

By: Truitt, Solomons, Hamric

H.B. No. 1015

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the continuation and functions of the Texas State Board
3 of Examiners of Psychologists.

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

5 SECTION 1. Section 501.005, Occupations Code, is amended to
6 read as follows:

7 Sec. 501.005. APPLICATION OF SUNSET ACT. The Texas State
8 Board of Examiners of Psychologists is subject to Chapter 325,
9 Government Code (Texas Sunset Act). Unless continued in existence
10 as provided by that chapter, the board is abolished and this chapter
11 expires September 1, 2017 [~~2005~~].

12 SECTION 2. Section 501.052, Occupations Code, is amended to
13 read as follows:

14 Sec. 501.052. ELIGIBILITY OF PUBLIC MEMBERS. A person is
15 not eligible for appointment as a public member of the board if:

16 (1) the person [~~or the person's spouse:~~

17 [~~(1)~~] is registered, certified, or licensed by an
18 occupational regulatory agency in the field of health services;

19 (2) the person's spouse is registered, certified, or
20 licensed by an occupational regulatory agency in the field of
21 mental health; or

22 (3) the person or the person's spouse:

23 (A) is employed by or participates in the
24 management of a business entity or other organization regulated by

1 the board or receiving funds from the board;

2 (B) [~~(3)~~] owns or controls, directly or
3 indirectly, more than a 10 percent interest in a business entity or
4 other organization regulated by the board or receiving funds from
5 the board; or

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

10 SECTION 3. Section 501.053, Occupations Code, is amended to
11 read as follows:

12 Sec. 501.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In
13 this section, "Texas trade association" means a [~~nonprofit,~~
14 cooperative~~]~~ and voluntarily joined statewide association of
15 business or professional competitors in this state designed to
16 assist its members and its industry or profession in dealing with
17 mutual business or professional problems and in promoting their
18 common interest.

19 (b) A person [~~An officer, employee, or paid consultant of a~~
20 ~~Texas trade association in the field of health services]~~ may not be
21 a member [~~or employee]~~ of the board and may not be a board employee
22 employed in a "bona fide executive, administrative, or professional
23 capacity," as that phrase is used for purposes of establishing an
24 exemption to the overtime provisions of the federal Fair Labor
25 Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

26 (1) the person is an officer, employee, or paid
27 consultant of a Texas trade association in the field of health

1 services; or

2 (2) the person's spouse is an officer, manager, or paid
3 consultant of a Texas trade association in the field of mental
4 health [who is exempt from the state's position classification plan
5 or is compensated at or above the amount prescribed by the General
6 Appropriations Act for step 1, salary group A17, of the position
7 classification salary schedule].

8 (c) ~~[A person who is the spouse of an officer, manager, or~~
9 ~~paid consultant of a Texas trade association in the field of health~~
10 ~~services may not be a board member and may not be an employee of the~~
11 ~~board who is exempt from the state's position classification plan~~
12 ~~or is compensated at or above the amount prescribed by the General~~
13 ~~Appropriations Act for step 1, salary group A17, of the position~~
14 ~~classification salary schedule.~~

15 ~~[(d)]~~ A person may not be ~~[serve as]~~ a member of the board or
16 act as the general counsel to the board if the person is required to
17 register as a lobbyist under Chapter 305, Government Code, because
18 of the person's activities for compensation on behalf of a
19 profession related to the operation of the board.

20 SECTION 4. Sections 501.055(a) and (c), Occupations Code,
21 are amended to read as follows:

22 (a) It is a ground for removal from the board that a member:

23 (1) does not have at the time of taking office
24 ~~[appointment]~~ the qualifications required by Sections 501.051 and
25 501.052;

26 (2) does not maintain during ~~[the member's]~~ service on
27 the board the qualifications required by Sections 501.051 and

1 501.052;

2 (3) is ineligible for membership under [~~violates a~~
3 ~~prohibition established by~~] Section 501.053;

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

7 (5) is absent from more than half of the regularly
8 scheduled board meetings that the member is eligible to attend
9 during a calendar year without an excuse approved [~~, unless the~~
10 ~~absence is excused~~] by a majority vote of the board.

