

1-1 By: Deuell S.B. No. 703  
1-2 (In the Senate - Filed February 15, 2007; March 6, 2007,  
1-3 read first time and referred to Committee on Education; March 15,  
1-4 2007, rereferred to Committee on Health and Human Services;  
1-5 April 20, 2007, reported adversely, with favorable Committee  
1-6 Substitute by the following vote: Yeas 9, Nays 0; April 20, 2007,  
1-7 sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR S.B. No. 703 By: Deuell

1-9 A BILL TO BE ENTITLED  
1-10 AN ACT

1-11 relating to the regulation of dyslexia practitioners and  
1-12 therapists; imposing penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subtitle G, Title 3, Occupations Code, is  
1-15 amended by adding Chapter 403 to read as follows:

1-16 CHAPTER 403. BASIC DYSLEXIA PRACTITIONERS AND ADVANCED DYSLEXIA  
1-17 THERAPISTS

1-18 SUBCHAPTER A. GENERAL PROVISIONS

1-19 Sec. 403.001. DEFINITIONS. In this chapter:

1-20 (1) "Commissioner" means the commissioner of state  
1-21 health services.

1-22 (2) "Department" means the Department of State Health  
1-23 Services.

1-24 (3) "Executive commissioner" means the executive  
1-25 commissioner of the Health and Human Services Commission.

1-26 (4) "License holder" means a person who holds a  
1-27 license issued under this chapter.

1-28 (5) "Multisensory structured language education"  
1-29 means a program for the treatment of individuals with dyslexia and  
1-30 related disorders that:

1-31 (A) includes instruction in:

1-32 (i) phonology and phonological awareness;

1-33 (ii) sound and symbol association;

1-34 (iii) syllables;

1-35 (iv) morphology;

1-36 (v) syntax; and

1-37 (vi) semantics; and

1-38 (B) is taught with the principles of:

1-39 (i) simultaneous multisensory instruction,  
1-40 including visual-auditory-kinesthetic-tactile instruction;

1-41 (ii) systematic and cumulative  
1-42 instruction;

1-43 (iii) explicit instruction;

1-44 (iv) diagnostic teaching to automaticity;

1-45 and

1-46 (v) synthetic and analytic instruction.

1-47 Sec. 403.002. ADMINISTRATION BY DEPARTMENT OF STATE HEALTH  
1-48 SERVICES. The department shall administer this chapter.

1-49 Sec. 403.003. APPLICABILITY. This chapter does not:

1-50 (1) require a school district to employ a person  
1-51 licensed under this chapter; or

1-52 (2) authorize a person who is not licensed under  
1-53 Chapter 401 to practice audiology or speech-language pathology.

1-54 [Sections 403.004-403.050 reserved for expansion]

1-55 SUBCHAPTER B. POWERS AND DUTIES

1-56 Sec. 403.051. ADVISORY COMMITTEE. The department shall  
1-57 appoint an advisory committee to advise the department in  
1-58 administering this chapter.

1-59 Sec. 403.052. RULES. The executive commissioner shall  
1-60 adopt rules necessary to administer and enforce this chapter,  
1-61 including rules that establish standards of ethical practice.

1-62 [Sections 403.053-403.100 reserved for expansion]

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## SUBCHAPTER C. LICENSE REQUIREMENTS

2-1                   Sec. 403.101. LICENSE REQUIRED. A person may not use the  
 2-2 title "basic dyslexia practitioner" or "advanced dyslexia  
 2-3 therapist" in this state unless the person holds the appropriate  
 2-4 license under this chapter.

2-5                   Sec. 403.102. ISSUANCE OF LICENSE. The department shall  
 2-6 issue a basic dyslexia practitioner or advanced dyslexia therapist  
 2-7 license to an applicant who meets the requirements of this chapter.

2-8                   Sec. 403.103. LICENSE APPLICATION. (a) A license  
 2-9 applicant must apply to the department on a form and in the manner  
 2-10 the department prescribes.

2-11                   (b) The application must be accompanied by a nonrefundable  
 2-12 application fee.

