

By: Zaffirini

S.B. No. 155

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of chemical dependency counselors.

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

SECTION 1. Section 504.001, Occupations Code, is amended to read as follows:

Sec. 504.001. DEFINITIONS. In this chapter:

(1) "Certified clinical supervisor" means a person certified in accordance with Section 504.1521.

(2) "Chemical dependency counseling" means assisting an individual or group to:

(A) develop an understanding of chemical dependency problems;

(B) define goals; and

(C) plan action reflecting the individual's or group's interest, abilities, and needs as affected by claimed or indicated chemical dependency problems.

(3) ~~[(2)]~~ "Chemical dependency counselor" means a person licensed under this chapter.

(4) "Clinical training institution" means a person registered with the department in accordance with Section 504.1521 to supervise a counselor intern.

(5) "Commissioner" means the commissioner of state health services ~~[(3) "Commission" means the Texas Commission on Alcohol and Drug Abuse].~~

1 (6) [~~3-a~~] "Counselor intern" means a person
2 registered with the department [~~commission~~] in accordance with
3 Section 504.1515.

4 (7) "Department" means the Department of State Health
5 Services.

6 (8) "Executive commissioner" means the executive
7 commissioner of the Health and Human Services Commission.

8 (9) "Peer assistance program" means a program approved
9 by the department under Section 504.058.

10 (10) [~~4~~] "~~Executive director~~" means the executive
11 ~~director of the Texas Commission on Alcohol and Drug Abuse.~~

12 [~~5~~] "Person" means an individual, corporation,
13 partnership, association, or other business or professional
14 entity.

15 (11) [~~6~~] "Practice of chemical dependency
16 counseling" means providing or offering to provide chemical
17 dependency counseling services involving the application of the
18 principles, methods, and procedures of the chemical dependency
19 counseling profession.

20 SECTION 2. Subchapters B and C, Chapter 504, Occupations
21 Code, are amended to read as follows:

22 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND
23 DEPARTMENT [~~TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE~~]

24 Sec. 504.051. GENERAL POWERS AND DUTIES OF EXECUTIVE
25 COMMISSIONER [~~COMMISSION~~]. The executive commissioner
26 [~~commission~~] shall:

27 (1) adopt [~~and enforce~~] rules as necessary for the

1 performance of its duties under this chapter;

2 (2) establish standards of conduct and ethics for
3 persons licensed under this chapter; and

4 (3) establish any additional criteria for peer
5 assistance programs for chemical dependency counselors that the
6 executive commissioner determines necessary [~~ensure strict~~
7 ~~compliance with and enforcement of this chapter~~].

8 Sec. 504.0515. GENERAL POWERS AND DUTIES OF DEPARTMENT.

9 The department shall:

10 (1) enforce rules as necessary for the performance of
11 its duties under this chapter; and

12 (2) ensure strict compliance with and enforcement of
13 this chapter.

14 Sec. 504.052. DISCRIMINATION PROHIBITED. In taking an
15 action or making a decision under this chapter, the executive
16 commissioner, commissioner, and department [~~commission~~] shall do
17 so without regard to the sex, race, religion, national origin,
18 color, or political affiliation of the person affected. For
19 purposes of this section, taking an action or making a decision
20 under this chapter includes:

21 (1) considering a license application;

22 (2) conducting an examination;

23 (3) adopting or enforcing a rule; and

24 (4) conducting a disciplinary proceeding.

25 Sec. 504.053. FEES; ACCOUNT. (a) The department
26 [~~commission~~] shall set application, examination, license renewal,
27 and other fees in amounts sufficient to cover the costs of

1 administering this chapter. The amount of the license renewal fee
2 may not exceed \$200.

3 (b) General revenue taxes may not be used to administer this
4 chapter.

5 Sec. 504.054. COLLECTION ACTION. A district court in
6 Travis County has exclusive jurisdiction of an action to collect an
7 obligation owed to the department [~~commission~~], including an
8 administrative penalty assessed under Subchapter G.

9 Sec. 504.055. OFFICIAL ROSTER. (a) The department
10 [~~commission~~] may prepare and publish a roster showing the name and
11 address, as reflected by the department's [~~commission's~~] records,
12 of each chemical dependency counselor.

13 (b) If the department [~~commission~~] publishes a roster under
14 this section, the department [~~commission~~] shall mail a copy of the
15 roster to each person licensed by the department [~~commission~~] and
16 shall file a copy of the roster with the secretary of state.

17 (c) A person's name and address may appear in the roster
18 only if each fee assessed against the person under this chapter is
19 current and paid in full at the time the roster is sent to the
20 printer or publisher.

21 (d) The department [~~commission~~] may charge a fee for the
22 roster published under this section.

23 Sec. 504.056. RULES RESTRICTING ADVERTISING OR COMPETITIVE
24 BIDDING. (a) The executive commissioner [~~commission~~] may not
25 adopt a rule restricting advertising or competitive bidding by a
26 person regulated by the department [~~commission~~] under this chapter
27 except to prohibit a false, misleading, or deceptive practice.

1 (b) The executive commissioner [~~commission~~] may not include
2 in rules adopted under this chapter a rule that:

3 (1) restricts the person's use of any advertising
4 medium;

5 (2) restricts the person's personal appearance or use
6 of the person's voice in an advertisement;

7 (3) relates to the size or duration of an
8 advertisement by the person; or

9 (4) restricts the person's advertisement under a trade
10 name.

