

By: Hinojosa

S.B. No. 1688

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the establishment of the Texas Department of Health
3 Professions Licensing and the transfer of the regulation of certain
4 licensed health professions to that department; providing a civil
5 penalty.

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

7 SECTION 1. Subtitle A, Title 3, Occupations Code, is
8 amended by adding Chapter 112 to read as follows:

9 CHAPTER 112. TEXAS DEPARTMENT OF HEALTH PROFESSIONS LICENSING

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 112.001. DEFINITIONS. In this chapter:

12 (1) "Board" means the Texas Board of Health
13 Professions Licensing.

14 (2) "Department" means the Texas Department of Health
15 Professions Licensing.

16 (3) "License" means a license, certificate,
17 registration, title, or permit issued by the department.

18 (4) "License holder" means a person who holds a
19 license issued by the department.

20 (5) "Respondent" means a person, regardless of whether
21 the person is a license holder, who is charged with violating a law
22 establishing a regulatory program administered by the department or
23 a rule adopted or order issued by the board or executive director.

24 (6) "Sanction" means an action by the executive

1 director against a license holder or another person, including the
2 denial, suspension, or revocation of a license, the reprimand of a
3 license holder, or the placement of a license holder on probation.

4 Sec. 112.002. APPLICATION OF SUNSET ACT. (a) The Texas
5 Board of Health Professions Licensing and the Texas Department of
6 Health Professions Licensing are subject to Chapter 325, Government
7 Code (Texas Sunset Act). Unless continued in existence as provided
8 by that chapter, the board and the department are abolished and this
9 chapter expires September 1, 2017.

10 (b) Each law governing a profession regulated by the
11 department is subject to Chapter 325, Government Code (Texas Sunset
12 Act). Unless this chapter is continued in existence as provided by
13 that chapter, that law expires September 1, 2017.

14 Sec. 112.003. APPLICABILITY. This chapter applies to each
15 regulatory program administered by the department, including any
16 program under which a license is issued by the department.

17 [Sections 112.004-112.050 reserved for expansion]

18 SUBCHAPTER B. DEPARTMENT AND BOARD

19 Sec. 112.051. TEXAS DEPARTMENT OF HEALTH PROFESSIONS
20 LICENSING. (a) The Texas Department of Health Professions
21 Licensing is the primary state agency responsible for the oversight
22 of health professions that are regulated by the state and assigned
23 to the department by the legislature.

24 (b) The department is governed by the board.

25 Sec. 112.052. APPOINTMENT OF BOARD. (a) The board consists
26 of seven members appointed by the governor with the advice and
27 consent of the senate.

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

4 Sec. 112.053. BOARD MEMBERSHIP; ELIGIBILITY. (a) Each
5 member of the board must be a representative of the public.

6 (b) A person is not eligible for appointment as a member of
7 the board if the person or the person's spouse:

8 (1) is regulated by the department;

9 (2) is employed by or participates in the management
10 of a business entity or other organization regulated by or
11 receiving funds from the department;

12 (3) owns or controls, directly or indirectly, more
13 than a 10 percent interest in a business entity or other
14 organization regulated by or receiving funds from the department;

15 (4) uses or receives a substantial amount of tangible
16 goods, services, or funds from the department, other than
17 compensation or reimbursement authorized by law for board
18 membership, attendance, or expenses; or

19 (5) is an employee of the department.

20 Sec. 112.054. CONFLICT OF INTEREST. (a) In this section,
21 "Texas trade association" means a cooperative and voluntarily
22 joined statewide association of business or professional
23 competitors in this state designed to assist its members and its
24 industry or profession in dealing with mutual business or
25 professional problems and in promoting their common interest.

26 (b) A person may not be a member of the board and may not be a
27 department employee employed in a "bona fide executive,

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

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

8 (2) the person's spouse is an officer, manager, or paid
9 consultant of a Texas trade association in the field of health care.

10 (c) A person may not be a member of the board or act as the
11 general counsel to the department if the person is required to
12 register as a lobbyist under Chapter 305, Government Code, because
13 of the person's activities for compensation on behalf of a
14 profession related to the operation of the department.

15 Sec. 112.055. TRAINING. (a) A person who is appointed to
16 and qualifies for office as a member of the board may not vote,
17 deliberate, or be counted as a member in attendance at a meeting of
18 the board until the person completes a training program that
19 complies with this section.

