

By: Nelson

S.B. No. 403

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 603.002, Occupations Code, is amended to read as follows:

Sec. 603.002. DEFINITIONS. In this chapter:

(1) ~~["Board" means the Texas State Board of Examiners of Perfusionists.~~

~~(2)~~ "Commissioner" means the commissioner of state health services ~~[public health]~~.

(2) "Committee" means the Texas State Perfusionist Advisory Committee.

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

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 2. Section 603.004, Occupations Code, is amended to read as follows:

Sec. 603.004. APPLICATION OF CHAPTER. This chapter does not apply to:

(1) a qualified perfusionist employed by the United States government while discharging official duties;

(2) ~~[a person who is not a resident of this state if~~

1 ~~the person:~~

2 ~~[(A) is authorized to perform perfusion services~~
3 ~~under the laws of the state of the person's residence;~~

4 ~~[(B) possesses educational and training~~
5 ~~qualifications the board determines are substantially similar to~~
6 ~~those required for practice in this state;~~

7 ~~[(C) notifies the board of the person's intent to~~
8 ~~perform perfusion services in this state for not more than 10 days~~
9 ~~in a year; and~~

10 ~~[(D) is approved by the board or the board's~~
11 ~~designated agent to perform perfusion services in this state for~~
12 ~~not more than 10 days in that year;~~

13 ~~(3)~~ a person licensed by another health professional
14 licensing board if the person:

15 (A) does not directly or indirectly represent to
16 the public that the person is licensed under this chapter and does
17 not use a name, title, or other designation indicating that the
18 person is licensed under this chapter; and

19 (B) confines the scope of the person's practice
20 to that authorized by the law under which the person is licensed as
21 a health professional;

22 (3) ~~(4)~~ a student enrolled in an accredited
23 perfusion education program if the perfusion services performed by
24 the student:

25 (A) are an integral part of the student's course
26 of study; and

27 (B) are directly supervised by a licensed

1 perfusionist who:

2 (i) is assigned to supervise the student;

3 and

4 (ii) is on duty and immediately available
5 in the assigned patient care area;

6 (4) [~~(5)~~] a person who successfully completes an
7 approved perfusion education program but has not been issued a
8 provisional license under Section 603.259 if the person:

9 (A) complies with Section 603.259(c); and

10 (B) receives a provisional license not later than
11 the 180th day after the date the person successfully completes the
12 program; or

13 (5) [~~(6)~~] a person performing autotransfusion or
14 blood conservation techniques under the supervision of a licensed
15 physician.

16 SECTION 3. Section 603.005, Occupations Code, is amended to
17 read as follows:

18 Sec. 603.005. APPLICATION OF SUNSET ACT. The Texas State
19 Perfusionist Advisory Committee [~~Board of Examiners of~~
20 ~~Perfusionists~~] is subject to Chapter 325, Government Code (Texas
21 Sunset Act). Unless continued in existence as provided by that
22 chapter, the committee [~~board~~] is abolished September 1, 2017
23 [~~2005~~].

24 SECTION 4. Subchapter A, Chapter 603, Occupations Code, is
25 amended by adding Section 603.006 to read as follows:

26 Sec. 603.006. APPLICABILITY OF OTHER LAW. Chapter 2110,
27 Government Code, does not apply to the committee.

1 SECTION 5. The heading to Subchapter B, Chapter 603,
2 Occupations Code, is amended to read as follows:

3 SUBCHAPTER B. TEXAS STATE PERFUSIONIST ADVISORY
4 COMMITTEE [~~BOARD OF EXAMINERS OF PERFUSIONISTS~~]

5 SECTION 6. Section 603.051, Occupations Code, is amended to
6 read as follows:

7 Sec. 603.051. COMMITTEE [~~BOARD~~] MEMBERSHIP. (a) The Texas
8 State Perfusionist Advisory Committee [~~Board of Examiners of~~
9 ~~Perfusionists~~] consists of five [~~nine~~] members appointed by the
10 State Health Services Council [~~governor with the advice and consent~~
11 ~~of the senate~~] as follows:

12 (1) two [~~five~~] licensed perfusionist members who have
13 been licensed under this chapter for at least three years before the
14 date of appointment;

15 (2) one physician member licensed by the Texas State
16 Board of Medical Examiners who is certified by that board in
17 cardiovascular surgery; and

18 (3) two [~~three~~] members who represent the public.

19 (b) Appointments to the committee [~~board~~] shall reflect the
20 historical and cultural diversity of the inhabitants of this state.

21 (c) Appointments to the committee [~~board~~] shall be made
22 without regard to the race, color, disability [~~creed~~], sex,
23 religion, age, or national origin [~~, or geographical distribution~~]
24 of the appointee [~~appointees~~].

25 SECTION 7. Subchapter B, Chapter 603, Occupations Code, is
26 amended by adding Section 603.0511 to read as follows:

27 Sec. 603.0511. ELIGIBILITY OF PUBLIC MEMBERS. A person may

1 not be a public member of the committee if the person or the
2 person's spouse:

3 (1) is registered, certified, or licensed by a
4 regulatory agency in the field of health care;

5 (2) is employed by or participates in the management
6 of a business entity or other organization regulated by or
7 receiving money from the department;

8 (3) owns or controls, directly or indirectly, more
9 than a 10 percent interest in a business entity or other
10 organization regulated by or receiving money from the department;
11 or

12 (4) uses or receives a substantial amount of tangible
13 goods, services, or money from the department other than
14 compensation or reimbursement authorized by law for committee
15 membership, attendance, or expenses.

16 SECTION 8. Section 603.052, Occupations Code, is amended to
17 read as follows:

18 Sec. 603.052. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
19 In this section, "Texas trade association" means a ~~[nonprofit,~~
20 cooperative~~]~~ and voluntarily joined statewide association of
21 business or professional competitors in this state designed to
22 assist its members and its industry or profession in dealing with
23 mutual business or professional problems and in promoting their
24 common interests.

