

By: Whitmire

S.B. No. 417

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the continuation and functions of the Texas State Board  
3 of Examiners of Marriage and Family Therapists.

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

5 SECTION 1. Sections 502.002(2) and (3), Occupations Code,  
6 are amended to read as follows:

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

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

11 SECTION 2. Section 502.003, Occupations Code, is amended to  
12 read as follows:

13 Sec. 502.003. APPLICATION OF SUNSET ACT. The Texas State  
14 Board of Examiners of Marriage and Family Therapists is subject to  
15 Chapter 325, Government Code (Texas Sunset Act). Unless continued  
16 in existence as provided by that chapter, the board is abolished and  
17 this chapter expires September 1, 2017 [~~2005~~].

18 SECTION 3. Section 502.004, Occupations Code, is amended to  
19 read as follows:

20 Sec. 502.004. APPLICATION OF CHAPTER. This chapter does  
21 not apply to:

22 (1) the activities of a person employed to perform  
23 marriage and family therapy by a federal, state, county, or  
24 municipal agency or a public or private educational institution, if

1 the activities are within the scope of the person's employment;

2 (2) the activities of a student, intern, or trainee in  
3 marriage and family therapy in a recognized course of study in  
4 marriage and family therapy at an accredited institution of higher  
5 education or other training institution, if:

6 (A) the activities constitute a part of the  
7 course of study; and

8 (B) the person is called a "marriage and family  
9 therapist intern" or similar title;

10 (3) ~~[services provided by a person who is not a  
11 resident of this state if:~~

12 ~~[(A) the services are performed for 30 days or  
13 less during a calendar year; and~~

14 ~~[(B) the person is authorized to provide the  
15 services under the law of the state or country of the person's  
16 residence;~~

17 ~~[(4)]~~ the activities and services of a person licensed  
18 to practice another profession, including a physician, attorney,  
19 registered nurse, occupational therapist, psychologist, social  
20 worker, or licensed professional counselor; or

21 (4) ~~[(5)]~~ the activities and services of a recognized  
22 religious practitioner, including a pastoral counselor or  
23 Christian Science practitioner recognized by the Church of Christ  
24 Scientist as registered and published in the Christian Science  
25 Journal, if the practitioner practices marriage and family therapy  
26 in a manner consistent with the laws of this state.

27 SECTION 4. Section 502.053, Occupations Code, is amended to

1 read as follows:

2           Sec. 502.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)  
3 In this section, "Texas trade association" means a [~~nonprofit,~~  
4 cooperative~~]~~ and voluntarily joined statewide association of  
5 business or professional competitors in this state designed to  
6 assist its members and its industry or profession in dealing with  
7 mutual business or professional problems and in promoting their  
8 common interest.

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

16                 (1) the person is an officer, employee, or paid  
17 consultant of a Texas trade association in the field of health  
18 services; or

19                 (2) the person's spouse is an officer, manager, or paid  
20 consultant of a Texas trade association in the field of health  
21 services [~~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) [~~A person who is the spouse of an officer, manager, or~~  
26 ~~paid consultant of a Texas trade association in the field of health~~  
27 ~~care may not be a member of the board and may not be an employee of~~

1 ~~the board who is exempt from the state's position classification~~  
2 ~~plan or is compensated at or above the amount prescribed by the~~  
3 ~~General Appropriations Act for step 1, salary group A17, of the~~  
4 ~~position classification salary schedule.~~

5 [~~d~~] A person may not be [~~serve as~~] a member of the board or  
6 act as general counsel to the board or the department if the person  
7 is required to register as a lobbyist under Chapter 305, Government  
8 Code, because of the person's activities for compensation on behalf  
9 of a profession related to the operation of the board.

10 SECTION 5. Sections 502.056(a) and (c), Occupations Code,  
11 are amended to read as follows:

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

13 (1) does not have at the time of taking office  
14 [~~appointment~~] the qualifications required by Section 502.052 [~~for~~  
15 ~~appointment to the board~~];

16 (2) does not maintain during service on the board the  
17 qualifications required by Section 502.052 [~~for appointment to the~~  
18 ~~board~~];

19 (3) is ineligible for membership under [~~violates a~~  
20 ~~prohibition established by~~] Section 502.052(c) or [~~7~~] 502.053[~~7~~  
21 ~~502.159~~];

22 (4) cannot, because of illness or disability,  
23 discharge the member's duties for a substantial part of the member's  
24 term; [~~or~~]

25 (5) is absent from more than half of the regularly  
26 scheduled board meetings that the member is eligible to attend  
27 during a calendar year without an excuse approved [~~unless the~~

1 ~~absence is excused]~~ by a majority vote of the board; or

2 (6) violates a prohibition established by Section  
3 502.159.