20 (b) The training program must provide the person with
21 information regarding:

22 (1) this chapter and the programs operated by the
23 department;

24 (2) the role and functions of the department;

25 (3) the rules of the department, with an emphasis on
26 the rules that relate to disciplinary and investigatory authority;

27 (4) the current budget for the department;

1 (5) the results of the most recent formal audit of the
2 department;

3 (6) the requirements of the laws relating to open
4 meetings, public information, administrative procedure, and
5 conflicts of interest; and

6 (7) any applicable ethics policies adopted by the
7 department 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.

13 Sec. 112.056. TERMS; VACANCY. (a) Members of the board
14 serve staggered six-year terms. The terms of two or three members
15 expire on February 1 of each odd-numbered year.

16 (b) If a vacancy occurs during a member's term, the governor
17 shall appoint a replacement to fill the unexpired term.

18 Sec. 112.057. PRESIDING OFFICER. The governor shall
19 designate a member of the board as the presiding officer of the
20 board to serve in that capacity at the will of the governor.

21 Sec. 112.058. GROUNDS FOR REMOVAL. (a) It is a ground for
22 removal from the board that a member:

23 (1) does not have at the time of taking office the
24 qualifications required by Section 112.053;

25 (2) does not maintain during service on the board the
26 qualifications required by Section 112.053;

27 (3) is ineligible for membership under Section

1 112.054;

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

5 (5) is absent from more than half of the regularly
6 scheduled board meetings that the member is eligible to attend
7 during a calendar year without an excuse approved by a majority vote
8 of the board.

9 (b) The validity of an action of the board is not affected by
10 the fact that it is taken when a ground for removal of a board member
11 exists.

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

21 Sec. 112.059. COMPENSATION; REIMBURSEMENT. (a) A board
22 member may not receive compensation for service on the board.

23 (b) A board member is entitled to reimbursement for actual
24 and necessary expenses incurred in performing functions as a board
25 member, subject to any applicable limitation on reimbursement
26 provided by the General Appropriations Act.

27 Sec. 112.060. MEETINGS. (a) The board shall meet at least

1 once in each quarter of the fiscal year.

2 (b) The board may meet at other times at the call of the
3 presiding officer or as provided by board rules.

4 Sec. 112.061. CIVIL LIABILITY. A member of the board is not
5 liable in a civil action for an act performed in good faith while
6 performing duties as a board member.

7 [Sections 112.062-112.100 reserved for expansion]

8 SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER DEPARTMENT PERSONNEL

9 Sec. 112.101. EXECUTIVE DIRECTOR. The board shall appoint
10 the executive director of the department. The executive director
11 serves at the will of the board.

12 Sec. 112.102. EXECUTIVE DIRECTOR POWERS AND DUTIES. (a)
13 The executive director shall:

14 (1) perform any duty assigned by the board and other
15 duties specified by law;

16 (2) administer and enforce the department's programs;
17 and

18 (3) issue licenses authorized by the laws establishing
19 programs regulated by the department.

20 (b) The executive director may delegate any power or duty
21 assigned to the executive director unless prohibited by statute or
22 rule.

23 (c) The executive director may:

24 (1) impose sanctions and issue orders relating to a
25 sanction as provided by Section 112.253; and

26 (2) assess an administrative penalty or issue an order
27 relating to an administrative penalty as authorized by a law

1 establishing a program regulated by the department.

2 Sec. 112.103. PERSONNEL. (a) The executive director may
3 employ persons to perform the department's work and may prescribe
4 their duties and compensation, subject to the personnel policies
5 adopted by the board and the board's approval of the budget.

6 (b) The executive director shall organize the personnel
7 employed by the department according to specific licensing,
8 enforcement, and regulatory functions rather than by the various
9 professions regulated by the department.

10 Sec. 112.104. DIVISION OF RESPONSIBILITIES. The board
11 shall develop and implement policies that clearly separate the
12 policy-making responsibilities of the board and the management
13 responsibilities of the executive director and the staff of the
14 department.

15 Sec. 112.105. INFORMATION ON STANDARDS OF CONDUCT. The
16 executive director or the executive director's designee shall
17 provide to members of the board and to department employees, as
18 often as necessary, information regarding the requirements for
19 office or employment under this chapter, including information
20 regarding a person's responsibilities under applicable laws
21 relating to standards of conduct for state officers or employees.

