

1-1 By: Deuell S.B. No. 311
1-2 (In the Senate - Filed January 31, 2005; February 7, 2005,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 10, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 March 10, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 311 By: Deuell

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of academic language teachers and
1-11 therapists; imposing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. The heading to Subtitle G, Title 3, Occupations
1-14 Code, is amended to read as follows:

1-15 SUBTITLE G. PROFESSIONS RELATED TO HEARING, LANGUAGE, AND SPEECH

1-16 SECTION 2. Subtitle G, Title 3, Occupations Code, is
1-17 amended by adding Chapter 403 to read as follows:

1-18 CHAPTER 403. ACADEMIC LANGUAGE TEACHERS AND THERAPISTS

1-19 SUBCHAPTER A. GENERAL PROVISIONS

1-20 Sec. 403.001. DEFINITIONS. In this chapter:

1-21 (1) "Academic language" means the treatment of
1-22 dyslexia or related disorders.

1-23 (2) "Department" means the Department of State Health
1-24 Services.

1-25 (3) "Executive commissioner" means the executive
1-26 commissioner of the Health and Human Services Commission.

1-27 (4) "License holder" means a person who holds a
1-28 license issued under this chapter.

1-29 Sec. 403.002. ADMINISTRATION BY DEPARTMENT OF STATE HEALTH
1-30 SERVICES. The department shall administer this chapter.

1-31 [Sections 403.003-403.050 reserved for expansion]

1-32 SUBCHAPTER B. POWERS AND DUTIES

1-33 Sec. 403.051. ADVISORY COMMITTEE. The department may
1-34 appoint an advisory committee to advise the department in
1-35 administering this chapter.

1-36 Sec. 403.052. RULES. The executive commissioner shall
1-37 adopt rules necessary to administer and enforce this chapter,
1-38 including rules that establish standards of ethical practice.

1-39 Sec. 403.053. RULES RESTRICTING ADVERTISING OR COMPETITIVE
1-40 BIDDING. (a) The executive commissioner may not adopt rules
1-41 restricting advertising or competitive bidding by a license holder
1-42 except to prohibit false, misleading, or deceptive practices.

1-43 (b) In the executive commissioner's rules to prohibit
1-44 false, misleading, or deceptive practices, the executive
1-45 commissioner may not include a rule that:

1-46 (1) restricts the use of any medium for advertising;

1-47 (2) restricts the use of a license holder's personal
1-48 appearance or voice in an advertisement;

1-49 (3) relates to the size or duration of an
1-50 advertisement by the license holder; or

1-51 (4) restricts the license holder's advertisement under
1-52 a trade name.

1-53 [Sections 403.054-403.100 reserved for expansion]

1-54 SUBCHAPTER C. LICENSE REQUIREMENTS

1-55 Sec. 403.101. LICENSE REQUIRED. A person may not use the
1-56 title "academic language teacher" or "academic language therapist"
1-57 in this state unless the person holds the appropriate license under
1-58 this chapter.

1-59 Sec. 403.102. ISSUANCE OF LICENSE. The department shall
1-60 issue an academic language teaching or therapy license to an
1-61 applicant who meets the requirements of this chapter.

1-62 Sec. 403.103. LICENSE APPLICATION. (a) A license
1-63 applicant must apply to the department on a form and in the manner

