

By: Truitt, Solomons, Hamric

H.B. No. 1283

Substitute the following for H.B. No. 1283:

By: McReynolds

C.S.H.B. No. 1283

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the continuation and functions of the Texas State Board  
3 of Examiners of Professional Counselors; providing an  
4 administrative penalty.

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

6 SECTION 1. Section 503.002, Occupations Code, is amended by  
7 adding Subdivision (1-a) and amending Subdivision (2) to read as  
8 follows:

9 (1-a) "Commissioner" means the commissioner of the  
10 department.

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

13 SECTION 2. Section 503.005, Occupations Code, is amended to  
14 read as follows:

15 Sec. 503.005. APPLICATION OF SUNSET ACT. The Texas State  
16 Board of Examiners of Professional Counselors is subject to Chapter  
17 325, Government Code (Texas Sunset Act). Unless continued in  
18 existence as provided by that chapter, the board is abolished  
19 September 1, 2017 [~~2005~~].

20 SECTION 3. Section 503.101, Occupations Code, is amended to  
21 read as follows:

22 Sec. 503.101. BOARD MEMBERSHIP. (a) The Texas State Board  
23 of Examiners of Professional Counselors consists of nine members  
24 appointed by the governor with the advice and consent of the senate

1 as follows:

2 (1) five licensed professional counselor members, at  
3 least three of whom are in private practice and at least one of whom  
4 is a counselor educator; and

5 (2) four members who represent the public.

6 (b) Appointments to the board shall be made without regard  
7 to the race, color, disability, sex, religion, age, or national  
8 origin of the appointee.

9 SECTION 4. Section 503.103, Occupations Code, is amended to  
10 read as follows:

11 Sec. 503.103. ELIGIBILITY OF PUBLIC MEMBERS. A person is  
12 not eligible for appointment as a public member of the board if:

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

14 [~~(1)~~] is registered, certified, or licensed by an  
15 occupational regulatory agency in the field of health care;

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

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

20 (A) is employed by or participates in the  
21 management of a business entity or other organization receiving  
22 funds from the board;

23 (B) [~~(3)~~] owns or controls, directly or  
24 indirectly, more than a 10 percent interest in a business entity or  
25 other organization receiving funds from the board; or

26 (C) [~~(4)~~] uses or receives a substantial amount  
27 of funds from the board, other than compensation or reimbursement

1 authorized by law for board membership, attendance, or expenses.

2 SECTION 5. Section 503.104, Occupations Code, is amended to  
3 read as follows:

4 Sec. 503.104. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)  
5 In this section, "Texas trade association" means a [~~nonprofit,~~  
6 cooperative~~]~~ and voluntarily joined statewide association of  
7 business or professional competitors in this state designed to  
8 assist its members and its industry or profession in dealing with  
9 mutual business or professional problems and in promoting their  
10 common interest.

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

18 (1) the person is an officer, employee, manager, or  
19 paid consultant of a Texas trade association in the field of health  
20 care; or

21 (2) the person's spouse is an officer, manager, or paid  
22 consultant of a Texas trade association in the field of mental  
23 health [~~of the department who carries out the functions of the board~~  
24 ~~who is exempt from the state's position classification plan or is~~  
25 ~~compensated at or above the amount prescribed by the General~~  
26 ~~Appropriations Act for step 1, salary group A17, of the position~~  
27 ~~classification salary schedule].~~

1           (c) ~~[A person who is the spouse of an officer, manager, or~~  
2 ~~paid consultant of a Texas trade association in the field of health~~  
3 ~~care may not be a member of the board and may not be an employee of~~  
4 ~~the department who carries out the functions of the board who is~~  
5 ~~exempt from the state's position classification plan or is~~  
6 ~~compensated at or above the amount prescribed by the General~~  
7 ~~Appropriations Act for step 1, salary group A17, of the position~~  
8 ~~classification salary schedule.~~

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

15           SECTION 6. Sections 503.107(a) and (c), Occupations Code,  
16 are amended to read as follows:

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

18                   (1) does not have at the time of taking office  
19 ~~[appointment]~~ the qualifications required by Section 503.102 ~~[for~~  
20 ~~appointment to the board]~~;

21                   (2) does not maintain during the service on the board  
22 the qualifications required by Section 503.102 ~~[for appointment to~~  
23 ~~the board]~~;