11 Sec. 504.057. APPROVAL OF PEER ASSISTANCE PROGRAMS. (a)
12 The department shall approve one or more peer assistance programs
13 established by the department or a professional association in
14 accordance with Chapter 467, Health and Safety Code, from which
15 persons licensed under this chapter may seek assistance.

16 (b) The department shall approve a peer assistance program
17 that:

18 (1) meets the minimum criteria established by the
19 executive commissioner or department under Chapter 467, Health and
20 Safety Code;

21 (2) meets any additional criteria established by the
22 executive commissioner or department for chemical dependency
23 counselors licensed under this chapter; and

24 (3) is designed to assist a chemical dependency
25 counselor whose ability to perform a professional service is
26 impaired by abuse of or dependency on drugs or alcohol.

27 (c) The department shall maintain a list of approved peer

1 assistance programs for licensed chemical dependency counselors on
2 the department's Internet website.

3 SUBCHAPTER C. PUBLIC INTEREST INFORMATION AND
4 COMPLAINT PROCEDURES

5 Sec. 504.101. CONSUMER INTEREST INFORMATION. (a) The
6 department [~~commission~~] shall prepare information of consumer
7 interest describing the regulatory functions of the department
8 [~~commission~~] and the procedures by which consumer complaints are
9 filed with and resolved by the department [~~commission~~].

10 (b) The department [~~commission~~] shall make the information
11 available to the public and appropriate state agencies.

12 Sec. 504.102. CONSUMER INFORMATION FOR FILING
13 COMPLAINTS. Each person licensed under this chapter shall display
14 prominently at all times in the person's place of business a sign
15 containing:

16 (1) the name, mailing address, and telephone number of
17 the department [~~commission~~]; and

18 (2) a statement informing a consumer that a complaint
19 against a person licensed under this chapter may be directed to the
20 department [~~commission~~].

21 Sec. 504.103. RECORDS OF COMPLAINTS. (a) The department
22 [~~commission~~] shall keep information about each complaint filed with
23 the department [~~commission~~]. The information must include:

- 24 (1) the date the complaint is received;
- 25 (2) the name of the complainant;
- 26 (3) the subject matter of the complaint;
- 27 (4) a record of each person contacted in relation to

1 the complaint;

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

4 (6) for a complaint for which the department
5 [~~commission~~] took no action, an explanation of the reason the
6 complaint was closed without action.

7 (b) The department [~~commission~~] shall keep an information
8 file about each complaint filed with the department [~~commission~~]
9 that the department [~~commission~~] has authority to resolve.

10 (c) The department [~~commission~~], at least quarterly and
11 until final disposition of the complaint, shall notify the person
12 filing the complaint and each person or entity that is the subject
13 of the complaint of the status of the complaint unless the notice
14 would jeopardize an undercover investigation.

15 SECTION 3. Subchapter D, Chapter 504, Occupations Code, is
16 amended by adding Section 504.1511 to read as follows:

17 Sec. 504.1511. OTHER CERTIFICATIONS INCLUDED ON LICENSE. A
18 license issued under this chapter must include the designation and
19 expiration date of any other related certification held by the
20 license holder:

21 (1) that is approved by the International
22 Certification Reciprocity Consortium or another entity approved by
23 the department; and

24 (2) for which the license holder provides to the
25 department a copy of a current certificate issued by the Texas
26 Certification Board of Addiction Professionals or another entity
27 approved by the department.

1 SECTION 4. Sections 504.1515 and 504.152, Occupations Code,
2 are amended to read as follows:

3 Sec. 504.1515. COUNSELOR INTERNS. (a) A person seeking a
4 license as a chemical dependency counselor shall register with the
5 department [~~commission~~] as a counselor intern by submitting, in a
6 form acceptable to the department [~~commission~~], the following:

7 (1) an application fee and a background investigation
8 fee;

9 (2) a completed, signed, dated, and notarized
10 application on a form prescribed by the department [~~commission~~];

11 (3) a recent full-face wallet-sized photograph of the
12 applicant;

13 (4) two sets of fingerprints completed in accordance
14 with department [~~commission~~] instructions on cards issued by the
15 department [~~commission~~];

16 (5) documentation verifying the applicant
17 successfully completed:

18 (A) 270 total hours of approved curricula
19 described by Section 504.152(3)(A); and

20 (B) 300 hours of approved supervised field work
21 practicum described by Section 504.152(3)(C); and

22 (6) documentation verifying the applicant received a
23 high school diploma or its equivalent.

24 (b) The department [~~commission~~] may obtain criminal history
25 record information relating to a counselor intern or an applicant
26 for registration as a counselor intern from the Department of
27 Public Safety and the Federal Bureau of Investigation.