2-1 the department prescribes.
2-2 (b) The application must be accompanied by a nonrefundable
2-3 application fee.
2-4 Sec. 403.104. ELIGIBILITY FOR ACADEMIC LANGUAGE TEACHER
2-5 LICENSE. (a) To be eligible for an academic language teacher
2-6 license, an applicant must have:
2-7 (1) successfully completed at least 45 hours in
2-8 courses related to academic language, including training in
2-9 multisensory structured language training; and
2-10 (2) completed at least 90 hours of practice of
2-11 supervised clinical experience related to academic language,
2-12 including at least five conferences with clients observed by the
2-13 supervisor.
2-14 (b) Clinical experience required under Subsection (a)(2)
2-15 must be obtained under:
2-16 (1) the supervision of a license holder; and
2-17 (2) guidelines approved by the department.
2-18 Sec. 403.105. ELIGIBILITY FOR ACADEMIC LANGUAGE THERAPIST
2-19 LICENSE. (a) To be eligible for an academic language therapist
2-20 license, an applicant must have:
2-21 (1) successfully completed at least 200 hours in
2-22 courses related to academic language, including training in
2-23 multisensory structured language training; and
2-24 (2) completed at least 700 hours of practice of
2-25 supervised clinical experience related to academic language,
2-26 including at least 10 conferences with clients observed by the
2-27 supervisor.
2-28 (b) Clinical experience required under Subsection (a)(2)
2-29 must be obtained under:
2-30 (1) the supervision of a person holding an academic
2-31 language therapist license; and
2-32 (2) guidelines approved by the department.
2-33 Sec. 403.106. EXAMINATION; RULES. (a) To obtain a
2-34 license, an applicant must:
2-35 (1) pass an examination approved by the department;
2-36 and
2-37 (2) pay fees in a manner prescribed by the department.
2-38 (b) The department shall:
2-39 (1) administer an examination at least twice each
2-40 year;
2-41 (2) determine standards for acceptable performance on
2-42 the examination; and
2-43 (3) maintain a record of all examination scores for at
2-44 least two years after the date of examination.
2-45 (c) The executive commissioner by rule may:
2-46 (1) establish procedures for the administration of the
2-47 examination; and
2-48 (2) require a written or oral examination, or both.
2-49 Sec. 403.107. EXAMINATION RESULTS. (a) Not later than the
2-50 30th day after the date a person takes a licensing examination under
2-51 this chapter, the department shall notify the person of the results
2-52 of the examination.
2-53 (b) If the examination is graded or reviewed by a testing
2-54 service:
2-55 (1) the department shall notify the person of the
2-56 results of the examination not later than the 14th day after the
2-57 date the department receives the results from the testing service;
2-58 and
2-59 (2) if notice of the examination results will be
2-60 delayed for longer than 90 days after the examination date, the
2-61 department shall notify the person of the reason for the delay
2-62 before the 90th day.
2-63 (c) The department may require a testing service to notify a
2-64 person of the results of the person's examination.
2-65 (d) If requested in writing by a person who fails a
2-66 licensing examination administered under this chapter, the
2-67 department shall furnish the person with an analysis of the
2-68 person's performance on the examination.
2-69 Sec. 403.108. REEXAMINATION. (a) A person who fails the

3-1 examination may take a later examination on payment of a
 3-2 nonrefundable fee for the examination.

3-3 (b) An applicant who fails two examinations may not be
 3-4 reexamined until the person:

3-5 (1) submits a new application accompanied by a
 3-6 nonrefundable application fee; and

3-7 (2) presents evidence acceptable to the department of
 3-8 additional study in the area for which a license is sought.

3-9 Sec. 403.109. WAIVER OF EXAMINATION REQUIREMENT. The
 3-10 department may waive the examination requirement and issue a
 3-11 license to an applicant who holds an appropriate certificate or
 3-12 other accreditation from a national organization recognized by the
 3-13 department.

3-14 Sec. 403.110. PROVISIONAL LICENSE. (a) The department may
 3-15 issue a provisional license to an applicant currently licensed in
 3-16 another jurisdiction who seeks a license in this state and who:

3-17 (1) has been licensed in good standing as an academic
 3-18 language teacher or therapist for at least two years in another
 3-19 jurisdiction, including a foreign country, that has licensing
 3-20 requirements substantially equivalent to the requirements of this
 3-21 chapter;

3-22 (2) has passed a national or other examination
 3-23 recognized by the department relating to the practice of academic
 3-24 language; and

3-25 (3) is sponsored by a person licensed by the
 3-26 department under this chapter with whom the provisional license
 3-27 holder will practice during the time the person holds a provisional
 3-28 license.

3-29 (b) The department may waive the requirement of Subsection
 3-30 (a)(3) for an applicant if the department determines that
 3-31 compliance with that subsection would be a hardship to the
 3-32 applicant.

3-33 (c) A provisional license is valid until the date the
 3-34 department approves or denies the provisional license holder's
 3-35 application for a license.

3-36 (d) The department shall issue a license under this chapter
 3-37 to the provisional license holder if:

3-38 (1) the provisional license holder is eligible to be
 3-39 licensed under Section 403.111 or the provisional license holder
 3-40 passes the part of the examination under Section 403.106 that
 3-41 relates to the applicant's knowledge and understanding of the laws
 3-42 and rules relating to the practice of academic language in this
 3-43 state;

3-44 (2) the department verifies that the provisional
 3-45 license holder meets the academic and experience requirements for a
 3-46 license under this chapter; and

3-47 (3) the provisional license holder satisfies any other
 3-48 licensing requirements under this chapter.

3-49 (e) The department must approve or deny a provisional
 3-50 license holder's application for a license not later than the 180th
 3-51 day after the date the provisional license is issued. The
 3-52 department may extend the 180-day period if the results of an
 3-53 examination have not been received by the department before the end
 3-54 of that period.