24                   (3) is ineligible for membership under ~~[violates a~~  
25 ~~prohibition established by]~~ Section 503.103 or ~~[Section]~~  
26 503.104 ~~[(b) or (c)]~~;

27                   (4) cannot, because of illness or disability,

1 discharge the member's duties for a substantial part of the member's  
2 term; or

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

7 (c) If the executive director has knowledge that a potential  
8 ground for removal [~~of a board member~~] exists, the executive  
9 director shall notify the presiding officer of the board of the  
10 potential ground. The presiding officer shall then notify the  
11 governor and the attorney general that a potential ground for  
12 removal exists. If the potential ground for removal involves the  
13 presiding officer, the executive director shall notify the next  
14 highest ranking officer of the board, who shall then notify the  
15 governor and attorney general that a potential ground for removal  
16 exists.

17 SECTION 7. Section 503.108, Occupations Code, is amended to  
18 read as follows:

19 Sec. 503.108. [~~PER DIEM,~~] REIMBURSEMENT. [~~(a) A board~~  
20 ~~member is entitled to a per diem as set by the General~~  
21 ~~Appropriations Act for each day the member engages in the business~~  
22 ~~of the board.~~

23 [~~(b)~~] A board member may receive reimbursement for expenses  
24 as provided by the General Appropriations Act.

25 SECTION 8. Sections 503.110(a), (b), and (c), Occupations  
26 Code, are amended to read as follows:

27 (a) A person who is appointed to and qualifies for office as

1 a member of the [~~Before a~~] board may not vote, deliberate, or be  
2 counted as a member in attendance at a meeting until the person  
3 completes [~~member may assume the member's duties and before the~~  
4 ~~member may be confirmed by the senate, the member must complete at~~  
5 ~~least one course of~~] a training program that complies with  
6 [~~established by the board under~~] this section.

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

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

11 (2) [~~the programs operated by the board;~~  
12 [~~(3) the role and functions of the board;~~  
13 [~~(4) the rules of the board, with an emphasis on the~~  
14 ~~rules that relate to disciplinary and investigatory authority;~~

15 [~~(5) the current budget for the board;~~  
16 [~~(6)] the results of the most recent formal audit of~~  
17 the board;

18 (3) [~~(7)] the requirements of laws relating to open  
19 meetings, public information, administrative procedure, and  
20 conflicts-of-interest; and~~

21 (4) [~~Chapters 551, 552, 2001, and 2002, Government~~  
22 ~~Code;~~

23 [~~(8) the requirements of the conflict of interest laws~~  
24 ~~and other laws relating to public officials; and~~

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

27 (c) A person appointed to the board is entitled to

1 reimbursement, as provided by the General Appropriations Act, for  
2 the travel expenses incurred in attending the training program  
3 regardless of whether the attendance at the program occurs before  
4 or after the person qualifies for office [~~In developing the~~  
5 ~~training program, the board shall consult with the governor, the~~  
6 ~~attorney general, and the Texas Ethics Commission~~].

7 SECTION 9. Section 503.154, Occupations Code, is amended to  
8 read as follows:

9 Sec. 503.154. DIVISION OF RESPONSIBILITIES. The board  
10 shall develop and implement policies that clearly separate [~~define~~]  
11 the policymaking [~~respective~~] responsibilities of the board and the  
12 management responsibilities of the executive director and staff of  
13 the department [~~board~~].

14 SECTION 10. Subchapter E, Chapter 503, Occupations Code, is  
15 amended by adding Section 503.2045 to read as follows:

16 Sec. 503.2045. RULES ON CONSEQUENCES OF CRIMINAL  
17 CONVICTION. (a) The board shall adopt rules necessary to comply  
18 with Chapter 53.

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

22 SECTION 11. Section 503.205, Occupations Code, is amended  
23 to read as follows:

24 Sec. 503.205. DELEGATION TO [~~INDIVIDUAL MEMBER OR~~]  
25 COMMITTEE. The board may delegate a function or activity required  
26 by this chapter [~~to an individual board member or~~] to a committee of  
27 board members on a permanent or temporary basis if [+]

1           ~~[(1)] the board agrees to the delegation[, and~~  
2           ~~[(2) the person clearly possesses the professional~~  
3 ~~and personal qualifications to carry out the delegation].~~

4           SECTION 12. Subchapter E, Chapter 503, Occupations Code, is  
5 amended by adding Sections 503.210 and 503.211 to read as follows:

6           Sec. 503.210. USE OF TECHNOLOGY. The board shall implement  
7 a policy requiring the board to use appropriate technological  
8 solutions to improve the board's ability to perform its functions.  
9 The policy must ensure that the public is able to interact with the  
10 board on the Internet.