1 Sec. 504.152. ELIGIBILITY REQUIREMENTS. To be eligible
2 for a license under this chapter, a person must:

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

4 (2) hold an associate degree or a more advanced
5 degree;

6 (3) have completed:

7 (A) 135 hours, or nine semester hours, specific
8 to substance abuse disorders and treatment and an additional 135
9 hours, or nine semester hours, specific or related to chemical
10 dependency counseling;

11 (B) 4,000 hours of approved supervised
12 experience working with chemically dependent persons; and

13 (C) 300 hours of approved supervised field work
14 practicum;

15 (4) provide two letters of reference from chemical
16 dependency counselors;

17 (5) pass a written examination approved by the
18 department [~~commission~~];

19 (6) submit a case presentation to the test
20 administrator;

21 (7) pass an oral examination approved by the
22 department [~~commission~~];

23 (8) be determined by the department [~~commission~~] to be
24 worthy of the public trust and confidence;

25 (9) successfully complete the chemical dependency
26 counselor examination under Section 504.156; [~~and~~]

27 (10) sign a written agreement to comply with the

1 standards of ethics approved by the department; and

2 (11) provide to the department written assurance that
3 the applicant has access to a peer assistance program [commission].

4 SECTION 5. Subchapter D, Chapter 504, Occupations Code, is
5 amended by adding Section 504.1521 to read as follows:

6 Sec. 504.1521. SUPERVISED WORK EXPERIENCE. (a) A
7 counselor intern shall obtain the supervised work experience
8 required under Section 504.152 that is obtained in this state at a
9 clinical training institution or under the supervision of a
10 certified clinical supervisor.

11 (b) The executive commissioner shall adopt rules necessary
12 to:

13 (1) register clinical training institutions that meet
14 the criteria established by the executive commissioner,
15 commissioner, or department to protect the safety and welfare of
16 the people of this state; and

17 (2) certify clinical supervisors who hold
18 certification credentials approved by the department or by a person
19 designated by the department, such as the International
20 Certification Reciprocity Consortium or another person that meets
21 the criteria established by the executive commissioner,
22 commissioner, or department to protect the safety and welfare of
23 the people of this state.

24 SECTION 6. Sections 504.1525, 504.153, 504.154, and
25 504.155, Occupations Code, are amended to read as follows:

26 Sec. 504.1525. CERTAIN GROUNDS FOR LICENSE REFUSAL;
27 EXCEPTION. (a) Except as provided by Subsection (b), the

1 department [~~The commission~~] may not issue a license under this
2 chapter to an applicant who has been:

3 (1) convicted or placed on community supervision
4 during the five years preceding the date of application in any
5 jurisdiction for an offense equal to a Class B misdemeanor
6 specified by executive commissioner [~~commission~~] rule;

7 (2) convicted or placed on community supervision in
8 any jurisdiction for an offense equal to or greater than a Class A
9 misdemeanor specified by executive commissioner [~~commission~~] rule;
10 or

11 (3) found to be incapacitated by a court on the basis
12 of a mental defect or disease.

13 (b) The department may issue a license to a person convicted
14 or placed on community supervision in any jurisdiction for a drug or
15 alcohol offense described by Subsection (a)(1) or (2) if the
16 department determines that the applicant has successfully
17 completed participation in an approved peer assistance program.

18 (c) Subsection (a) does not apply to an applicant who has,
19 with respect to Subsection (a)(1) or (2), received a full pardon
20 based on the person's wrongful conviction or, with respect to
21 Subsection (a)(3), been found by a court to no longer be
22 incapacitated.

23 Sec. 504.153. ALTERNATIVE QUALIFICATIONS AND EVIDENCE OF
24 LICENSE REQUIREMENT SATISFACTION. (a) An applicant is exempt from
25 the requirements of Sections 504.152(3)(A) and (C) if the applicant
26 holds a baccalaureate degree or a more advanced degree in:

27 (1) chemical dependency counseling; or

1 (2) psychology, sociology, or any other related
2 program approved by the department [~~commission~~].

3 (b) On presentation of documentation by an applicant who
4 holds a degree described by Subsection (a), the department
5 [~~commission~~] may waive any portion of the requirement established
6 by Section 504.152(3)(B) that the department [~~commission~~]
7 determines has been satisfied as evidenced by the documentation.

8 Sec. 504.154. LICENSING WITHOUT EXAMINATION FOR CERTAIN
9 APPLICANTS. An applicant may be licensed as a chemical dependency
10 counselor without taking the examination required by Section
11 504.156 if the applicant:

12 (1) is certified on or before October 1, 1991, as an
13 alcohol and drug abuse counselor by the Texas Association of
14 Alcohol and Drug Abuse Counselors; or

15 (2) holds a baccalaureate degree in chemical
16 dependency counseling or in sociology, psychology, criminology, or
17 a related field conferred by an educational program approved by the
18 department [~~commission~~] and has successfully completed two years of
19 actual and active chemical dependency counseling experience
20 approved by the department [~~commission~~] on or before October 1,
21 1991.

22 Sec. 504.155. LICENSE APPLICATION. (a) An application for
23 a license under this chapter must:

24 (1) be on a form prescribed and furnished by the
25 department [~~commission~~]; and

26 (2) contain a statement made under oath of the
27 applicant's education, experience, and other qualifications

1 established by the department [~~commission~~] as required for a
2 license under this chapter.

3 (b) The department [~~commission~~] may require additional
4 information regarding the quality, scope, and nature of the
5 experience and competence of the applicant if the department
6 [~~commission~~] determines that a person's application lacks
7 sufficient information for consideration by the department
8 [~~commission~~].