22 Sec. 112.106. CAREER LADDER PROGRAM; PERFORMANCE
23 EVALUATIONS. (a) The executive director shall develop a career
24 ladder program. The program must require intra-agency postings of
25 all nonentry level positions concurrently with any public posting.

26 (b) The executive director shall develop a system of
27 employee performance evaluations. The system must require that

1 evaluations be conducted at least annually. All merit pay for
2 department employees must be based on the system established under
3 this subsection.

4 Sec. 112.107. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)

5 The executive director or the executive director's designee shall
6 prepare and maintain a written policy statement that implements a
7 program of equal employment opportunity to ensure that all
8 personnel decisions are made without regard to race, color,
9 disability, sex, religion, age, or national origin.

10 (b) The policy statement must include:

11 (1) personnel policies, including policies relating
12 to recruitment, evaluation, selection, training, and promotion of
13 personnel, that show the intent of the department to avoid the
14 unlawful employment practices described by Chapter 21, Labor Code;
15 and

16 (2) an analysis of the extent to which the composition
17 of the department's personnel is in accordance with state and
18 federal law and a description of reasonable methods to achieve
19 compliance with state and federal law.

20 (c) The policy statement must:

21 (1) be updated annually;
22 (2) be reviewed by the civil rights division of the
23 Texas Workforce Commission for compliance with Subsection (b)(1);
24 and

25 (3) be filed with the governor.

26 Sec. 112.108. STATE EMPLOYEE INCENTIVE PROGRAM. The
27 executive director or the executive director's designee shall

1 provide to department employees information and training on the
2 benefits and methods of participation in the state employee
3 incentive program.

4 [Sections 112.109-112.150 reserved for expansion]

5 SUBCHAPTER D. POWERS AND DUTIES

6 Sec. 112.151. GENERAL POWERS AND DUTIES OF BOARD. (a) The
7 board shall:

8 (1) supervise the executive director's administration
9 of the department;

10 (2) formulate the policy objectives for the
11 department; and

12 (3) approve the department's operating budget and the
13 department's requests for legislative appropriations.

14 (b) The board:

15 (1) may adopt rules as necessary for its own
16 procedures; and

17 (2) shall adopt rules as necessary to implement this
18 chapter.

19 Sec. 112.152. FEES. (a) The board shall set fees, in
20 amounts reasonable and necessary to cover the costs of
21 administering the programs or activities, for:

22 (1) licenses issued by the department;

23 (2) license renewals and late renewals;

24 (3) examinations; and

25 (4) any other program or activity administered by the
26 department for which a fee is authorized.

27 (b) The board by rule may provide for prorating fees for the

1 issuance of a license so that a person regulated by the department
2 pays only that portion of the applicable fee that is allocable to
3 the number of months during which the license is valid.

4 (c) The executive director shall develop cost management
5 procedures that enable the board to determine with reasonable
6 accuracy the cost to the department of each program and activity for
7 which a fee is charged.

8 Sec. 112.153. RULES REGARDING PROGRAMS REGULATED BY
9 DEPARTMENT. The board shall adopt rules as necessary to implement
10 each law establishing a program regulated by the department.

11 Sec. 112.154. RULES RESTRICTING ADVERTISING OR COMPETITIVE
12 BIDDING. (a) The board may not adopt rules restricting advertising
13 or competitive bidding by a license holder except to prohibit
14 false, misleading, or deceptive practices.

15 (b) The board may not include in rules to prohibit false,
16 misleading, or deceptive practices by a license holder a rule that:

17 (1) restricts the use of any advertising medium;

18 (2) restricts the license holder's personal appearance
19 or the use of the license holder's voice in an advertisement;

20 (3) relates to the size or duration of an
21 advertisement; or

22 (4) restricts the use of a trade name in advertising.

23 Sec. 112.155. USE OF TECHNOLOGY. The board shall develop
24 and implement a policy requiring the executive director and
25 department employees to research and propose appropriate
26 technological solutions to improve the department's ability to
27 perform its functions. The technological solutions must:

1 (1) ensure that the public is able to easily find
2 information about the department on the Internet;

3 (2) ensure that persons who want to use the
4 department's services are able to:

5 (A) interact with the department through the
6 Internet; and

7 (B) access any service that can be provided
8 effectively through the Internet; and

9 (3) be cost-effective and developed through the
10 department's planning processes.