2-13                   Sec. 403.104. ELIGIBILITY FOR BASIC DYSLEXIA PRACTITIONER  
 2-14 LICENSE. (a) To be eligible for a basic dyslexia practitioner  
 2-15 license, an applicant must have:

2-16                   (1) earned a bachelor's degree from an accredited  
 2-17 public or private institution of higher education;

2-18                   (2) successfully completed at least 45 hours of course  
 2-19 work in multisensory structured language education from a training  
 2-20 program that meets the requirements of Section 403.106;

2-21                   (3) completed at least 90 hours of practice of  
 2-22 supervised clinical experience in multisensory structured language  
 2-23 education; and

2-24                   (4) completed at least five observations of the  
 2-25 practice of multisensory structured language education, each  
 2-26 followed by a conference and a written report and observed by an  
 2-27 instructor from a training program that meets the requirements of  
 2-28 Section 403.106.

2-29                   (b) Clinical experience required under Subsection (a)(3)  
 2-30 must be obtained under:

2-31                   (1) the supervision of a training program that meets  
 2-32 the requirements of Section 403.106; and

2-33                   (2) guidelines approved by the department.

2-34                   Sec. 403.105. ELIGIBILITY FOR ADVANCED DYSLEXIA THERAPIST  
 2-35 LICENSE. (a) To be eligible for an advanced dyslexia therapist  
 2-36 license, an applicant must have:

2-37                   (1) earned at least a master's degree from an  
 2-38 accredited public or private institution of higher education;

2-39                   (2) successfully completed at least 200 hours of  
 2-40 course work in multisensory structured language education from a  
 2-41 training program that meets the requirements of Section 403.106;

2-42                   (3) completed at least 700 hours of practice of  
 2-43 supervised clinical experience in multisensory structured language  
 2-44 education; and

2-45                   (4) completed at least 10 observations of the practice  
 2-46 of multisensory structured language education, each followed by a  
 2-47 conference and a written report and observed by an instructor from a  
 2-48 training program that meets the requirements of Section 403.106.

2-49                   (b) Clinical experience required under Subsection (a)(3)  
 2-50 must be obtained under:

2-51                   (1) the supervision of a person holding an advanced  
 2-52 dyslexia therapist license; and

2-53                   (2) guidelines approved by the department.

2-54                   Sec. 403.106. REQUIREMENTS FOR TRAINING PROGRAMS. (a) For  
 2-55 purposes of determining whether an applicant satisfies the training  
 2-56 requirements for a license under this chapter, a multisensory  
 2-57 structured language education training program completed by the  
 2-58 applicant must:

2-59                   (1) be accredited by a nationally recognized  
 2-60 accrediting organization;

2-61                   (2) provide instruction in each element of  
 2-62 multisensory structured language education;

2-63                   (3) provide instruction based on the Texas Education  
 2-64 Agency publication The Dyslexia Handbook: Procedures Concerning  
 2-65 Dyslexia and Related Disorders (2001);

2-66                   (4) be committed to self-study;

2-67                   (5) have been reviewed by dyslexia education  
 2-68 professionals who are not affiliated with the training program; and  
 2-69

3-1 (6) develop and follow procedures to maintain and  
3-2 improve the quality of training provided by the program.

3-3 (b) The department, in consultation with the advisory  
3-4 committee, shall determine whether a training program meets the  
3-5 requirements of Subsection (a).

3-6 Sec. 403.107. EXAMINATION; RULES. (a) To obtain a  
3-7 license, an applicant must:

3-8 (1) pass an examination approved by the department;  
3-9 and

3-10 (2) pay fees set by the executive commissioner.

3-11 (b) The department shall, in consultation with the advisory  
3-12 committee:

3-13 (1) administer an examination at least twice each  
3-14 year;

3-15 (2) determine standards for acceptable performance on  
3-16 the examination; and

3-17 (3) maintain a record of all examination scores for at  
3-18 least two years after the date of examination.

3-19 (c) In consultation with the advisory committee, the  
3-20 executive commissioner by rule may:

3-21 (1) establish procedures for the administration of the  
3-22 examination; and

3-23 (2) require a written examination.

3-24 Sec. 403.108. REEXAMINATION. (a) A person who fails the  
3-25 examination may take a later examination on payment of a  
3-26 nonrefundable fee for the examination.

3-27 (b) An applicant who fails two examinations may not be  
3-28 reexamined until the person:

3-29 (1) submits a new application accompanied by a  
3-30 nonrefundable application fee; and

3-31 (2) presents evidence acceptable to the department of  
3-32 additional study in the area for which a license is sought.

