:

26 (1) the nutritionists board shall notify the person of
27 the results of the examination not later than the 14th day after the

1 date the nutritionists board receives the results from the board of
2 experts or testing service; and

3 (2) if notice of the examination results will be
4 delayed for longer than 90 days after the examination date, the
5 nutritionists board shall notify the person of the reason for the
6 delay before the 90th day.

7 (c) The nutritionists board may require the board of experts
8 or a testing service to notify a person of the results of the
9 person's examination.

10 (d) If requested in writing by a person who fails an
11 examination under this chapter, the nutritionists board shall
12 furnish the person with an analysis of the person's performance on
13 the examination.

14 Sec. 703.258. REEXAMINATION. An applicant who fails the
15 examination three times must provide evidence to the nutritionists
16 board that the applicant has successfully completed clinical
17 nutrition or nutrition counseling training in the applicant's areas
18 of weakness before the applicant may apply for reexamination.

19 Sec. 703.259. QUALIFIED PERSON ENTITLED TO LICENSE. The
20 nutritionists board shall issue the appropriate clinical
21 nutritionist or nutrition counselors license under this chapter to
22 a person who meets the qualifications for the license.

23 Sec. 703.260. PROVISIONAL LICENSE. (a) The nutritionists
24 board may issue the appropriate provisional license to an applicant
25 currently licensed in another jurisdiction who seeks a license in
26 this state and who:

27 (1) has been licensed in good standing as a clinical

1 nutritionist or nutrition counselor for at least two years in
2 another jurisdiction, including a foreign country, that has
3 licensing requirements substantially equivalent to the
4 requirements of this chapter;

5 (2) has passed a national or other examination
6 recognized by the nutritionists board relating to the practice of
7 clinical nutrition or nutrition counseling; and

8 (3) is sponsored by a person licensed by the
9 nutritionists board under this chapter with whom the provisional
10 license holder will practice during the time the person holds a
11 provisional license.

12 (b) The nutritionists board may waive the requirement of
13 Subsection (a)(3) for an applicant if the nutritionists board
14 determines that compliance with that subsection would be a hardship
15 to the applicant.

16 (c) A provisional license is valid until the date the
17 nutritionists board approves or denies the provisional license
18 holder's application for a license. The nutritionists board shall
19 issue a license under this chapter to the provisional license
20 holder if:

21 (1) the provisional license holder is eligible to be
22 licensed under Section 703.263; or

23 (2) the provisional license holder passes the part of
24 the examination under Section 703.254 that relates to the
25 applicant's knowledge and understanding of the laws and rules
26 relating to the practice of clinical nutrition or nutrition
27 counseling in this state and:

1 (A) the nutritionists board verifies that the
2 provisional license holder meets the academic and experience
3 requirements for a license under this chapter; and

4 (B) the provisional license holder satisfies any
5 other licensing requirements under this chapter.

6 (d) The nutritionists board must approve or deny a
7 provisional license holder's application for a license not later
8 than the 180th day after the date the provisional license is issued.
9 The nutritionists board may extend the 180-day period if the
10 results of an examination have not been received by the
11 nutritionists board before the end of that period.

12 (e) The nutritionists board may establish a fee for
13 provisional licenses in an amount reasonable and necessary to cover
14 the cost of issuing the license.

15 Sec. 703.261. TEMPORARY LICENSE. (a) On receipt of an
16 application and payment of an application fee, the nutritionists
17 board may grant the appropriate temporary license to an applicant
18 who:

19 (1) is licensed in good standing as a clinical
20 nutritionist or nutrition counselor in another state that has
21 license requirements that are substantially equivalent to the
22 requirements of this chapter;

23 (2) has passed a national or other examination
24 recognized by the nutritionists board relating to clinical
25 nutrition or nutrition counseling; and

26 (3) is sponsored by a person licensed by the
27 nutritionists board under this chapter with whom the temporary

1 license holder may practice.