9 (c) The department [~~commission~~] may obtain criminal history
10 record information relating to an applicant for a license under
11 this chapter from the Department of Public Safety and the Federal
12 Bureau of Investigation. The department [~~commission~~] may deny an
13 application for a license if the applicant fails to provide two
14 complete sets of fingerprints on a form prescribed by the
15 department [~~commission~~].

16 (d) The issuance of a license by the department [~~commission~~]
17 is conditioned on the receipt by the department [~~commission~~] of the
18 applicant's criminal history record information.

19 SECTION 7. Section 504.156(a), Occupations Code, is amended
20 to read as follows:

21 (a) At least twice each year, the department [~~commission~~]
22 may prepare and administer or contract with an organization
23 approved by the International Certification Reciprocity Consortium
24 to prepare and administer an examination to determine the
25 qualifications of an applicant for a license under this chapter.
26 The examination shall be conducted as determined by the department
27 [~~commission~~] and in a manner that is fair and impartial to and takes

1 into consideration each school or system of chemical dependency
2 counseling.

3 SECTION 8. Sections 504.157-504.161, Occupations Code, are
4 amended to read as follows:

5 Sec. 504.157. EXAMINATION RESULTS; REEXAMINATION. (a)
6 The department [~~commission~~] shall notify each examinee of the
7 results of the examination not later than the 30th day after the
8 date the examination is administered.

9 (b) If requested by an applicant who fails the examination,
10 the department [~~commission~~] shall furnish the applicant with an
11 analysis of the applicant's performance on the examination.

12 (c) An applicant who fails the examination may take a
13 subsequent examination on payment of the required examination fee.

14 (d) The executive commissioner [~~commission~~] by rule shall
15 establish the criteria under which an applicant may take a
16 subsequent examination under Subsection (c).

17 Sec. 504.158. PROVISIONAL LICENSE. (a) The department
18 [~~commission~~] may issue a provisional license to an applicant who is
19 licensed in another state. An applicant for a provisional license
20 under this section must:

21 (1) be licensed in good standing as a chemical
22 dependency counselor at least two years in another state or country
23 that has licensing requirements substantially equivalent to the
24 requirements of this chapter;

25 (2) have passed a national or other examination
26 recognized by the department [~~commission~~] relating to the practice
27 of chemical dependency counseling; and

1 (3) be sponsored by a person licensed by the
2 department [~~commission~~] under this chapter with whom the
3 provisional license holder may practice.

4 (b) The department [~~commission~~] may waive the requirement
5 of Subsection (a)(3) if the department [~~commission~~] determines that
6 compliance with that subsection would constitute a hardship to the
7 applicant.

8 (c) The department [~~commission~~] may establish a fee for a
9 provisional license in an amount reasonable and necessary to cover
10 the cost of issuing the license.

11 (d) A provisional license is valid until the date the
12 department [~~commission~~] approves or denies the provisional license
13 holder's application for a license under Section 504.159.

14 Sec. 504.159. ISSUANCE OF LICENSE TO PROVISIONAL LICENSE
15 HOLDER. (a) The department [~~commission~~] shall issue a license
16 under this chapter to a provisional license holder who satisfies
17 the eligibility requirements established by Section 504.152. When
18 issuing a license under this subsection, the department
19 [~~commission~~] may waive the requirements established by Sections
20 504.152(6), (7), and (9).

21 (b) The department [~~commission~~] shall complete the
22 processing of a provisional license holder's application for a
23 license not later than the 180th day after the date the provisional
24 license is issued. The department [~~commission~~] may extend the
25 180-day period if the department [~~commission~~] has not received
26 information necessary to determine whether the applicant is
27 eligible for a license as provided by Subsection (a).

1 Sec. 504.160. ISSUANCE OF LICENSE TO CERTAIN OUT-OF-STATE
2 APPLICANTS. (a) The department [~~commission~~] may, on application
3 and payment of the appropriate fee, issue a license to a person who
4 is licensed or certified by another state as a chemical dependency
5 counselor if the department [~~commission~~] determines that the
6 license or certificate requirements of that state are substantially
7 equivalent to the requirements of this chapter.

8 (b) The department [~~commission~~] may waive any license
9 requirement for an applicant with a license or certificate issued
10 by another state with which this state has a reciprocity agreement.

11 Sec. 504.161. CRIMINAL HISTORY RECORD INFORMATION. (a)
12 The department [~~commission~~] may obtain criminal history record
13 information as provided by Section 411.1105 [~~411.132~~], Government
14 Code, [~~as added by Chapter 18, Acts of the 75th Legislature, Regular~~
15 ~~Session, 1997,~~] and consider that information in determining a
16 person's license status under this chapter.

17 (b) The department [~~commission~~] may charge a person on whom
18 criminal history record information is sought a fee in an amount set
19 by the department [~~commission~~] as reasonably necessary to cover the
20 costs of administering this section. A fee collected under this
21 subsection may be appropriated only to the department [~~commission~~]
22 to administer this section.

23 SECTION 9. Section 504.201(a), Occupations Code, is amended
24 to read as follows:

25 (a) A license issued under this chapter expires on the
26 second anniversary of the date of issuance. The executive
27 commissioner [~~commission~~] by rule shall adopt a system under which

1 licenses expire on various dates during the year.

