

1-1 By: Nelson S.B. No. 402
1-2 (In the Senate - Filed February 9, 2005; February 15, 2005,
1-3 read first time and referred to Committee on Government
1-4 Organization; March 17, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 March 17, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 402 By: Nelson

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

1-10 relating to the administration and functions of the Texas State
1-11 Board of Podiatric Medical Examiners; providing an administrative
1-12 penalty.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 202.002, Occupations Code, is amended to
1-15 read as follows:

1-16 Sec. 202.002. APPLICATION OF SUNSET ACT. The Texas State
1-17 Board of Podiatric Medical Examiners is subject to Chapter 325,
1-18 Government Code (Texas Sunset Act). Unless continued in existence
1-19 as provided by that chapter, the board is abolished September 1,
1-20 2017 [~~2005~~].

1-21 SECTION 2. Subsection (b), Section 202.051, Occupations
1-22 Code, is amended to read as follows:

1-23 (b) Appointments to the board shall be made without regard
1-24 to the race, color, disability, sex, religion, age, or national
1-25 origin of the appointees.

1-26 SECTION 3. Section 202.054, Occupations Code, is amended to
1-27 read as follows:

1-28 Sec. 202.054. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

1-29 (a) In this section, "Texas trade association" means a
1-30 [~~nonprofit,~~] cooperative[~~,~~] and voluntarily joined statewide
1-31 association of business or professional competitors in this state
1-32 designed to assist its members and its industry or profession in
1-33 dealing with mutual business or professional problems and in
1-34 promoting their common interest.

1-35 (b) A person may not be a member of the board and may not be a
1-36 board employee employed in a "bona fide executive, administrative,
1-37 or professional capacity," as that phrase is used for purposes of
1-38 establishing an exemption to the overtime provisions of the federal
1-39 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

1-40 (1) the person is an officer, employee, or paid
1-41 consultant of a Texas trade association in the field of health care;
1-42 or

1-43 (2) the person's spouse is an officer, manager, or paid
1-44 consultant of a Texas trade association in the field of health care
1-45 [An officer, employee, or paid consultant of a Texas trade
1-46 association in the health care industry may not be a member of the
1-47 board and may not be an employee of the board who is exempt from the
1-48 state's position classification plan or is compensated at or above
1-49 the amount prescribed by the General Appropriations Act for step 1,
1-50 salary group A17, of the position classification salary schedule].

1-51 (c) [A person who is the spouse of an officer, manager, or
1-52 paid consultant of a Texas trade association in the health care
1-53 industry may not be a board member and may not be an employee of the
1-54 board who is exempt from the state's position classification plan
1-55 or is compensated at or above the amount prescribed by the General
1-56 Appropriations Act for step 1, salary group A17, of the position
1-57 classification salary schedule.

1-58 [~~(d)~~] A person may not be [~~serve as~~] a member of the board
1-59 [~~member~~] or act as the general counsel to the board if the person is
1-60 required to register as a lobbyist under Chapter 305, Government
1-61 Code, because of the person's activities for compensation on behalf
1-62 of a profession related to the operation of the board.

1-63 SECTION 4. Subsections (a) and (c), Section 202.056,

Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:
 (1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Section 202.051 or 202.053;

(2) does not maintain during service on the board the qualifications required by Section 202.051 or 202.053;

(3) is ineligible for membership under ~~[violates a prohibition established by]~~ Section 202.054;

(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 unless the absence is excused by a majority vote of the board.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Subsection (b), Section 202.057, Occupations Code, is amended to read as follows:

(b) A member may ~~[not]~~ receive reimbursement for travel expenses, including expenses for meals, ~~[and]~~ lodging, and ~~[, other than]~~ transportation, ~~[expenses. A member is entitled to reimbursement for transportation expenses]~~ as prescribed by the General Appropriations Act.

SECTION 6. Section 202.058, Occupations Code, is amended to read as follows:

Sec. 202.058. OFFICERS. (a) The governor shall designate a member of the board as the president of the board to serve in that capacity at the pleasure of the governor.

(b) At the first regular scheduled meeting of each biennium, the board shall elect from its members a ~~[president,]~~ vice president~~[,]~~ and secretary.

