

By: Shapleigh

S.B. No. 413

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the continuation and functions of the Texas State Board
3 of Examiners of Dietitians.

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

5 SECTION 1. Sections 701.002(1) and (2), Occupations Code,
6 are amended to read as follows:

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

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

11 SECTION 2. Section 701.003, Occupations Code, is amended to
12 read as follows:

13 Sec. 701.003. APPLICATION OF SUNSET ACT. The Texas State
14 Board of Examiners of Dietitians is subject to Chapter 325,
15 Government Code (Texas Sunset Act). Unless continued in existence
16 as provided by that chapter, the board is abolished September 1,
17 2017 [~~2005~~].

18 SECTION 3. Section 701.053, Occupations Code, is amended to
19 read as follows:

20 Sec. 701.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
21 In this section, "Texas trade association" means a [~~nonprofit~~]
22 cooperative[~~7~~] and voluntarily joined statewide association of
23 business or professional competitors in this state designed to
24 assist its members and its industry or profession in dealing with

1 mutual business or professional problems and in promoting their
2 common interest.

3 (b) A person [~~An officer, employee, or paid consultant of a~~
4 ~~Texas trade association in the field of dietetics~~] may not be a
5 dietitians board member and may not be an employee of the department
6 employed in a "bona fide executive, administrative, or professional
7 capacity," as that phrase is used for purposes of establishing an
8 exemption to the overtime provisions of the federal Fair Labor
9 Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

10 (1) the person is an officer, employee, or paid
11 consultant of a Texas trade association in the field of dietetics;
12 or

13 (2) the person's spouse is [~~board who is exempt from~~
14 ~~the state's position classification plan or is compensated at or~~
15 ~~above the amount prescribed by the General Appropriations Act for~~
16 ~~step 1, salary group A17, of the position classification salary~~
17 ~~schedule.~~

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

25 (c) [~~(d)~~] A person may not be [~~serve as~~] a member of the
26 dietitians board or act as the general counsel to the board or the
27 department if the person is required to register as a lobbyist under

1 Chapter 305, Government Code, because of the person's activities
2 for compensation on behalf of a profession related to the operation
3 of the board.

4 SECTION 4. Sections 701.055(a) and (c), Occupations Code,
5 are amended to read as follows:

6 (a) It is a ground for removal from the dietitians board
7 that a member:

8 (1) does not have at the time of taking office
9 [~~appointment~~] the qualifications required by Section 701.051(a)
10 [~~for appointment to the board~~];

11 (2) does not maintain during service on the board the
12 qualifications required by Section 701.051(a) [~~for appointment to~~
13 ~~the board~~];

14 (3) is ineligible for membership under Section 701.052
15 or 701.053 [~~violates a prohibition established by this chapter~~];

16 (4) cannot, because of illness or disability,
17 discharge the member's duties for a substantial part of the member's
18 term; or

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

23 (c) If the executive secretary has knowledge that a
24 potential ground for removal exists, the executive secretary shall
25 notify the presiding officer of the dietitians board of the ground.
26 The presiding officer shall then notify the governor and the
27 attorney general that a potential ground for removal exists. If the

1 potential ground for removal involves the presiding officer, the
2 executive secretary shall notify the assistant presiding officer,
3 who shall then notify the governor and the attorney general that a
4 potential ground for removal exists.

5 SECTION 5. The heading to Section 701.056, Occupations
6 Code, is amended to read as follows:

7 Sec. 701.056. [~~PER DIEM,~~] REIMBURSEMENT.

8 SECTION 6. Section 701.056(b), Occupations Code, is amended
9 to read as follows:

10 (b) A member is entitled to reimbursement for travel
11 [~~transportation~~] expenses as provided by the General
12 Appropriations Act.

13 SECTION 7. Section 701.057, Occupations Code, is amended to
14 read as follows:

15 Sec. 701.057. OFFICERS. (a) The governor shall designate a
16 member of the dietitians board as the presiding officer of the board
17 to serve in that capacity at the pleasure of the governor.

18 (b) Not later than the 30th day after the date the governor
19 appoints new board members, the dietitians board shall meet to
20 elect an [a presiding officer and] assistant presiding officer, who
21 holds [hold] office according to board rules.

