

BILL ANALYSIS

S.B. 703
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Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The professional title "dyslexia practitioner" has no statutory definition in Texas. As a result, services offered by a dyslexia practitioner are often performed by a person without any formal training. Customers that hire a dyslexia practitioner for services to improve their disorder have no guarantee that services rendered are quality professional services.

S.B. 703 provides certain educational requirements for dyslexia practitioners.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

ANALYSIS

S.B. 703 adds CHAPTER 403, BASIC DYSLEXIA PRACTITIONERS AND ADVANCED DYSLEXIA THERAPISTS to the Occupation Code. It defines "commissioner," "department," "executive commissioner," "license holder," and "multisensory structured language education."

S.B. 703 requires the Department of State Health Services (department) to administer this chapter. It further provides that the chapter neither requires a school district to employ a person licensed under this chapter nor does it authorize a person who is not licensed under the chapter pertaining to Speech-Language Pathologists and Audiologists to practice audiology or speech-language pathology.

S.B. 703 requires the department to appoint an advisory committee to advise the department in administering this chapter. It also requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules necessary to administer and enforce this chapter, including rules that establish standards of ethical practice.

S.B. 703 states that 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. It requires the department to issue a basic dyslexia practitioner or an advanced dyslexia therapist license to an applicant who meets the requirements of this chapter. A license applicant must apply to the department on a form and in the manner it prescribes. The application must also be accompanied by a nonrefundable application fee.

S.B. 703 provides that to be eligible for a basic dyslexia practitioner license, an applicant must have met certain specified criteria and have clinical experience that must be obtained under a training program specified by the code and guidelines approved by the department.

S.B. 703 states that to be eligible for an advanced dyslexia therapist license, the applicant must have met certain specified criteria and have clinical experience that must be obtained under the supervision of a person holding an advanced dyslexia therapist license and guidelines approved by the department.

S.B. 703 provides that for the purposes of determining whether an applicant satisfies training requirements for a license under the chapter that a multisensory structured language education training program completed by the applicant must meet certain specified criteria, and the

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department in consultation with the advisory committee whether a program meets those specified criteria.

S.B. 703 provides that an applicant for a license must pass an examination approved by the department and pay fees set by the executive commissioner. It further requires the department, in consultation with the advisory committee, to administer an examination at least twice each year, to determine standards for acceptable performance on the examination, and to maintain a record of all examination scores for at least two years after the date of examination. It also authorizes the executive commissioner, in consultation with the advisory committee, by rule to establish procedures for administering the examination and requiring a written examination. It also permits a person who fails the examination to take a later examination on payment of a nonrefundable fee for the examination. It prohibits an applicant who fails two examinations from being reexamined until the person meets certain criteria.

S.B. 703 authorizes the department, in consultation with the advisory committee, to 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.

S.B. 703 authorizes the department, in consultation with the advisory committee, to issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who meets certain criteria. It allows the department to waive the specified requirements for an applicant if the department determines that compliance with that subsection would be a hardship to the applicant. It provides that a provisional license is valid until the date the department approves or denies the professional license holder's application for a license. It requires the department to issue a license under this chapter to the provisional license holder if the holder meets certain criteria relating to experience and eligibility. It provides that 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 and it may extend the 180-day period provided the results of an examination have not been received by the department before the end of that period.

S.B. 703 authorizes the executive commissioner by rule to provide for the issuance of a temporary license. It also permits the executive commissioner by rule to provide for a license holder to be placed on inactive status and the adopted rules must include a time limit for a license holder to remain on inactive status.

S.B. 703 authorizes a basic dyslexia practitioner to practice only in a supervised education setting, including a school, learning center, or clinic, and it permits an advanced dyslexia therapist to practice in a school, clinic, or private practice setting.

S.B. 703 prohibits a license holder from renewing the person's license unless the person meets certain requirements established by the executive commissioner relating to continuing education. It also requires the executive commissioner, in consultation with the advisory committee, to 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. It requires the department to 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 notify each license holder of any change in the continuing education requirements at least one year before the date the change takes effect.

S.B. 703 permits any person to file a complaint with the department alleging a violation of this chapter or a rule adopted under this chapter. It prohibits a license holder from obtaining a license by certain specified acts, or engage in unprofessional conduct that is likely to endanger the health, welfare, or safety of the public as defined by executive commissioner rule. It also requires the department to take certain actions if a license holder violates this chapter or a rule or code of ethics adopted by the executive commissioner.

S.B. 703 authorizes the department to deny a license or to suspend or revoke a license if the applicant or license holder has been convicted of a misdemeanor involving moral turpitude or a felony, and to take action authorized by this section when certain circumstances occur. It also

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provides that a plea or verdict of guilty or a conviction following a plea of nolo contendere is a conviction for purposes of this section.

S.B. 703 entitles a person to a hearing before a hearings officer appointed by the State Office of Administrative Hearings (SOAH) if the department proposes to revoke, suspend, or refuse to renew that person's license. It requires the executive commissioner to prescribe procedures for appealing to the commissioner of state health services (commissioner) a decision to revoke, suspend, or refuse to renew a license.

S.B. 703 provides that a proceeding under this subchapter to suspend, revoke, or refuse to renew a license is governed by a specified section of the code. It also requires the executive commissioner by rule to adopt a broad schedule of sanctions for a violation of this chapter. It requires SOAH to use the schedule of sanctions for a sanction imposed as the result of a hearing conducted by SOAH. It authorizes the department to require a person to follow certain provisions if that person's license suspension is probated.

