

By: Jackson

S.B. No. 406

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 501.005, Occupations Code, is amended to read as follows:

Sec. 501.005. APPLICATION OF SUNSET ACT. The Texas State Board of Examiners of Psychologists is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017 [~~2005~~].

SECTION 2. Section 501.053, Occupations Code, is amended to read as follows:

Sec. 501.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~7~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person [~~An officer, employee, or paid consultant of a Texas trade association in the field of health services~~] may not be a member [~~or employee~~] of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional

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

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

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

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

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

25 SECTION 3. Sections 501.055(a) and (c), Occupations Code,
26 are amended to read as follows:

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

1 (1) does not have at the time of taking office
2 [~~appointment~~] the qualifications required by Sections 501.051 and
3 501.052;

4 (2) does not maintain during [~~the member's~~] service on
5 the board the qualifications required by Sections 501.051 and
6 501.052;

7 (3) is ineligible for membership under [~~violates a~~
8 ~~prohibition established by~~] Section 501.053;

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

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

16 (c) If the executive director has knowledge that a potential
17 ground for removal exists [~~may exist~~], the executive director shall
18 notify the presiding officer of the board of the potential ground.
19 The presiding officer [~~On a determination that a potential ground~~
20 ~~for removal exists, the board~~] shall then notify the governor and
21 the attorney general that a potential ground for removal exists. If
22 the potential ground for removal involves the presiding officer,
23 the executive director shall notify the next highest ranking
24 officer of the board, who shall then notify the governor and the
25 attorney general that a potential ground for removal exists.

26 SECTION 4. Section 501.057(a), Occupations Code, is amended
27 to read as follows:

1 (a) The governor shall designate a member of the board as
2 the presiding officer of the board to serve in that capacity at the
3 pleasure of the governor. The board shall hold an annual meeting
4 during which the board shall select from its members [~~a presiding~~
5 ~~officer and~~] an assistant presiding officer.

6 SECTION 5. Section 501.059, Occupations Code, is amended to
7 read as follows:

8 Sec. 501.059. TRAINING PROGRAM FOR MEMBERS. (a) A person
9 who is appointed to and qualifies for office as [~~Before~~] a [~~board~~]
10 member of the board may not vote, deliberate, or be counted as a
11 member in attendance at a meeting of [~~assume the member's duties or~~
12 ~~be confirmed by the senate, the member must complete at least one~~
13 ~~course of the training program established by~~] the board until the
14 person completes a training program that complies with [~~under~~] this
15 section.

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

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

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

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

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

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

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

27 (3) [~~(7)~~] the requirements of laws relating to open

1 meetings, public information, administrative procedure, and
2 conflicts of interest [~~Chapters 551, 552, and 2001, Government~~
3 ~~Code,~~

4 ~~(8) the requirements of the conflict of interest laws~~
5 ~~and other laws relating to public officials]; and~~

6 (4) [(9)] any applicable ethics policies adopted by
7 the board or the Texas Ethics Commission.

8 (c) A person appointed to the board is entitled to
9 reimbursement, as provided by the General Appropriations Act, for
10 the travel expenses incurred in attending the training program
11 regardless of whether the attendance at the program occurs before
12 or after the person qualifies for office. [~~In developing the~~
13 ~~program, the board shall consult with the governor, attorney~~
14 ~~general, and Texas Ethics Commission.~~

15 [~~(d) If another state agency or entity is authorized to~~
16 ~~establish the training requirements for board members, the board~~
17 ~~shall adopt that training instead of developing its own program.]~~

18 SECTION 6. Section 501.103, Occupations Code, is amended to
19 read as follows:

20 Sec. 501.103. DIVISION OF RESPONSIBILITIES. The board
21 shall develop and implement policies that clearly separate [~~define~~
22 the policymaking [~~respective~~] responsibilities of the board and the
23 management responsibilities of the executive director and the staff
24 of the board.

25 SECTION 7. Subchapter D, Chapter 501, Occupations Code, is
26 amended by adding Section 501.160 to read as follows:

27 Sec. 501.160. USE OF TECHNOLOGY. The board shall implement

1 a policy requiring the use of appropriate technological solutions
2 to improve the board's ability to perform its functions. The policy
3 must ensure that the public is able to interact with the board on
4 the Internet.