25 (b) A person ~~[An officer, employee, or paid consultant of a~~
26 ~~Texas trade association in the field of health care]~~ may not be a
27 committee ~~[board]~~ member and may not be a department ~~[an]~~ employee

1 employed in a "bona fide executive, administrative, or professional
2 capacity," as that phrase is used for purposes of establishing an
3 exemption to the overtime provisions of the federal Fair Labor
4 Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

5 (1) the person is an officer, employee, or paid
6 consultant of a Texas trade association in the field of health care;
7 or

8 (2) the person's spouse is an officer, manager, or paid
9 consultant of a Texas trade association in the field of health care
10 ~~[of the board who is exempt from the state's position~~
11 ~~classification plan or is compensated at or above the amount~~
12 ~~prescribed by the General Appropriations Act for step 1, salary~~
13 ~~group A17, of the position classification salary schedule].~~

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

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

27 SECTION 9. Section 603.053, Occupations Code, is amended to

1 read as follows:

2 Sec. 603.053. TERMS. Members of the committee [~~board~~]
3 serve staggered six-year terms. The terms of one or two [~~three~~]
4 members, as appropriate, expire on February 1 of each odd-numbered
5 year.

6 SECTION 10. Section 603.054, Occupations Code, is amended
7 to read as follows:

8 Sec. 603.054. GROUNDS FOR REMOVAL. (a) It is a ground for
9 removal from the committee [~~board~~] that a member:

10 (1) does not have at the time of taking office
11 [~~appointment~~] the qualifications required by Section 603.051 [~~for~~
12 ~~appointment to the board~~];

13 (2) does not maintain during service on the committee
14 [~~board~~] the qualifications required by Section 603.051 [~~for~~
15 ~~appointment to the board~~];

16 (3) is ineligible for membership under Section
17 603.0511 or 603.052 [~~violates a prohibition established by this~~
18 ~~chapter~~];

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

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

27 (b) The validity of an action of the committee [~~board~~] is

1 not affected by the fact that it is taken when a ground for removal
2 of a member of the committee [~~board~~] exists.

3 (c) If the executive secretary has knowledge that a
4 potential ground for removal exists, the executive secretary shall
5 notify the presiding officer of the committee [~~board~~] of the
6 potential ground. The presiding officer shall then notify the
7 State Health Services Council and the attorney general [~~governor~~]
8 that a potential ground for removal exists. If the potential ground
9 for removal involves the presiding officer, the executive secretary
10 shall notify the next highest ranking officer of the committee, who
11 shall then notify the State Health Services Council and the
12 attorney general that a potential ground for removal exists.

13 SECTION 11. Section 603.055, Occupations Code, is amended
14 to read as follows:

15 Sec. 603.055. [~~PER DIEM,~~] REIMBURSEMENT. [~~(a) Each board~~
16 ~~member is entitled to receive a per diem set by the General~~
17 ~~Appropriations Act for each day the member engages in the business~~
18 ~~of the board.~~

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

21 SECTION 12. Section 603.056, Occupations Code, is amended
22 to read as follows:

23 Sec. 603.056. OFFICERS. (a) Not later than the 30th day
24 after the date the State Health Services Council [~~governor~~]
25 appoints new committee [~~board~~] members, the State Health Services
26 Council [~~board~~] shall designate [~~meet to elect~~] a presiding officer
27 [~~and an assistant presiding officer, who hold office according to~~

1 ~~board rule]~~. The presiding officer serves at the pleasure of the
2 State Health Services Council.

3 (b) The committee may appoint additional officers as
4 necessary.

5 SECTION 13. Section 603.057, Occupations Code, is amended
6 to read as follows:

7 Sec. 603.057. MEETINGS. The committee [board] shall meet
8 subject to the call of the commissioner [hold at least two regular
9 meetings each year as provided by board rule].

10 SECTION 14. Section 603.058, Occupations Code, is amended
11 to read as follows:

12 Sec. 603.058. TRAINING. (a) A person who is appointed to
13 and qualifies for office as a member of the committee may not vote,
14 deliberate, or be counted as a member in attendance at a meeting of
15 the committee until the person completes a training program that
16 complies with this section.

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

19 (1) this chapter and the committee's programs,
20 functions, rules, and budget;

21 (2) the results of the most recent formal audit of the
22 department;

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

26 (4) any applicable ethics policies adopted by the
27 executive commissioner or the Texas Ethics Commission.

1 (c) A person appointed to the committee is entitled to
2 reimbursement, as provided by the General Appropriations Act, for
3 the travel expenses incurred in attending the training program
4 regardless of whether the attendance at the program occurs before
5 or after the person qualifies for office. [~~Each board member shall~~
6 ~~comply with the training requirements established by any state~~
7 ~~agency with authority to establish training requirements for the~~
8 ~~board.]~~

9 SECTION 15. Section 603.101, Occupations Code, is amended
10 to read as follows:

11 Sec. 603.101. EXECUTIVE SECRETARY. The commissioner shall
12 designate a department employee to serve as executive secretary of
13 the committee [~~board~~].

14 SECTION 16. Section 603.102, Occupations Code, is amended
15 to read as follows:

16 Sec. 603.102. EXECUTIVE SECRETARY POWERS AND DUTIES. In
17 addition to performing other duties prescribed by this chapter and
18 by the department, the executive secretary shall:

19 (1) administer licensing activity for the department
20 [~~board~~];

21 (2) keep full and accurate minutes of the committee's
22 [~~board's~~] transactions and proceedings;

23 (3) serve as custodian of the committee's [~~board's~~]
24 files and other records;

25 (4) prepare and recommend to the department [~~board~~]
26 plans and procedures necessary to implement the objectives of this
27 chapter, including rules and proposals on administrative

1 procedure;

2 (5) exercise general supervision over persons
3 employed by the department in the administration of this chapter;

4 (6) investigate complaints and present formal
5 complaints;

6 (7) attend all committee [~~board~~] meetings as a
7 nonvoting participant;

8 (8) handle the committee's [~~board's~~] correspondence;
9 and

10 (9) obtain, assemble, or prepare reports and other
11 information as directed or authorized by the committee [~~board~~].