4 (c) If the executive director has knowledge that a potential  
5 ground for removal exists, the executive director shall notify the  
6 presiding officer of the board of the potential ground. The  
7 presiding officer shall then notify the governor and the attorney  
8 general that a potential ground for removal exists. If the  
9 potential ground for removal involves the presiding officer, the  
10 executive director shall notify the next highest ranking officer of  
11 the board, who shall then notify the governor and attorney general  
12 that a potential ground for removal exists.

13 SECTION 6. Section 502.057(b), Occupations Code, is amended  
14 to read as follows:

15 (b) A board member is entitled to[+]

16 ~~[(1) the per diem set by the General Appropriations~~  
17 ~~Act for each day that the member performs duties as a board member,~~  
18 ~~and~~

19 ~~[(2)] reimbursement for expenses as provided by the~~  
20 General Appropriations Act.

21 SECTION 7. Section 502.059, Occupations Code, is amended to  
22 read as follows:

23 Sec. 502.059. TRAINING REQUIREMENTS. (a) A person who is  
24 appointed to and qualifies for office as a member of the board may  
25 not vote, deliberate, or be counted as a member in attendance at a  
26 meeting of the board until the person completes a training program  
27 that complies with this section [~~Before a board member may assume~~

1 ~~the member's duties, the member must complete at least one course of~~  
2 ~~the training program established by the board under this section].~~

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

5 (1) this chapter;

6 (2) the programs operated by the board;

7 (3) the role and functions of the board;

8 (4) the rules of the board, with an emphasis on the  
9 rules that relate to disciplinary and investigatory authority;

10 (5) the current budget for the board;

11 (6) the results of the most recent formal audit of the  
12 board;

13 (7) the requirements of laws relating to open  
14 meetings, public information, administrative procedure, and  
15 conflict of interest ~~[the requirements of Chapters 551, 552, 2001,~~  
16 ~~and 2002, Government Code,~~

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

19 (8) [(9)] any applicable ethics policies adopted by  
20 the board or the Texas Ethics Commission.

21 (c) A person appointed to the board is entitled to  
22 reimbursement, as provided by the General Appropriations Act, for  
23 the travel expenses incurred in attending the training program  
24 regardless of whether the attendance at the program occurs before  
25 or after the person qualifies for office ~~[In developing the~~  
26 ~~training program, the board shall consult with the governor's~~  
27 ~~office, the attorney general's office, and the Texas Ethics~~

1 ~~Commission.~~

2 ~~[(d) If another state agency or entity is given the~~  
3 ~~authority to establish the training requirements for board members,~~  
4 ~~the board shall allow that training instead of developing its own~~  
5 ~~program, and each member shall comply with the training~~  
6 ~~requirements established by any other state agency that is given~~  
7 ~~authority to establish training requirements for the board].~~

8 SECTION 8. Section 502.104, Occupations Code, is amended to  
9 read as follows:

10 Sec. 502.104. DIVISION OF RESPONSIBILITIES. The board  
11 shall develop and implement policies that clearly separate ~~define~~  
12 the policy-making ~~respective~~ responsibilities of the board and  
13 the management responsibilities of the executive director and the  
14 staff of the department ~~board~~.

15 SECTION 9. Subchapter D, Chapter 502, Occupations Code, is  
16 amended by adding Sections 502.1565, 502.161, 502.162, and 502.163  
17 to read as follows:

18 Sec. 502.1565. RULES ON CONSEQUENCES OF CRIMINAL  
19 CONVICTION. (a) The board shall adopt rules necessary to comply  
20 with Chapter 53.

21 (b) In its rules under this section, the board shall list  
22 the specific offenses for which a conviction would constitute  
23 grounds for the board to take action under Section 53.021.

24 Sec. 502.161. BOARD COMMITTEES. (a) The board may appoint  
25 committees to assist the board with its functions under this  
26 chapter.

27 (b) Only a member of the board may serve as a member of a

1 board committee.

2 Sec. 502.162. USE OF TECHNOLOGY. The board shall implement  
3 a policy requiring the board to use appropriate technological  
4 solutions to improve the board's ability to perform its functions.  
5 The policy must ensure that the public is able to interact with the  
6 board on the Internet.

7 Sec. 502.163. NEGOTIATED RULEMAKING AND ALTERNATIVE  
8 DISPUTE RESOLUTION POLICY. (a) The board shall develop and  
9 implement a 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 10. Section 502.204, Occupations Code, is amended  
2 by adding Subsections (f)-(h) to read as follows:

3 (f) The board shall maintain a system to promptly and  
4 efficiently act on complaints filed with the board. The board shall  
5 maintain information about parties to the complaint, the subject  
6 matter of the complaint, a summary of the results of the review or  
7 investigation of the complaint, and its disposition.

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

10 (h) The board shall periodically notify the complaint  
11 parties of the status of the complaint until final disposition.