SECTION 7. Section 202.061, Occupations Code, is amended to read as follows:

Sec. 202.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

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

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

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

(c) A person appointed to the board may be entitled to reimbursement, as provided by the General Appropriations Act, for the 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 [If another state agency is given authority to establish training requirements for the board, each board member shall comply with those training requirements].

SECTION 8. Section 202.101, Occupations Code, is amended to read as follows:

Sec. 202.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate ~~[define]~~

3-1 the policymaking [~~respective~~] responsibilities of the board and the
 3-2 management responsibilities of the executive director and the
 3-3 staff of the board.

3-4 SECTION 9. Subchapter D, Chapter 202, Occupations Code, is
 3-5 amended by adding Section 202.1525 to read as follows:

3-6 Sec. 202.1525. RULES ON CONSEQUENCES OF CRIMINAL
 3-7 CONVICTION. (a) The board shall adopt rules necessary to comply
 3-8 with Chapter 53.

3-9 (b) In its rules under this section, the board shall list
 3-10 the specific offenses for which a conviction would constitute
 3-11 grounds for the board to take action under Section 53.021.

3-12 SECTION 10. Subchapter D, Chapter 202, Occupations Code, is
 3-13 amended by adding Section 202.1545 to read as follows:

3-14 Sec. 202.1545. ADVISORY COMMITTEE MEMBERSHIP. (a) This
 3-15 section does not apply to a committee created under Section 202.154
 3-16 exclusively composed of board members.

3-17 (b) A board member is not eligible to serve as a voting
 3-18 member on a task force or advisory committee that makes
 3-19 recommendations to the board.

3-20 SECTION 11. Subchapter D, Chapter 202, Occupations Code, is
 3-21 amended by adding Sections 202.162 and 202.163 to read as follows:

3-22 Sec. 202.162. USE OF TECHNOLOGY. The board shall implement
 3-23 a policy requiring the board to use appropriate technological
 3-24 solutions to improve the board's ability to perform its functions.
 3-25 The policy must ensure that the public is able to interact with the
 3-26 board on the Internet.

3-27 Sec. 202.163. NEGOTIATED RULEMAKING AND ALTERNATIVE
 3-28 DISPUTE RESOLUTION PROCEDURES. (a) The board shall develop and
 3-29 implement a policy to encourage the use of:

3-30 (1) negotiated rulemaking procedures under Chapter
 3-31 2008, Government Code, for the adoption of board rules; and

3-32 (2) appropriate alternative dispute resolution
 3-33 procedures under Chapter 2009, Government Code, to assist in the
 3-34 resolution of internal and external disputes under the board's
 3-35 jurisdiction.

3-36 (b) The board's procedures relating to alternative dispute
 3-37 resolution must conform, to the extent possible, to any model
 3-38 guidelines issued by the State Office of Administrative Hearings
 3-39 for the use of alternative dispute resolution by state agencies.

3-40 (c) The board shall designate a trained person to:

3-41 (1) coordinate the implementation of the policy
 3-42 adopted under Subsection (a);

3-43 (2) serve as a resource for any training needed to
 3-44 implement the procedures for negotiated rulemaking or alternative
 3-45 dispute resolution; and

3-46 (3) collect data concerning the effectiveness of those
 3-47 procedures, as implemented by the board.

3-48 SECTION 12. Section 202.202, Occupations Code, is amended
 3-49 by adding Subsection (c) to read as follows:

3-50 (c) The board shall make information available describing
 3-51 its procedures for complaint investigation and resolution.