2 SECTION 10. Sections 504.202 and 504.2025, Occupations
3 Code, are amended to read as follows:

4 Sec. 504.202. NOTICE OF LICENSE EXPIRATION AND REQUIREMENTS
5 TO RENEW. Not later than the 31st day before the expiration date of
6 a person's license, the department [~~commission~~] shall send to the
7 license holder at the license holder's last known address according
8 to department [~~commission~~] records written notice of:

- 9 (1) the impending license expiration;
10 (2) the amount of the renewal fee; and
11 (3) any continuing education required to renew the
12 license.

13 Sec. 504.2025. CERTAIN GROUNDS FOR REFUSAL TO RENEW
14 LICENSE. (a) Except as provided by Subsection (b), the department
15 [~~The commission~~] shall refuse to renew a license under this chapter
16 on receipt of information from the Department of Public Safety or
17 another law enforcement agency that the person has been convicted,
18 placed on community supervision, or found to be incapacitated as
19 described by Section 504.1525.

20 (b) The department may renew a license under this chapter if
21 the department determines that the person has successfully
22 completed participation in an approved peer assistance program
23 subsequent to the conviction or placement on community supervision
24 for an offense described by Section 504.1525(b).

25 SECTION 11. Subchapter E, Chapter 504, Occupations Code, is
26 amended by adding Section 504.2026 to read as follows:

27 Sec. 504.2026. REFUSAL TO RENEW LICENSE: ACCESS TO PEER

1 ASSISTANCE PROGRAM. (a) Except as provided by Subsection (b), the
2 department may not renew a license under this chapter unless the
3 license holder provides to the department written documentation
4 that the license holder has access to an approved peer assistance
5 program.

6 (b) The department may waive the requirement of
7 Subsection (a) if the department determines that a peer assistance
8 program is not reasonably available to the license holder.

9 SECTION 12. Sections 504.203(a), (b), and (c), Occupations
10 Code, are amended to read as follows:

11 (a) A person who is otherwise eligible to renew a license
12 may renew an unexpired license by paying the required renewal fee to
13 the department [~~commission~~] before the expiration date of the
14 license.

15 (b) If the person's license has been expired for 90 days or
16 less, the person may renew the license by paying to the department
17 [~~commission~~] a fee in an amount equal to one and one-half times the
18 required renewal fee.

19 (c) If the person's license has been expired for more than
20 90 days but less than one year, the person may renew the license by
21 paying to the department [~~commission~~] a fee in an amount equal to
22 two times the required renewal fee.

23 SECTION 13. Section 504.204, Occupations Code, is amended
24 to read as follows:

25 Sec. 504.204. RENEWAL OF EXPIRED LICENSE OF OUT-OF-STATE
26 PRACTITIONER. (a) The department [~~commission~~] may renew without
27 reexamination an expired license of a person who was licensed in

1 this state, moved to another state, and is currently licensed and
2 has been in practice in the other state for the two years preceding
3 the date the person applies for renewal.

4 (b) The person must pay to the department [~~commission~~] a fee
5 in an amount equal to two times the required renewal fee for the
6 license.

7 SECTION 14. Sections 504.205(a) and (d), Occupations Code,
8 are amended to read as follows:

9 (a) The department [~~commission~~] shall recognize, prepare,
10 or administer a continuing education program for chemical
11 dependency counselors. The executive commissioner [~~commission~~] by
12 rule shall provide for the administration of the continuing
13 education requirements established under this section.

14 (d) Except for the number of hours required, the department
15 [~~commission~~] may not adopt a rule under Subsection (a) that
16 distinguishes between the continuing education requirements for a
17 license holder subject to Subsection (b) and a license holder
18 subject to Subsection (c).

19 SECTION 15. Sections 504.206(b) and (d), Occupations Code,
20 are amended to read as follows:

21 (b) The department [~~commission~~] shall recognize, prepare,
22 or administer a training component that satisfies the requirement
23 of Subsection (a) for use in continuing education for chemical
24 dependency counselors.

25 (d) In developing the training component, the department
26 [~~commission shall consult with the Texas Department of Health and~~]
27 may, to the extent appropriate, consider the training course

1 relating to hepatitis C developed by the department under Section
2 94.002 [~~93.003~~], Health and Safety Code [~~, as added by Chapter 823,~~
3 ~~Acts of the 76th Legislature, Regular Session, 1999~~].

4 SECTION 16. Subchapter F, Chapter 504, Occupations Code, is
5 amended to read as follows:

6 SUBCHAPTER F. DISCIPLINARY PROCEEDINGS

7 Sec. 504.251. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY
8 ACTION. The department [~~commission~~] shall refuse to issue a
9 license to an applicant, refuse to renew a license holder's
10 license, or take disciplinary action against a license holder if
11 the applicant or license holder:

12 (1) violates or assists another to violate this
13 chapter or a rule adopted under this chapter;

14 (2) circumvents or attempts to circumvent this chapter
15 or a rule adopted under this chapter;

16 (3) directly or indirectly participates in a plan to
17 evade this chapter or a rule adopted under this chapter;

18 (4) has a license to practice chemical dependency
19 counseling in another jurisdiction refused, suspended, or revoked
20 for a reason that the department [~~commission~~] determines would
21 constitute a violation of this chapter or a rule adopted under this
22 chapter;