12 SECTION 11. Subchapter E, Chapter 502, Occupations Code, is  
13 amended by adding Section 502.2041 to read as follows:

14 Sec. 502.2041. COMPLAINT COMMITTEE. The board shall  
15 appoint at least one public member to any board committee  
16 established to review a complaint filed with the board or review an  
17 enforcement action against a license holder related to a complaint  
18 filed with the board.

19 SECTION 12. Section 502.252(b), Occupations Code, is  
20 amended to read as follows:

21 (b) To qualify for a license as a licensed marriage and  
22 family therapist associate, a person must:

23 (1) be at least 18 years of age;

24 (2) have completed a graduate internship in marriage  
25 and family therapy, or an equivalent internship, as approved by the  
26 board;

27 (3) pass the license [~~an~~] examination and

1 jurisprudence examination determined by the board;

2 (4) hold a master's or doctoral degree in marriage and  
3 family therapy or in a related mental health field with coursework  
4 and training determined by the board to be substantially equivalent  
5 to a graduate degree in marriage and family therapy from a  
6 regionally accredited institution of higher education or an  
7 institution of higher education approved by the board;

8 (5) be of good moral character;

9 (6) have not been convicted of a felony or a crime  
10 involving moral turpitude;

11 (7) not use drugs or alcohol to an extent that affects  
12 the applicant's professional competency;

13 (8) not have had a license or certification revoked by  
14 a licensing agency or by a certifying professional organization;  
15 and

16 (9) not have engaged in fraud or deceit in applying for  
17 a license under this chapter.

18 SECTION 13. The heading to Section 502.254, Occupations  
19 Code, is amended to read as follows:

20 Sec. 502.254. LICENSE EXAMINATION.

21 SECTION 14. Section 502.254(c), Occupations Code, is  
22 amended to read as follows:

23 (c) The examination consists of [+

24 [~~1~~] a written examination[+]

25 [~~2~~] ~~an oral examination,~~

26 [~~3~~] ~~a field examination that:~~

27 [~~A~~] ~~uses questionnaires answered by persons who~~

1 ~~are competent in the judgment of the board to assess the applicant's~~  
2 ~~professional ability, including the applicant's instructors,~~  
3 ~~employers, or supervisors; and~~

4 ~~[(B) may include written case studies and taped~~  
5 ~~interviews; or~~

6 ~~[(4) any combination of those examinations].~~

7 SECTION 15. Subchapter F, Chapter 502, Occupations Code, is  
8 amended by adding Section 502.2541 to read as follows:

9 Sec. 502.2541. JURISPRUDENCE EXAMINATION. (a) The board  
10 shall develop and administer at least twice each calendar year a  
11 jurisprudence examination to determine an applicant's knowledge of  
12 this chapter, board rules, and any other applicable laws of this  
13 state affecting the applicant's practice of marriage and family  
14 therapy.

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 16. Sections 502.301(a) and (d), Occupations Code,  
21 are amended to read as follows:

22 (a) A license issued under this chapter is subject to  
23 biennial ~~[annual]~~ renewal. The board shall adopt a system under  
24 which licenses expire on various dates during the year.

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

1 amount of the renewal [~~examination~~] fee. If a person's license has  
2 been expired for more than 90 days but less than one year, the  
3 person may renew the license by paying to the board [~~all unpaid~~  
4 ~~renewal fees and~~] a fee that is equal to 1-1/2 times the amount of  
5 the renewal [~~examination~~] fee for the license.

6 SECTION 17. Section 502.302(b), Occupations Code, is  
7 amended to read as follows:

8 (b) The person must pay to the board a fee that is equal to  
9 the amount of the renewal [~~examination~~] fee.

10 SECTION 18. Section 502.351, Occupations Code, is amended  
11 to read as follows:

12 Sec. 502.351. GROUNDS FOR DISCIPLINARY ACTIONS. The board  
13 shall reprimand a license holder, place on probation a person whose  
14 license has been suspended, refuse to renew a person's license, or  
15 suspend or revoke a holder's license if the person:

16 (1) is convicted of a misdemeanor involving moral  
17 turpitude or a felony;

18 (2) obtains or attempts to obtain a license by fraud or  
19 deception;

20 (3) uses drugs or alcohol to an extent that affects the  
21 license holder's professional competence;

22 (4) performs professional duties in a grossly  
23 negligent manner;

24 (5) is adjudicated as mentally incompetent by a court;

25 (6) practices in a manner that is detrimental to the  
26 public health or welfare;

27 (7) advertises in a manner that tends to deceive or

1 defraud the public;

2 (8) has a license or certification revoked by a  
3 licensing agency or a certifying professional organization;

4 (9) violates this chapter or a rule or code of ethics  
5 adopted under this chapter; or

6 (10) commits an act for which liability exists under  
7 Chapter 81, Civil Practice and Remedies Code.

