

Amend CSHB 2237 (Senate committee printing) as follows:

(1) Add the following appropriately numbered SECTIONS to the bill and renumber existing SECTIONS accordingly:

SECTION \_\_\_\_\_. Subtitle G, Title 3, Occupations Code, is amended by adding Chapter 403 to read as follows:

CHAPTER 403. BASIC DYSLEXIA PRACTITIONERS AND ADVANCED DYSLEXIA THERAPISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 403.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "License holder" means a person who holds a license issued under this chapter.

(5) "Multisensory structured language education" means a program for the treatment of individuals with dyslexia and related disorders that:

(A) includes instruction in:

(i) phonology and phonological awareness;

(ii) sound and symbol association;

(iii) syllables;

(iv) morphology;

(v) syntax; and

(vi) semantics; and

(B) is taught with the principles of:

(i) simultaneous multisensory instruction, including visual-auditory-kinesthetic-tactile instruction;

(ii) systematic and cumulative instruction;

(iii) explicit instruction;

(iv) diagnostic teaching to automaticity;

and

(v) synthetic and analytic instruction.

Sec. 403.002. ADMINISTRATION BY DEPARTMENT OF STATE HEALTH

SERVICES. The department shall administer this chapter.

Sec. 403.003. APPLICABILITY. This chapter does not:

(1) require a school district to employ a person licensed under this chapter; or

(2) authorize a person who is not licensed under Chapter 401 to practice audiology or speech-language pathology.

[Sections 403.004-403.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES

Sec. 403.051. ADVISORY COMMITTEE. The department shall appoint an advisory committee to advise the department in administering this chapter.

Sec. 403.052. RULES. The executive commissioner shall adopt rules necessary to administer and enforce this chapter, including rules that establish standards of ethical practice.

[Sections 403.053-403.100 reserved for expansion]

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 403.101. LICENSE REQUIRED. A person may not use the title "basic dyslexia practitioner" or "advanced dyslexia therapist" in this state unless the person holds the appropriate license under this chapter.

Sec. 403.102. ISSUANCE OF LICENSE. The department shall issue a basic dyslexia practitioner or advanced dyslexia therapist license to an applicant who meets the requirements of this chapter.

Sec. 403.103. LICENSE APPLICATION. (a) A license applicant must apply to the department on a form and in the manner the department prescribes.

(b) The application must be accompanied by a nonrefundable application fee.

Sec. 403.104. ELIGIBILITY FOR BASIC DYSLEXIA PRACTITIONER LICENSE. (a) To be eligible for a basic dyslexia practitioner license, an applicant must have:

(1) earned a bachelor's degree from an accredited public or private institution of higher education;

(2) successfully completed at least 45 hours of course work in multisensory structured language education from a training program that meets the requirements of Section 403.106;

(3) completed at least 90 hours of practice of

supervised clinical experience in multisensory structured language education; and

(4) completed at least five observations of the practice of multisensory structured language education, each followed by a conference and a written report and observed by an instructor from a training program that meets the requirements of Section 403.106.

(b) Clinical experience required under Subsection (a)(3) must be obtained under:

(1) the supervision of a training program that meets the requirements of Section 403.106; and

(2) guidelines approved by the department.

Sec. 403.105. ELIGIBILITY FOR ADVANCED DYSLEXIA THERAPIST LICENSE. (a) To be eligible for an advanced dyslexia therapist license, an applicant must have:

(1) earned at least a master's degree from an accredited public or private institution of higher education;

(2) successfully completed at least 200 hours of course work in multisensory structured language education from a training program that meets the requirements of Section 403.106;

(3) completed at least 700 hours of practice of supervised clinical experience in multisensory structured language education; and

(4) completed at least 10 observations of the practice of multisensory structured language education, each followed by a conference and a written report and observed by an instructor from a training program that meets the requirements of Section 403.106.

(b) Clinical experience required under Subsection (a)(3) must be obtained under:

(1) the supervision of a person holding an advanced dyslexia therapist license; and

(2) guidelines approved by the department.

Sec. 403.106. REQUIREMENTS FOR TRAINING PROGRAMS. (a) For purposes of determining whether an applicant satisfies the training requirements for a license under this chapter, a multisensory structured language education training program completed by the applicant must:

(1) be accredited by a nationally recognized accrediting organization;

(2) provide instruction in each element of multisensory structured language education;

(3) provide instruction based on the Texas Education Agency publication The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders (2001);

(4) be committed to self-study;

(5) have been reviewed by dyslexia education professionals who are not affiliated with the training program; and

(6) develop and follow procedures to maintain and improve the quality of training provided by the program.

(b) The department, in consultation with the advisory committee, shall determine whether a training program meets the requirements of Subsection (a).

Sec. 403.107. EXAMINATION; RULES. (a) To obtain a license, an applicant must:

(1) pass an examination approved by the department;  
and

(2) pay fees set by the executive commissioner.