23 (5) engages in false, misleading, or deceptive conduct
24 as defined by Section 17.46, Business & Commerce Code;

25 (6) engages in conduct that discredits or tends to
26 discredit the profession of chemical dependency counseling;

27 (7) directly or indirectly reveals a confidential

1 communication made to the person by a client or recipient of
2 services, except as required by law;

3 (8) refuses to perform an act or service the person is
4 licensed to perform under this chapter on the basis of the client's
5 or recipient's age, sex, race, religion, national origin, color, or
6 political affiliation; or

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

9 Sec. 504.252. DISCIPLINARY POWERS OF DEPARTMENT
10 [~~COMMISSION~~]. (a) On a determination that grounds exist to deny a
11 license or license renewal or to take disciplinary action against a
12 license holder, the department [~~commission~~] may:

- 13 (1) refuse to issue or renew a license;
14 (2) revoke or suspend a license;
15 (3) place on probation a license holder whose license
16 is suspended; or
17 (4) reprimand a license holder.

18 (b) If the department [~~commission~~] places on probation a
19 license holder whose license is suspended, the department
20 [~~commission~~] may require the license holder to:

- 21 (1) report regularly to the department [~~commission~~] on
22 matters that are the basis of the probation;
23 (2) limit practice to the areas prescribed by the
24 department [~~commission~~]; or
25 (3) continue or review professional education until
26 the license holder attains a degree of skill satisfactory to the
27 department [~~commission~~] in the areas that are the basis of the

1 probation.

2 Sec. 504.2525. SUMMARY LICENSE SUSPENSION. (a) The
3 department [~~commission~~] shall suspend the license of a license
4 holder if the department [~~commission~~] receives written notice from
5 the Department of Public Safety or another law enforcement agency
6 that the license holder has been charged, indicted, placed on
7 deferred adjudication, community supervision, or probation, or
8 convicted of an offense described by Section 504.1525.

9 (b) To initiate a proceeding to take action under Subsection
10 (a), the department [~~commission~~] must serve notice on the license
11 holder. The notice must:

12 (1) state the grounds for summary suspension; and

13 (2) be personally served on the license holder or sent
14 to the license holder by certified or registered mail, return
15 receipt requested, to the license holder's mailing address as it
16 appears in the department's [~~commission's~~] records.

17 (c) The suspension is effective at the time notice is
18 served. The license holder is entitled to appeal the suspension as
19 provided by Section 504.255.

20 Sec. 504.253. COMPLAINT AND INVESTIGATION. (a) A person
21 may file a complaint with the department [~~commission~~] alleging a
22 violation of this chapter. The complaint must be in writing and
23 under oath.

24 (b) The department [~~commission~~] shall provide to the person
25 filing the complaint and to each person or entity that is the
26 subject of the complaint the department's [~~commission's~~] policies
27 and procedures pertaining to complaint investigation and

1 resolution.

2 Sec. 504.254. RIGHT TO ADMINISTRATIVE HEARING. (a) If the
3 department [~~commission~~] proposes to suspend, revoke, or refuse to
4 renew a person's license, the person is entitled to a hearing
5 conducted by the State Office of Administrative Hearings.

6 (b) Procedures for disciplinary action are governed by
7 Chapter 2001, Government Code. Rules of practice adopted by the
8 executive commissioner [~~commission~~] under Section 2001.004,
9 Government Code, applicable to the proceedings for a disciplinary
10 action may not conflict with rules adopted by the State Office of
11 Administrative Hearings.

12 Sec. 504.255. APPEAL OF CERTAIN LICENSE DENIALS, REFUSALS
13 TO RENEW, AND SUSPENSIONS. (a) A person whose license application
14 is denied under Section 504.1525, whose license renewal is refused
15 under Section 504.2025, or whose license is suspended under Section
16 504.2525 may appeal the denial, refusal to renew, or suspension on
17 the grounds that:

18 (1) the sole basis for the department's [~~commission's~~]
19 determination is a conviction or placement on community supervision
20 for an offense described by Section 504.1525; and

21 (2) sufficient time, as determined by executive
22 commissioner [~~commission~~] rule, has expired since the date of the
23 conviction or placement.

24 (b) A proceeding under this section is governed by Chapter
25 2001, Government Code.

26 (c) After a hearing under this section, the department
27 [~~commission~~] may determine that the person is entitled to a license

1 under this chapter.

2 SECTION 17. Sections 504.301 and 504.303-504.307,
3 Occupations Code, are amended to read as follows:

4 Sec. 504.301. IMPOSITION OF PENALTY. The department
5 [~~commission~~] may impose an administrative penalty on a person who
6 violates this chapter or a rule adopted under this chapter.

7 Sec. 504.303. NOTICE OF VIOLATION AND PENALTY. If, after
8 investigation of a possible violation and the facts surrounding the
9 possible violation, the department [~~commission~~] determines that a
10 violation occurred, the department [~~commission~~] shall give written
11 notice of the violation to the person alleged to have committed the
12 violation. The notice must:

- 13 (1) include a brief summary of the alleged violation;
14 (2) state the amount of the proposed administrative
15 penalty; and
16 (3) inform the person of the person's right to a
17 hearing on the occurrence of the violation, the amount of the
18 penalty, or both.