8 SECTION 19. Subchapter H, Chapter 502, Occupations Code, is  
9 amended by adding Sections 502.357 and 502.358 to read as follows:

10 Sec. 502.357. GROUNDS FOR REFUSING RENEWAL. The board may  
11 refuse to renew the license of a person who fails to pay an  
12 administrative penalty imposed under Subchapter I unless  
13 enforcement of the penalty is stayed or a court has ordered that the  
14 administrative penalty is not owed.

15 Sec. 502.358. REFUND. (a) Subject to Subsection (b), the  
16 board may order a license holder to pay a refund to a consumer as  
17 provided in an agreement resulting from an informal settlement  
18 conference instead of or in addition to imposing an administrative  
19 penalty under this chapter.

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

25 SECTION 20. Section 502.402(a), Occupations Code, is  
26 amended to read as follows:

27 (a) The amount of an administrative penalty may not exceed

1 \$5,000 [~~\$1,000~~] for each violation. Each day a violation continues  
2 or occurs is a separate violation for purposes of imposing a  
3 penalty.

4 SECTION 21. Subchapter J, Chapter 502, Occupations Code, is  
5 amended by adding Section 502.455 to read as follows:

6 Sec. 502.455. CEASE AND DESIST ORDER. (a) If it appears to  
7 the board that a person who is not licensed under this chapter is  
8 violating this chapter, a rule adopted under this chapter, or  
9 another state statute or rule relating to the practice of marriage  
10 and family therapy, the board after notice and opportunity for a  
11 hearing may issue a cease and desist order prohibiting the person  
12 from engaging in the activity.

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

15 SECTION 22. (a) Not later than January 1, 2006, the Texas  
16 State Board of Examiners of Marriage and Family Therapists shall:

17 (1) adopt the policies required by Sections 502.162  
18 and 502.163, Occupations Code, as added by this Act; and

19 (2) adopt the rules required by Chapter 502,  
20 Occupations Code, as amended by this Act.

21 (b) Not later than March 1, 2006, the Texas State Board of  
22 Examiners of Marriage and Family Therapists shall develop the  
23 jurisprudence examination required by Section 502.2541,  
24 Occupations Code, as added by this Act.

25 SECTION 23. (a) The changes in law made by Sections  
26 502.053, 502.056, and 502.059, Occupations Code, as amended by this  
27 Act, regarding the prohibitions on or qualifications of members of

1 the Texas State Board of Examiners of Marriage and Family  
2 Therapists do not affect the entitlement of a member serving on the  
3 board immediately before September 1, 2005, to continue to serve  
4 and function as a member of the board for the remainder of the  
5 member's term. The changes in law made by those sections apply only  
6 to a member appointed on or after September 1, 2005.

7 (b) The changes in law made by this Act governing the  
8 eligibility of a person for a license under Chapter 502,  
9 Occupations Code, apply only to an application for a license filed  
10 with the Texas State Board of Examiners of Marriage and Family  
11 Therapists under Chapter 502, Occupations Code, as amended by this  
12 Act, on or after the effective date of this Act. A license  
13 application filed before the effective date of this Act is governed  
14 by the law in effect at the time the application was filed, and the  
15 former law is continued in effect for that purpose.

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

24 (d) The changes in law made by Section 502.252(b),  
25 Occupations Code, as amended by this Act, and Section 502.2541,  
26 Occupations Code, as added by this Act, regarding the jurisprudence  
27 examination, apply only to an application for a license filed with

1 the Texas State Board of Examiners of Marriage and Family  
2 Therapists under Chapter 502, Occupations Code, as amended by this  
3 Act, on or after September 1, 2006.

4 (e) Section 502.204, Occupations Code, as amended by this  
5 Act, applies only to a complaint filed with the Texas State Board of  
6 Examiners of Marriage and Family Therapists on or after the  
7 effective date of this Act. A complaint filed before the effective  
8 date of this Act is governed by the law in effect on the date the  
9 complaint was filed, and the former law is continued in effect for  
10 that purpose.

11 SECTION 24. Notwithstanding Section 502.301(d),  
12 Occupations Code, as amended by this Act, the fees for an applicant  
13 renewing an expired license under Chapter 502, Occupations Code,  
14 before September 1, 2007, are governed by the law in effect  
15 immediately before the effective date of this Act, and the former  
16 law is continued in effect for that purpose. An applicant who  
17 renews an expired license under Chapter 502, Occupations Code, on  
18 or after September 1, 2007, is subject to the fees provided by  
19 Sections 502.301(d) or 502.302(b), Occupations Code, as amended by  
20 this Act.

21 SECTION 25. This Act takes effect September 1, 2005.