

By: Carona

S.B. No. 414

A BILL TO BE ENTITLED

AN ACT

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relating to the continuation and functions of the Texas State Board of Examiners of Professional Counselors; providing an administrative penalty.

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

SECTION 1. Section 503.002, Occupations Code, is amended by adding Subdivision (1-a) and amending Subdivision (2) to read as follows:

(1-a) "Commissioner" means the commissioner of the department.

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

SECTION 2. Section 503.005, Occupations Code, is amended to read as follows:

Sec. 503.005. APPLICATION OF SUNSET ACT. The Texas State Board of Examiners of Professional Counselors is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017 [~~2005~~].

SECTION 3. Section 503.101, Occupations Code, is amended to read as follows:

Sec. 503.101. BOARD MEMBERSHIP. (a) The Texas State Board of Examiners of Professional Counselors consists of nine members appointed by the governor with the advice and consent of the senate

1 as follows:

2 (1) five licensed professional counselor members, at  
3 least three of whom are in private practice and at least one of whom  
4 is a counselor educator; and

5 (2) four members who represent the public.

6 (b) Appointments to the board shall be made without regard  
7 to the race, color, disability, sex, religion, age, or national  
8 origin of the appointee.

9 SECTION 4. Section 503.104, Occupations Code, is amended to  
10 read as follows:

11 Sec. 503.104. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)  
12 In this section, "Texas trade association" means a [~~nonprofit,~~  
13 cooperative~~]~~ and voluntarily joined statewide association of  
14 business or professional competitors in this state designed to  
15 assist its members and its industry or profession in dealing with  
16 mutual business or professional problems and in promoting their  
17 common interest.

18 (b) A person [~~An officer, employee, or paid consultant of a~~  
19 ~~Texas trade association in the field of health care]~~ may not be a  
20 member of the board and may not be a department [~~an~~] employee  
21 employed in a "bona fide executive, administrative, or professional  
22 capacity," as that phrase is used for purposes of establishing an  
23 exemption to the overtime provisions of the federal Fair Labor  
24 Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

25 (1) the person is an officer, employee, manager, or  
26 paid consultant of a Texas trade association in the field of health  
27 care; or

1           (2) the person's spouse is an officer, manager, or paid  
2 consultant of a Texas trade association in the field of health care  
3 ~~[of the department who carries out the functions of the board who is~~  
4 ~~exempt from the state's position classification plan or is~~  
5 ~~compensated at or above the amount prescribed by the General~~  
6 ~~Appropriations Act for step 1, salary group A17, of the position~~  
7 ~~classification salary schedule].~~

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

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

22           SECTION 5. Sections 503.107(a) and (c), Occupations Code,  
23 are amended to read as follows:

24           (a) It is a ground for removal from the board that a member:  
25               (1) does not have at the time of taking office  
26 ~~[appointment]~~ the qualifications required by Section 503.102 ~~[for~~  
27 ~~appointment to the board];~~

1           (2) does not maintain during the service on the board  
2 the qualifications required by Section 503.102 [~~for appointment to~~  
3 ~~the board~~];

4           (3) is ineligible for membership under [~~violates a~~  
5 ~~prohibition established by~~] Section 503.103 or [~~Section~~  
6 503.104[~~(b) or (c)~~];

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

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

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

24           SECTION 6. Section 503.108, Occupations Code, is amended to  
25 read as follows:

26           Sec. 503.108. [~~PER DIEM,~~] REIMBURSEMENT. [~~(a) A board~~  
27 ~~member is entitled to a per diem as set by the General~~

1 ~~Appropriations Act for each day the member engages in the business~~  
2 ~~of the board.~~

3 ~~[(b)]~~ A board member may receive reimbursement for expenses  
4 as provided by the General Appropriations Act.

5 SECTION 7. Sections 503.110(a), (b), and (c), Occupations  
6 Code, are amended to read as follows:

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

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

16 (1) this chapter and the board's programs, functions,  
17 rules, and budget;

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

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

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

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

23 ~~[(6)]~~ the results of the most recent formal audit of  
24 the board;

25 (3) ~~[(7)]~~ the requirements of laws relating to open  
26 meetings, public information, administrative procedure, and  
27 conflicts-of-interest; and

1           (4) [~~Chapters 551, 552, 2001, and 2002, Government~~  
2 ~~Code,~~

3           ~~[(8) the requirements of the conflict of interest laws~~  
4 ~~and other laws relating to public officials, and~~

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

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

14           SECTION 8. Section 503.154, Occupations Code, is amended to  
15 read as follows:

16           Sec. 503.154. DIVISION OF RESPONSIBILITIES. The board  
17 shall develop and implement policies that clearly separate [~~define~~]  
18 the policymaking [~~respective~~] responsibilities of the board and the  
19 management responsibilities of the executive director and staff of  
20 the department [~~board~~].