3-33 Sec. 403.109. WAIVER OF EXAMINATION REQUIREMENT. The  
3-34 department, in consultation with the advisory committee, may waive  
3-35 the examination requirement and issue a license to an applicant who  
3-36 holds an appropriate certificate or other accreditation from a  
3-37 national organization recognized by the department.

3-38 Sec. 403.110. PROVISIONAL LICENSE. (a) The department, in  
3-39 consultation with the advisory committee, may issue a provisional  
3-40 license to an applicant currently licensed in another jurisdiction  
3-41 who seeks a license in this state and who:

3-42 (1) has been licensed in good standing as a basic  
3-43 dyslexia practitioner or an advanced dyslexia therapist for at  
3-44 least two years in another jurisdiction, including a foreign  
3-45 country, that has licensing requirements substantially equivalent  
3-46 to the requirements of this chapter;

3-47 (2) has passed a national or other examination  
3-48 recognized by the department relating to the practice of  
3-49 multisensory structured language education; and

3-50 (3) is sponsored by a person licensed by the  
3-51 department under this chapter with whom the provisional license  
3-52 holder will practice during the time the person holds a provisional  
3-53 license.

3-54 (b) The department may waive the requirement of Subsection  
3-55 (a)(3) for an applicant if the department determines that  
3-56 compliance with that subsection would be a hardship to the  
3-57 applicant.

3-58 (c) A provisional license is valid until the date the  
3-59 department approves or denies the provisional license holder's  
3-60 application for a license.

3-61 (d) The department shall issue a license under this chapter  
3-62 to the provisional license holder if:

3-63 (1) the provisional license holder passes the part of  
3-64 the examination under Section 403.107 that relates to the  
3-65 applicant's knowledge and understanding of the laws and rules  
3-66 relating to the practice of multisensory structured language  
3-67 education in this state;

3-68 (2) the department verifies that the provisional  
3-69 license holder meets the academic and experience requirements for a

4-1 license under this chapter; and

4-2 (3) the provisional license holder satisfies any other  
4-3 licensing requirements under this chapter.

4-4 (e) The department must approve or deny a provisional  
4-5 license holder's application for a license not later than the 180th  
4-6 day after the date the provisional license is issued. The  
4-7 department may extend the 180-day period if the results of an  
4-8 examination have not been received by the department before the end  
4-9 of that period.

4-10 Sec. 403.111. TEMPORARY LICENSE; RULES. The executive  
4-11 commissioner by rule may provide for the issuance of a temporary  
4-12 license.

4-13 Sec. 403.112. INACTIVE STATUS; RULES. (a) The executive  
4-14 commissioner by rule may provide for a license holder to be placed  
4-15 on inactive status.

4-16 (b) Rules adopted under this section must include a time  
4-17 limit for a license holder to remain on inactive status.

4-18 [Sections 403.113-403.150 reserved for expansion]

4-19 SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

4-20 Sec. 403.151. PRACTICE SETTING. (a) A basic dyslexia  
4-21 practitioner may practice only in a supervised educational setting,  
4-22 including a school, learning center, or clinic.

4-23 (b) An advanced dyslexia therapist may practice in a school,  
4-24 clinic, or private practice setting.

4-25 Sec. 403.152. CONTINUING EDUCATION. (a) A license holder  
4-26 may not renew the person's license unless the person meets the  
4-27 continuing education requirements established by the executive  
4-28 commissioner.

4-29 (b) The executive commissioner, in consultation with the  
4-30 advisory committee, shall establish the continuing education  
4-31 requirements in a manner that allows a license holder to comply  
4-32 without an extended absence from the license holder's county of  
4-33 residence.

4-34 (c) The department shall:

4-35 (1) provide to a license applicant, with the  
4-36 application form on which the person is to apply for a license,  
4-37 information describing the continuing education requirements; and

4-38 (2) notify each license holder of any change in the  
4-39 continuing education requirements at least one year before the date  
4-40 the change takes effect.

4-41 [Sections 403.153-403.200 reserved for expansion]

4-42 SUBCHAPTER E. LICENSE DENIAL; COMPLAINT AND DISCIPLINARY  
4-43 PROCEDURES

4-44 Sec. 403.201. COMPLAINTS. Any person may file a complaint  
4-45 with the department alleging a violation of this chapter or a rule  
4-46 adopted under this chapter.