3-55 Sec. 403.111. ENDORSEMENT OF OUT-OF-STATE CREDENTIALS;
 3-56 RECIPROCITY. (a) The department may waive any prerequisite to
 3-57 obtaining a license for an applicant after reviewing the
 3-58 applicant's credentials and determining that the applicant holds a
 3-59 license issued by another jurisdiction that has licensing
 3-60 requirements substantially equivalent to those of this state.

3-61 (b) The department may waive any prerequisite to obtaining a
 3-62 license for an applicant who holds a license issued by another
 3-63 jurisdiction with which this state has a reciprocity agreement.
 3-64 The department may make an agreement, subject to the approval of the
 3-65 governor, with another state to allow for licensing by reciprocity.

3-66 Sec. 403.112. TEMPORARY LICENSE; RULES. The executive
 3-67 commissioner by rule may provide for the issuance of a temporary
 3-68 license.

3-69 Sec. 403.113. INACTIVE STATUS; RULES. (a) The executive

4-1 commissioner by rule may provide for a license holder to be placed
4-2 on inactive status.

4-3 (b) Rules adopted under this section must include a time
4-4 limit for a license holder to remain on inactive status.

4-5 Sec. 403.114. LICENSE RENEWAL. (a) A person who is
4-6 otherwise eligible to renew a license may renew an unexpired
4-7 license by paying the required renewal fee to the department before
4-8 the expiration date of the license. A person whose license has
4-9 expired may not engage in activities that require a license until
4-10 the license has been renewed.

4-11 (b) A person whose license has been expired for 90 days or
4-12 less may renew the license by paying to the department a renewal fee
4-13 that is equal to 1-1/2 times the normally required renewal fee.

4-14 (c) A person whose license has been expired for more than 90
4-15 days but less than one year may renew the license by paying to the
4-16 department a renewal fee that is equal to two times the normally
4-17 required renewal fee.

4-18 (d) A person whose license has been expired for one year or
4-19 more may not renew the license. The person may obtain a new license
4-20 by complying with the requirements and procedures, including the
4-21 examination requirements, for obtaining an original license.

4-22 (e) A person who was licensed in this state, moved to
4-23 another state, and is currently licensed and has been in practice in
4-24 the other state for the two years preceding the date of application
4-25 may obtain a new license without reexamination. The person must pay
4-26 to the department a fee that is equal to two times the normally
4-27 required renewal fee for the license.

4-28 (f) Not later than the 30th day before the date a person's
4-29 license is scheduled to expire, the department shall send written
4-30 notice of the impending expiration to the person at the person's
4-31 last known address according to the records of the department.

4-32 [Sections 403.115-403.150 reserved for expansion]

4-33 SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

4-34 Sec. 403.151. CONTINUING EDUCATION. (a) The department
4-35 shall recognize, prepare, or administer continuing education
4-36 programs for its license holders under this chapter. A license
4-37 holder may not renew the person's license unless the person meets
4-38 the continuing education requirements.

4-39 (b) The department shall establish the requirements in a
4-40 manner that allows a license holder to comply without an extended
4-41 absence from the license holder's county of residence.

4-42 (c) The department shall:

4-43 (1) provide to a license applicant, with the
4-44 application form on which the person is to apply for a license,
4-45 information describing the continuing education requirements; and

4-46 (2) notify each license holder of any change in the
4-47 continuing education requirements at least one year before the date
4-48 the change takes effect.

4-49 [Sections 403.152-403.200 reserved for expansion]

4-50 SUBCHAPTER E. LICENSE DENIAL; COMPLAINT AND DISCIPLINARY
4-51 PROCEDURES

4-52 Sec. 403.201. ADMINISTRATIVE SANCTIONS. (a) The
4-53 department shall revoke, suspend, or refuse to renew a license or
4-54 shall reprimand a license holder for a violation of this chapter or
4-55 a department rule.

4-56 (b) The department may place on probation a person whose
4-57 license is suspended. If a license suspension is probated, the
4-58 department may require the person:

4-59 (1) to report regularly to the department on matters
4-60 that are the basis of the probation;

4-61 (2) to limit practice to the areas prescribed by the
4-62 department; or

4-63 (3) to continue or review professional education until
4-64 the person attains a degree of skill satisfactory to the department
4-65 in those areas that are the basis of the probation.

4-66 Sec. 403.202. COMPLAINTS. Any person may file a complaint
4-67 with the department alleging a violation of this chapter or a rule
4-68 adopted under this chapter.