5 SECTION 8. Subchapter D, Chapter 501, Occupations Code, is
6 amended by adding Section 501.161 to read as follows:

7 Sec. 501.161. NEGOTIATED RULEMAKING AND ALTERNATIVE
8 DISPUTE RESOLUTION. (a) The board shall develop and implement a
9 policy to encourage the use of:

10 (1) negotiated rulemaking procedures under Chapter
11 2008, Government Code, for the adoption of board rules; and

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

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

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

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

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

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

1 SECTION 9. Subchapter D, Chapter 501, Occupations Code, is
2 amended by adding Section 501.162 to read as follows:

3 Sec. 501.162. DEVELOPMENT OF PROPOSED RULES. (a) This
4 section applies to the process by which the board develops proposed
5 rules before the proposed rules are published in the Texas Register
6 and before the board complies with the rulemaking requirements of
7 the administrative procedure law, Chapter 2001, Government Code.
8 This section does not affect the duty of the board to comply with
9 the rulemaking requirements of that law.

10 (b) The board shall establish methods under which the board,
11 to the extent appropriate, will seek input early in the rule
12 development process from the public and from persons who will be
13 most affected by a proposed rule. Methods shall include
14 identifying persons who will be most affected and soliciting, at a
15 minimum, the advice and opinions of those persons.

16 (c) Methods may include negotiated rulemaking, informal
17 conferences, advisory committees, and any other appropriate
18 method.

19 (d) A rule adopted by the board may not be challenged on the
20 grounds that the board did not comply with this section. If the
21 board was unable to solicit a significant amount of advice and
22 opinion from the public or from affected persons early in the rule
23 development process, the board shall state in writing the reasons
24 why the board was unable to do so.

25 SECTION 10. Section 501.201(a), Occupations Code, is
26 amended to read as follows:

27 (a) The board shall prepare information of public interest

1 describing the functions of the board [~~and the procedures by which~~
2 ~~complaints are filed with and resolved by the board~~].

3 SECTION 11. Section 501.203, Occupations Code, is amended
4 to read as follows:

5 Sec. 501.203. INFORMATION ABOUT COMPLAINT ACTIONS [~~RECORDS~~
6 ~~OF COMPLAINTS~~]. (a) The board shall maintain a system to promptly
7 and efficiently act on complaints filed with the board. The board
8 shall maintain information about parties to a complaint, the
9 subject matter of the complaint, a summary of the results of the
10 review or investigation of the complaint, and the disposition of
11 the complaint [~~keep an information file about each complaint~~
12 ~~relating to a license holder filed with the board. The information~~
13 ~~file must be kept current and contain a record for each complaint~~
14 ~~of:~~

- 15 [~~(1) each person contacted regarding the complaint,~~
16 [~~(2) a summary of findings made at each step of the~~
17 ~~complaint process,~~
18 [~~(3) an explanation of the legal basis and reason for~~
19 ~~dismissing a complaint,~~
20 [~~(4) the schedule established for the complaint under~~
21 ~~Section 501.204 and a notation of any change in the schedule, and~~
22 [~~(5) other relevant information~~].

23 (b) The board shall make information available describing
24 its procedures for complaint investigation and resolution.

25 (c) The board shall periodically notify the complaint
26 parties of the status of the complaint [~~If a written complaint is~~
27 ~~filed with the board that the board has authority to resolve, the~~

1 ~~board, at least quarterly and] until final disposition [of the~~
2 ~~complaint, shall notify the parties to the complaint of the status~~
3 ~~of the complaint unless the notice would jeopardize an undercover~~
4 ~~investigation].~~

5 (d) The board shall analyze complaints filed with the board
6 to identify any trends or issues related to certain violations,
7 including:

8 (1) the reason for each complaint;

9 (2) how each complaint was resolved; and

10 (3) the subject matter of each complaint that was not
11 within the jurisdiction of the board and how the board responded to
12 the complaint.

13 SECTION 12. Section 501.204, Occupations Code, is amended
14 by adding Subsection (e) to read as follows:

15 (e) The board shall assign priorities and investigate
16 complaints based on:

17 (1) the severity of the conduct alleged in the
18 complaint; and

19 (2) the degree of harm to public health and safety.