19 Sec. 504.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
20 Not later than the 20th day after the date the person receives the
21 notice under Section 504.303, the person may:

- 22 (1) accept the department's [~~commission's~~]
23 determination and proposed administrative penalty; or
24 (2) make a written request for a hearing on that
25 determination.

26 (b) If the person accepts the department's [~~commission's~~]
27 determination, the commissioner [~~executive director~~] or the

1 commissioner's [~~executive director's~~] designee by order shall
2 approve the determination and assess the proposed penalty.

3 Sec. 504.305. HEARING. (a) If the person requests a
4 hearing in a timely manner, the department [~~commission~~] shall set a
5 hearing and give written notice of the hearing to the person.

6 (b) The department [~~commission~~] may employ a hearings
7 examiner for this purpose.

8 (c) The hearings examiner shall:

9 (1) make findings of fact and conclusions of law; and

10 (2) promptly issue to the commissioner [~~executive~~
11 ~~director~~] or the commissioner's [~~executive director's~~] designee a
12 proposal for decision as to the occurrence of the violation and the
13 amount of any proposed administrative penalty.

14 Sec. 504.306. DECISION BY DEPARTMENT [~~COMMISSION~~]. (a)
15 Based on the findings of fact, conclusions of law, and
16 recommendations of the hearings examiner, the commissioner
17 [~~executive director~~] or the commissioner's [~~executive director's~~]
18 designee by order may determine that:

19 (1) a violation occurred and assess an administrative
20 penalty; or

21 (2) a violation did not occur.

22 (b) The department [~~commission~~] shall give notice of the
23 order to the person. The notice must include:

24 (1) separate statements of the findings of fact and
25 conclusions of law;

26 (2) the amount of any penalty assessed; and

27 (3) a statement of the person's right to judicial

1 review of the order.

2 Sec. 504.307. OPTIONS FOLLOWING DECISION: PAY OR
3 APPEAL. (a) Not later than the 30th day after the date the
4 department's [~~commission's~~] order becomes final, the person shall:

5 (1) pay the administrative penalty;

6 (2) pay the penalty and file a petition for judicial
7 review contesting the fact of the violation, the amount of the
8 penalty, or both; or

9 (3) without paying the penalty, file a petition for
10 judicial review contesting the fact of the violation, the amount of
11 the penalty, or both.

12 (b) Within the 30-day period, a person who acts under
13 Subsection (a)(3) may:

14 (1) stay enforcement of the penalty by:

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

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

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

20 (ii) is effective until judicial review of
21 the order is final; or

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

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

27 (B) giving a copy of the affidavit to the

1 department [~~commission~~] by certified mail.

2 (c) If the department [~~commission~~] receives a copy of an
3 affidavit under Subsection (b)(2), the department [~~commission~~] may
4 file with the court a contest to the affidavit not later than the
5 fifth day after the date the copy is received.

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

12 SECTION 18. Section 504.310, Occupations Code, is amended
13 to read as follows:

14 Sec. 504.310. COLLECTION OF PENALTY. (a) In this section,
15 "reasonable expenses and costs" includes expenses incurred by the
16 department [~~commission~~] and the attorney general in the
17 investigation, initiation, or prosecution of an action, including
18 reasonable investigative costs, court costs, attorney's fees,
19 witness fees, and deposition expenses.

20 (b) If the person does not pay the administrative penalty
21 and the enforcement of the penalty is not stayed under Section
22 504.307, the department [~~commission~~] may refer the matter to the
23 attorney general for collection of the penalty.

24 (c) The department [~~commission~~] may assess reasonable
25 expenses and costs against a person in an administrative hearing
26 if, as a result of the hearing, an administrative penalty is
27 assessed against the person. The person shall pay expenses and

1 costs assessed under this subsection not later than the 30th day
2 after the date the order of the commissioner [~~executive director~~]
3 or the commissioner's [~~executive director's~~] designee requiring the
4 payment of expenses and costs is final. The department
5 [~~commission~~] may refer the matter to the attorney general for
6 collection of expenses and costs.

7 (d) If the attorney general brings an action against a
8 person to enforce an administrative penalty assessed under this
9 chapter and the person is found liable for the administrative
10 penalty, the attorney general may recover, on behalf of the
11 attorney general and the department [~~commission~~], reasonable
12 expenses and costs.

13 SECTION 19. Sections 504.351(a) and (b), Occupations Code,
14 are amended to read as follows:

15 (a) If it appears that a person has violated, is violating,
16 or is threatening to violate this chapter or a rule adopted under
17 this chapter, the department [~~commission~~] or the attorney general
18 at the request of the department [~~commission~~] may institute an
19 action in district court for an injunction, a civil penalty, or
20 both.

21 (b) On application for injunctive relief and a finding that
22 a person is violating or threatening to violate this chapter or a
23 rule adopted under this chapter, the district court may grant
24 injunctive relief as the facts warrant. The department
25 [~~commission~~] is not required to give an appeal bond in an appeal of
26 an action seeking injunctive relief under this section.