(b) The department shall, in consultation with the advisory committee:

(1) administer an examination at least twice each year;

(2) determine standards for acceptable performance on the examination; and

(3) maintain a record of all examination scores for at least two years after the date of examination.

(c) In consultation with the advisory committee, the executive commissioner by rule may:

(1) establish procedures for the administration of the examination; and

(2) require a written examination.

Sec. 403.108. REEXAMINATION. (a) A person who fails the examination may take a later examination on payment of a nonrefundable fee for the examination.

(b) An applicant who fails two examinations may not be

reexamined until the person:

(1) submits a new application accompanied by a nonrefundable application fee; and

(2) presents evidence acceptable to the department of additional study in the area for which a license is sought.

Sec. 403.109. WAIVER OF EXAMINATION REQUIREMENT. The department, in consultation with the advisory committee, may waive the examination requirement and issue a license to an applicant who holds an appropriate certificate or other accreditation from a national organization recognized by the department.

Sec. 403.110. PROVISIONAL LICENSE. (a) The department, in consultation with the advisory committee, may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a basic dyslexia practitioner or an advanced dyslexia therapist for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the department relating to the practice of multisensory structured language education; and

(3) is sponsored by a person licensed by the department under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The department may waive the requirement of Subsection (a)(3) for an applicant if the department determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the department approves or denies the provisional license holder's application for a license.

(d) The department shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder passes the part of the examination under Section 403.107 that relates to the

applicant's knowledge and understanding of the laws and rules relating to the practice of multisensory structured language education in this state;

(2) the department verifies that the provisional license holder meets the academic and experience requirements for a license under this chapter; and

(3) the provisional license holder satisfies any other licensing requirements under this chapter.

(e) The department must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

Sec. 403.111. TEMPORARY LICENSE; RULES. The executive commissioner by rule may provide for the issuance of a temporary license.

Sec. 403.112. INACTIVE STATUS; RULES. (a) The executive commissioner by rule may provide for a license holder to be placed on inactive status.

(b) Rules adopted under this section must include a time limit for a license holder to remain on inactive status.

[Sections 403.113-403.150 reserved for expansion]

SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

Sec. 403.151. PRACTICE SETTING. (a) A basic dyslexia practitioner may practice only in a supervised educational setting, including a school, learning center, or clinic.

(b) An advanced dyslexia therapist may practice in a school, clinic, or private practice setting.

Sec. 403.152. CONTINUING EDUCATION. (a) A license holder may not renew the person's license unless the person meets the continuing education requirements established by the executive commissioner.

(b) The executive commissioner, in consultation with the advisory committee, shall establish the continuing education requirements in a manner that allows a license holder to comply without an extended absence from the license holder's county of

residence.

(c) The department shall:

(1) provide to a license applicant, with the application form on which the person is to apply for a license, information describing the continuing education requirements; and

(2) notify each license holder of any change in the continuing education requirements at least one year before the date the change takes effect.

[Sections 403.153-403.200 reserved for expansion]

SUBCHAPTER E. LICENSE DENIAL; COMPLAINT AND DISCIPLINARY

PROCEDURES

Sec. 403.201. COMPLAINTS. Any person may file a complaint with the department alleging a violation of this chapter or a rule adopted under this chapter.

Sec. 403.202. PROHIBITED ACTIONS. A license holder may not:

(1) obtain a license by means of fraud, misrepresentation, or concealment of a material fact;

(2) sell, barter, or offer to sell or barter a license;

or

(3) engage in unprofessional conduct that endangers or is likely to endanger the health, welfare, or safety of the public as defined by executive commissioner rule.

Sec. 403.203. GROUNDS FOR DISCIPLINARY ACTION. If a license holder violates this chapter or a rule or code of ethics adopted by the executive commissioner, the department shall:

(1) revoke or suspend the license;

(2) place on probation the person if the person's license has been suspended;

(3) reprimand the license holder; or

(4) refuse to renew the license.

Sec. 403.204. LICENSE DENIAL, REVOCATION, OR SUSPENSION FOR CRIMINAL CONVICTION. (a) The department may deny a license or may suspend or revoke a license if the applicant or license holder has been convicted of a misdemeanor involving moral turpitude or a felony. The department may take action authorized by this section when:

(1) the time for appeal of the person's conviction has elapsed;

(2) the judgment or conviction has been affirmed on appeal; or

(3) an order granting probation is made suspending the imposition of the person's sentence, without regard to whether a subsequent order:

(A) allows withdrawal of a plea of guilty;

(B) sets aside a verdict of guilty; or

(C) dismisses an information or indictment.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is a conviction for purposes of this section.

Sec. 403.205. HEARING. (a) If the department proposes to revoke, suspend, or refuse to renew a person's license, the person is entitled to a hearing before a hearings officer appointed by the State Office of Administrative Hearings.

(b) The executive commissioner shall prescribe procedures for appealing to the commissioner a decision to revoke, suspend, or refuse to renew a license.

Sec. 403.206. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter to suspend, revoke, or refuse to renew a license is governed by Chapter 2001, Government Code.

