

By: Truitt, Solomons, Hamric H.B. No. 1155
(Senate Sponsor - Shapleigh)
(In the Senate - Received from the House April 20, 2005;
April 21, 2005, read first time and referred to Committee on
Government Organization; May 4, 2005, reported favorably by the
following vote: Yeas 7, Nays 0; May 4, 2005, sent to printer.)

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Texas State Board
of Examiners of Dietitians.

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

SECTION 1. Sections 701.002(1) and (2), Occupations Code,
are amended to read as follows:

(1) "Commissioner" means the commissioner of state
health services ~~[public health]~~.

(2) "Department" means the ~~[Texas]~~ Department of State
Health Services.

SECTION 2. Section 701.003, Occupations Code, is amended to
read as follows:

Sec. 701.003. APPLICATION OF SUNSET ACT. The Texas State
Board of Examiners of Dietitians is subject to Chapter 325,
Government Code (Texas Sunset Act). Unless continued in existence
as provided by that chapter, the board is abolished September 1,
2017 ~~[2005]~~.

SECTION 3. Section 701.053, Occupations Code, is amended to
read as follows:

Sec. 701.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.
(a) In this section, "Texas trade association" means a
~~[nonprofit,]~~ cooperative~~[,]~~ and voluntarily joined statewide
association of business or professional competitors in this state
designed to assist its members and its industry or profession in
dealing with mutual business or professional problems and in
promoting their common interest.

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

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

(2) the person's spouse is [board who is exempt from
the state's position classification plan or is compensated at or
above the amount prescribed by the General Appropriations Act for
step 1, salary group A17, of the position classification salary
schedule].

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

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

SECTION 4. Sections 701.055(a) and (c), Occupations Code,
are amended to read as follows:

(a) It is a ground for removal from the dietitians board

that a member:

(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Section 701.051(a) ~~[for appointment to the board];~~

(2) does not maintain during service on the board the qualifications required by Section 701.051(a) ~~[for appointment to the board];~~

(3) is ineligible for membership under Section 701.052 or 701.053 ~~[violates a prohibition established by this chapter];~~

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

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

(c) If the executive secretary has knowledge that a potential ground for removal exists, the executive secretary shall notify the presiding officer of the dietitians board of the ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive secretary shall notify the assistant presiding officer, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. The heading to Section 701.056, Occupations Code, is amended to read as follows:

Sec. 701.056. ~~[PER DIEM,]~~ REIMBURSEMENT.

SECTION 6. Section 701.056(b), Occupations Code, is amended to read as follows:

(b) A member is entitled to reimbursement for travel ~~[transportation]~~ expenses as provided by the General Appropriations Act.

SECTION 7. Section 701.057, Occupations Code, is amended to read as follows:

Sec. 701.057. OFFICERS. (a) The governor shall designate a member of the dietitians board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) Not later than the 30th day after the date the governor appoints new board members, the dietitians board shall meet to elect an ~~[a presiding officer and]~~ assistant presiding officer, who holds ~~[holds]~~ office according to board rules.

SECTION 8. Sections 701.059(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A person who is appointed to and qualifies for office as a member of the dietitians board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes ~~[Before a dietitians board member may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of]~~ a training program that complies with ~~[established by the board under]~~ this section.

(b) The training program ~~[established by the dietitians board]~~ must provide the person with information ~~[to a participant]~~ regarding:

(1) this chapter and the dietitians board's programs, functions, rules, and budget;

(2) ~~[the programs operated by the board,~~

~~(3) the role and functions of the board,~~

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

~~(5) the current budget for the board,~~

~~(6)] the results of the most recent formal audit of the board;~~

(3) ~~[(7)]~~ the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts-of-interest ~~[Chapters 551, 552, 2001, and 2002, Government Code,~~

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

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

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

~~(c) A person appointed to the dietitians board is entitled to reimbursement, as provided by the General Appropriations Act, for 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 [In developing the training program, the dietitians board shall consult with the governor, the attorney general, and the Texas Ethics Commission].~~

SECTION 9. Section 701.104, Occupations Code, is amended to read as follows:

Sec. 701.104. DIVISION OF RESPONSIBILITIES. The dietitians board shall develop and implement policies that clearly separate ~~[define]~~ the policymaking ~~[respective]~~ responsibilities of the board and the management responsibilities of the executive secretary and the staff of the department ~~[board]~~.