20 SECTION 13. Section 501.253, Occupations Code, is amended
21 by amending Subsection (b) and adding Subsections (e) and (f) to
22 read as follows:

23 (b) A provisional license holder is entitled to practice
24 psychology under the supervision of a psychologist to meet the
25 requirements for issuance of a license under Section 501.252. A
26 provisional license holder who is licensed in another state to
27 independently practice psychology and is in good standing in that

1 state and who seeks a license in this state is entitled to practice
2 psychology without the supervision of a psychologist during the
3 time that the board is processing the person's application for a
4 license.

5 (e) The board may not restrict the issuance of a license or
6 provisional license to an applicant who is licensed in another
7 state to independently practice psychology and is in good standing
8 in that state based on the number of years the applicant has been
9 licensed in good standing in that state.

10 (f) If an applicant who is licensed in another state to
11 independently practice psychology and is in good standing in that
12 state presents credentials from a national accreditation
13 organization to the board and the board determines that the
14 requirements for obtaining those credentials from that
15 organization are sufficient to protect the public, the board may
16 issue a provisional license to the applicant. An applicant who
17 obtains a provisional license under this subsection must have
18 passed the examination described by Section 501.256(b)(2).

19 SECTION 14. Section 501.256, Occupations Code, is amended
20 by amending Subsections (a) and (b) and adding Subsection (f) to
21 read as follows:

22 (a) The board shall administer to qualified applicants at
23 least annually the [~~oral and~~] written examination required by board
24 rules. The board shall have the [~~written portion of the~~]
25 examination[~~, if any,~~] validated by an independent testing
26 professional.

27 (b) The board shall determine the subject and scope of the

1 written examination [~~examinations~~] and establish an appropriate
2 fee [~~fees~~] for examinations administered. The examination must
3 test the applicant's knowledge of:

- 4 (1) the discipline and profession of psychology; and
5 (2) the laws and rules governing the profession of
6 psychology in this state.

7 (f) The board may not require an oral examination under this
8 section.

9 SECTION 15. Section 501.259(a), Occupations Code, is
10 amended to read as follows:

11 (a) The board [~~, with the advice of the Psychological~~
12 ~~Associate Advisory Committee,~~] shall set standards for the issuance
13 of licenses to psychological personnel who hold a master's degree
14 from an accredited university or college in a program that is
15 primarily psychological in nature.

16 SECTION 16. Sections 501.263(a) and (b), Occupations Code,
17 are amended to read as follows:

18 (a) The board may issue a temporary license to an applicant
19 seeking to practice in this state for a limited time and limited
20 purpose [~~a permanent license, including a person seeking a license~~
21 ~~by reciprocity under Section 501.262,~~] if the applicant:

- 22 (1) pays the required application fee;
23 (2) submits an application to the board in the form
24 prescribed by the board;

25 (3) is licensed, certified, or registered as a
26 psychologist or psychological associate by another state having
27 requirements substantially equal to those prescribed by this

1 chapter;

2 (4) is in good standing with the regulatory agency of
3 the jurisdiction in which the person is licensed, certified, or
4 registered;

5 (5) is supervised by a person licensed by the board
6 under this chapter with whom the temporary license holder may
7 consult during the time the person holds a temporary license; and

8 (6) [(5)] has passed an examination recognized by the
9 board as equivalent to the examination required by the board for a
10 permanent license under this chapter.

11 (b) A temporary license is valid only for the period
12 specified by the board and for the limited purpose approved by the
13 board [~~until the earlier of:~~

14 [~~(1) the date the board approves or denies the~~
15 ~~temporary license holder's application for a permanent license; or~~

16 [~~(2) the first anniversary of the date the board~~
17 ~~issues the temporary license if no action is taken by the board]~~.

18 SECTION 17. Section 501.302(b), Occupations Code, is
19 amended to read as follows:

20 (b) A person whose license has been expired for 90 days or
21 less may renew the license by paying to the board the required
22 renewal fee and a fee in an amount [~~that is~~] equal to half of the
23 amount of the renewal [~~examination~~] fee that is set by the board
24 under Section 501.152 [~~for the license~~]. A person whose license has
25 been expired for more than 90 days but less than one year may renew
26 the license by paying to the board all unpaid renewal fees and a fee
27 in an amount [~~that is~~] equal to the amount of the renewal

1 ~~[examination]~~ fee that is set by the board under Section 501.152
2 ~~[for the license]~~.