11 Sec. 112.156. NEGOTIATED RULEMAKING AND ALTERNATIVE
12 DISPUTE RESOLUTION PROCEDURES. (a) The board shall develop and
13 implement a policy to encourage the use of:

14 (1) negotiated rulemaking procedures under Chapter
15 2008, Government Code, for the adoption of department rules; and

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

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

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

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

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

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

6 [Sections 112.157-112.200 reserved for expansion]

7 SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

8 Sec. 112.201. PUBLIC INTEREST INFORMATION. (a) The
9 department shall prepare information of public interest describing
10 the functions of the board and department and the procedures by
11 which complaints are filed with and resolved by the board or
12 executive director.

13 (b) The department shall make the information available to
14 the public and appropriate state agencies.

15 Sec. 112.202. COMPLAINTS. (a) The executive director
16 shall establish methods by which consumers and service recipients
17 are notified of the name, mailing address, and telephone number of
18 the department for the purpose of directing complaints to the
19 department. The department shall provide to the person filing the
20 complaint and to each person who is a subject of the complaint
21 information about the department's policies and procedures
22 relating to complaint investigation and resolution.

23 (b) The department shall maintain a file on each written
24 complaint filed with the department. The file must include:

- 25 (1) the name of the person who filed the complaint;
26 (2) the date the complaint is received by the
27 department;

1 (3) the subject matter of the complaint;

2 (4) the name of each person contacted in relation to
3 the complaint;

4 (5) a summary of the results of the review or
5 investigation of the complaint; and

6 (6) an explanation of the reason the file was closed,
7 if the department closed the file without taking action other than
8 to investigate the complaint.

9 (c) The department, at least quarterly and until final
10 disposition of the complaint, shall notify the person filing the
11 complaint and each person who is a subject of the complaint of the
12 status of the investigation unless the notice would jeopardize an
13 undercover investigation.

14 (d) The board shall adopt a procedure for documenting
15 complaints to the department from the time of the submission of the
16 initial complaint to the final disposition of the complaint. The
17 board shall publish the procedure in the Texas Register.

18 Sec. 112.203. PUBLIC PARTICIPATION. (a) The board shall
19 develop and implement policies that provide the public with a
20 reasonable opportunity to appear before the board and to speak on
21 any issue under the board's jurisdiction.

22 (b) The board shall prepare and maintain a written plan that
23 describes how a person who does not speak English or who has a
24 physical, mental, or developmental disability may be provided
25 reasonable access to the board's programs.

26 [Sections 112.204-112.250 reserved for expansion]

27 SUBCHAPTER F. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

1 Sec. 112.251. INSPECTIONS AND INVESTIGATIONS. (a) The
2 department may conduct inspections or investigations as necessary
3 to enforce the laws administered by the department.

4 (b) The department, during reasonable business hours, may:

5 (1) enter the business premises of a person regulated
6 by the department or a person suspected of being in violation of or
7 threatening to violate a law establishing a regulatory program
8 administered by the department or a rule or order of the board
9 related to a regulatory program administered by the department; and

10 (2) examine and copy records pertinent to the
11 inspection or investigation.

12 Sec. 112.252. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The
13 attorney general or the executive director may institute an action
14 for injunctive relief to restrain a violation by and to collect a
15 civil penalty from a person that appears to be in violation of or
16 threatening to violate a law establishing a regulatory program
17 administered by the department or a rule or order of the board
18 related to the regulatory program.

19 (b) An action filed under this section must be filed in a
20 district court in Travis County.

21 (c) The attorney general and the department may recover
22 reasonable expenses incurred in obtaining injunctive relief under
23 this section, including court costs, reasonable attorney's fees,
24 investigative costs, witness fees, and deposition expenses.

25 Sec. 112.253. ADMINISTRATIVE SANCTIONS. (a) The
26 department shall revoke, suspend, or refuse to renew a license or
27 shall reprimand a license holder for a violation of this chapter, a

1 law establishing a regulatory program administered by the
2 department, or a rule or order of the board.

3 (b) The department may place on probation a person whose
4 license is suspended. If a license suspension is probated, the
5 department may require the person to:

6 (1) report regularly to the department on matters that
7 are the basis of the probation;

8 (2) limit practice to the areas prescribed by the
9 department; or

10 (3) continue or renew professional education until the
11 person attains a degree of skill satisfactory to the department in
12 those areas that are the basis for the probation.