12 SECTION 17. Section 603.105, Occupations Code, is amended
13 to read as follows:

14 Sec. 603.105. QUALIFICATIONS AND STANDARDS OF CONDUCT
15 INFORMATION. The department [~~board~~] shall provide, as often as
16 necessary, to its [~~members and~~] employees information regarding
17 their:

18 (1) qualifications for office or employment under this
19 chapter; and

20 (2) responsibilities under applicable laws relating
21 to standards of conduct for state officers or employees.

22 SECTION 18. Section 603.106, Occupations Code, is amended
23 to read as follows:

24 Sec. 603.106. CAREER LADDER PROGRAM; PERFORMANCE
25 EVALUATIONS. (a) The commissioner [~~executive secretary~~] shall
26 develop an intra-agency career ladder program. The program must
27 require intra-agency posting of all nonentry level positions

1 concurrently with any public posting.

2 (b) The commissioner [~~executive secretary~~] shall develop a
3 system of annual performance evaluations based on measurable job
4 tasks. All merit pay for department [~~board~~] employees must be based
5 on the system established under this subsection.

6 SECTION 19. Section 603.107(a), Occupations Code, is
7 amended to read as follows:

8 (a) The commissioner [~~executive secretary~~] shall prepare
9 and maintain a written policy statement to ensure implementation of
10 an equal employment opportunity program under which all personnel
11 transactions are made without regard to race, color, disability,
12 sex, religion, age, or national origin. The policy statement must
13 include:

14 (1) personnel policies, including policies relating
15 to recruitment, evaluation, selection, application, training, and
16 promotion, that are in compliance with Chapter 21, Labor Code;

17 (2) a comprehensive analysis of the committee [~~board~~]
18 workforce that meets federal and state guidelines;

19 (3) procedures by which a determination can be made of
20 significant underuse in the committee [~~board~~] workforce of all
21 persons for whom federal or state guidelines encourage a more
22 equitable balance; and

23 (4) reasonable methods to appropriately address those
24 areas of underuse.

25 SECTION 20. Section 603.151, Occupations Code, is amended
26 to read as follows:

27 Sec. 603.151. GENERAL POWERS AND DUTIES OF EXECUTIVE

1 COMMISSIONER [~~BOARD~~]. The executive commissioner [~~board~~] shall:

2 (1) establish the qualifications and fitness of
3 applicants for licenses, including renewed and reciprocal
4 licenses;

5 (2) revoke, suspend, or deny a license, probate a
6 license suspension, or reprimand a license holder for a violation
7 of this chapter, a [~~board~~] rule adopted by the executive
8 commissioner, or the code of ethics adopted by the executive
9 commissioner [~~board~~];

10 (3) spend money necessary to administer the
11 department's [~~board's~~] duties;

12 (4) request and receive necessary assistance from
13 another state agency, including a state educational institution;

14 (5) adopt an official seal; and

15 (6) adopt and publish a code of ethics.

16 SECTION 21. Section 603.152, Occupations Code, is amended
17 to read as follows:

18 Sec. 603.152. GENERAL RULEMAKING AUTHORITY. [~~(a)~~] The
19 executive commissioner [~~board~~] may adopt rules necessary to:

20 (1) regulate the practice of perfusion;

21 (2) enforce this chapter; and

22 (3) [~~govern board proceedings, and~~

23 [~~(4)~~] perform department [~~board~~] duties.

24 [~~(b) In adopting rules, the board shall consider the rules~~
25 ~~and procedures of the Texas Board of Health and the department and~~
26 ~~shall adopt procedural rules consistent with rules and procedures~~
27 ~~of those entities.]~~

1 SECTION 22. Section 603.153, Occupations Code, is amended
2 to read as follows:

3 Sec. 603.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE
4 BIDDING. (a) The executive commissioner [~~board~~] may not adopt a
5 rule restricting advertising or competitive bidding by a person
6 regulated by the department [~~board~~] except to prohibit a false,
7 misleading, or deceptive practice.

8 (b) The executive commissioner [~~board~~] may not include in
9 rules to prohibit a false, misleading, or deceptive practice by a
10 person regulated by the department [~~board~~] a rule that:

11 (1) restricts the person's use of any medium for
12 advertising;

13 (2) restricts the person's personal appearance or use
14 of the person's voice in an advertisement;

15 (3) relates to the size or duration of any
16 advertisement by the person; or

17 (4) restricts the use by the person of a trade name in
18 advertising.

19 SECTION 23. Subchapter D, Chapter 603, Occupations Code, is
20 amended by adding Section 603.1535 to read as follows:

21 Sec. 603.1535. RULES ON CONSEQUENCES OF CRIMINAL
22 CONVICTION. (a) The executive commissioner shall adopt rules
23 necessary to comply with Chapter 53.

24 (b) In rules under this section, the executive commissioner
25 shall list the specific offenses for which a conviction would
26 constitute grounds for the executive commissioner to take action
27 under Section 53.021.

1 SECTION 24. Section 603.154, Occupations Code, is amended
2 to read as follows:

3 Sec. 603.154. FEES. After consulting the commissioner or
4 the department, the executive commissioner [~~board~~] shall set fees
5 in amounts reasonable and necessary to cover the costs of
6 administering this chapter.

7 SECTION 25. Section 603.155, Occupations Code, is amended
8 to read as follows:

9 Sec. 603.155. EXECUTIVE COMMISSIONER AND DEPARTMENT
10 [~~BOARD~~] DUTIES REGARDING COMPLAINTS. (a) The executive
11 commissioner [~~board~~] by rule shall:

12 (1) adopt a form to standardize information concerning
13 complaints made to the department [~~board~~]; and

14 (2) prescribe information to be provided to a person
15 when the person files a complaint with the department [~~board~~].

16 (b) The department [~~board~~] shall provide reasonable
17 assistance to a person who wishes to file a complaint with the
18 department [~~board~~].