Sec. 403.207. SANCTIONS. (a) The executive commissioner by rule shall adopt a broad schedule of sanctions for a violation of this chapter.

(b) The State Office of Administrative Hearings shall use the schedule of sanctions for a sanction imposed as the result of a hearing conducted by that office.

Sec. 403.208. PROBATION. The department may require a person whose license suspension is probated to:

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

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

(3) continue the person's professional education until the license holder attains a degree of skill satisfactory to the



department in those areas that are the basis of the probation.

Sec. 403.209. MONITORING OF LICENSE HOLDER. (a) The executive commissioner by rule shall develop a system for monitoring a license holder's compliance with the requirements of this chapter.

(b) Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the department to perform certain acts; and

(2) identify and monitor license holders who represent a risk to the public.

Sec. 403.210. INFORMAL PROCEDURES. (a) The executive commissioner by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

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

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

(2) require the presence of a representative of the attorney general or the department's legal counsel to advise the department or the department's employees.

Sec. 403.211. REFUND. (a) Subject to Subsection (b), the department may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

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

Sec. 403.212. REINSTATEMENT. (a) A person may apply for reinstatement of a revoked license on or after the first anniversary of the date of revocation.

(b) The department may:

(1) accept or reject the application; and  
(2) require an examination as a condition for reinstatement of the license.

Sec. 403.213. REPRIMAND; CONTINUING EDUCATION. (a) In addition to other disciplinary action authorized by this subchapter, the department may:

(1) issue a written reprimand to a license holder who violates this chapter; or

(2) require that a license holder who violates this chapter attend continuing education programs.

(b) The department, in consultation with the advisory committee, may specify the number of hours of continuing education that must be completed by a license holder to fulfill the requirement of Subsection (a)(2).

Sec. 403.214. EMERGENCY SUSPENSION. (a) The department shall temporarily suspend the license of a license holder if the department determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

[Sections 403.215-403.250 reserved for expansion]

#### SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 403.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or

order adopted under this chapter.

Sec. 403.252. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

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

Sec. 403.253. REPORT AND NOTICE OF VIOLATION AND PENALTY.

(a) If the commissioner or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the department a report stating:

(1) the facts on which the determination is based; and

(2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner or the commissioner's designee shall give written notice of the report to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended administrative penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 403.254. PENALTY TO BE PAID OR HEARING REQUESTED.

(a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the commissioner or the commissioner's designee; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the commissioner or the commissioner's designee, the commissioner by order shall approve the determination and impose the recommended penalty.

Sec. 403.255. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the commissioner or the commissioner's designee shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Sec. 403.256. DECISION BY COMMISSIONER. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the commissioner by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the commissioner's order given to the person must include a statement of the right of the person to judicial review of the order.

Sec. 403.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

(a) Within 30 days after the date the commissioner's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a

person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner or the commissioner's designee by certified mail.

(c) If the commissioner or the commissioner's designee receives a copy of an affidavit under Subsection (b)(2), the commissioner or the designee may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 403.258. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Sec. 403.259. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not

owed.

Sec. 403.260. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Sec. 403.261. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

[Sections 403.262-403.300 reserved for expansion]

SUBCHAPTER G. PENALTIES AND OTHER ENFORCEMENT PROCEDURES

Sec. 403.301. INJUNCTION. (a) The department may request the attorney general or the appropriate county or district attorney to commence an action to enjoin a violation of this chapter.

(b) The remedy provided by this section is in addition to any other action authorized by law.

Sec. 403.302. CIVIL PENALTY. (a) A person who violates this chapter, a rule adopted by the executive commissioner, or an order adopted by the commissioner under this chapter is liable for a civil penalty not to exceed \$5,000 a day.

(b) At the request of the department, the attorney general shall bring an action to recover a civil penalty authorized under this section.

Sec. 403.303. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 403.101.

(b) An offense under this section is a Class B misdemeanor.

Sec. 403.304. CEASE AND DESIST ORDER. (a) If it appears to the commissioner that a person who is not licensed under this chapter is violating this chapter or a rule adopted under this chapter, the commissioner after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

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

SECTION \_\_\_\_\_. The heading to Subtitle G, Title 3, Occupations Code, is amended to read as follows:

SUBTITLE G. PROFESSIONS RELATED TO HEARING, ~~[AND]~~ SPEECH, AND  
DYSLEXIA

(2) In SECTION 14 of the bill, at the end of that section (page 14, line 15), insert "This section does not apply to Chapter 403, Occupations Code, as added by this Act."

(3) Strike SECTION 15 of the bill (page 14, lines 16 through 20) and substitute the following appropriately numbered SECTION:

SECTION \_\_\_\_\_. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

(b) Except as provided by Subsection (c) of this section, the changes in law made by this Act to Subtitle G, Title 3, Occupations Code, take effect September 1, 2007.

(c) Section 403.101 and Subchapters E, F, and G, Chapter 403, Occupations Code, as added by this Act, take effect February 1, 2008.