4-47 Sec. 403.202. PROHIBITED ACTIONS. A license holder may  
4-48 not:

4-49 (1) obtain a license by means of fraud,  
4-50 misrepresentation, or concealment of a material fact;

4-51 (2) sell, barter, or offer to sell or barter a license;  
4-52 or

4-53 (3) engage in unprofessional conduct that endangers or  
4-54 is likely to endanger the health, welfare, or safety of the public  
4-55 as defined by executive commissioner rule.

4-56 Sec. 403.203. GROUNDS FOR DISCIPLINARY ACTION. If a  
4-57 license holder violates this chapter or a rule or code of ethics  
4-58 adopted by the executive commissioner, the department shall:

4-59 (1) revoke or suspend the license;  
4-60 (2) place on probation the person if the person's  
4-61 license has been suspended;

4-62 (3) reprimand the license holder; or  
4-63 (4) refuse to renew the license.

4-64 Sec. 403.204. LICENSE DENIAL, REVOCATION, OR SUSPENSION FOR  
4-65 CRIMINAL CONVICTION. (a) The department may deny a license or may  
4-66 suspend or revoke a license if the applicant or license holder has  
4-67 been convicted of a misdemeanor involving moral turpitude or a  
4-68 felony. The department may take action authorized by this section  
4-69 when:

5-1 (1) the time for appeal of the person's conviction has  
 5-2 elapsed;

5-3 (2) the judgment or conviction has been affirmed on  
 5-4 appeal; or

5-5 (3) an order granting probation is made suspending the  
 5-6 imposition of the person's sentence, without regard to whether a  
 5-7 subsequent order:

5-8 (A) allows withdrawal of a plea of guilty;

5-9 (B) sets aside a verdict of guilty; or

5-10 (C) dismisses an information or indictment.

5-11 (b) A plea or verdict of guilty or a conviction following a  
 5-12 plea of nolo contendere is a conviction for purposes of this  
 5-13 section.

5-14 Sec. 403.205. HEARING. (a) If the department proposes to  
 5-15 revoke, suspend, or refuse to renew a person's license, the person  
 5-16 is entitled to a hearing before a hearings officer appointed by the  
 5-17 State Office of Administrative Hearings.

5-18 (b) The executive commissioner shall prescribe procedures  
 5-19 for appealing to the commissioner a decision to revoke, suspend, or  
 5-20 refuse to renew a license.

5-21 Sec. 403.206. ADMINISTRATIVE PROCEDURE. A proceeding under  
 5-22 this subchapter to suspend, revoke, or refuse to renew a license is  
 5-23 governed by Chapter 2001, Government Code.

5-24 Sec. 403.207. SANCTIONS. (a) The executive commissioner  
 5-25 by rule shall adopt a broad schedule of sanctions for a violation of  
 5-26 this chapter.

5-27 (b) The State Office of Administrative Hearings shall use  
 5-28 the schedule of sanctions for a sanction imposed as the result of a  
 5-29 hearing conducted by that office.

5-30 Sec. 403.208. PROBATION. The department may require a  
 5-31 person whose license suspension is probated to:

5-32 (1) report regularly to the department on matters that  
 5-33 are the basis of the probation;

5-34 (2) limit practice to areas prescribed by the  
 5-35 department; or

5-36 (3) continue the person's professional education until  
 5-37 the license holder attains a degree of skill satisfactory to the  
 5-38 department in those areas that are the basis of the probation.

5-39 Sec. 403.209. MONITORING OF LICENSE HOLDER. (a) The  
 5-40 executive commissioner by rule shall develop a system for  
 5-41 monitoring a license holder's compliance with the requirements of  
 5-42 this chapter.

5-43 (b) Rules adopted under this section must include  
 5-44 procedures to:

5-45 (1) monitor for compliance a license holder who is  
 5-46 ordered by the department to perform certain acts; and

5-47 (2) identify and monitor license holders who represent  
 5-48 a risk to the public.

5-49 Sec. 403.210. INFORMAL PROCEDURES. (a) The executive  
 5-50 commissioner by rule shall adopt procedures governing:

5-51 (1) informal disposition of a contested case under  
 5-52 Section 2001.056, Government Code; and

5-53 (2) an informal proceeding held in compliance with  
 5-54 Section 2001.054, Government Code.