19 SECTION 26. Section 603.156, Occupations Code, is amended
20 to read as follows:

21 Sec. 603.156. REGISTRY. The department [~~board~~] shall
22 prepare a registry of licensed perfusionists and provisionally
23 licensed perfusionists that is available to the public, license
24 holders, and appropriate state agencies.

25 SECTION 27. Section 603.157(a), Occupations Code, is
26 amended to read as follows:

27 (a) The department [~~board~~] shall file annually with the

1 governor and the presiding officer of each house of the legislature
2 a complete and detailed written report accounting for all money
3 received and disbursed by the [~~board or the~~] department for the
4 administration of this chapter during the preceding year.

5 SECTION 28. Subchapter D, Chapter 603, Occupations Code, is
6 amended by adding Sections 603.158 and 603.159 to read as follows:

7 Sec. 603.158. USE OF TECHNOLOGY. The executive
8 commissioner shall implement a policy requiring the department to
9 use appropriate technological solutions to improve the
10 department's ability to perform its functions. The policy must
11 ensure that the public is able to interact with the department on
12 the Internet.

13 Sec. 603.159. NEGOTIATED RULEMAKING AND ALTERNATIVE
14 DISPUTE RESOLUTION POLICY. (a) The executive commissioner shall
15 develop and implement a policy to encourage the use of:

16 (1) negotiated rulemaking procedures under Chapter
17 2008, Government Code, for the adoption of rules; and

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

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

27 (c) The commissioner shall designate a trained person to:

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

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

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

8 SECTION 29. Section 603.201, Occupations Code, is amended
9 to read as follows:

10 Sec. 603.201. PUBLIC INTEREST INFORMATION. (a) The
11 department [~~board~~] shall prepare information of consumer interest
12 describing the profession of perfusion, the regulatory functions of
13 the department [~~board~~], and the procedures by which consumer
14 complaints are filed with and resolved by the department [~~board~~].

15 (b) The department [~~board~~] shall make the information
16 available to the public and appropriate state agencies.

17 SECTION 30. Section 603.202, Occupations Code, is amended
18 to read as follows:

19 Sec. 603.202. COMPLAINTS. (a) The executive commissioner
20 [~~board~~] by rule shall establish methods by which consumers and
21 service recipients are notified of the name, mailing address, and
22 telephone number of the department [~~board~~] for the purpose of
23 directing complaints to the department [~~board~~]. The department
24 [~~board~~] may provide for that notice:

25 (1) on each license form, application, or written
26 contract for services of a person licensed under this chapter;

27 (2) on a sign prominently displayed in the place of

1 business of each person licensed under this chapter; or

2 (3) in a bill for services provided by a person
3 licensed under this chapter.

4 (b) The department [~~board~~] shall list with its regular
5 telephone number any toll-free telephone number established under
6 other state law that may be called to present a complaint about a
7 health professional.

8 SECTION 31. Section 603.203, Occupations Code, is amended
9 to read as follows:

10 Sec. 603.203. RECORDS OF COMPLAINTS. (a) The department
11 [~~board~~] shall maintain a system to promptly and efficiently act on
12 complaints filed with the department. The department shall
13 maintain:

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

16 (2) a summary of the results of the review or
17 investigation of the complaint; and

18 (3) information about the disposition of the complaint
19 [~~keep an information file about each complaint filed with the~~
20 ~~board. The information file must be kept current and contain a~~
21 ~~record for each complaint of:~~

22 [~~(1) each person contacted in relation to the~~
23 ~~complaint,~~

24 [~~(2) a summary of findings made at each step of the~~
25 ~~complaint process,~~

26 [~~(3) an explanation of the legal basis and reason for a~~
27 ~~complaint that is dismissed,~~

1 ~~[(4) the schedule established for the complaint under~~
2 ~~Section 603.204(b) and a notation of any change in the schedule,~~
3 ~~and~~

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

5 (b) The department shall make information available
6 describing its procedures for complaint investigation and
7 resolution.

8 (c) The department shall periodically notify the parties of
9 the status of the complaint until final disposition of the
10 complaint [~~If a written complaint is filed with the board that the~~
11 ~~board has authority to resolve, the board, at least quarterly and~~
12 ~~until final disposition of the complaint, shall notify the parties~~
13 ~~to the complaint of the status of the complaint unless notice would~~
14 ~~jeopardize an undercover investigation].~~

15 SECTION 32. Sections 603.204(a), (b), and (d), Occupations
16 Code, are amended to read as follows:

17 (a) The executive commissioner [~~board~~] shall adopt rules
18 concerning the investigation of a complaint filed with the
19 department [~~board~~]. The rules shall:

20 (1) distinguish among categories of complaints;

21 (2) ensure that a complaint is not dismissed without
22 appropriate consideration;

23 (3) require that the executive commissioner [~~board~~] be
24 advised of a complaint that is dismissed and that a letter be sent
25 to the person who filed the complaint explaining the action taken on
26 the dismissed complaint;

27 (4) ensure that the person who filed the complaint has

1 an opportunity to explain the allegations made in the complaint;
2 and

3 (5) prescribe guidelines concerning the categories of
4 complaints that require the use of a private investigator and the
5 procedures for the department [~~board~~] to obtain the services of a
6 private investigator.

7 (b) The department [~~board~~] shall:

8 (1) dispose of each complaint in a timely manner; and

9 (2) establish, not later than the 30th day after the
10 date the department [~~board~~] receives a complaint, a schedule for
11 conducting each phase of the complaint resolution process that is
12 under the control of the department [~~board~~].

13 (d) The executive secretary shall notify the executive
14 commissioner [~~board~~] of a complaint that is not resolved within the
15 time prescribed by the executive commissioner [~~board~~] for resolving
16 the complaint so that the executive commissioner [~~board~~] may take
17 necessary action on the complaint.