S.B. 703 requires the executive commissioner by rule to develop a system for monitoring a license holder's compliance with the requirements of this chapter. It also requires rules adopted under this section to include procedures to monitor for compliance a license holder who is ordered by the department to perform certain acts and to identify and monitor license holders who represent a risk to the public. It requires the executive commissioner by rule to adopt procedures governing the information disposition of a contested case under the section pertaining Information Disposition of Contested Case, as specified in code, and an information proceeding held in compliance with the section pertaining Licenses as specified in the code.

S.B. 703 also provides that the rules adopted by the executive commissioner must provide the complainant and the license holder an opportunity to be heard and require the presence of a representative of the attorney general or department's legal counsel to advise department or department's employees.

S.B. 703 authorizes the department, subject to Subsection (b), to order a license holder to pay a refund to a consumer as provided in an agreement resulting from an information settlement conference instead of or in addition to imposing an administrative penalty under this chapter. It also prohibits the amount of a refund ordered as provided in an agreement resulting from an information settlement conference from exceeding the amount the consumer paid to the license holder for a service regulated by this chapter. Prohibits the department from requiring payment of other damages or estimate harm in a refund order.

S.B. 703 authorizes a person to apply for reinstatement of a revoked license on or after the first anniversary of the date of revocation, and it permits the department to accept or reject the application and require an examination as a condition for reinstatement of the license.

S.B. 703 authorizes department, in addition to other authorized disciplinary action, to issue a written reprimand to a license holder who violates this chapter, or require that a license holder who violates this chapter attend continuing education programs. It further authorizes the department, in consultation with the advisory committee, to specify the number of hours of continuing education that are required to be completed by a license holder to fulfill the requirement where specified.

S.B. 703 requires the department to temporarily suspend the license of a license holder under certain circumstances. It also permits a license to be suspended under this section without notice or hearing on the complaint under certain circumstances. It requires SOAH to 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. Requires a final hearing on the matter to be held not later than the 61st day after the date of the temporary suspension.

S.B. 703 authorizes the department to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. Provides that an administrative penalty may not be more than \$5,000 for each violation, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

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It further requires the amount to be based on certain factors and it requires the executive commissioner by rule to 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. Requires the executive commissioner to provide an administrative penalty schedule to the public on request.

S.B. 703 authorizes the commissioner or the commissioner's designee to issue a report to the department, if it is determined that a violation occurred, that contains specified facts and determinations. Requires the commissioner or the commissioner's designee, within 14 days after the date the report is issued, to give written notice of the report to the person. Requires the notice to contain certain information regarding the alleged violation, administrative penalty, and the person's rights.

S.B. 703 authorizes, within 10 days after the date the person receives the notice, the person in writing to accept the determination and recommended administrative penalty of the commissioner or the commissioner's designee or to make a request in writing for a hearing on the occurrence of the violation, the amount of the penalty, or both. Requires the commissioner by order to approve the determination and impose the recommended penalty if the person accepts the determination and recommended penalty.

S.B. 703 requires the commissioner or the commissioner's designee to set a hearing and give written notice of the hearing to the person if the person requests a hearing or fails to respond in a timely manner to the notice. Requires an administrative law judge of SOAH (judge) to hold the hearing. Requires the judge to 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.

S.B. 703 authorizes the commissioner by order to determine whether a violation occurred and to impose an administrative penalty, if applicable, based on the findings of fact, conclusions of law, and proposal for decision. It provides that 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.

S.B. 703 requires the person to pay the administrative penalty or file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both, within 30 days after the date the commissioner's order becomes final. It also authorizes a person who files a petition for judicial review to stay enforcement of the penalty in a certain manner or to request the court to stay enforcement of the penalty within the 30-day period prescribed in a specified subsection. It permits the commissioner or the commissioner's designee to file with the court, within five days after the date the copy is received, a contest to the affidavit, if the commissioner or designee receives a copy of the affidavit under a specified subsection. It requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and requires the court to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay and to give a supersedeas bond.

S.B. 703 authorizes the collection of the penalty if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty.

S.B.703 authorizes the court to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty if the court sustains the determination that a violation occurred. It also requires the court to order that a penalty is not owed if the court does not sustain the finding that a violation occurred.

S.B. 703 requires the court to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to a person 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. It further provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. It also requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted. It requires the court to order, when the court's judgment becomes final, the release of the bond if

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the person gave a supersedeas bond and the penalty is not upheld by the court. It requires the court to order the release of the bond after the person pays the reduced amount if the person gave a supersedeas bond and the amount of the penalty is reduced.

S.B. 703 provides that a proceeding under this subchapter is a contested case under the Administrative Procedure chapter of a designated code. It also provides that a violation of a specified section of the chapter is a deceptive trade practice. It further authorizes the department to request the attorney general or the appropriate county or district attorney to commence an action to enjoin a violation of this chapter. It also provides that the remedy provided by this section is in addition to any other action authorized by law.

S.B. 703 provides that 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. It requires the attorney general, at the request of the department, to bring an action to recover a civil penalty authorized under this section.

S.B. 703 provides that a person commits an offense if the person violates a specified section to the chapter. It also provides that an offense under this section is a Class B misdemeanor.

S.B. 703 authorizes the commissioner after notice and an opportunity for a hearing to issue a cease and desist order to prohibit a person from engaging in certain activities if it appears that the person who is not licensed under this chapter is violating this chapter or a rule adopted under this chapter. It provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

S.B. 703 amends the heading to Subtitle G, Title 3, Occupations Code, to read as follows:
SUBTITLE G. PROFESSIONS RELATED TO HEARING, SPEECH, AND DYSLEXIA.

EFFECTIVE DATE

Effective date is September 1, 2007, except as required by Subsection (b) of this section, and the effective date for Section 403.101 and Subchapters E, F, and G, Chapter 403, Occupations Code, as added by this Act is February 1, 2008.