11           Sec. 503.211. NEGOTIATED RULEMAKING AND ALTERNATIVE  
12 DISPUTE RESOLUTION POLICY. (a) The board shall develop and  
13 implement a policy to encourage the use of:

14           (1) negotiated rulemaking procedures under Chapter  
15 2008, Government Code, for the adoption of board rules; and

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

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

24           (c) The board shall designate a trained person to:

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

27           (2) serve as a resource for any training needed to

1 implement the procedures for negotiated rulemaking or alternative  
2 dispute resolution; and

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

5 SECTION 13. Section 503.253, Occupations Code, is amended  
6 to read as follows:

7 Sec. 503.253. RECORDS OF COMPLAINTS. (a) The board shall  
8 maintain a system to promptly and efficiently act on complaints  
9 filed with the board. The board shall maintain:

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

12 (2) a summary of the results of the review or  
13 investigation of the complaint; and

14 (3) information about the disposition of the complaint  
15 ~~[keep an information file about each complaint filed with the~~  
16 ~~board. The information file must be kept current and contain a~~  
17 ~~record for each complaint of:~~

18 ~~[(1) each person contacted in relation to the~~  
19 ~~complaint;~~

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

22 ~~[(3) an explanation of the legal basis and reason for~~  
23 ~~dismissal of a complaint;~~

24 ~~[(4) the schedule established for the complaint under~~  
25 ~~Section 503.255 and a notation of any change in the schedule; and~~

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

27 (b) The board shall make information available describing

1 its procedures for complaint investigation and resolution.

2 (c) The board shall periodically notify the parties of the  
3 status of the complaint until final disposition of the  
4 complaint [~~If a written complaint is filed with the board that the~~  
5 ~~board has authority to resolve, the board, at least quarterly and~~  
6 ~~until final disposition of the complaint, shall notify the parties~~  
7 ~~to the complaint of the status of the complaint unless the notice~~  
8 ~~would jeopardize an undercover investigation].~~

9 SECTION 14. Subchapter F, Chapter 503, Occupations Code, is  
10 amended by adding Section 503.2555 to read as follows:

11 Sec. 503.2555. COMPLAINT COMMITTEE. The board shall  
12 appoint at least one public member to any board committee  
13 established to review a complaint filed with the board or review an  
14 enforcement action against a license holder related to a complaint  
15 filed with the board.

16 SECTION 15. Section 503.302(a), Occupations Code, is  
17 amended to read as follows:

18 (a) A person qualifies for a license under this chapter if  
19 the person:

20 (1) is at least 18 years old;

21 (2) has a master's or doctoral degree in counseling or  
22 a related field;

23 (3) has successfully completed a graduate degree at a  
24 regionally accredited institution of higher education and the  
25 number of [~~a planned graduate program of 48~~] graduate semester  
26 hours required by board rule, which may not be less than 48 hours  
27 and must include [~~including~~] 300 clock hours of supervised

1 practicum that:

2 (A) is primarily counseling in nature; and

3 (B) meets the specific academic course content  
4 and training standards established by the board;

5 (4) has completed the number of supervised experience  
6 hours required by board rule, which may not be less than ~~[36 months~~  
7 ~~or]~~ 3,000 hours ~~[of supervised experience]~~ working in a counseling  
8 setting that meets the requirements established by the board after  
9 the completion of the graduate program described by Subdivision  
10 (3);

11 (5) except as provided by Subsection (b), passes the  
12 license examination and jurisprudence examination required by this  
13 chapter;

14 (6) submits an application as required by the board,  
15 accompanied by the required application fee; and

16 (7) meets any other requirement prescribed by the  
17 board.