2 (b) The nutritionists board may waive the requirement of
3 Subsection (a)(3) if the nutritionists board determines that
4 compliance with that provision is a hardship to the applicant.

5 (c) A temporary license is valid until the date the
6 nutritionists board approves or denies the temporary license
7 holder's application for a license. The nutritionists board shall
8 issue a license under this chapter to the holder of a temporary
9 license if:

10 (1) the temporary license holder passes the competency
11 examination required by Section 703.254;

12 (2) the nutritionists board verifies that the
13 temporary license holder meets the academic and experience
14 requirements for a license under this chapter; and

15 (3) the temporary license holder satisfies any other
16 license requirements under this chapter.

17 (d) The nutritionists board must complete the processing of
18 a temporary license holder's application for a license not later
19 than the 180th day after the date the nutritionists board issues the
20 temporary license. The nutritionists board may extend this
21 deadline to receive pending examination results.

22 Sec. 703.262. INACTIVE STATUS. The nutritionists board by
23 rule may provide for a license holder to place the person's license
24 on inactive status. The nutritionists board by rule shall provide
25 for a time limit for a license to remain on inactive status.

26 Sec. 703.263. RECIPROCITY. The nutritionists board may
27 waive any prerequisite to obtaining a license for an applicant who

1 holds a license issued by another jurisdiction with which this
2 state has a reciprocity agreement. The nutritionists board may
3 make an agreement, subject to the approval of the governor, with
4 another state to allow for licensing by reciprocity.

5 [Sections 703.264-703.300 reserved for expansion]

6 SUBCHAPTER G. LICENSE RENEWAL; CONTINUING EDUCATION

7 Sec. 703.301. LICENSE RENEWAL. The nutritionists board
8 shall renew the license of a clinical nutritionist or nutrition
9 counselor in good standing who:

10 (1) returns a completed renewal form in the manner
11 prescribed by the nutritionists board;

12 (2) submits evidence of completion of the minimum
13 number of continuing education hours required under Section
14 703.305; and

15 (3) pays the required renewal fee before the license
16 expires.

17 Sec. 703.302. TERM OF LICENSE. A license is valid for one
18 year after the date of issuance and may be renewed annually.

19 Sec. 703.303. LICENSE RENEWAL PROCEDURE. (a) A person who
20 is otherwise eligible to renew a license may renew an unexpired
21 license by paying the required renewal fee to the nutritionists
22 board before the license expiration date. A person whose license
23 has expired may not engage in activities that require a license
24 until the license has been renewed.

25 (b) A person whose license has been expired for 90 days or
26 less may renew the license by paying to the nutritionists board a
27 renewal fee that is equal to 1-1/2 times the normally required

1 renewal fee.

2 (c) A person whose license has been expired for more than 90
3 days but less than one year may renew the license by paying to the
4 nutritionists board a renewal fee that is equal to two times the
5 normally required renewal fee.

6 (d) A person whose license has been expired for one year or
7 more may not renew the license. The person may obtain a new license
8 by complying with the requirements and procedures for obtaining an
9 original license.

10 (e) A person who was licensed in this state, moved to
11 another state, and is currently licensed and has been in practice in
12 the other state for the two years preceding the date of application
13 may obtain a new license without reexamination. The person must pay
14 to the nutritionists board a fee that is equal to two times the
15 normally required renewal fee for the license.

16 (f) Not later than the 30th day before the date a person's
17 license is scheduled to expire, the nutritionists board shall send
18 written notice of the impending expiration to the person at the
19 person's last known address according to the records of the
20 nutritionists board.

21 Sec. 703.304. STAGGERED RENEWAL OF LICENSES. The
22 nutritionists board by rule may adopt a system under which licenses
23 expire on various dates during the year. For the year in which the
24 license expiration date is changed, the nutritionists board shall
25 prorate license fees on a monthly basis so that each license holder
26 pays only that portion of the license fee that is allocable to the
27 number of months during which the license is valid. On renewal of

1 the license on the new expiration date, the total license renewal
2 fee is payable.