18 SECTION 33. Sections 603.2041(a), (c), (e), (f), (h), and
19 (i), Occupations Code, are amended to read as follows:

20 (a) In an investigation of a complaint filed with the
21 department [~~board~~], the department [~~board~~] may request that the
22 commissioner or the commissioner's designee approve the issuance of
23 a subpoena. If the request is approved, the department [~~board~~] may
24 issue a subpoena to compel the attendance of a relevant witness or
25 the production, for inspection or copying, of relevant evidence
26 that is in this state.

27 (c) If a person fails to comply with a subpoena, the

1 department [~~board~~], acting through the attorney general, may file
2 suit to enforce the subpoena in a district court in Travis County or
3 in the county in which a hearing conducted by the department [~~board~~]
4 may be held.

5 (e) The commissioner [~~board~~] may delegate the authority
6 granted under Subsection (a) to the executive secretary of the
7 committee [~~board~~].

8 (f) The department [~~board~~] shall pay a reasonable fee for
9 photocopies subpoenaed under this section in an amount not to
10 exceed the amount the department [~~board~~] may charge for copies of
11 its records.

12 (h) All information and materials subpoenaed or compiled by
13 the department [~~board~~] in connection with a complaint and
14 investigation are confidential and not subject to disclosure under
15 Chapter 552, Government Code, and not subject to disclosure,
16 discovery, subpoena, or other means of legal compulsion for their
17 release to anyone other than the department [~~board~~] or its agents or
18 employees involved in discipline of the holder of a license, except
19 that this information may be disclosed to:

20 (1) persons involved with the department [~~board~~] in a
21 disciplinary action against the holder of a license;

22 (2) professional perfusionist licensing or
23 disciplinary boards in other jurisdictions;

24 (3) peer assistance programs approved by the
25 department [~~board~~] under Chapter 467, Health and Safety Code;

26 (4) law enforcement agencies; and

27 (5) persons engaged in bona fide research, if all

1 individual-identifying information has been deleted.

2 (i) The filing of formal charges by the department [~~board~~]
3 against a holder of a license, the nature of those charges,
4 disciplinary proceedings of the department [~~board~~], and final
5 disciplinary actions, including warnings and reprimands, by the
6 department [~~board~~] are not confidential and are subject to
7 disclosure in accordance with Chapter 552, Government Code.

8 SECTION 34. Section 603.205, Occupations Code, is amended
9 to read as follows:

10 Sec. 603.205. PUBLIC PARTICIPATION. (a) The executive
11 commissioner [~~board~~] shall develop and implement policies that
12 provide the public with a reasonable opportunity to appear before
13 the executive commissioner [~~board~~] and to speak on any issue
14 related to the practice of perfusion [~~under the board's~~
15 ~~jurisdiction~~].

16 (b) The executive commissioner [~~board~~] shall prepare and
17 maintain a written plan that describes how a person who does not
18 speak English or who has a physical, mental, or developmental
19 disability may be provided reasonable access to the department's
20 [~~board's~~] programs.

21 SECTION 35. Section 603.252(b), Occupations Code, is
22 amended to read as follows:

23 (b) The executive commissioner [~~board~~] shall prescribe the
24 application form and by rule may establish dates by which
25 applications and fees must be received.

26 SECTION 36. Section 603.253, Occupations Code, is amended
27 to read as follows:

1 Sec. 603.253. COMPETENCY EXAMINATION. (a) An applicant
2 must pass a competency examination to qualify for a license under
3 this chapter.

4 (b) The department [~~board~~] shall prepare or approve an
5 examination. The department [~~board~~] may prescribe an examination
6 that consists of or includes a written [~~or oral~~] examination given
7 by the American Board of Cardiovascular Perfusion or by a national
8 or state testing service.

9 (c) The department [~~board~~] shall have any written portion of
10 the examination validated by an independent testing professional.

11 (d) The department [~~board~~] shall administer an examination
12 to qualified applicants at least once each calendar year.

13 (e) On receipt of an application and application fee, the
14 department [~~board~~] shall waive the examination requirement for an
15 applicant who, at the time of application:

16 (1) is licensed or certified by another state that has
17 licensing or certification requirements the department [~~board~~]
18 determines to be substantially equivalent to the requirements of
19 this chapter; or

20 (2) holds a certificate as a certified clinical
21 perfusionist issued by the American Board of Cardiovascular
22 Perfusion before January 1, 1994, authorizing the holder to
23 practice perfusion in a state that does not license or certify
24 perfusionists.

25 SECTION 37. Subchapter F, Chapter 603, Occupations Code, is
26 amended by adding Section 603.2535 to read as follows:

27 Sec. 603.2535. JURISPRUDENCE EXAMINATION. (a) An

1 applicant must pass a jurisprudence examination to qualify for a
2 license under this chapter.

3 (b) The department shall develop and administer at least
4 twice each calendar year a jurisprudence examination to determine
5 an applicant's knowledge of this chapter, rules adopted by the
6 executive commissioner, and any other applicable laws of this state
7 affecting the applicant's practice of perfusion.

8 (c) The executive commissioner shall adopt rules to
9 implement this section, including rules related to the development
10 and administration of the examination, examination fees,
11 guidelines for reexamination, grading the examination, and
12 providing notice of examination results.

13 SECTION 38. Section 603.254, Occupations Code, is amended
14 to read as follows:

15 Sec. 603.254. QUALIFICATION FOR EXAMINATION. (a) To
16 qualify for the licensing examinations [~~examination~~] under this
17 chapter, an applicant must have successfully completed a perfusion
18 education program approved by the department [~~board~~].

19 (b) The department [~~board~~] may approve a perfusion
20 education program only if the program has educational standards
21 that are:

22 (1) at least as stringent as those established by the
23 Accreditation Committee for Perfusion Education of the American
24 Medical Association or its successor; and

25 (2) approved by the Commission on Accreditation of the
26 Allied Health Education Program of the American Medical Association
27 or its successor.

1 SECTION 39. Section 603.255(a), Occupations Code, is
2 amended to read as follows:

3 (a) The department shall notify an applicant in writing of
4 the receipt and investigation of the applicant's application and
5 any other relevant evidence relating to qualifications established
6 by an executive commissioner [~~board~~] rule not later than:

7 (1) the 45th day after the date a properly submitted
8 and timely application is received; and

9 (2) the 30th day before the next examination date.