11 (c) If the executive director has knowledge that a potential
12 ground for removal exists [~~may exist~~], the executive director shall
13 notify the presiding officer of the board of the potential ground.
14 The presiding officer [~~On a determination that a potential ground~~
15 ~~for removal exists, the board~~] shall then notify the governor and
16 the attorney general that a potential ground for removal exists. If
17 the potential ground for removal involves the presiding officer,
18 the executive director shall notify the next highest ranking
19 officer of the board, who shall then notify the governor and the
20 attorney general that a potential ground for removal exists.

21 SECTION 5. Section 501.057(a), Occupations Code, is amended
22 to read as follows:

23 (a) The governor shall designate a member of the board as
24 the presiding officer of the board to serve in that capacity at the
25 pleasure of the governor. The board shall hold an annual meeting
26 during which the board shall select from its members [~~a presiding~~
27 ~~officer and~~] an assistant presiding officer.

1 SECTION 6. Section 501.059, Occupations Code, is amended to
2 read as follows:

3 Sec. 501.059. TRAINING PROGRAM FOR MEMBERS. (a) A person
4 who is appointed to and qualifies for office as [~~Before~~] a [~~board~~]
5 member of the board may not vote, deliberate, or be counted as a
6 member in attendance at a meeting of [~~assume the member's duties or~~
7 ~~be confirmed by the senate, the member must complete at least one~~
8 ~~course of the training program established by~~] the board until the
9 person completes a training program that complies with [~~under~~] this
10 section.

11 (b) The training program must provide the person with
12 information [~~to a participant~~] regarding:

13 (1) this chapter and the programs, functions, rules,
14 and budget of the board;

15 (2) [~~the programs operated by the board;~~

16 [~~(3) the role and functions of the board;~~

17 [~~(4) the rules of the board, with an emphasis on the~~
18 ~~rules that relate to disciplinary and investigatory authority;~~

19 [~~(5) the current budget for the board;~~

20 [~~(6)] the results of the most recent formal audit of~~

21 the board;

22 (3) [~~(7)] the requirements of laws relating to open~~

23 meetings, public information, administrative procedure, and

24 conflicts of interest [~~Chapters 551, 552, and 2001, Government~~

25 ~~Code;~~

26 [~~(8) the requirements of the conflict of interest laws~~

27 ~~and other laws relating to public officials]; and~~

1 (4) [~~(9)~~] any applicable ethics policies adopted by
2 the board or the Texas Ethics Commission.

3 (c) A person appointed to the board is entitled to
4 reimbursement, as provided by the General Appropriations Act, for
5 the travel expenses incurred in attending the training program
6 regardless of whether the attendance at the program occurs before
7 or after the person qualifies for office. [~~In developing the~~
8 ~~program, the board shall consult with the governor, attorney~~
9 ~~general, and Texas Ethics Commission.~~

10 [~~(d) If another state agency or entity is authorized to~~
11 ~~establish the training requirements for board members, the board~~
12 ~~shall adopt that training instead of developing its own program.]~~

13 SECTION 7. Section 501.103, Occupations Code, is amended to
14 read as follows:

15 Sec. 501.103. DIVISION OF RESPONSIBILITIES. The board
16 shall develop and implement policies that clearly separate [~~define~~]
17 the policymaking [~~respective~~] responsibilities of the board and the
18 management responsibilities of the executive director and the staff
19 of the board.

20 SECTION 8. Subchapter D, Chapter 501, Occupations Code, is
21 amended by adding Section 501.160 to read as follows:

22 Sec. 501.160. USE OF TECHNOLOGY. The board shall implement
23 a policy requiring the use of appropriate technological solutions
24 to improve the board's ability to perform its functions. The policy
25 must ensure that the public is able to interact with the board on
26 the Internet.

27 SECTION 9. Subchapter D, Chapter 501, Occupations Code, is

1 amended by adding Section 501.161 to read as follows:

2 Sec. 501.161. NEGOTIATED RULEMAKING AND ALTERNATIVE
3 DISPUTE RESOLUTION. (a) The board shall develop and implement a
4 policy to encourage the use of:

5 (1) negotiated rulemaking procedures under Chapter
6 2008, Government Code, for the adoption of board rules; and

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

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

15 (c) The board shall designate a trained 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 those
22 procedures, as implemented by the board.

23 SECTION 10. Subchapter D, Chapter 501, Occupations Code, is
24 amended by adding Section 501.162 to read as follows:

25 Sec. 501.162. DEVELOPMENT OF PROPOSED RULES. (a) This
26 section applies to the process by which the board develops proposed
27 rules before the proposed rules are published in the Texas Register

1 and before the board complies with the rulemaking requirements of
2 the administrative procedure law, Chapter 2001, Government Code.
3 This section does not affect the duty of the board to comply with
4 the rulemaking requirements of that law.