3 Sec. 703.305. CONTINUING EDUCATION. (a) To renew a license
4 under this chapter:

5 (1) a licensed clinical nutritionist must annually
6 complete at least 25 hours of continuing education approved by the
7 nutritionists board; and

8 (2) a licensed nutrition counselor must annually
9 complete at least 17 hours of continuing education approved by the
10 nutritionists board, including at least one clinical nutritionist
11 symposium.

12 (b) The nutritionists board may assess the continuing
13 education needs of license holders and may require license holders
14 to attend continuing education courses specified by the
15 nutritionists board and made available by continuing education
16 providers approved by the nutritionists board. The nutritionists
17 board shall develop a process to evaluate and approve continuing
18 education.

19 (c) The nutritionists board shall identify the key factors
20 for the competent performance of professional duties. The
21 nutritionists board shall adopt a procedure to assess a license
22 holder's participation in continuing education programs.

23 [Sections 703.306-703.350 reserved for expansion]

24 SUBCHAPTER H. PRACTICE BY LICENSE HOLDER

25 Sec. 703.351. DISPLAY OF LICENSE. (a) Each license holder
26 shall display the person's license in an appropriate and public
27 manner.

1 (b) A license issued by the nutritionists board is the
2 property of the nutritionists board and must be surrendered on
3 demand.

4 Sec. 703.352. LICENSE HOLDER INFORMATION. A license holder
5 shall keep the department informed of the license holder's current
6 address.

7 Sec. 703.353. PROHIBITED USE OF SEAL. (a) A person may not
8 use a seal authorized by the nutritionists board unless the person
9 holds a license issued under this chapter.

10 (b) A person may not affix a seal to a document if the
11 license of the license holder named on the seal is expired,
12 suspended, or revoked.

13 [Sections 703.354-703.400 reserved for expansion]

14 SUBCHAPTER I. DISCIPLINARY PROCEDURES

15 Sec. 703.401. GROUNDS FOR DISCIPLINARY ACTION. The
16 nutritionists board shall revoke, suspend, or refuse to renew a
17 license or shall reprimand a license holder for a violation of this
18 chapter, a rule of the nutritionists board, or a code of ethics
19 adopted by the nutritionists board.

20 Sec. 703.402. HEARING. (a) If the nutritionists board
21 proposes to suspend or revoke a person's license, the person is
22 entitled to a hearing.

23 (b) A member or employee of the nutritionists board or a
24 department employee who carries out the functions of the
25 nutritionists board and who proposes to make a decision, a finding
26 of fact, or a conclusion of law in a proceeding pending before the
27 nutritionists board may communicate directly or indirectly with a

1 party to the proceeding or with the party's representative only if
2 notice and an opportunity to participate are given to each party.

3 Sec. 703.403. SCHEDULE OF SANCTIONS. The State Office of
4 Administrative Hearings shall use the schedule of sanctions adopted
5 by the nutritionists board by rule for a sanction imposed as the
6 result of a hearing conducted by the office.

7 Sec. 703.404. PROBATION. The nutritionists board may place
8 on probation a person whose license is suspended. If a license
9 suspension is probated, the nutritionists board may require the
10 person:

11 (1) to report regularly to the nutritionists board on
12 matters that are the basis of the probation;

13 (2) to limit practice to the areas prescribed by the
14 nutritionists board; or

15 (3) to continue or review professional education until
16 the person attains a degree of skill satisfactory to the
17 nutritionists board in those areas that are the basis of the
18 probation.

19 Sec. 703.405. MONITORING OF LICENSE HOLDER. (a) The
20 nutritionists board by rule shall develop a system for monitoring a
21 license holder's compliance with this chapter.

22 (b) Rules adopted under this section must include
23 procedures to:

24 (1) monitor for compliance a license holder who is
25 ordered by the nutritionists board to perform certain acts; and

26 (2) identify and monitor license holders who represent
27 a risk to the public.