10 SECTION 40. Section 603.257, Occupations Code, is amended
11 to read as follows:

12 Sec. 603.257. REEXAMINATION AND ALTERNATIVES TO
13 EXAMINATION. The executive commissioner [~~board~~] by rule shall
14 establish:

15 (1) a limit on the number of times an applicant who
16 fails an examination may retake the examination;

17 (2) requirements for retaking an examination; and

18 (3) alternative methods of examining competency.

19 SECTION 41. Sections 603.259(a), (c), and (d), Occupations
20 Code, are amended to read as follows:

21 (a) The department [~~board~~] may issue a provisional license
22 to an applicant who files an application, pays an application fee,
23 and submits evidence satisfactory to the department [~~board~~] of
24 successful completion of the education requirement under Section
25 603.254.

26 (c) A provisionally licensed perfusionist must practice
27 under the supervision and direction of a licensed perfusionist

1 while performing perfusion. If the department [~~board~~] finds that a
2 licensed perfusionist is not reasonably available to provide
3 supervision and direction and if the department [~~board~~] approves an
4 application submitted to the department [~~board~~] by the
5 provisionally licensed perfusionist, supervision and direction may
6 be provided by a physician who is licensed by the Texas State Board
7 of Medical Examiners and certified by the American Board of
8 Thoracic Surgeons, Inc., or certified in cardiovascular surgery by
9 the American Osteopathic Board of Surgery.

10 (d) The executive commissioner [~~board~~] may not adopt a rule
11 governing supervision and direction that requires the immediate
12 physical presence of the supervising person.

13 SECTION 42. Section 603.301, Occupations Code, is amended
14 to read as follows:

15 Sec. 603.301. LICENSE RENEWAL. (a) A license is valid for
16 two years [~~one year~~] from the date of issuance and may be renewed
17 biennially [~~annually~~].

18 (b) The executive commissioner [~~Texas Board of Health~~] by
19 rule may adopt a system under which licenses expire on various dates
20 during the year.

21 (c) A person may renew an unexpired license by paying the
22 required renewal fee to the department before the license
23 expiration date.

24 (d) A person whose license has been expired for 90 days or
25 less may renew the license by paying to the department [~~the required~~
26 ~~renewal fee and~~] a fee that is equal to 1-1/4 times [~~half~~] the
27 amount of the renewal fee [~~for the license~~]. If a license has been

1 expired for more than 90 days but less than one year [~~two years~~],
2 the person may renew the license by paying to the department [~~all~~
3 ~~unpaid renewal fees and~~] a fee that is equal to 1-1/2 times the
4 amount of the renewal fee [~~for the license~~].

5 (e) Except as provided by Section 603.303, a person whose
6 license has been expired for one year [~~two years~~] or more may not
7 renew the license. The person may obtain a new license by
8 submitting to reexamination and complying with the requirements and
9 procedures for obtaining an original license.

10 (f) Before the 30th day before a person's license expiration
11 date, the department shall send written notice of the impending
12 license expiration to the person at the person's last known address
13 according to department [~~board~~] records.

14 SECTION 43. Section 603.303, Occupations Code, is amended
15 to read as follows:

16 Sec. 603.303. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE
17 PRACTITIONER. (a) The department [~~board~~] may renew without
18 reexamination an expired license of a person who was licensed as a
19 perfusionist in this state, moved to another state, and is licensed
20 or certified and has been in practice in the other state for the two
21 years preceding the date the person applies for renewal.

22 (b) The person must pay to the department [~~board~~] a fee that
23 is equal to the amount of the renewal [~~examination~~] fee for the
24 license.

25 SECTION 44. Section 603.304, Occupations Code, is amended
26 to read as follows:

27 Sec. 603.304. CONTINUING EDUCATION. (a) To renew a license

1 under this chapter, a person must submit proof satisfactory to the
2 department [~~board~~] that the person has complied with the continuing
3 education requirements prescribed by the department [~~board~~].

4 (b) The executive commissioner [~~board~~] shall establish
5 continuing education programs for licensed perfusionists and
6 provisionally licensed perfusionists under this chapter. The
7 standards of the programs must be at least as stringent as the
8 standards of the American Board of Cardiovascular Perfusion or its
9 successor.

10 (c) The executive commissioner [~~board~~] shall:

11 (1) establish a minimum number of hours of continuing
12 education required for license renewal under this chapter; and

13 (2) develop a process to evaluate and approve
14 continuing education courses.

15 (d) The executive commissioner [~~board~~] shall identify key
16 factors for a license holder's competent performance of
17 professional duties. The executive commissioner [~~board~~] shall
18 adopt a procedure to assess a license holder's participation in
19 continuing education programs.

20 SECTION 45. Subchapter G, Chapter 603, Occupations Code, is
21 amended by adding Section 603.305 to read as follows:

22 Sec. 603.305. GROUNDS FOR REFUSING RENEWAL. The department
23 may refuse to renew the license of a person who fails to pay an
24 administrative penalty imposed under Subchapter K unless
25 enforcement of the penalty is stayed or a court has ordered that the
26 administrative penalty is not owed.

27 SECTION 46. Section 603.353, Occupations Code, is amended

1 to read as follows:

2 Sec. 603.353. SURRENDER OF LICENSE. A license certificate
3 issued by the department [~~board~~] is the property of the department
4 [~~board~~] and shall be surrendered on demand.

5 SECTION 47. Section 603.401, Occupations Code, is amended
6 to read as follows:

7 Sec. 603.401. GROUNDS FOR DISCIPLINARY ACTION. If a
8 license holder violates this chapter or a rule or code of ethics
9 adopted by the executive commissioner [~~board~~], the department
10 [~~board~~] shall:

- 11 (1) revoke or suspend the license;
- 12 (2) place on probation the person if the person's
13 license has been suspended; [~~or~~]
- 14 (3) reprimand the license holder; or
- 15 (4) refuse to renew the license.