5-55 (b) Rules adopted under Subsection (a) must:

5-56 (1) provide the complainant and the license holder an  
 5-57 opportunity to be heard; and

5-58 (2) require the presence of a representative of the  
 5-59 attorney general or the department's legal counsel to advise the  
 5-60 department or the department's employees.

5-61 Sec. 403.211. REFUND. (a) Subject to Subsection (b), the  
 5-62 department may order a license holder to pay a refund to a consumer  
 5-63 as provided in an agreement resulting from an informal settlement  
 5-64 conference instead of or in addition to imposing an administrative  
 5-65 penalty under this chapter.

5-66 (b) The amount of a refund ordered as provided in an  
 5-67 agreement resulting from an informal settlement conference may not  
 5-68 exceed the amount the consumer paid to the license holder for a  
 5-69 service regulated by this chapter. The department may not require

6-1 payment of other damages or estimate harm in a refund order.

6-2 Sec. 403.212. REINSTATEMENT. (a) A person may apply for  
6-3 reinstatement of a revoked license on or after the first  
6-4 anniversary of the date of revocation.

6-5 (b) The department may:

6-6 (1) accept or reject the application; and  
6-7 (2) require an examination as a condition for  
6-8 reinstatement of the license.

6-9 Sec. 403.213. REPRIMAND; CONTINUING EDUCATION. (a) In  
6-10 addition to other disciplinary action authorized by this  
6-11 subchapter, the department may:

6-12 (1) issue a written reprimand to a license holder who  
6-13 violates this chapter; or

6-14 (2) require that a license holder who violates this  
6-15 chapter attend continuing education programs.

6-16 (b) The department, in consultation with the advisory  
6-17 committee, may specify the number of hours of continuing education  
6-18 that must be completed by a license holder to fulfill the  
6-19 requirement of Subsection (a)(2).

6-20 Sec. 403.214. EMERGENCY SUSPENSION. (a) The department  
6-21 shall temporarily suspend the license of a license holder if the  
6-22 department determines from the evidence or information presented to  
6-23 it that continued practice by the license holder would constitute a  
6-24 continuing and imminent threat to the public welfare.

6-25 (b) A license may be suspended under this section without  
6-26 notice or hearing on the complaint if:

6-27 (1) action is taken to initiate proceedings for a  
6-28 hearing before the State Office of Administrative Hearings  
6-29 simultaneously with the temporary suspension; and

6-30 (2) a hearing is held as soon as practicable under this  
6-31 chapter and Chapter 2001, Government Code.

6-32 (c) The State Office of Administrative Hearings shall hold a  
6-33 preliminary hearing not later than the 14th day after the date of  
6-34 the temporary suspension to determine if there is probable cause to  
6-35 believe that a continuing and imminent threat to the public welfare  
6-36 still exists. A final hearing on the matter shall be held not later  
6-37 than the 61st day after the date of the temporary suspension.

6-38 [Sections 403.215-403.250 reserved for expansion]

6-39 SUBCHAPTER F. ADMINISTRATIVE PENALTY

6-40 Sec. 403.251. IMPOSITION OF ADMINISTRATIVE PENALTY. The  
6-41 department may impose an administrative penalty on a person  
6-42 licensed under this chapter who violates this chapter or a rule or  
6-43 order adopted under this chapter.

6-44 Sec. 403.252. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The  
6-45 amount of the administrative penalty may not be more than \$5,000 for  
6-46 each violation. Each day a violation continues or occurs is a  
6-47 separate violation for the purpose of imposing a penalty.

6-48 (b) The amount shall be based on:

6-49 (1) the seriousness of the violation, including the  
6-50 nature, circumstances, extent, and gravity of the violation;

6-51 (2) the economic harm caused by the violation;

6-52 (3) the history of previous violations;

6-53 (4) the amount necessary to deter a future violation;

6-54 (5) efforts to correct the violation; and

6-55 (6) any other matter that justice may require.

6-56 (c) The executive commissioner by rule shall adopt an  
6-57 administrative penalty schedule based on the criteria listed in  
6-58 Subsection (b) for violations of this chapter or applicable rules  
6-59 to ensure that the amounts of penalties imposed are appropriate to  
6-60 the violation. The executive commissioner shall provide the  
6-61 administrative penalty schedule to the public on request.