22 SECTION 8. Sections 701.059(a), (b), and (c), Occupations
23 Code, are amended to read as follows:

24 (a) A person who is appointed to and qualifies for office as
25 a member of the dietitians board may not vote, deliberate, or be
26 counted as a member in attendance at a meeting of the board until
27 the person completes [Before a dietitians board member may assume

1 ~~the member's duties and before the member may be confirmed by the~~
2 ~~senate, the member must complete at least one course of]~~ a training
3 program that complies with ~~[established by the board under]~~ this
4 section.

5 (b) The training program ~~[established by the dietitians~~
6 ~~board]~~ must provide the person with information ~~[to a participant]~~
7 regarding:

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

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

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

17 (3) ~~[(7)]~~ the requirements of laws relating to open
18 meetings, public information, administrative procedure, and
19 conflicts-of-interest ~~[Chapters 551, 552, 2001, and 2002,~~
20 ~~Government Code,~~

21 ~~[(8) the requirements of the conflict of interest laws~~
22 ~~and other laws relating to public officials]; and~~

23 (4) ~~[(9)]~~ any applicable ethics policies adopted by
24 the board or the Texas Ethics Commission.

25 (c) A person appointed to the dietitians board is entitled
26 to reimbursement, as provided by the General Appropriations Act,
27 for travel expenses incurred in attending the training program

1 regardless of whether the attendance at the program occurs before
2 or after the person qualifies for office [~~In developing the~~
3 ~~training program, the dietitians board shall consult with the~~
4 ~~governor, the attorney general, and the Texas Ethics Commission~~].

5 SECTION 9. Section 701.104, Occupations Code, is amended to
6 read as follows:

7 Sec. 701.104. DIVISION OF RESPONSIBILITIES. The dietitians
8 board shall develop and implement policies that clearly separate
9 [~~define~~] the policymaking [~~respective~~] responsibilities of the
10 board and the management responsibilities of the executive
11 secretary and the staff of the department [~~board~~].

12 SECTION 10. Subchapter D, Chapter 701, Occupations Code, is
13 amended by adding Section 701.1535 to read as follows:

14 Sec. 701.1535. RULES ON CONSEQUENCES OF CRIMINAL
15 CONVICTION. (a) The dietitians board shall adopt rules necessary
16 to comply with Chapter 53.

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

21 SECTION 11. Subchapter D, Chapter 701, Occupations Code, is
22 amended by adding Sections 701.159, 701.160, and 701.161 to read as
23 follows:

24 Sec. 701.159. DELEGATION TO COMMITTEE. The dietitians
25 board may delegate a function or activity required by this chapter
26 to a committee of board members on a permanent or temporary basis if
27 the board agrees to the delegation.

1 Sec. 701.160. USE OF TECHNOLOGY. The dietitians board
2 shall implement a policy requiring the board to use appropriate
3 technological solutions to improve the board's ability to perform
4 its functions. The policy must ensure that the public is able to
5 interact with the board on the Internet.

6 Sec. 701.161. NEGOTIATED RULEMAKING AND ALTERNATIVE
7 DISPUTE RESOLUTION POLICY. (a) The dietitians board shall develop
8 and implement a policy to encourage the use of:

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

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

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

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

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

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

27 (3) collect data concerning the effectiveness of those

1 procedures, as implemented by the board.

2 SECTION 12. Section 701.203, Occupations Code, is amended
3 to read as follows:

4 Sec. 701.203. RECORDS OF COMPLAINTS. (a) The dietitians
5 board shall maintain a system to promptly and efficiently act on
6 complaints filed with the board. The board shall maintain:

7 (1) information about the parties to the complaint and
8 the subject matter of the complaint;

9 (2) a summary of the results of the review or
10 investigation of the complaint; and

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

15 ~~[(1) each person contacted in relation to the~~
16 ~~complaint;~~

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

19 ~~[(3) an explanation of the legal basis and reason for a~~
20 ~~complaint that is dismissed;~~

21 ~~[(4) the schedule established for the complaint under~~
22 ~~Section 701.204(b) and a notation of any change in the schedule; and~~

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

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

27 (c) The dietitians board shall periodically notify the

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

8 SECTION 13. Subchapter E, Chapter 701, Occupations Code, is
9 amended by adding Section 701.206 to read as follows:

10 Sec. 701.206. COMPLAINT COMMITTEE. The dietitians board
11 shall appoint at least one public member to any board committee
12 established to review a complaint filed with the board or review an
13 enforcement action against a license holder related to a complaint
14 filed with the board.