5 (b) The board shall establish methods under which the board,
6 to the extent appropriate, will seek input early in the rule
7 development process from the public and from persons who will be
8 most affected by a proposed rule. Methods shall include
9 identifying persons who will be most affected and soliciting, at a
10 minimum, the advice and opinions of those persons.

11 (c) Methods may include negotiated rulemaking, informal
12 conferences, advisory committees, and any other appropriate
13 method.

14 (d) A rule adopted by the board may not be challenged on the
15 grounds that the board did not comply with this section. If the
16 board was unable to solicit a significant amount of advice and
17 opinion from the public or from affected persons early in the rule
18 development process, the board shall state in writing the reasons
19 why the board was unable to do so.

20 SECTION 11. Section 501.201(a), Occupations Code, is
21 amended to read as follows:

22 (a) The board shall prepare information of public interest
23 describing the functions of the board [~~and the procedures by which~~
24 ~~complaints are filed with and resolved by the board~~].

25 SECTION 12. Section 501.203, Occupations Code, is amended
26 to read as follows:

27 Sec. 501.203. INFORMATION ABOUT COMPLAINT ACTIONS [~~RECORDS~~

1 ~~OF COMPLAINTS]~~. (a) The board shall maintain a system to promptly
2 and efficiently act on complaints filed with the board. The board
3 shall maintain information about parties to a complaint, the
4 subject matter of the complaint, a summary of the results of the
5 review or investigation of the complaint, and the disposition of
6 the complaint [~~keep an information file about each complaint~~
7 ~~relating to a license holder filed with the board. The information~~
8 ~~file must be kept current and contain a record for each complaint~~
9 ~~of:~~

10 [~~(1) each person contacted regarding the complaint;~~

11 [~~(2) a summary of findings made at each step of the~~
12 ~~complaint process;~~

13 [~~(3) an explanation of the legal basis and reason for~~
14 ~~dismissing a complaint;~~

15 [~~(4) the schedule established for the complaint under~~
16 ~~Section 501.204 and a notation of any change in the schedule; and~~

17 [~~(5) other relevant information].~~

18 (b) The board shall make information available describing
19 its procedures for complaint investigation and resolution.

20 (c) The board shall periodically notify the complaint
21 parties of the status of the complaint [~~If a written complaint is~~
22 ~~filed with the board that the board has authority to resolve, the~~
23 ~~board, at least quarterly and] until final disposition [~~of the~~
24 ~~complaint, shall notify the parties to the complaint of the status~~
25 ~~of the complaint unless the notice would jeopardize an undercover~~
26 ~~investigation].~~~~

27 (d) The board shall analyze complaints filed with the board

1 to identify any trends or issues related to certain violations,
2 including:

- 3 (1) the reason for each complaint;
4 (2) how each complaint was resolved; and
5 (3) the subject matter of each complaint that was not
6 within the jurisdiction of the board and how the board responded to
7 the complaint.

8 SECTION 13. Section 501.204, Occupations Code, is amended
9 by adding Subsection (e) to read as follows:

10 (e) The board shall assign priorities and investigate
11 complaints based on:

- 12 (1) the severity of the conduct alleged in the
13 complaint; and
14 (2) the degree of harm to public health and safety.

15 SECTION 14. Section 501.253, Occupations Code, is amended
16 by amending Subsection (b) and adding Subsections (e) and (f) to
17 read as follows:

18 (b) A provisional license holder is entitled to practice
19 psychology under the supervision of a psychologist to meet the
20 requirements for issuance of a license under Section 501.252. A
21 provisional license holder who is licensed in another state to
22 independently practice psychology and is in good standing in that
23 state and who seeks a license in this state is entitled to practice
24 psychology without the supervision of a psychologist during the
25 time that the board is processing the person's application for a
26 license.

27 (e) The board may not restrict the issuance of a license or

1 provisional license to an applicant who is licensed in another
2 state to independently practice psychology and is in good standing
3 in that state based on the number of years the applicant has been
4 licensed in good standing in that state.