6-62 Sec. 403.253. REPORT AND NOTICE OF VIOLATION AND PENALTY.  
6-63 (a) If the commissioner or the commissioner's designee determines  
6-64 that a violation occurred, the commissioner or the designee may  
6-65 issue to the department a report stating:

6-66 (1) the facts on which the determination is based; and

6-67 (2) the commissioner's or the designee's  
6-68 recommendation on the imposition of an administrative penalty,  
6-69 including a recommendation on the amount of the penalty.

7-1 (b) Within 14 days after the date the report is issued, the  
 7-2 commissioner or the commissioner's designee shall give written  
 7-3 notice of the report to the person. The notice must:

- 7-4 (1) include a brief summary of the alleged violation;  
 7-5 (2) state the amount of the recommended administrative  
 7-6 penalty; and  
 7-7 (3) inform the person of the person's right to a  
 7-8 hearing on the occurrence of the violation, the amount of the  
 7-9 penalty, or both.

7-10 Sec. 403.254. PENALTY TO BE PAID OR HEARING REQUESTED.

7-11 (a) Within 10 days after the date the person receives the notice,  
 7-12 the person in writing may:

- 7-13 (1) accept the determination and recommended  
 7-14 administrative penalty of the commissioner or the commissioner's  
 7-15 designee; or  
 7-16 (2) make a request for a hearing on the occurrence of  
 7-17 the violation, the amount of the penalty, or both.

7-18 (b) If the person accepts the determination and recommended  
 7-19 penalty of the commissioner or the commissioner's designee, the  
 7-20 commissioner by order shall approve the determination and impose  
 7-21 the recommended penalty.

7-22 Sec. 403.255. HEARING. (a) If the person requests a  
 7-23 hearing or fails to respond in a timely manner to the notice, the  
 7-24 commissioner or the commissioner's designee shall set a hearing and  
 7-25 give written notice of the hearing to the person.

7-26 (b) An administrative law judge of the State Office of  
 7-27 Administrative Hearings shall hold the hearing.

7-28 (c) The administrative law judge shall make findings of fact  
 7-29 and conclusions of law and promptly issue to the commissioner a  
 7-30 proposal for a decision about the occurrence of the violation and  
 7-31 the amount of a proposed administrative penalty.

7-32 Sec. 403.256. DECISION BY COMMISSIONER. (a) Based on the  
 7-33 findings of fact, conclusions of law, and proposal for decision,  
 7-34 the commissioner by order may determine that:

- 7-35 (1) a violation occurred and impose an administrative  
 7-36 penalty; or  
 7-37 (2) a violation did not occur.

7-38 (b) The notice of the commissioner's order given to the  
 7-39 person must include a statement of the right of the person to  
 7-40 judicial review of the order.

7-41 Sec. 403.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

7-42 (a) Within 30 days after the date the commissioner's order becomes  
 7-43 final, the person shall:

- 7-44 (1) pay the administrative penalty; or  
 7-45 (2) file a petition for judicial review contesting the  
 7-46 occurrence of the violation, the amount of the penalty, or both.

7-47 (b) Within the 30-day period prescribed by Subsection (a), a  
 7-48 person who files a petition for judicial review may:

- 7-49 (1) stay enforcement of the penalty by:  
 7-50 (A) paying the penalty to the court for placement  
 7-51 in an escrow account; or  
 7-52 (B) giving the court a supersedeas bond approved  
 7-53 by the court that:

7-54 (i) is for the amount of the penalty; and  
 7-55 (ii) is effective until all judicial review  
 7-56 of the commissioner's order is final; or

7-57 (2) request the court to stay enforcement of the  
 7-58 penalty by:

7-59 (A) filing with the court a sworn affidavit of  
 7-60 the person stating that the person is financially unable to pay the  
 7-61 penalty and is financially unable to give the supersedeas bond; and

7-62 (B) giving a copy of the affidavit to the  
 7-63 commissioner or the commissioner's designee by certified mail.

7-64 (c) If the commissioner or the commissioner's designee  
 7-65 receives a copy of an affidavit under Subsection (b)(2), the  
 7-66 commissioner or the designee may file with the court, within five  
 7-67 days after the date the copy is received, a contest to the  
 7-68 affidavit.

7-69 (d) The court shall hold a hearing on the facts alleged in

8-1 the affidavit as soon as practicable and shall stay the enforcement  
8-2 of the penalty on finding that the alleged facts are true. The  
8-3 person who files an affidavit has the burden of proving that the  
8-4 person is financially unable to pay the penalty and to give a  
8-5 supersedeas bond.