SECTION 10. Subchapter D, Chapter 701, Occupations Code, is amended by adding Section 701.1535 to read as follows:

Sec. 701.1535. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. (a) The dietitians board shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the dietitians board shall list the specific offenses for which a conviction would constitute grounds for the board to take action under Section 53.021.

SECTION 11. Subchapter D, Chapter 701, Occupations Code, is amended by adding Sections 701.159, 701.160, and 701.161 to read as follows:

Sec. 701.159. DELEGATION TO COMMITTEE. The dietitians board may delegate a function or activity required by this chapter to a committee of board members on a permanent or temporary basis if the board agrees to the delegation.

Sec. 701.160. USE OF TECHNOLOGY. The dietitians board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Sec. 701.161. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The dietitians board shall develop and implement a policy to encourage the use of:

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

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

(b) The dietitians board's procedures relating to alternative dispute resolution must 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) The dietitians board shall designate a trained person to:

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

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

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

SECTION 12. Section 701.203, Occupations Code, is amended to read as follows:

Sec. 701.203. RECORDS OF COMPLAINTS. (a) The dietitians board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

(2) a summary of the results of the review or

4-1 investigation of the complaint; and

4-2 (3) information about the disposition of the complaint
 4-3 [keep an information file about each complaint filed with the
 4-4 board. The information file must be kept current and contain a
 4-5 record for each complaint of:

4-6 [(1) each person contacted in relation to the
 4-7 complaint;

4-8 [(2) a summary of findings made at each step of the
 4-9 complaint process;

4-10 [(3) an explanation of the legal basis and reason for a
 4-11 complaint that is dismissed;

4-12 [(4) the schedule established for the complaint under
 4-13 Section 701.204(b) and a notation of any change in the schedule; and

4-14 [(5) other relevant information].

4-15 (b) The dietitians board shall make information available
 4-16 describing its procedures for complaint investigation and
 4-17 resolution.

4-18 (c) The dietitians board shall periodically notify the
 4-19 parties of the status of the complaint until final disposition of
 4-20 the complaint. [If a written complaint is filed with the dietitians
 4-21 board that the board or department has authority to resolve, the
 4-22 board, at least quarterly and until final disposition of the
 4-23 complaint, shall notify the parties to the complaint of the status
 4-24 of the complaint unless notice would jeopardize an undercover
 4-25 investigation.]

4-26 SECTION 13. Subchapter E, Chapter 701, Occupations Code, is
 4-27 amended by adding Section 701.206 to read as follows:

4-28 Sec. 701.206. COMPLAINT COMMITTEE. The dietitians board
 4-29 shall appoint at least one public member to any board committee
 4-30 established to review a complaint filed with the board or review an
 4-31 enforcement action against a license holder related to a complaint
 4-32 filed with the board.

4-33 SECTION 14. The heading to Section 701.253, Occupations
 4-34 Code, is amended to read as follows:

4-35 Sec. 701.253. LICENSE EXAMINATION.

4-36 SECTION 15. Section 701.253(b), Occupations Code, is
 4-37 amended to read as follows:

4-38 (b) Except as provided by Subsection (f), an applicant must
 4-39 pass a license [competency] examination to qualify for a license
 4-40 under this chapter.

4-41 SECTION 16. The heading to Section 701.256, Occupations
 4-42 Code, is amended to read as follows:

4-43 Sec. 701.256. LICENSING EXAMINATION RESULTS.

4-44 SECTION 17. Section 701.256(a), Occupations Code, is
 4-45 amended to read as follows:

4-46 (a) The department shall notify each examinee of the
 4-47 licensing examination results not later than the 30th day after the
 4-48 date the examination is administered. If an examination is graded
 4-49 or reviewed by a national or state testing service, the department
 4-50 shall notify each examinee of the examination results not later
 4-51 than the 14th day after the date the department receives the results
 4-52 from the testing service.

4-53 SECTION 18. Section 701.257, Occupations Code, is amended
 4-54 to read as follows:

4-55 Sec. 701.257. REEXAMINATION FOR LICENSING EXAMINATION. An
 4-56 applicant who fails the licensing examination three times must
 4-57 provide evidence to the dietitians board that the applicant has
 4-58 successfully completed credit hours in the applicant's areas of
 4-59 weakness before the applicant may apply for reexamination.

4-60 SECTION 19. Subchapter F, Chapter 701, Occupations Code, is
 4-61 amended by adding Section 701.2575 to read as follows:

4-62 Sec. 701.2575. JURISPRUDENCE EXAMINATION. (a) The
 4-63 dietitians board shall develop and administer at least twice each
 4-64 calendar year a jurisprudence examination to determine an
 4-65 applicant's knowledge of this chapter, board rules, and any other
 4-66 applicable laws of this state affecting the applicant's dietetics
 4-67 practice.