5 (f) If an applicant who is licensed in another state to
6 independently practice psychology and is in good standing in that
7 state presents credentials from a national accreditation
8 organization to the board and the board determines that the
9 requirements for obtaining those credentials from that
10 organization are sufficient to protect the public, the board may
11 issue a provisional license to the applicant. An applicant who
12 obtains a provisional license under this subsection must have
13 passed the examination described by Section 501.256(b)(2).

14 SECTION 15. Section 501.256, Occupations Code, is amended
15 by amending Subsection (c) and adding Subsections (f) and (g) to
16 read as follows:

17 (c) The board may waive the discipline and professional
18 segment of the examination requirement for an applicant who:

19 (1) is a specialist [~~diplomate~~] of the American Board
20 of Professional Psychology; or

21 (2) in the board's judgment, has demonstrated
22 competence in the areas covered by the examination.

23 (f) On the oral examination administered under this section
24 the board may only assess knowledge of psychological principles and
25 techniques, applicable laws and regulations, and ethical
26 principles. The board may not assess personal characteristics
27 through the oral examination.

1 (g) For purposes of the oral examination, the board shall by
2 rule clearly define the standards used by the board to determine
3 whether a person has demonstrated sufficient entry-level knowledge
4 of the practice of psychology to have passed the examination.

5 SECTION 16. Subchapter F, Chapter 501, Occupations Code, is
6 amended by adding Section 501.2561 to read as follows:

7 Sec. 501.2561. EVALUATION OF ORAL EXAMINATION. (a) The
8 board by rule shall establish a work group to evaluate the oral
9 examination for the purpose of improving the consistency of the
10 administration and the objectivity of the examination. The work
11 group must include persons interested in or affected by the
12 regulation of the practice of psychology under this chapter,
13 including faculty members of college or university psychology
14 departments and licensees with varying levels of experience. The
15 work group shall:

16 (1) review audiotapes of passed and failed
17 examinations;

18 (2) review analyses of the performance of persons who
19 failed the examination provided under Section 501.256(e);

20 (3) assess scoring criteria and clinical scenarios
21 used in the administration of the examination;

22 (4) recommend improvements to standardize the
23 administration of the examination; and

24 (5) conduct other appropriate tasks.

25 (b) Members of the board may not participate in the
26 evaluation of the oral examination but may otherwise participate in
27 the work group.

1 (c) The work group shall report biennially to the board the
2 group's recommendations for improving the consistency of the
3 administration and the objectivity of the oral examination. The
4 board shall modify the oral examination, as necessary, based on the
5 work group's recommendations before the next administration of the
6 oral examination.

7 SECTION 17. Section 501.259(a), Occupations Code, is
8 amended to read as follows:

9 (a) The board~~[, with the advice of the Psychological~~
10 ~~Associate Advisory Committee,~~] shall set standards for the issuance
11 of licenses to psychological personnel who hold a master's degree
12 from an accredited university or college in a program that is
13 primarily psychological in nature.

14 SECTION 18. Sections 501.263(a) and (b), Occupations Code,
15 are amended to read as follows:

16 (a) The board may issue a temporary license to an applicant
17 seeking to practice in this state for a limited time and limited
18 purpose ~~[a permanent license, including a person seeking a license~~
19 ~~by reciprocity under Section 501.262,~~] if the applicant:

20 (1) pays the required application fee;

21 (2) submits an application to the board in the form
22 prescribed by the board;

23 (3) is licensed, certified, or registered as a
24 psychologist or psychological associate by another state having
25 requirements substantially equal to those prescribed by this
26 chapter;

27 (4) is in good standing with the regulatory agency of

1 the jurisdiction in which the person is licensed, certified, or
2 registered;

3 (5) is supervised by a person licensed by the board
4 under this chapter with whom the temporary license holder may
5 consult during the time the person holds a temporary license; and

6 (6) [(5)] has passed an examination recognized by the
7 board as equivalent to the examination required by the board for a
8 permanent license under this chapter.

9 (b) A temporary license is valid only for the period
10 specified by the board and for the limited purpose approved by the
11 board [~~until the earlier of:~~

12 [~~(1) the date the board approves or denies the~~
13 ~~temporary license holder's application for a permanent license; or~~

14 [~~(2) the first anniversary of the date the board~~
15 ~~issues the temporary license if no action is taken by the board]~~.

16 SECTION 19. Section 501.304, Occupations Code, is amended
17 by adding Subsection (e) to read as follows:

18 (e) The process developed under Subsection (c)(1) may
19 include a process under which the board evaluates and approves
20 appropriate courses for the continuing education program that are
21 developed or approved for license holders by national and state
22 associations that represent license holders, by other mental health
23 professional associations, and by institutions of higher
24 education.