18 SECTION 16. Section 503.305(b), Occupations Code, is  
19 amended to read as follows:

20 (b) The ~~[As determined by the]~~ board shall contract with a  
21 nationally recognized testing organization to develop and  
22 administer a written professional counselor licensing examination  
23 to applicants who apply for a license under this chapter ~~[for each~~  
24 ~~applicant, the license examination may be:~~

25 ~~[(1) a field examination using questionnaires~~  
26 ~~answered by the applicant's instructors, employers, supervisors,~~  
27 ~~references, and others who are competent, in the board's judgment,~~

1 ~~to evaluate the applicant's professional competence, or~~  
2  ~~[(2) another type of examination as prescribed by the~~  
3  ~~board].~~

4 SECTION 17. Subchapter G, Chapter 503, Occupations Code, is  
5 amended by adding Section 503.3055 to read as follows:

6 Sec. 503.3055. JURISPRUDENCE EXAMINATION. (a) The board  
7 shall develop and administer at least twice each calendar year a  
8 jurisprudence examination to determine an applicant's knowledge of  
9 this chapter, board rules, and any other applicable laws of this  
10 state affecting the applicant's professional counseling practice.

11 (b) The board shall adopt rules to implement this section,  
12 including rules related to the development and administration of  
13 the examination, examination fees, guidelines for reexamination,  
14 grading the examination, and providing notice of examination  
15 results.

16 SECTION 18. Section 503.306, Occupations Code, is amended  
17 by adding Subsection (d) to read as follows:

18 (d) Notwithstanding the other provisions of this section,  
19 the board may notify an applicant of the applicant's examination  
20 results in the manner provided in a contract between the board and a  
21 testing organization selected by the board under Section 503.305.

22 SECTION 19. Section 503.310(b), Occupations Code, is  
23 amended to read as follows:

24 (b) An applicant for a provisional license must:

25 (1) be licensed in good standing as a counselor or art  
26 therapist in another state, territory, or jurisdiction that has  
27 licensing requirements substantially equivalent to the

1 requirements of this chapter;

2 (2) have passed the required license [~~a national or~~  
3 ~~other~~] examination [~~recognized by the board relating to counseling~~  
4 ~~or art therapy~~]; and

5 (3) be sponsored by a person licensed under this  
6 chapter with whom the applicant may practice under a provisional  
7 license.

8 SECTION 20. Section 503.351, Occupations Code, is amended  
9 to read as follows:

10 Sec. 503.351. [~~ANNUAL~~] RENEWAL; ELIGIBILITY. A person  
11 licensed under this chapter may renew the license biennially  
12 [~~annually~~] if the person:

13 (1) is not in violation of this chapter when the person  
14 applies for renewal; and

15 (2) fulfills the continuing education requirements  
16 established by the board.

17 SECTION 21. Sections 503.354(c) and (d), Occupations Code,  
18 are amended to read as follows:

19 (c) A person whose license has been expired for 90 days or  
20 less may renew the license by paying to the board [~~the required~~  
21 ~~renewal fee and~~] a fee that is equal to 1-1/4 times [~~half of~~] the  
22 amount of the renewal [~~license examination~~] fee.

23 (d) If a person's license has been expired for more than 90  
24 days but less than one year [~~because the person did not pay the~~  
25 ~~renewal fee or did not meet continuing education requirements~~], the  
26 person may renew the license by[+]

27 [~~(1)~~] paying to the board [~~all unpaid renewal fees~~

1 ~~and~~] a fee that is equal to 1-1/2 times the amount of the renewal  
2 [license examination] fee [~~;~~ and

3 ~~(2) providing the board with proof that the person~~  
4 ~~has completed the required continuing education].~~

5 SECTION 22. Subchapter I, Chapter 503, Occupations Code, is  
6 amended by adding Section 503.407 to read as follows:

7 Sec. 503.407. REFUND. (a) Subject to Subsection (b), the  
8 board may order a license holder to pay a refund to a consumer as  
9 provided in an agreement resulting from an informal settlement  
10 conference instead of or in addition to imposing an administrative  
11 penalty under this chapter.

12 (b) The amount of a refund ordered as provided in an  
13 agreement resulting from an informal settlement conference may not  
14 exceed the amount the consumer paid to the license holder for a  
15 service regulated by this chapter. The board may not require  
16 payment of other damages or estimate harm in a refund order.

17 SECTION 23. Subchapter J, Chapter 503, Occupations Code, is  
18 amended by adding Section 503.454 to read as follows:

19 Sec. 503.454. CEASE AND DESIST ORDER. (a) If it appears to  
20 the board that a person who is not licensed under this chapter is  
21 violating this chapter, a rule adopted under this chapter, or  
22 another state statute or rule relating to the practice of  
23 professional counseling, the board after notice and opportunity for  
24 a hearing may issue a cease and desist order prohibiting the person  
25 from engaging in the activity.