8-6 Sec. 403.258. COLLECTION OF PENALTY. (a) If the person  
8-7 does not pay the administrative penalty and the enforcement of the  
8-8 penalty is not stayed, the penalty may be collected.

8-9 (b) The attorney general may sue to collect the penalty.

8-10 Sec. 403.259. DETERMINATION BY COURT. (a) If the court  
8-11 sustains the determination that a violation occurred, the court may  
8-12 uphold or reduce the amount of the administrative penalty and order  
8-13 the person to pay the full or reduced amount of the penalty.

8-14 (b) If the court does not sustain the finding that a  
8-15 violation occurred, the court shall order that a penalty is not  
8-16 owed.

8-17 Sec. 403.260. REMITTANCE OF PENALTY AND INTEREST. (a) If  
8-18 the person paid the administrative penalty and if the amount of the  
8-19 penalty is reduced or the penalty is not upheld by the court, the  
8-20 court shall order, when the court's judgment becomes final, that  
8-21 the appropriate amount plus accrued interest be remitted to the  
8-22 person.

8-23 (b) The interest accrues at the rate charged on loans to  
8-24 depository institutions by the New York Federal Reserve Bank.

8-25 (c) The interest shall be paid for the period beginning on  
8-26 the date the penalty is paid and ending on the date the penalty is  
8-27 remitted.

8-28 (d) If the person gave a supersedeas bond and the penalty is  
8-29 not upheld by the court, the court shall order, when the court's  
8-30 judgment becomes final, the release of the bond.

8-31 (e) If the person gave a supersedeas bond and the amount of  
8-32 the penalty is reduced, the court shall order the release of the  
8-33 bond after the person pays the reduced amount.

8-34 Sec. 403.261. ADMINISTRATIVE PROCEDURE. A proceeding under  
8-35 this subchapter is a contested case under Chapter 2001, Government  
8-36 Code.

8-37 [Sections 403.262-403.300 reserved for expansion]

8-38 SUBCHAPTER G. PENALTIES AND OTHER ENFORCEMENT PROCEDURES

8-39 Sec. 403.301. DECEPTIVE TRADE PRACTICE. A violation of  
8-40 Section 403.101 is a deceptive trade practice.

8-41 Sec. 403.302. INJUNCTION. (a) The department may request  
8-42 the attorney general or the appropriate county or district attorney  
8-43 to commence an action to enjoin a violation of this chapter.

8-44 (b) The remedy provided by this section is in addition to  
8-45 any other action authorized by law.

8-46 Sec. 403.303. CIVIL PENALTY. (a) A person who violates  
8-47 this chapter, a rule adopted by the executive commissioner, or an  
8-48 order adopted by the commissioner under this chapter is liable for a  
8-49 civil penalty not to exceed \$5,000 a day.

8-50 (b) At the request of the department, the attorney general  
8-51 shall bring an action to recover a civil penalty authorized under  
8-52 this section.

8-53 Sec. 403.304. CRIMINAL PENALTY. (a) A person commits an  
8-54 offense if the person violates Section 403.101.

8-55 (b) An offense under this section is a Class B misdemeanor.

8-56 Sec. 403.305. CEASE AND DESIST ORDER. (a) If it appears to  
8-57 the commissioner that a person who is not licensed under this  
8-58 chapter is violating this chapter or a rule adopted under this  
8-59 chapter, the commissioner after notice and an opportunity for a  
8-60 hearing may issue a cease and desist order prohibiting the person  
8-61 from engaging in the activity.

8-62 (b) A violation of an order under this section constitutes  
8-63 grounds for imposing an administrative penalty under this chapter.

8-64 SECTION 2. The heading to Subtitle G, Title 3, Occupations  
8-65 Code, is amended to read as follows:

8-66 SUBTITLE G. PROFESSIONS RELATED TO HEARING, ~~AND~~ SPEECH, AND  
8-67 DYSLEXIA

8-68 SECTION 3. (a) Except as required by Subsection (b) of  
8-69 this section, this Act takes effect September 1, 2007.



9-1 (b) Section 403.101 and Subchapters E, F, and G, Chapter  
9-2 403, Occupations Code, as added by this Act, take effect February 1,  
9-3 2008.

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