21           SECTION 9. Subchapter E, Chapter 503, Occupations Code, is  
22 amended by adding Section 503.2045 to read as follows:

23           Sec. 503.2045. RULES ON CONSEQUENCES OF CRIMINAL  
24 CONVICTION. (a) The board shall adopt rules necessary to comply  
25 with Chapter 53.

26           (b) In its rules under this section, the board shall list  
27 the specific offenses for which a conviction would constitute

1 grounds for the board to take action under Section 53.021.

2 SECTION 10. Section 503.205, Occupations Code, is amended  
3 to read as follows:

4 Sec. 503.205. DELEGATION TO [~~INDIVIDUAL MEMBER OR~~]  
5 COMMITTEE. The board may delegate a function or activity required  
6 by this chapter [~~to an individual board member or~~] to a committee of  
7 board members on a permanent or temporary basis if [+

8 [(1)] the board agrees to the delegation[; ~~and~~

9 [(2) ~~the person clearly possesses the professional~~  
10 ~~and personal qualifications to carry out the delegation]~~.

11 SECTION 11. Subchapter E, Chapter 503, Occupations Code, is  
12 amended by adding Sections 503.210 and 503.211 to read as follows:

13 Sec. 503.210. USE OF TECHNOLOGY. The board shall implement  
14 a policy requiring the board to use appropriate technological  
15 solutions to improve the board's ability to perform its functions.  
16 The policy must ensure that the public is able to interact with the  
17 board on the Internet.

18 Sec. 503.211. NEGOTIATED RULEMAKING AND ALTERNATIVE  
19 DISPUTE RESOLUTION POLICY. (a) The board shall develop and  
20 implement a policy to encourage the use of:

21 (1) negotiated rulemaking procedures under Chapter  
22 2008, Government Code, for the adoption of board rules; and

23 (2) appropriate alternative dispute resolution  
24 procedures under Chapter 2009, Government Code, to assist in the  
25 resolution of internal and external disputes under the board's  
26 jurisdiction.

27 (b) The board's procedures relating to alternative dispute

1 resolution must conform, to the extent possible, to any model  
2 guidelines issued by the State Office of Administrative Hearings  
3 for the use of alternative dispute resolution by state agencies.

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

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

7 (2) serve as a resource for any training needed to  
8 implement the procedures for negotiated rulemaking or alternative  
9 dispute resolution; and

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

12 SECTION 12. Section 503.253, Occupations Code, is amended  
13 to read as follows:

14 Sec. 503.253. RECORDS OF COMPLAINTS. (a) The board shall  
15 maintain a system to promptly and efficiently act on complaints  
16 filed with the board. The board shall maintain:

17 (1) information about the parties to the complaint and  
18 the subject matter of the complaint;

19 (2) a summary of the results of the review or  
20 investigation of the complaint; and

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

25 ~~[(1) each person contacted in relation to the~~  
26 ~~complaint,~~

27 ~~[(2) a summary of findings made at each step of the~~



1 ~~complaint process;~~

2 ~~[(3) an explanation of the legal basis and reason for~~  
3 ~~dismissal of a complaint;~~

4 ~~[(4) the schedule established for the complaint under~~  
5 ~~Section 503.255 and a notation of any change in the schedule; and~~

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

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

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

16 SECTION 13. Subchapter F, Chapter 503, Occupations Code, is  
17 amended by adding Section 503.2555 to read as follows:

18 Sec. 503.2555. COMPLAINT COMMITTEE. The board shall  
19 appoint at least one public member to any board committee  
20 established to review a complaint filed with the board or review an  
21 enforcement action against a license holder related to a complaint  
22 filed with the board.