27 SECTION 20. Sections 467.001(1),(2), and (5), Health and

1 Safety Code, are amended to read as follows:

2 (1) "Approved peer assistance program" means a program
3 that is designed to help an impaired professional and that is:

4 (A) established by a licensing or disciplinary
5 authority; or

6 (B) approved by a licensing or disciplinary
7 authority as meeting the criteria established by the department
8 [~~Texas Commission on Alcohol and Drug Abuse~~] and any additional
9 criteria established by that licensing or disciplinary authority.

10 (2) "Department" means the Department of State Health
11 Services [~~"Commission" means the Texas Commission on Alcohol and~~
12 ~~Drug Abuse~~].

13 (5) "Professional" means an individual who:

14 (A) may incorporate under The Texas Professional
15 Corporation Act (Article 1528e, Vernon's Texas Civil Statutes); or

16 (B) is licensed, registered, certified, or
17 otherwise authorized by the state to practice as a licensed
18 vocational nurse, social worker, chemical dependency counselor,
19 occupational therapist, speech-language pathologist, audiologist,
20 licensed dietitian, or dental or dental hygiene school faculty
21 member.

22 SECTION 21. Section 467.003, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 467.003. PROGRAMS. (a) A professional association or
25 licensing or disciplinary authority may establish a peer assistance
26 program to identify and assist impaired professionals in accordance
27 with the minimum criteria established by the department

1 ~~[commission]~~ and any additional criteria established by the
2 appropriate licensing or disciplinary authority.

3 (b) A peer assistance program established by a professional
4 association is not governed by or entitled to the benefits of this
5 chapter unless the association submits evidence to the appropriate
6 licensing or disciplinary authority showing that the association's
7 program meets the minimum criteria established by the department
8 ~~[commission]~~ and any additional criteria established by that
9 authority.

10 (c) If a licensing or disciplinary authority receives
11 evidence showing that a peer assistance program established by a
12 professional association meets the minimum criteria established by
13 the department ~~[commission]~~ and any additional criteria
14 established by that authority, the authority shall approve the
15 program.

16 (d) A licensing or disciplinary authority may revoke its
17 approval of a program established by a professional association
18 under this chapter if the authority determines that:

19 (1) the program does not comply with the criteria
20 established by the department ~~[commission]~~ or by that authority;
21 and

22 (2) the professional association does not bring the
23 program into compliance within a reasonable time, as determined by
24 that authority.

25 SECTION 22. Section 411.1105, Government Code, is amended
26 to read as follows:

27 Sec. 411.1105. ACCESS TO CRIMINAL HISTORY RECORD

1 INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES [~~TEXAS COMMISSION~~
2 ~~ON ALCOHOL AND DRUG ABUSE~~]. (a) The Department of State Health
3 Services [~~Texas Commission on Alcohol and Drug Abuse~~] is entitled
4 to obtain from the department criminal history record information
5 maintained by the department that relates to a person who is:

6 (1) an applicant for a chemical dependency counselor's
7 license under Chapter 504, Occupations Code; or

8 (2) the holder of a license under that chapter.

9 (b) In addition to information obtained from the Federal
10 Bureau of Investigation under Section 411.087, the Department of
11 State Health Services [~~Texas Commission on Alcohol and Drug Abuse~~]
12 is entitled to obtain information relating to the wanted persons
13 status of an individual listed in Subsection (a).

14 (c) Criminal history record information obtained by the
15 Department of State Health Services [~~Texas Commission on Alcohol~~
16 ~~and Drug Abuse~~] under Subsection (a) may not be released or
17 disclosed to any person except on court order, with the consent of
18 the person who is the subject of the criminal history record
19 information, or as provided by Subsection (d).

20 (d) The Department of State Health Services [~~Texas~~
21 ~~Commission on Alcohol and Drug Abuse~~] may provide the applicant or
22 licensee with a copy of the person's criminal history record
23 information obtained from the Department of Public Safety, Federal
24 Bureau of Investigation identification division, or another law
25 enforcement agency.

26 SECTION 23. (a) Not later than May 1, 2008, the executive
27 commissioner of the Health and Human Services Commission shall

1 adopt the rules necessary to implement the changes in law made by
2 this Act.

3 (b) The Department of State Health Services shall approve
4 one or more peer assistance programs as required under Section
5 504.057, Occupations Code, as added by this Act, not later than
6 September 1, 2008, provided that applicants for approval under that
7 section meet the criteria established by the department.

8 (c) The changes in law made by this Act to Section 504.1521,
9 Occupations Code, as added by this Act, and Section 504.1525,
10 Occupations Code, apply only to an initial license application
11 filed on or after September 1, 2008. An initial license application
12 filed before that date is governed by the law in effect on the date
13 the application was filed, and the former law is continued in effect
14 for that purpose for the initial license application.

15 (d) The changes in law made by this Act to Section 504.2025,
16 Occupations Code, apply only to a renewal application filed on or
17 after September 1, 2007. A renewal application filed before that
18 date is governed for that renewal term by the law in effect on the
19 date the renewal application was filed, and the former law is
20 continued in effect for that purpose. A subsequent renewal
21 application filed on or after the date of expiration of that license
22 renewal term is subject to the changes in law made by this Act to
23 Section 504.2025, Occupations Code.

24 SECTION 24. (a) Except as provided by Subsection (b) of this
25 section, this Act takes effect September 1, 2007.

26 (b) Section 504.1521, Occupations Code, as added by this
27 Act, takes effect September 1, 2008.