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

1 SECTION 24. Section 503.502, Occupations Code, is amended  
2 by adding Subsection (c) to read as follows:

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

9 SECTION 25. The following sections are repealed:

- 10 (1) Section 503.053, Occupations Code;  
11 (2) Section 503.110(d), Occupations Code;  
12 (3) Sections 503.302(b) and (c), Occupations Code;  
13 (4) Section 503.303(c), Occupations Code;  
14 (5) Sections 503.305(c), (d), and (e), Occupations  
15 Code; and  
16 (6) Section 503.309, Occupations Code.

17 SECTION 26. (a) Not later than January 1, 2006, the Texas  
18 State Board of Examiners of Professional Counselors shall:

19 (1) adopt the policies required by Sections 503.210  
20 and 503.211, Occupations Code, as added by this Act; and

21 (2) adopt the rules required by Chapter 503,  
22 Occupations Code, as amended by this Act.

23 (b) Not later than March 1, 2006, the Texas State Board of  
24 Examiners of Professional Counselors shall:

25 (1) develop the jurisprudence examination required by  
26 Section 503.3055, Occupations Code, as added by this Act; and

27 (2) contract with a nationally recognized testing

1 organization for the administration of the license examination as  
2 required by Section 503.305(b), Occupations Code, as amended by  
3 this Act.

4 SECTION 27. (a) The changes in law made by Sections 503.104,  
5 503.107, and 503.110, Occupations Code, as amended by this Act,  
6 regarding the prohibitions on or qualifications of members of the  
7 Texas State Board of Examiners of Professional Counselors do not  
8 affect the entitlement of a member serving on the board immediately  
9 before September 1, 2005, to continue to serve and function as a  
10 member of the board for the remainder of the member's term. The  
11 changes in law made by those sections apply only to a member  
12 appointed on or after September 1, 2005.

13 (b) The changes in law made by this Act related to the filing  
14 or investigation of a complaint under Chapter 503, Occupations  
15 Code, as amended by this Act, apply only to a complaint filed with  
16 the Texas State Board of Examiners of Professional Counselors on or  
17 after the effective date of this Act. A complaint filed before the  
18 effective date of this Act is governed by the law as it existed  
19 immediately before that date, and the former law is continued in  
20 effect for that purpose.

21 (c) The changes in law made by this Act governing the  
22 eligibility of a person for a license under Chapter 503,  
23 Occupations Code, apply only to an application for a license filed  
24 with the Texas State Board of Examiners of Professional Counselors  
25 under Chapter 503, Occupations Code, as amended by this Act, on or  
26 after the effective date of this Act. A license application filed  
27 before the effective date of this Act is governed by the law in

1 effect at the time the application was filed, and the former law is  
2 continued in effect for that purpose.

3 (d) The change in law made by this Act with respect to  
4 conduct that is grounds for imposition of a disciplinary sanction,  
5 including a refund, temporary license suspension, or cease and  
6 desist order, applies only to conduct that occurs on or after the  
7 effective date of this Act. Conduct that occurs before the  
8 effective date of this Act is governed by the law in effect on the  
9 date the conduct occurred, and the former law is continued in effect  
10 for that purpose.

11 (e) The change in law made by Section 503.302(a),  
12 Occupations Code, as amended by this Act, and Section 503.3055,  
13 Occupations Code, as added by this Act, regarding the jurisprudence  
14 examination, applies only to an application for a license filed  
15 with the Texas State Board of Examiners of Professional Counselors  
16 under Chapter 503, Occupations Code, as amended by this Act, on or  
17 after the effective date of this Act.

18 SECTION 28. Notwithstanding Section 503.354, Occupations  
19 Code, as amended by this Act, the fees for an applicant renewing an  
20 expired license under Chapter 503, Occupations Code, before  
21 September 1, 2007, are governed by the law in effect immediately  
22 before the effective date of this Act, and the former law is  
23 continued in effect for that purpose. An applicant who renews an  
24 expired license under Chapter 503, Occupations Code, on or after  
25 September 1, 2007, is subject to the fees provided by Section  
26 503.354, Occupations Code, as amended by this Act.

27 SECTION 29. This Act takes effect September 1, 2005.