23 SECTION 14. Section 503.302(a), Occupations Code, is  
24 amended to read as follows:

25 (a) A person qualifies for a license under this chapter if  
26 the person:

27 (1) is at least 18 years old;

1           (2) has a master's or doctoral degree in counseling or  
2 a related field;

3           (3) has successfully completed a graduate degree at a  
4 regionally accredited institution of higher education and the  
5 number of [a planned graduate program of 48] graduate semester  
6 hours required by board rule, including 300 clock hours of  
7 supervised practicum that:

8                   (A) is primarily counseling in nature; and

9                   (B) meets the specific academic course content  
10 and training standards established by the board;

11           (4) has completed 36 months or 3,000 hours of  
12 supervised experience working in a counseling setting that meets  
13 the requirements established by the board after the completion of  
14 the graduate program described by Subdivision (3);

15           (5) except as provided by Subsection (b), passes the  
16 license examination and jurisprudence examination required by this  
17 chapter;

18           (6) submits an application as required by the board,  
19 accompanied by the required application fee; and

20           (7) meets any other requirement prescribed by the  
21 board.

22           SECTION 15. Section 503.305(b), Occupations Code, is  
23 amended to read as follows:

24           (b) The [As determined by the] board shall contract with a  
25 nationally recognized testing organization to develop and  
26 administer a written professional counselor licensing examination  
27 to applicants who apply for a license under this chapter [for each

1 ~~applicant, the license examination may be:~~

2 ~~[(1) a field examination using questionnaires~~  
3 ~~answered by the applicant's instructors, employers, supervisors,~~  
4 ~~references, and others who are competent, in the board's judgment,~~  
5 ~~to evaluate the applicant's professional competence; or~~

6 ~~[(2) another type of examination as prescribed by the~~  
7 ~~board].~~

8 SECTION 16. Subchapter G, Chapter 503, Occupations Code, is  
9 amended by adding Section 503.3055 to read as follows:

10 Sec. 503.3055. JURISPRUDENCE EXAMINATION. (a) The board  
11 shall develop and administer at least twice each calendar year a  
12 jurisprudence examination to determine an applicant's knowledge of  
13 this chapter, board rules, and any other applicable laws of this  
14 state affecting the applicant's professional counseling practice.

15 (b) The board shall adopt rules to implement this section,  
16 including rules related to the development and administration of  
17 the examination, examination fees, guidelines for reexamination,  
18 grading the examination, and providing notice of examination  
19 results.

20 SECTION 17. Section 503.306, Occupations Code, is amended  
21 by adding Subsection (d) to read as follows:

22 (d) Notwithstanding the other provisions of this section,  
23 the board may notify an applicant of the applicant's examination  
24 results in the manner provided in a contract between the board and a  
25 testing organization selected by the board under Section 503.305.

26 SECTION 18. Section 503.310(b), Occupations Code, is  
27 amended to read as follows:

1 (b) An applicant for a provisional license must:

2 (1) be licensed in good standing as a counselor or art  
3 therapist in another state, territory, or jurisdiction that has  
4 licensing requirements substantially equivalent to the  
5 requirements of this chapter;

6 (2) have passed the required license [~~a national or~~  
7 ~~other~~] examination [~~recognized by the board relating to counseling~~  
8 ~~or art therapy~~]; and

9 (3) be sponsored by a person licensed under this  
10 chapter with whom the applicant may practice under a provisional  
11 license.

12 SECTION 19. Section 503.351, Occupations Code, is amended  
13 to read as follows:

14 Sec. 503.351. [~~ANNUAL~~] RENEWAL; ELIGIBILITY. A person  
15 licensed under this chapter may renew the license biennially  
16 [~~annually~~] if the person:

17 (1) is not in violation of this chapter when the person  
18 applies for renewal; and

19 (2) fulfills the continuing education requirements  
20 established by the board.

21 SECTION 20. Sections 503.354(c) and (d), Occupations Code,  
22 are amended to read as follows:

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

27 (d) If a person's license has been expired for more than 90

1 days but less than one year [~~because the person did not pay the~~  
2 ~~renewal fee or did not meet continuing education requirements~~], the  
3 person may renew the license by[+]

4 [~~(1)~~] paying to the board [~~all unpaid renewal fees~~  
5 ~~and~~] a fee that is equal to 1-1/2 times the amount of the renewal  
6 [~~license examination~~] fee[+ ~~and~~

7 [~~(2)~~ ~~providing the board with proof that the person~~  
8 ~~has completed the required continuing education~~].

9 SECTION 21. Subchapter I, Chapter 503, Occupations Code, is  
10 amended by adding Section 503.407 to read as follows:

11 Sec. 503.407. REFUND. (a) Subject to Subsection (b), the  
12 board may order a license holder to pay a refund to a consumer as  
13 provided in an agreement resulting from an informal settlement  
14 conference instead of or in addition to imposing an administrative  
15 penalty under this chapter.