1 Sec. 703.406. APPLICABILITY OF OPEN RECORDS LAW TO
2 DISCIPLINARY RECORDS. The filing of formal charges by the
3 nutritionists board against a license holder, the nature of those
4 charges, disciplinary proceedings of the board, and final
5 disciplinary actions, including warnings and reprimands, are not
6 confidential and are subject to disclosure in accordance with
7 Chapter 552, Government Code.

8 [Sections 703.407-703.450 reserved for expansion]

9 SUBCHAPTER J. CIVIL PENALTY

10 Sec. 703.451. CIVIL PENALTY. (a) A person who violates
11 this chapter or a rule adopted by the nutritionists board under this
12 chapter is liable to the state for a civil penalty not to exceed
13 \$1,000 for each day of violation.

14 (b) At the request of the nutritionists board, the attorney
15 general shall bring an action to recover a civil penalty authorized
16 by this section.

17 SECTION 2. (a) Until September 1, 2007, the Texas State
18 Board of Examiners of Clinical Nutritionists shall waive the
19 examination required under Chapter 703, Occupations Code, as added
20 by this Act, and issue a license under that chapter to any person
21 who holds a credential for clinical nutritionist or other nutrition
22 specialty status issued by a nationally recognized professional
23 certification entity approved by the Texas State Board of Examiners
24 of Clinical Nutritionists.

25 (b) Until September 1, 2007, the Texas State Board of
26 Examiners of Clinical Nutritionists shall waive the education
27 requirements for the clinical nutritionist examination, but not the

1 examination, required under Sections 703.254 and 703.255,
2 Occupations Code, as added by this Act, for any person who is a
3 licensed physician, chiropractor, dentist, pharmacist, or
4 registered nurse.

5 (c) Until September 1, 2007, the Texas State Board of
6 Examiners of Clinical Nutritionists shall waive the education
7 requirements for the nutrition counselor examination, but not the
8 examination, required under Sections 703.254 and 703.255,
9 Occupations Code, as added by this Act, and issue a license under
10 that chapter to any person who:

11 (1) presents evidence satisfactory to the board that
12 the person has at least five years of documented experience in the
13 field of nutrition counseling approved by the board; or

14 (2) holds a certificate in good standing in basic or
15 entry-level nutrition issued by a nationally recognized
16 certification entity approved by the board.

17 (d) The Texas State Board of Examiners of Clinical
18 Nutritionists may select a nationally recognized clinical
19 nutrition certification and credential review entity to assist in
20 the review of credentials submitted by persons applying for a
21 license under this section. The selected entity may charge a fee to
22 the applicant to review the applicant's credentials, if the board
23 approves the fee.

24 SECTION 3. (a) The governor shall appoint the initial
25 members of the Texas State Board of Examiners of Clinical
26 Nutritionists not later than December 1, 2005. In making the
27 initial appointments, the governor shall designate two clinical

1 nutritionist appointees and one public appointee for terms expiring
2 February 1, 2007, two clinical nutritionist appointees and one
3 public appointee for terms expiring February 1, 2009, and two
4 clinical nutritionist appointees and one public appointee for terms
5 expiring February 1, 2011.

6 (b) A person appointed as a clinical nutritionist member of
7 the Texas State Board of Examiners of Clinical Nutritionists before
8 September 1, 2009, is not required to be licensed for three years as
9 required by Section 703.051(a)(1), Occupations Code, as added by
10 this Act, but the person must be eligible to hold a license issued
11 under that chapter, may not have an additional primary practice,
12 and must have at least three years of professional experience in the
13 field of clinical nutrition.

14 SECTION 4. (a) Except as provided by Subsection (b) of this
15 section, this Act takes effect September 1, 2005.

16 (b) Section 703.251 and Subchapters I and J, Chapter 703,
17 Occupations Code, as added by this Act, take effect January 1, 2006.