4-68 (b) In addition to the license examination required by
 4-69 Section 701.253, an applicant must pass a jurisprudence examination

to qualify for a license under this chapter.

(c) The dietitians board shall 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. Sections 701.301(a) and (d), Occupations Code, are amended to read as follows:

(a) A license is valid for two years [~~one year~~] after the date of issuance and may be renewed biennially [~~annually~~].

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the dietitians board [~~the required renewal fee and~~] a fee that is equal to 1-1/4 times [~~half~~] the amount of the renewal [~~examination~~] fee for the license. If a license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board [~~all unpaid renewal fees and~~] a fee that is equal to 1-1/2 times the amount of the renewal fee for the license.

SECTION 21. Subchapter G, Chapter 701, Occupations Code, is amended by adding Section 701.304 to read as follows:

Sec. 701.304. GROUNDS FOR REFUSING RENEWAL. The dietitians board may refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter K, unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

SECTION 22. Section 701.401, Occupations Code, is amended to read as follows:

Sec. 701.401. GROUNDS FOR DISCIPLINARY ACTION. The dietitians board shall refuse to renew a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of this chapter or a rule or code of ethics adopted by the board.

SECTION 23. Section 701.402(a), Occupations Code, is amended to read as follows:

(a) If the dietitians board proposes to refuse to renew a license, revoke, or suspend a person's license, the person is entitled to a hearing before the board.

SECTION 24. The heading to Subchapter J, Chapter 701, Occupations Code, is amended to read as follows:

SUBCHAPTER J. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

SECTION 25. Subchapter J, Chapter 701, Occupations Code, is amended by adding Sections 701.452 and 701.453 to read as follows:

Sec. 701.452. CEASE AND DESIST ORDER. (a) If it appears to the dietitians board that a person who is not licensed under this chapter is violating this chapter or a rule adopted under this chapter, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

Sec. 701.453. INJUNCTION. (a) The dietitians board may apply to a district court in any county for an injunction to restrain a violation of Section 701.251 by a person.

(b) At the request of the board, the attorney general shall initiate and conduct an action in a district court in the state's name to obtain an injunction under this section.

SECTION 26. Section 701.502, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The dietitians board by rule shall adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or board rules to ensure that the amounts of penalties imposed are appropriate to the violation. The board shall provide the administrative penalty schedule to the public on request.

SECTION 27. Subchapter K, Chapter 701, Occupations Code, is amended by adding Section 701.512 to read as follows:

Sec. 701.512. REFUND. (a) Subject to Subsection (b), the dietitians board may 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) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 28. Sections 701.056(a) and 701.059(d), Occupations Code, are repealed.

SECTION 29. (a) Not later than January 1, 2006, the Texas State Board of Examiners of Dietitians shall:

(1) develop and implement the policies required by Sections 701.160 and 701.161, Occupations Code, as added by this Act; and

(2) adopt the rules required by Chapter 701, Occupations Code, as amended by this Act.

(b) Not later than March 1, 2006, the Texas State Board of Examiners of Dietitians shall develop the jurisprudence examination required by Section 701.2575, Occupations Code, as added by this Act.

SECTION 30. (a) The changes in law made by Sections 701.053, 701.055, and 701.059, Occupations Code, as amended by this Act, regarding the prohibitions on or qualifications of members of the Texas State Board of Examiners of Dietitians do not affect the entitlement of a member serving on the board immediately before September 1, 2005, to continue to serve and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

(b) The changes in law made by this Act with respect to conduct that is grounds for imposition of a disciplinary sanction or for obtaining an injunction apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

(c) The change in law made by Section 701.2575, Occupations Code, as added by this Act, regarding the jurisprudence examination, applies only to an application for a license filed with the Texas State Board of Examiners of Dietitians under Chapter 701, Occupations Code, as amended by this Act, on or after September 1, 2006.

SECTION 31. Notwithstanding Section 701.301, Occupations Code, as amended by this Act, the fee for an applicant renewing an expired license under Chapter 701, Occupations Code, before September 1, 2007, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose. An applicant who renews an expired license under Chapter 701, Occupations Code, on or after September 1, 2007, is subject to the fees provided by Section 701.301, Occupations Code, as amended by this Act.

SECTION 32. This Act takes effect September 1, 2005.

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