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

21 SECTION 22. Subchapter J, Chapter 503, Occupations Code, is  
22 amended by adding Section 503.454 to read as follows:

23 Sec. 503.454. CEASE AND DESIST ORDER. (a) If it appears to  
24 the board that a person who is not licensed under this chapter is  
25 violating this chapter, a rule adopted under this chapter, or  
26 another state statute or rule relating to the practice of  
27 professional counseling, the board after notice and opportunity for

1 a hearing may issue a cease and desist order prohibiting the person  
2 from engaging in the activity.

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

5 SECTION 23. Section 503.502, Occupations Code, is amended  
6 by adding Subsection (c) to read as follows:

7 (c) The board by rule shall adopt an administrative penalty  
8 schedule based on the criteria listed in Subsection (b) for  
9 violations of this chapter or board rules to ensure that the amounts  
10 of penalties imposed are appropriate to the violation. The board  
11 shall provide the administrative penalty schedule to the public on  
12 request.

13 SECTION 24. The following sections are repealed:

- 14 (1) Section 503.053, Occupations Code;  
15 (2) Section 503.110(d), Occupations Code;  
16 (3) Sections 503.302(b) and (c), Occupations Code;  
17 (4) Sections 503.305(c), (d), and (e), Occupations  
18 Code; and  
19 (5) Section 503.309, Occupations Code.

20 SECTION 25. (a) Not later than January 1, 2006, the Texas  
21 State Board of Examiners of Professional Counselors shall:

22 (1) adopt the policies required by Sections 503.210  
23 and 503.211, Occupations Code, as added by this Act; and

24 (2) adopt the rules required by Chapter 503,  
25 Occupations Code, as amended by this Act.

26 (b) Not later than March 1, 2006, the Texas State Board of  
27 Examiners of Professional Counselors shall:

1           (1) develop the jurisprudence examination required by  
2 Section 503.3055, Occupations Code, as added by this Act; and

3           (2) contract with a nationally recognized testing  
4 organization for the administration of the license examination as  
5 required by Section 503.305(b), Occupations Code, as amended by  
6 this Act.

7           SECTION 26. (a) The changes in law made by Sections 503.104,  
8 503.107, and 503.110, Occupations Code, as amended by this Act,  
9 regarding the prohibitions on or qualifications of members of the  
10 Texas State Board of Examiners of Professional Counselors do not  
11 affect the entitlement of a member serving on the board immediately  
12 before September 1, 2005, to continue to serve and function as a  
13 member of the board for the remainder of the member's term. The  
14 changes in law made by those sections apply only to a member  
15 appointed on or after September 1, 2005.

16           (b) The changes in law made by this Act related to the filing  
17 or investigation of a complaint under Chapter 503, Occupations  
18 Code, as amended by this Act, apply only to a complaint filed with  
19 the Texas State Board of Examiners of Professional Counselors on or  
20 after the effective date of this Act. A complaint filed before the  
21 effective date of this Act is governed by the law as it existed  
22 immediately before that date, and the former law is continued in  
23 effect for that purpose.

24           (c) The changes in law made by this Act governing the  
25 eligibility of a person for a license under Chapter 503,  
26 Occupations Code, apply only to an application for a license filed  
27 with the Texas State Board of Examiners of Professional Counselors

1 under Chapter 503, Occupations Code, as amended by this Act, on or  
2 after the effective date of this Act. A license application filed  
3 before the effective date of this Act is governed by the law in  
4 effect at the time the application was filed, and the former law is  
5 continued in effect for that purpose.

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

14 (e) The change in law made by Section 503.302(a),  
15 Occupations Code, as amended by this Act, and Section 503.3055,  
16 Occupations Code, as added by this Act, regarding the jurisprudence  
17 examination, applies only to an application for a license filed  
18 with the Texas State Board of Examiners of Professional Counselors  
19 under Chapter 503, Occupations Code, as amended by this Act, on or  
20 after September 1, 2006.

21 SECTION 27. Notwithstanding Section 503.354, Occupations  
22 Code, as amended by this Act, the fees for an applicant renewing an  
23 expired license under Chapter 503, Occupations Code, before  
24 September 1, 2007, are governed by the law in effect immediately  
25 before the effective date of this Act, and the former law is  
26 continued in effect for that purpose. An applicant who renews an  
27 expired license under Chapter 503, Occupations Code, on or after



S.B. No. 414

1 September 1, 2007, is subject to the fees provided by Section  
2 503.354, Occupations Code, as amended by this Act.

3 SECTION 28. This Act takes effect September 1, 2005.