25 SECTION 20. Section 501.404, Occupations Code, is amended
26 to read as follows:

27 Sec. 501.404. SCHEDULE OF SANCTIONS. (a) The board by rule

1 shall adopt a [~~broad~~] schedule of the disciplinary sanctions that
2 the board may impose under this chapter. In adopting the schedule
3 of sanctions, the board shall ensure that the severity of the
4 sanction imposed is appropriate to the type of violation or conduct
5 that is the basis for disciplinary action [~~for violations under~~
6 ~~this chapter~~].

7 (b) In determining the appropriate disciplinary action,
8 including the amount of any administrative penalty to assess, the
9 board shall consider whether the person:

10 (1) is being disciplined for multiple violations of
11 either this chapter or a rule or order adopted under this chapter;
12 or

13 (2) has previously been the subject of disciplinary
14 action by the board.

15 (c) In the case of a person described by:

16 (1) Subsection (b)(1), the board shall consider taking
17 a more severe disciplinary action, including revocation of the
18 person's license, than the disciplinary action that would be taken
19 for a single violation; and

20 (2) Subsection (b)(2), the board shall consider taking
21 a more severe disciplinary action, including revocation of the
22 person's license, than the disciplinary action that would be taken
23 for a person who has not previously been the subject of disciplinary
24 action by the board.

25 (d) The State Office of Administrative Hearings shall use
26 the schedule for any sanction imposed as the result of a hearing
27 conducted by that office.

1 SECTION 21. Section 501.410(b), Occupations Code, is
2 amended to read as follows:

3 (b) Rules adopted under Subsection (a) must:

4 (1) provide the complainant and the license holder an
5 opportunity to be heard; ~~and~~

6 (2) require the presence of a member of the board's
7 legal staff, if the board has a legal staff, or, if the board does
8 not have a legal staff, a representative of the attorney general's
9 office to advise the board or board employees; and

10 (3) require the presence of at least one public member
11 of the board.

12 SECTION 22. Subchapter K, Chapter 501, Occupations Code, is
13 amended by adding Section 501.505 to read as follows:

14 Sec. 501.505. OPTION TO ORDER REFUND. (a) Under an
15 agreement resulting from an informal settlement conference, the
16 board may order a license holder to refund to the person who paid
17 for the psychological services at issue an amount not to exceed the
18 amount the person paid to the license holder for a service regulated
19 by this chapter instead of or in addition to imposing an
20 administrative penalty under this chapter.

21 (b) The board may not include an estimation of other damages
22 or harm in a refund order.

23 SECTION 23. Article 60.061(a), Code of Criminal Procedure,
24 is amended to read as follows:

25 (a) The Texas State Board of Medical Examiners, the Texas
26 State Board of Podiatric Medical Examiners, the State Board of
27 Dental Examiners, the Texas State Board of Pharmacy, the Texas

1 State Board of Examiners of Psychologists, and the State Board of
2 Veterinary Medical Examiners shall provide to the Department of
3 Public Safety through electronic means, magnetic tape, or disk, as
4 specified by the department, a list including the name, date of
5 birth, and any other personal descriptive information required by
6 the department for each person licensed by the respective agency.
7 Each agency shall update this information and submit to the
8 Department of Public Safety the updated information quarterly.

9 SECTION 24. Subchapter H, Chapter 501, Occupations Code, is
10 repealed.

11 SECTION 25. The Psychological Associate Advisory Committee
12 is abolished.

13 SECTION 26. The changes in law made by this Act to Section
14 501.053, Occupations Code, do not affect the entitlement of a
15 member serving on the Texas State Board of Examiners of
16 Psychologists immediately before September 1, 2005, to continue to
17 serve and function as a member of the Texas State Board of Examiners
18 of Psychologists for the remainder of the term the member is serving
19 on that date. Those changes in law apply only to a member appointed
20 on or after September 1, 2005.

21 SECTION 27. The work group established under Section
22 501.2561, Occupations Code, as added by this Act, shall submit the
23 group's first report to the Texas State Board of Examiners of
24 Psychologists in time for the board to make necessary modifications
25 to the oral examination that will be administered in January 2007.

26 SECTION 28. This Act takes effect September 1, 2005.