16 SECTION 48. Section 603.402, Occupations Code, is amended
17 to read as follows:

18 Sec. 603.402. HEARING. (a) If the department [~~board~~]
19 proposes to revoke, [~~or~~] suspend, or refuse to renew a person's
20 license, the person is entitled to a hearing before a hearings
21 officer appointed by the State Office of Administrative Hearings.

22 (b) The executive commissioner [~~board~~] shall prescribe
23 procedures for appealing to the commissioner [~~board~~] a decision to
24 revoke, [~~or~~] suspend, or refuse to renew a license.

25 SECTION 49. Section 603.403, Occupations Code, is amended
26 to read as follows:

27 Sec. 603.403. ADMINISTRATIVE PROCEDURE. A proceeding under

1 this subchapter to suspend, ~~[or]~~ revoke, or refuse to renew a
2 license is governed by Chapter 2001, Government Code.

3 SECTION 50. Section 603.404(a), Occupations Code, is
4 amended to read as follows:

5 (a) The executive commissioner ~~[board]~~ by rule shall adopt a
6 broad schedule of sanctions for a violation of this chapter.

7 SECTION 51. Section 603.405, Occupations Code, is amended
8 to read as follows:

9 Sec. 603.405. PROBATION. The department ~~[board]~~ may
10 require a person whose license suspension is probated to:

11 (1) report regularly to the department ~~[board]~~ on
12 matters that are the basis of the probation;

13 (2) limit practice to areas prescribed by the
14 department ~~[board]~~; or

15 (3) continue the person's professional education until
16 the license holder attains a degree of skill satisfactory to the
17 department ~~[board]~~ in those areas that are the basis of the
18 probation.

19 SECTION 52. Section 603.406, Occupations Code, is amended
20 to read as follows:

21 Sec. 603.406. MONITORING OF LICENSE HOLDER. (a) The
22 executive commissioner ~~[board]~~ by rule shall develop a system for
23 monitoring a license holder's compliance with the requirements of
24 this chapter.

25 (b) Rules adopted under this section must include
26 procedures to:

27 (1) monitor for compliance a license holder who is

1 ordered by the department [~~board~~] to perform certain acts; and

2 (2) identify and monitor license holders who represent
3 a risk to the public.

4 SECTION 53. Section 603.407, Occupations Code, is amended
5 to read as follows:

6 Sec. 603.407. INFORMAL PROCEDURES. (a) The executive
7 commissioner [~~board~~] by rule shall adopt procedures governing:

8 (1) informal disposition of a contested case under
9 Section 2001.056, Government Code; and

10 (2) an informal proceeding held in compliance with
11 Section 2001.054, Government Code.

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

13 (1) provide the complainant and the license holder an
14 opportunity to be heard; and

15 (2) require the presence of a representative of the
16 attorney general or the department's [~~board's~~] legal counsel to
17 advise the department [~~board~~] or the department's [~~board's~~]
18 employees.

19 SECTION 54. Section 603.408(a), Occupations Code, is
20 amended to read as follows:

21 (a) The department [~~board or a three-member committee of~~
22 ~~board members designated by the board~~] shall temporarily suspend
23 the license of a license holder if the department [~~board or~~
24 ~~committee~~] determines from the evidence or information presented to
25 it that continued practice by the license holder would constitute a
26 continuing and imminent threat to the public welfare.

27 SECTION 55. Subchapter I, Chapter 603, Occupations Code, is

1 amended by adding Section 603.409 to read as follows:

2 Sec. 603.409. REFUND. (a) Subject to Subsection (b), the
3 department may order a license holder to pay a refund to a consumer
4 as provided in an agreement resulting from an informal settlement
5 conference instead of or in addition to imposing an administrative
6 penalty under this chapter.

7 (b) The amount of a refund ordered as provided in an
8 agreement resulting from an informal settlement conference may not
9 exceed the amount the consumer paid to the license holder for a
10 service regulated by this chapter. The department may not require
11 payment of other damages or estimate harm in a refund order.

12 SECTION 56. Section 603.451(a), Occupations Code, is
13 amended to read as follows:

14 (a) The department [~~board~~] may request the attorney general
15 or the appropriate county or district attorney to commence an
16 action to enjoin a violation of this chapter.

17 SECTION 57. Section 603.4515, Occupations Code, is amended
18 to read as follows:

19 Sec. 603.4515. CIVIL PENALTY. (a) A person who violates
20 this chapter or a rule or order adopted by the executive
21 commissioner [~~board~~] under this chapter is liable for a civil
22 penalty not to exceed \$5,000 a day.

23 (b) At the request of the department [~~board~~], the attorney
24 general shall bring an action to recover a civil penalty authorized
25 under this section.

26 SECTION 58. Subchapter J, Chapter 603, Occupations Code, is
27 amended by adding Section 603.453 to read as follows:

1 Sec. 603.453. CEASE AND DESIST ORDER. (a) If it appears to
2 the commissioner that a person who is not licensed under this
3 chapter is violating this chapter, a rule adopted under this
4 chapter, or another state statute or rule relating to the practice
5 of perfusion, the commissioner after notice and an opportunity for
6 a hearing may issue a cease and desist order prohibiting the person
7 from engaging in the activity.

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

10 SECTION 59. Section 603.501, Occupations Code, is amended
11 to read as follows:

12 Sec. 603.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The
13 department [board] may impose an administrative penalty on a person
14 licensed under this chapter who violates this chapter or a rule or
15 order adopted under this chapter.

16 SECTION 60. Section 603.502, Occupations Code, is amended
17 by adding Subsection (c) to read as follows:

18 (c) The executive commissioner by rule shall adopt an
19 administrative penalty schedule based on the criteria listed in
20 Subsection (b) for violations of this chapter or applicable rules
21 to ensure that the amounts of penalties imposed are appropriate to
22 the violation. The executive commissioner shall provide the
23 administrative penalty schedule to the public on request.