4-69 Sec. 403.203. PROHIBITED ACTIONS. A license holder may

5-1 not:

5-2 (1) obtain a license by means of fraud,
5-3 misrepresentation, or concealment of a material fact;

5-4 (2) sell, barter, or offer to sell or barter a license;
5-5 or

5-6 (3) engage in unprofessional conduct that endangers or
5-7 is likely to endanger the health, welfare, or safety of the public
5-8 as defined by department rule.

5-9 Sec. 403.204. MONITORING OF LICENSE HOLDER; RULES. (a) The
5-10 executive commissioner by rule shall develop a system for
5-11 monitoring a license holder's compliance with this chapter.

5-12 (b) Rules adopted under this section must include
5-13 procedures to:

5-14 (1) monitor for compliance a license holder who is
5-15 ordered by the department to perform certain acts; and

5-16 (2) identify and monitor license holders who represent
5-17 a risk to the public.

5-18 Sec. 403.205. LICENSE DENIAL, REVOCATION, OR SUSPENSION FOR
5-19 CRIMINAL CONVICTION. (a) The department may deny a license or may
5-20 suspend or revoke a license if the applicant or license holder has
5-21 been convicted of a misdemeanor involving moral turpitude or a
5-22 felony. The department may take action authorized by this section
5-23 when:

5-24 (1) the time for appeal of the person's conviction has
5-25 elapsed;

5-26 (2) the judgment or conviction has been affirmed on
5-27 appeal; or

5-28 (3) an order granting probation is made suspending the
5-29 imposition of the person's sentence, without regard to whether a
5-30 subsequent order:

5-31 (A) allows withdrawal of a plea of guilty;

5-32 (B) sets aside a verdict of guilty; or

5-33 (C) dismisses an information or indictment.

5-34 (b) A plea or verdict of guilty or a conviction following a
5-35 plea of nolo contendere is a conviction for purposes of this
5-36 section.

5-37 Sec. 403.206. SCHEDULE OF SANCTIONS; RULES. The department
5-38 shall use the schedule of sanctions adopted by executive
5-39 commissioner rule for any sanction imposed as the result of a
5-40 hearing conducted by the department.

5-41 Sec. 403.207. REINSTATEMENT. (a) A person may apply for
5-42 reinstatement of a revoked license on or after the first
5-43 anniversary of the date of revocation.

5-44 (b) The department may:

5-45 (1) accept or reject the application; and

5-46 (2) require an examination as a condition for
5-47 reinstatement of the license.

5-48 Sec. 403.208. REPRIMAND; CONTINUING EDUCATION. (a) In
5-49 addition to other disciplinary action authorized by this
5-50 subchapter, the department may:

5-51 (1) issue a written reprimand to a license holder who
5-52 violates this chapter; or

5-53 (2) require that a license holder who violates this
5-54 chapter attend continuing education programs.

5-55 (b) The department may specify the number of hours of
5-56 continuing education that must be completed by a license holder to
5-57 fulfill the requirement of Subsection (a)(2).

5-58 Sec. 403.209. EMERGENCY SUSPENSION. (a) The department or
5-59 a three-member committee of members designated by the department
5-60 shall temporarily suspend the license of a license holder if the
5-61 department or committee determines from the evidence or information
5-62 presented to it that continued practice by the license holder would
5-63 constitute a continuing and imminent threat to the public welfare.

5-64 (b) A license may be suspended under this section without
5-65 notice or hearing on the complaint if:

5-66 (1) action is taken to initiate proceedings for a
5-67 hearing before the State Office of Administrative Hearings
5-68 simultaneously with the temporary suspension; and

5-69 (2) a hearing is held as soon as practicable under this

chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

[Sections 403.210-403.250 reserved for expansion]

SUBCHAPTER F. PENALTIES AND OTHER ENFORCEMENT PROCEDURES

Sec. 403.251. DECEPTIVE TRADE PRACTICE. A violation of Section 403.101 is a deceptive trade practice.

Sec. 403.252. INJUNCTION. The department may apply to a district court in any county for an injunction or another order to restrain the violation of this chapter by a person other than a license holder under this chapter.

Sec. 403.253. CRIMINAL OFFENSE. (a) A person commits an offense if the person violates Section 403.101.

(b) An offense under this section is a Class B misdemeanor.

[Sections 403.254-403.300 reserved for expansion]

SUBCHAPTER G. ADMINISTRATIVE PENALTY

Sec. 403.301. IMPOSITION OF ADMINISTRATIVE PENALTY. The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 403.302. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

Sec. 403.303. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department determines that a violation occurred, the department may issue a report stating:

- (1) the facts on which the determination is based; and
- (2) the department's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the department shall give written notice of the report to the person. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended administrative penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 403.304. PENALTY TO BE PAID OR HEARING REQUESTED.