13 Sec. 112.254. RIGHT TO HEARING; ADMINISTRATIVE PROCEDURE.

14 (a) A respondent is entitled to a hearing conducted by the State
15 Office of Administrative Hearings if the department proposes to
16 deny, suspend, or revoke a license.

17 (b) A proceeding under this chapter to deny, suspend, or
18 revoke a license is considered to be a contested case under Chapter
19 2001, Government Code.

20 Sec. 112.255. AMOUNT OF ADMINISTRATIVE PENALTY.

21 Notwithstanding any provision in a law governing a profession
22 regulated by the department, an administrative penalty imposed
23 under that law shall be in an amount not to exceed \$5,000 for each
24 day of a violation.

25 [Sections 112.256-112.300 reserved for expansion]

26 SUBCHAPTER G. LICENSE REQUIREMENTS

27 Sec. 112.301. TERM OF LICENSE. Notwithstanding any

1 provision in a law governing a profession regulated by the
2 department, a license issued by the department expires on the
3 second anniversary of the date the license is issued.

4 [Sections 112.302-112.350 reserved for expansion]

5 SUBCHAPTER H. HEALTH PROFESSIONS AFFECTED

6 Sec. 112.351. HEALTH PROFESSIONS. (a) Notwithstanding any
7 other provision of law, the department is the state agency
8 responsible for licensing and regulating the following health
9 professions:

10 (1) chiropractors under Chapter 201;

11 (2) podiatrists under Chapter 202;

12 (3) optometrists and therapeutic optometrists under
13 Chapter 351;

14 (4) psychologists under Chapter 501;

15 (5) marriage and family therapists under Chapter 502;

16 (6) licensed professional counselors under Chapter
17 503;

18 (7) social workers under Chapter 505;

19 (8) midwives under Chapter 203;

20 (9) dietitians under Chapter 701;

21 (10) perfusionists under Chapter 603;

22 (11) athletic trainers under Chapter 451;

23 (12) orthotists and prosthetists under Chapter 605;

24 (13) speech-language pathologists and audiologists
25 under Chapter 401;

26 (14) hearing instrument fitters and dispensers under
27 Chapter 402;

1 (15) medical physicists under Chapter 602;

2 (16) medical radiologic technologists under Chapter
3 601;

4 (17) respiratory care practitioners under Chapter
5 604;

6 (18) chemical dependency counselors under Chapter
7 504;

8 (19) contact lens dispensers under Chapter 353;

9 (20) massage therapists under Chapter 455;

10 (21) opticians under Chapter 352;

11 (22) personal emergency response system providers
12 under Chapter 1702; and

13 (23) acupuncturists under Chapter 205.

14 (b) A reference in Subsection (a) to the regulation by the
15 department of a profession under a specific law includes the
16 authority to regulate related health professions and practices
17 under that law and to exercise all powers and duties assigned to the
18 licensing authority under that law.

19 Sec. 112.352. HEALTH PROFESSIONS COUNCIL. The department
20 shall administer the health professions council under Chapter 101
21 and perform the duties assigned to the council under that chapter,
22 including the provision of administrative support for the office of
23 patient protection under Subchapter G, Chapter 101.

24 Sec. 112.353. TRANSITION PLAN. (a) The commissioner of the
25 Department of State Health Services, the executive director of the
26 Texas Department of Health Professions Licensing, and the executive
27 director or comparable official responsible for the administration

1 of each licensing program listed in Section 112.351 shall develop a
2 transition plan to be submitted to the governor, lieutenant
3 governor, and speaker of the house of representatives not later
4 than January 1, 2006.

5 (b) The transition plan described must provide for the
6 transfer of powers, duties, functions, programs, and activities
7 related to the regulation of the affected licensed professions to
8 the department to ensure that the transfer is accomplished in a
9 careful and deliberative manner. The plan must provide for the
10 transition to be completed not later than September 1, 2007.

11 (c) The department's responsibilities under this chapter
12 are subject to the transition plan.

13 (d) This section expires September 1, 2008.

14 SECTION 2. In appointing the initial members of the Texas
15 Board of Health Professions Licensing under Section 112.052,
16 Occupations Code, as added by this Act, the governor shall appoint
17 two members for terms expiring February 1, 2007, two members for
18 terms expiring February 1, 2009, and three members for terms
19 expiring February 1, 2011.

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