3 SECTION 18. Section 501.303(b), Occupations Code, is
4 amended to read as follows:

5 (b) The person must pay to the board a fee that is equal to
6 the amount of the renewal ~~[examination]~~ fee for the license under
7 Section 501.153.

8 SECTION 19. Section 501.404, Occupations Code, is amended
9 to read as follows:

10 Sec. 501.404. SCHEDULE OF SANCTIONS. (a) The board by rule
11 shall adopt a ~~[broad]~~ schedule of the disciplinary sanctions that
12 the board may impose under this chapter. In adopting the schedule
13 of sanctions, the board shall ensure that the severity of the
14 sanction imposed is appropriate to the type of violation or conduct
15 that is the basis for disciplinary action ~~[for violations under~~
16 ~~this chapter]~~.

17 (b) In determining the appropriate disciplinary action,
18 including the amount of any administrative penalty to assess, the
19 board shall consider whether the person:

20 (1) is being disciplined for multiple violations of
21 either this chapter or a rule or order adopted under this chapter;
22 or

23 (2) has previously been the subject of disciplinary
24 action by the board.

25 (c) In the case of a person described by:

26 (1) Subsection (b)(1), the board shall consider taking
27 a more severe disciplinary action, including revocation of the

1 person's license, than the disciplinary action that would be taken
2 for a single violation; and

3 (2) Subsection (b)(2), the board shall consider taking
4 a more severe disciplinary action, including revocation of the
5 person's license, than the disciplinary action that would be taken
6 for a person who has not previously been the subject of disciplinary
7 action by the board.

8 (d) The State Office of Administrative Hearings shall use
9 the schedule for any sanction imposed as the result of a hearing
10 conducted by that office.

11 SECTION 20. Section 501.410(b), Occupations Code, is
12 amended to read as follows:

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

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

16 (2) require the presence of a member of the board's
17 legal staff, if the board has a legal staff, or, if the board does
18 not have a legal staff, a representative of the attorney general's
19 office to advise the board or board employees; and

20 (3) require the presence of at least one public member
21 of the board.

22 SECTION 21. Subchapter K, Chapter 501, Occupations Code, is
23 amended by adding Section 501.505 to read as follows:

24 Sec. 501.505. OPTION TO ORDER REFUND. (a) Under an
25 agreement resulting from an informal settlement conference, the
26 board may order a license holder to refund to the person who paid
27 for the psychological services at issue an amount not to exceed the

1 amount the person paid to the license holder for a service regulated
2 by this chapter instead of or in addition to imposing an
3 administrative penalty under this chapter.

4 (b) The board may not include an estimation of other damages
5 or harm in a refund order.

6 SECTION 22. Article 60.061(a), Code of Criminal Procedure,
7 is amended to read as follows:

8 (a) The Texas State Board of Medical Examiners, the Texas
9 State Board of Podiatric Medical Examiners, the State Board of
10 Dental Examiners, the Texas State Board of Pharmacy, the Texas
11 State Board of Examiners of Psychologists, and the State Board of
12 Veterinary Medical Examiners shall provide to the Department of
13 Public Safety through electronic means, magnetic tape, or disk, as
14 specified by the department, a list including the name, date of
15 birth, and any other personal descriptive information required by
16 the department for each person licensed by the respective agency.
17 Each agency shall update this information and submit to the
18 Department of Public Safety the updated information quarterly.

19 SECTION 23. Subchapter H, Chapter 501, Occupations Code, is
20 repealed.

21 SECTION 24. The Psychological Associate Advisory Committee
22 is abolished.

23 SECTION 25. The changes in law made by this Act to Section
24 501.053, Occupations Code, do not affect the entitlement of a
25 member serving on the Texas State Board of Examiners of
26 Psychologists immediately before September 1, 2005, to continue to
27 serve and function as a member of the Texas State Board of Examiners

1 of Psychologists for the remainder of the term the member is serving
2 on that date. Those changes in law apply only to a member appointed
3 on or after September 1, 2005.

4 SECTION 26. This Act takes effect September 1, 2005.