3-52 SECTION 13. Section 202.203, Occupations Code, is amended
 3-53 to read as follows:

3-54 Sec. 202.203. COMPLAINT RECORDS. (a) The board shall
 3-55 maintain a system to promptly and efficiently act on complaints
 3-56 filed with the board. The board shall maintain information about
 3-57 parties to the complaint, the subject matter of the complaint, a
 3-58 summary of the results of the review or investigation of the
 3-59 complaint, and the disposition of the complaint [~~The board shall~~
 3-60 ~~keep an information file about each complaint filed with the board.~~
 3-61 ~~The information file must be kept current and contain a record for~~
 3-62 ~~each complaint of:~~

3-63 ~~(1) each person contacted in relation to the~~
 3-64 ~~complaint;~~

3-65 ~~(2) a summary of findings made at each step of the~~
 3-66 ~~complaint process;~~

3-67 ~~(3) an explanation of the legal basis and reason for a~~
 3-68 ~~complaint that is dismissed;~~

3-69 ~~(4) the schedule established for the complaint under~~

4-1 ~~Section 202.204 and a notation of a change in the schedule, and~~
4-2 ~~[(5) other relevant information].~~

4-3 (b) The board shall periodically notify the complaint
4-4 parties of the status of the complaint until final disposition [~~If a~~
4-5 ~~written complaint is filed with the board, the board, at least~~
4-6 ~~quarterly and until final disposition of the complaint, shall~~
4-7 ~~notify the parties to the complaint of the status of the complaint]~~
4-8 unless the notification would jeopardize an undercover
4-9 investigation. The board may provide a copy of the complaint to the
4-10 license holder unless providing a copy would jeopardize an
4-11 investigation.

4-12 SECTION 14. Section 202.260, Occupations Code, is amended
4-13 by amending Subsection (c) and adding Subsection (e) to read as
4-14 follows:

4-15 (c) A provisional license is valid until the date the board
4-16 approves or denies the provisional license holder's application for
4-17 a license. Except as provided by Subsection (e), the [The] board
4-18 shall issue a license under this chapter to the holder of a
4-19 provisional license under this section if:

4-20 (1) the provisional license holder passes the
4-21 examination required by Section 202.254;

4-22 (2) the board verifies that the provisional license
4-23 holder has the academic and experience requirements for a license
4-24 under this chapter; and

4-25 (3) the provisional license holder satisfies any other
4-26 license requirements under this chapter.

4-27 (e) A provisional license holder is not required to pass a
4-28 part of an examination related to the testing of clinical skills
4-29 that an applicant for an original license under this chapter with
4-30 substantially equivalent experience is not required to pass.

4-31 SECTION 15. Subsection (d), Section 202.301, Occupations
4-32 Code, is amended to read as follows:

4-33 (d) A person whose license has been expired for 90 days or
4-34 less may renew the license by paying to the board a fee equal to
4-35 1-1/2 times the required renewal fee [~~the required renewal fee and a~~
4-36 ~~fee equal to half of the amount charged for examination for the~~
4-37 ~~license]. If a license has been expired for more than 90 days but~~
4-38 ~~less than one year, the person may renew the license by paying to~~
4-39 ~~the board a fee equal to two times the required renewal fee~~ [all
4-40 unpaid renewal fees and a fee equal to the amount charged for
4-41 examination for the license].

4-42 SECTION 16. Subsection (b), Section 202.302, Occupations
4-43 Code, is amended to read as follows:

4-44 (b) The person must pay to the board a fee equal to the
4-45 amount charged for renewal of [~~examination for~~] the license.

4-46 SECTION 17. Subsection (b), Section 202.508, Occupations
4-47 Code, is amended to read as follows:

4-48 (b) Rules adopted under this section must:
4-49 (1) provide the complainant and the license holder an
4-50 opportunity to be heard; and

4-51 (2) require the presence of:
4-52 (A) a representative of the office of the
4-53 attorney general or the board's legal counsel to advise the board or
4-54 the board's employees; and

4-55 (B) a public member of the board at an informal
4-56 settlement conference.

4-57 SECTION 18. Subchapter K, Chapter 202, Occupations Code, is
4-58 amended by adding Sections 202.5085 and 202.510 to read as follows:

4-59 Sec. 202.5085. REFUND. (a) Subject to Subsection (b),
4-60 the board may order a person licensed under this chapter to pay a
4-61 refund to a consumer as provided in an agreement resulting from an
4-62 informal settlement conference instead of or in addition to
4-63 imposing an administrative penalty under this chapter.

4-64 (b) The amount of a refund ordered as provided in an
4-65 agreement resulting from an informal settlement conference may not
4-66 exceed the amount the consumer paid to the person for a service
4-67 regulated by this chapter. The board may not require payment of
4-68 other damages or estimate harm in a refund order.