15 SECTION 14. The heading to Section 701.253, Occupations
16 Code, is amended to read as follows:

17 Sec. 701.253. LICENSE EXAMINATION.

18 SECTION 15. Section 701.253(b), Occupations Code, is
19 amended to read as follows:

20 (b) Except as provided by Subsection (f), an applicant must
21 pass a license [~~competency~~] examination to qualify for a license
22 under this chapter.

23 SECTION 16. The heading to Section 701.256, Occupations
24 Code, is amended to read as follows:

25 Sec. 701.256. LICENSING EXAMINATION RESULTS.

26 SECTION 17. Section 701.256(a), Occupations Code, is
27 amended to read as follows:

1 (a) The department shall notify each examinee of the
2 licensing examination results not later than the 30th day after the
3 date the examination is administered. If an examination is graded
4 or reviewed by a national or state testing service, the department
5 shall notify each examinee of the examination results not later
6 than the 14th day after the date the department receives the results
7 from the testing service.

8 SECTION 18. Section 701.257, Occupations Code, is amended
9 to read as follows:

10 Sec. 701.257. REEXAMINATION FOR LICENSING EXAMINATION. An
11 applicant who fails the licensing examination three times must
12 provide evidence to the dietitians board that the applicant has
13 successfully completed credit hours in the applicant's areas of
14 weakness before the applicant may apply for reexamination.

15 SECTION 19. Subchapter F, Chapter 701, Occupations Code, is
16 amended by adding Section 701.2575 to read as follows:

17 Sec. 701.2575. JURISPRUDENCE EXAMINATION. (a) The
18 dietitians board shall develop and administer at least twice each
19 calendar year a jurisprudence examination to determine an
20 applicant's knowledge of this chapter, board rules, and any other
21 applicable laws of this state affecting the applicant's dietetics
22 practice.

23 (b) In addition to the license examination required by
24 Section 701.253, an applicant must pass a jurisprudence examination
25 to qualify for a license under this chapter.

26 (c) The dietitians board shall adopt rules to implement this
27 section, including rules related to the development and

1 administration of the examination, examination fees, guidelines
2 for reexamination, grading the examination, and providing notice of
3 examination results.

4 SECTION 20. Sections 701.301(a) and (d), Occupations Code,
5 are amended to read as follows:

6 (a) A license is valid for two years [~~one year~~] after the
7 date of issuance and may be renewed biennially [~~annually~~].

8 (d) A person whose license has been expired for 90 days or
9 less may renew the license by paying to the dietitians board [~~the~~
10 ~~required renewal fee and~~] a fee that is equal to 1-1/4 times [~~half~~]
11 the amount of the renewal [~~examination~~] fee for the license. If a
12 license has been expired for more than 90 days but less than one
13 year, the person may renew the license by paying to the board [~~all~~
14 ~~unpaid renewal fees and~~] a fee that is equal to 1-1/2 times the
15 amount of the renewal fee for the license.

16 SECTION 21. Subchapter G, Chapter 701, Occupations Code, is
17 amended by adding Section 701.304 to read as follows:

18 Sec. 701.304. GROUNDS FOR REFUSING RENEWAL. The dietitians
19 board may refuse to renew the license of a person who fails to pay an
20 administrative penalty imposed under Subchapter K, unless
21 enforcement of the penalty is stayed or a court has ordered that the
22 administrative penalty is not owed.

23 SECTION 22. Section 701.401, Occupations Code, is amended
24 to read as follows:

25 Sec. 701.401. GROUNDS FOR DISCIPLINARY ACTION. The
26 dietitians board shall refuse to renew a license, revoke or suspend
27 a license, place on probation a person whose license has been

1 suspended, or reprimand a license holder for a violation of this
2 chapter or a rule or code of ethics adopted by the board.