24 SECTION 61. Section 603.503(a), Occupations Code, is
25 amended to read as follows:

26 (a) If the commissioner or the commissioner's designee
27 determines that a violation occurred, the commissioner or the

1 designee may issue to the department [~~board~~] a report stating:

2 (1) the facts on which the determination is based; and

3 (2) the commissioner's or the designee's
4 recommendation on the imposition of an administrative penalty,
5 including a recommendation on the amount of the penalty.

6 SECTION 62. Section 603.504(b), Occupations Code, is
7 amended to read as follows:

8 (b) If the person accepts the determination and recommended
9 penalty of the commissioner or the commissioner's designee, the
10 executive commissioner [~~board~~] by order shall approve the
11 determination and impose the recommended penalty.

12 SECTION 63. Section 603.505(c), Occupations Code, is
13 amended to read as follows:

14 (c) The administrative law judge shall make findings of fact
15 and conclusions of law and promptly issue to the executive
16 commissioner [~~board~~] a proposal for a decision about the occurrence
17 of the violation and the amount of a proposed administrative
18 penalty.

19 SECTION 64. Section 603.506, Occupations Code, is amended
20 to read as follows:

21 Sec. 603.506. DECISION BY EXECUTIVE COMMISSIONER [~~BOARD~~].

22 (a) Based on the findings of fact, conclusions of law, and proposal
23 for decision, the executive commissioner [~~board~~] by order may
24 determine that:

25 (1) a violation occurred and impose an administrative
26 penalty; or

27 (2) a violation did not occur.

1 (b) The notice of the executive commissioner's [~~board's~~]
2 order given to the person must include a statement of the right of
3 the person to judicial review of the order.

4 SECTION 65. Sections 603.507(a) and (b), Occupations Code,
5 are amended to read as follows:

6 (a) Within 30 days after the date the executive
7 commissioner's [~~board's~~] order becomes final, the person shall:

- 8 (1) pay the administrative penalty; or
9 (2) file a petition for judicial review contesting the
10 occurrence of the violation, the amount of the penalty, or both.

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

- 13 (1) stay enforcement of the penalty by:
14 (A) paying the penalty to the court for placement
15 in an escrow account; or
16 (B) giving the court a supersedeas bond approved
17 by the court that:

- 18 (i) is for the amount of the penalty; and
19 (ii) is effective until all judicial review
20 of the executive commissioner's [~~board's~~] order is final; or

21 (2) request the court to stay enforcement of the
22 penalty by:

- 23 (A) filing with the court a sworn affidavit of
24 the person stating that the person is financially unable to pay the
25 penalty and is financially unable to give the supersedeas bond; and

26 (B) giving a copy of the affidavit to the
27 commissioner or the commissioner's designee by certified mail.

1 SECTION 66. Sections 603.103(b) and 603.104, Occupations
2 Code, are repealed.

3 SECTION 67. (a) The Texas State Board of Examiners of
4 Perfusionists is abolished on the effective date of this Act.

5 (b) As soon as possible after the effective date of this
6 Act, the State Health Services Council shall appoint the members of
7 the Texas State Perfusionist Advisory Committee as provided by
8 Section 603.051, Occupations Code, as amended by this Act. In
9 making initial appointments to the committee, the State Health
10 Services Council shall designate one member for a term expiring
11 February 1, 2007, two members for terms expiring February 1, 2009,
12 and two members for terms expiring February 1, 2011.

13 SECTION 68. (a) Not later than January 1, 2006, the
14 executive commissioner of the Health and Human Services Commission
15 shall:

16 (1) adopt the policies required by Sections 603.158
17 and 603.159, Occupations Code, as added by this Act; and

18 (2) adopt the rules required by Chapter 603,
19 Occupations Code, as amended by this Act.

20 (b) Not later than March 1, 2006, the Department of State
21 Health Services shall develop the jurisprudence examination
22 required by Section 603.2535, Occupations Code, as added by this
23 Act.

24 SECTION 69. (a) The changes in law made by this Act related
25 to the filing or investigation of a complaint under Chapter 603,
26 Occupations Code, as amended by this Act, apply only to a complaint
27 filed with the Department of State Health Services on or after the

1 effective date of this Act. A complaint filed before the effective
2 date of this Act is governed by the law as it existed immediately
3 before that date, and the former law is continued in effect for that
4 purpose.

5 (b) The changes in law made by this Act governing the
6 eligibility of a person for a license under Chapter 603,
7 Occupations Code, apply only to an application for a license filed
8 with the Department of State Health Services under Chapter 603,
9 Occupations Code, as amended by this Act, on or after the effective
10 date of this Act. A license application filed before the effective
11 date of this Act is governed by the law in effect at the time the
12 application was filed, and the former law is continued in effect for
13 that purpose.

14 (c) The change in law made by this Act with respect to
15 conduct that is grounds for imposition of a disciplinary sanction,
16 including a refund or a cease and desist order, applies only to
17 conduct that occurs on or after the effective date of this Act.
18 Conduct that occurs before the effective date of this Act is
19 governed by the law in effect on the date the conduct occurred, and
20 the former law is continued in effect for that purpose.

21 (d) The change in law made by Section 603.2535, Occupations
22 Code, as added by this Act, regarding the jurisprudence
23 examination, applies only to an application for a license filed
24 with the Department of State Health Services under Chapter 603,
25 Occupations Code, as amended by this Act, on or after September 1,
26 2006.

27 SECTION 70. Notwithstanding Section 603.301, Occupations

1 Code, as amended by this Act, the fees for an applicant renewing an
2 expired license under Chapter 603, Occupations Code, before
3 September 1, 2007, are governed by the law in effect immediately
4 before the effective date of this Act, and the former law is
5 continued in effect for that purpose. An applicant who renews an
6 expired license under Chapter 603, Occupations Code, on or after
7 September 1, 2007, is subject to the fees provided by Section
8 603.301, Occupations Code, as amended by this Act.

9 SECTION 71. This Act takes effect September 1, 2005.