4-69 Sec. 202.510. TEMPORARY SUSPENSION OF LICENSE. (a) The

5-1 president of the board shall appoint a disciplinary panel
 5-2 consisting of three board members to determine whether a person's
 5-3 license to practice podiatry should be temporarily suspended.

5-4 (b) If the disciplinary panel determines from the evidence
 5-5 presented to the panel that a person licensed to practice podiatry
 5-6 would, by the person's continuation in practice, constitute a
 5-7 continuing threat to the public welfare, the disciplinary panel
 5-8 shall temporarily suspend the license of that person.

5-9 (c) A license may be suspended by a disciplinary panel under
 5-10 this section without notice or hearing if:

5-11 (1) the board immediately provides notice of the
 5-12 suspension to the license holder; and

5-13 (2) a hearing on the temporary suspension before a
 5-14 disciplinary panel of the board is scheduled for the earliest
 5-15 possible date after the 10th day after the notice of hearing.

5-16 (d) Notwithstanding Chapter 551, Government Code, the
 5-17 disciplinary panel may hold a meeting by telephone conference call
 5-18 if immediate action is required and convening of the panel at one
 5-19 location is inconvenient for any member of the disciplinary panel.

5-20 (e) After the hearing before the disciplinary panel
 5-21 described by Subsection (c), if the disciplinary panel affirms the
 5-22 temporary suspension of the license holder's license, the board
 5-23 shall schedule an informal compliance meeting that meets the
 5-24 requirements of Section 2001.054(c), Government Code, and Section
 5-25 202.508 of this code to be held as soon as practicable, unless the
 5-26 license holder waives the informal meeting or an informal meeting
 5-27 has already been held with regard to the issues that are the basis
 5-28 for the temporary suspension.

5-29 (f) If the license holder is unable to show compliance at
 5-30 the informal meeting described by Subsection (e) regarding the
 5-31 issues that are the basis for the temporary suspension, a board
 5-32 representative shall initiate a disciplinary procedure under
 5-33 Section 202.501 as soon as practicable.

5-34 (g) If, after the hearing described by Subsection (c), the
 5-35 disciplinary panel does not temporarily suspend the license
 5-36 holder's license, the facts that were the basis for the temporary
 5-37 suspension may not be the sole basis of another proceeding to
 5-38 temporarily suspend the license holder's license. The board may
 5-39 use those same facts in a subsequent investigation to obtain new
 5-40 information that may be the basis for the temporary suspension of
 5-41 the license holder's license. For purposes of this subsection,
 5-42 facts that are the basis for the temporary suspension of a license
 5-43 holder's license include facts presented to the disciplinary panel
 5-44 and facts presented by the board or a representative of the board at
 5-45 the time evidence was presented to the disciplinary panel.

5-46 SECTION 19. Section 202.552, Occupations Code, is amended
 5-47 by amending Subsection (a) and adding Subsection (c) to read as
 5-48 follows:

5-49 (a) The amount of an administrative penalty may not exceed
 5-50 \$5,000 [~~\$2,500~~]. Each day a violation continues or occurs is a
 5-51 separate violation for purposes of imposing a penalty.

5-52 (c) The board by rule shall develop a standardized penalty
 5-53 schedule based on the criteria listed in Subsection (b).

5-54 SECTION 20. Subchapter M, Chapter 202, Occupations Code, is
 5-55 amended by adding Section 202.6015 to read as follows:

5-56 Sec. 202.6015. CEASE AND DESIST ORDER. (a) If it appears
 5-57 to the board that a person who is not licensed under this chapter is
 5-58 violating or has violated this chapter, a rule adopted under this
 5-59 chapter, or another state statute or rule relating to the practice
 5-60 of podiatry, the board after providing to the person notice and the
 5-61 opportunity for a hearing may issue a cease and desist order
 5-62 prohibiting the conduct described in the notice.

5-63 (b) If the person does not request a hearing before the 22nd
 5-64 day after the date of receiving notice under Subsection (a), the
 5-65 board may:

5-66 (1) issue a cease and desist order; and

5-67 (2) refer the violation to the attorney general for
 5-68 further action.