3 SECTION 23. Section 701.402(a), Occupations Code, is
4 amended to read as follows:

5 (a) If the dietitians board proposes to refuse to renew a
6 license, revoke, or suspend a person's license, the person is
7 entitled to a hearing before the board.

8 SECTION 24. The heading to Subchapter J, Chapter 701,
9 Occupations Code, is amended to read as follows:

10 SUBCHAPTER J. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

11 SECTION 25. Subchapter J, Chapter 701, Occupations Code, is
12 amended by adding Sections 701.452 and 701.453 to read as follows:

13 Sec. 701.452. CEASE AND DESIST ORDER. (a) If it appears to
14 the dietitians board that a person who is not licensed under this
15 chapter is violating this chapter or a rule adopted under this
16 chapter, the board after notice and opportunity for a hearing may
17 issue a cease and desist order prohibiting the person from engaging
18 in the activity.

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

21 Sec. 701.453. INJUNCTION. (a) The dietitians board may
22 apply to a district court in any county for an injunction to
23 restrain a violation of Section 701.251 by a person.

24 (b) At the request of the board, the attorney general shall
25 initiate and conduct an action in a district court in the state's
26 name to obtain an injunction under this section.

27 SECTION 26. Section 701.502, Occupations Code, is amended

1 by adding Subsection (c) to read as follows:

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

8 SECTION 27. Subchapter K, Chapter 701, Occupations Code, is
9 amended by adding Section 701.512 to read as follows:

10 Sec. 701.512. REFUND. (a) Subject to Subsection (b), the
11 dietitians board may order a license holder to pay a refund to a
12 consumer as provided in an agreement resulting from an informal
13 settlement conference instead of or in addition to imposing an
14 administrative penalty under this chapter.

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

20 SECTION 28. Sections 701.056(a) and 701.059(d),
21 Occupations Code, are repealed.

22 SECTION 29. (a) Not later than January 1, 2006, the Texas
23 State Board of Examiners of Dietitians shall:

24 (1) develop and implement the policies required by
25 Sections 701.160 and 701.161, Occupations Code, as added by this
26 Act; and

27 (2) adopt the rules required by Chapter 701,

1 Occupations Code, as amended by this Act.

2 (b) Not later than March 1, 2006, the Texas State Board of
3 Examiners of Dietitians shall develop the jurisprudence
4 examination required by Section 701.2575, Occupations Code, as
5 added by this Act.

6 SECTION 30. (a) The changes in law made by Sections
7 701.053, 701.055, and 701.059, Occupations Code, as amended by this
8 Act, regarding the prohibitions on or qualifications of members of
9 the Texas State Board of Examiners of Dietitians do not affect the
10 entitlement of a member serving on the board immediately before
11 September 1, 2005, to continue to serve and function as a member of
12 the board for the remainder of the member's term. The changes in
13 law made by those sections apply only to a member appointed on or
14 after September 1, 2005.

15 (b) The changes in law made by this Act with respect to
16 conduct that is grounds for imposition of a disciplinary sanction
17 or for obtaining an injunction apply only to conduct that occurs on
18 or after the effective date of this Act. Conduct that occurs before
19 the effective date of this Act is governed by the law in effect on
20 the date the conduct occurred, and the former law is continued in
21 effect for that purpose.

22 (c) The change in law made by Section 701.2575, Occupations
23 Code, as added by this Act, regarding the jurisprudence
24 examination, applies only to an application for a license filed
25 with the Texas State Board of Examiners of Dietitians under Chapter
26 701, Occupations Code, as amended by this Act, on or after September
27 1, 2006.

1 SECTION 31. Notwithstanding Section 701.301, Occupations
2 Code, as amended by this Act, the fee for an applicant renewing an
3 expired license under Chapter 701, Occupations Code, before
4 September 1, 2007, is governed by the law in effect immediately
5 before the effective date of this Act, and the former law is
6 continued in effect for that purpose. An applicant who renews an
7 expired license under Chapter 701, Occupations Code, on or after
8 September 1, 2007, is subject to the fees provided by Section
9 701.301, Occupations Code, as amended by this Act.

10 SECTION 32. This Act takes effect September 1, 2005.