(a) Within 10 days after the date the person receives the notice, the person in writing may:

- (1) accept the determination and recommended administrative penalty of the department; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the department, the department by order shall approve the determination and impose the recommended penalty.

Sec. 403.305. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the department shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

7-1 (c) The administrative law judge shall make findings of fact
 7-2 and conclusions of law and promptly issue to the department a
 7-3 proposal for a decision about the occurrence of the violation and
 7-4 the amount of a proposed administrative penalty.

7-5 Sec. 403.306. DECISION BY DEPARTMENT. (a) Based on the
 7-6 findings of fact, conclusions of law, and proposal for decision,
 7-7 the department by order may determine that:

7-8 (1) a violation occurred and impose an administrative
 7-9 penalty; or

7-10 (2) a violation did not occur.

7-11 (b) The notice of the department's order given to the person
 7-12 must include a statement of the right of the person to judicial
 7-13 review of the order.

7-14 Sec. 403.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

7-15 (a) Within 30 days after the date the department's order becomes
 7-16 final, the person shall:

7-17 (1) pay the administrative penalty; or

7-18 (2) file a petition for judicial review contesting the
 7-19 occurrence of the violation, the amount of the penalty, or both.

7-20 (b) Within the 30-day period prescribed by Subsection (a), a
 7-21 person who files a petition for judicial review may:

7-22 (1) stay enforcement of the penalty by:

7-23 (A) paying the penalty to the court for placement
 7-24 in an escrow account; or

7-25 (B) giving the court a supersedeas bond approved
 7-26 by the court that:

7-27 (i) is for the amount of the penalty; and

7-28 (ii) is effective until all judicial review
 7-29 of the department's order is final; or

7-30 (2) request the court to stay enforcement of the
 7-31 penalty by:

7-32 (A) filing with the court a sworn affidavit
 7-33 stating that the person is financially unable to pay the penalty and
 7-34 is financially unable to give the supersedeas bond; and

7-35 (B) giving a copy of the affidavit to the
 7-36 department by certified mail.

7-37 (c) If the department receives a copy of an affidavit under
 7-38 Subsection (b)(2), the department may file with the court, within
 7-39 five days after the date the copy is received, a contest to the
 7-40 affidavit.

7-41 (d) The court shall hold a hearing on the facts alleged in
 7-42 the affidavit as soon as practicable and shall stay the enforcement
 7-43 of the penalty on finding that the alleged facts are true. The
 7-44 person who files an affidavit has the burden of proving that the
 7-45 person is financially unable to pay the penalty and to give a
 7-46 supersedeas bond.

7-47 Sec. 403.308. COLLECTION OF PENALTY. (a) If the person
 7-48 does not pay the administrative penalty and the enforcement of the
 7-49 penalty is not stayed, the penalty may be collected.

7-50 (b) The attorney general may sue to collect the penalty.

7-51 Sec. 403.309. DETERMINATION BY COURT. (a) If the court
 7-52 sustains the determination that a violation occurred, the court may
 7-53 uphold or reduce the amount of the administrative penalty and order
 7-54 the person to pay the full or reduced amount of the penalty.

7-55 (b) If the court does not sustain the finding that a
 7-56 violation occurred, the court shall order that a penalty is not
 7-57 owed.

7-58 Sec. 403.310. REMITTANCE OF PENALTY AND INTEREST. (a) If
 7-59 the person paid the administrative penalty and if the amount of the
 7-60 penalty is reduced or the penalty is not upheld by the court, the
 7-61 court shall order, when the court's judgment becomes final, that
 7-62 the appropriate amount plus accrued interest be remitted to the
 7-63 person.

7-64 (b) The interest accrues at the rate charged on loans to
 7-65 depository institutions by the New York Federal Reserve Bank.

7-66 (c) The interest shall be paid for the period beginning on
 7-67 the date the penalty is paid and ending on the date the penalty is
 7-68 remitted.

7-69 (d) If the person gave a supersedeas bond and the penalty is

8-1 not upheld by the court, the court shall order, when the court's
8-2 judgment becomes final, the release of the bond.

8-3 (e) If the person gave a supersedeas bond and the amount of
8-4 the penalty is reduced, the court shall order the release of the
8-5 bond after the person pays the reduced amount.

8-6 SECTION 3. (a) Except as required by Subsection (b) of
8-7 this section, this Act takes effect September 1, 2005.

8-8 (b) Section 403.101 and Subchapters E, F, and G, Chapter
8-9 403, Occupations Code, as added by this Act, take effect February 1,
8-10 2006.

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