5-69 (c) If the person requests a hearing before the 22nd day

6-1 after the date of receiving notice under Subsection (a), the board
6-2 shall hold the hearing not later than the 30th day after the date
6-3 the board receives the request for the hearing.

6-4 (d) A hearing under this section is subject to Chapter 2001,
6-5 Government Code.

6-6 (e) Notwithstanding Section 202.551, the board may impose
6-7 an administrative penalty under Subchapter L against a person who
6-8 violates an order issued under this section.

6-9 (f) The board shall adopt rules necessary to implement this
6-10 section.

6-11 SECTION 21. Section 202.602, Occupations Code, is amended
6-12 to read as follows:

6-13 Sec. 202.602. MONITORING AND INSPECTION OF LICENSE HOLDER.
6-14 (a) The board by rule shall develop a system to monitor a
6-15 podiatrist's compliance with this chapter. The system must
6-16 include:

6-17 (1) procedures for determining whether a podiatrist is
6-18 in compliance with an order issued by the board; and

6-19 (2) a method of identifying and monitoring each
6-20 podiatrist who represents a risk to the public.

6-21 (b) The board, during reasonable business hours, may enter
6-22 the business premises of a person regulated by the board without
6-23 notice to:

6-24 (1) investigate a complaint filed with the board; or

6-25 (2) determine compliance with an order of the board.

6-26 SECTION 22. (a) The Texas State Board of Podiatric Medical
6-27 Examiners shall adopt rules as required by this Act not later than
6-28 March 1, 2006.

6-29 (b) The changes in law made by this Act to Subsection (d),
6-30 Section 202.301, Occupations Code, apply only to the fee for the
6-31 renewal of a license that is applied for on or after the effective
6-32 date of this Act. A renewal of a license applied for before the
6-33 effective date of this Act is covered by the law in effect on the
6-34 date the application for renewal was made, and the former law is
6-35 continued in effect for that purpose.

6-36 (c) The changes in law made by this Act in the prohibitions
6-37 or qualifications applying to a member of the Texas State Board of
6-38 Podiatric Medical Examiners do not affect the entitlement of a
6-39 member serving on the board immediately before the effective date
6-40 of this Act to continue to serve and function as a member of the
6-41 board for the remainder of the member's term. Those changes in law
6-42 apply only to a member appointed on or after the effective date of
6-43 this Act.

6-44 (d) Section 202.1545, Occupations Code, as added by this
6-45 Act, applies only to a vote of a task force or advisory committee
6-46 taken on or after the effective date of this Act.

6-47 (e) The changes in law made by this Act to Chapter 202,
6-48 Occupations Code, relating to the investigation of a complaint
6-49 filed with the Texas State Board of Podiatric Medical Examiners
6-50 apply only to a complaint filed on or after the effective date of
6-51 this Act. A complaint filed with the board before the effective
6-52 date of this Act is governed by the law as it existed immediately
6-53 before that date, and the former law is continued in effect for that
6-54 purpose.

6-55 (f) The changes in law made by this Act governing
6-56 eligibility of a person for a license under Chapter 202,
6-57 Occupations Code, apply only to the issuance of a license by the
6-58 Texas State Board of Podiatric Medical Examiners under Chapter 202,
6-59 Occupations Code, as amended by this Act, on or after the effective
6-60 date of this Act. A license issued by the Texas State Board of
6-61 Podiatric Medical Examiners under that chapter before the effective
6-62 date of this Act is governed by the licensing requirements in effect
6-63 when the license was last issued until the license expires or is
6-64 renewed as provided by Chapter 202, Occupations Code, as amended by
6-65 this Act.

6-66 (g) The change in law made by this Act relating to
6-67 imposition of an administrative penalty applies only to a violation
6-68 that occurs on or after the effective date of this Act. A violation
6-69 that occurs before the effective date of this Act is governed by the

7-1 law in effect on the date the violation occurred, and the former law
7-2 is continued in effect for that purpose.

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

7-11 SECTION 23. This Act takes effect September 1, 2005.

7-12 * * * * *