

BILL ANALYSIS

Senate Research Center
82R698 YDB-F

S.B. 188
By: Nelson
Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill is intended to regulate the practice and advertising of genetic counseling and genetic counselors. S.B. 188 defines the practice of genetic counseling; clarifies that genetic counseling does not include the practice of medicine or making a medical diagnosis; requires a referral from a physician for genetic counseling services; allows certain health professionals, such as physicians, to continue to define their services as genetic counseling, but not use the term "genetic counselor"; establishes an informal genetic counselors advisory committee to the Texas Medical Board; allows the Texas Medical Board, in consultation with the advisory committee, to establish qualifications for and license genetic counselors; and makes genetic counselors subject to disciplinary actions by the Texas Medical Board.

As proposed, S.B. 188 amends current law relating to the licensing and regulation of genetic counselors and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Medical Board in SECTION 1 (Sections 506.102, 506.103, 506.153, 506.204, 506.207, 506.307, and 506.310, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle I, Title 3, Occupations Code, by adding Chapter 506, as follows:

CHAPTER 506. LICENSED GENETIC COUNSELORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 506.001. **SHORT TITLE.** Provides that this chapter may be cited as the Licensed Genetic Counselor Act.

Sec. 506.002. **GENERAL DEFINITIONS.** Defines "advisory committee," "board," "executive director," and "licensed genetic counselor."

Sec. 506.003. **DEFINITION: PRACTICE OF GENETIC COUNSELING.** Defines "practice of genetic counseling."

Sec. 506.004. **PRACTICE OF MEDICINE NOT AUTHORIZED.** Provides that this chapter does not authorize the practice of medicine as defined by Subtitle B (Physicians), Title 3 (Health Professions), or the making of a medical diagnosis.

Sec. 506.005. **APPLICATION OF SUNSET ACT.** Provides that the Licensed Genetic Counselor Advisory Committee (advisory committee) is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that unless continued in existence as provided by that chapter, the advisory committee is abolished and this chapter expires September 1, 2021.

Sec. 506.006. APPLICABILITY; EXEMPTIONS. (a) Provides that this chapter does not apply to a physician licensed to practice medicine in this state unless the physician is a licensed genetic counselor.

(b) Authorizes a person to engage in the practice of genetic counseling without holding a license under this chapter if the person:

(1) is licensed, certified, or registered to practice in this state in a health care-related field and engages in an activity or service of genetic counseling but does not use the title "genetic counselor" or represent or imply the person is licensed as a genetic counselor under this chapter;

(2) is a student pursuing a course of study or engaged in a training program for an occupation regulated by this state and acting within the occupation's scope of practice, or enrolled in a board-approved supervised genetic counseling training program and engaged in an activity constituting the practice of genetic counseling as a required part of the training program; or

(3) is a genetic counselor who is certified by the American Board of Medical Genetics, the American Board of Genetic Counseling, or another certification body approved by the Texas Medical Board (TMB); is not a resident of this state; performs an activity or provides a service in this state for not more than 30 days during any year and the activity or service is under the direction and supervision of a physician licensed to practice medicine in this state or a licensed genetic counselor; and meets any other requirements established by TMB rule.

(c) Provides that a student described by Subsection (b)(2) includes an individual who is trained as a genetic counselor and has applied to take the certification examination or a doctoral medical geneticist and has applied to take the certification examination, and has not failed the certification examination more than two times.

[Reserves Sections 506.007-506.050 for expansion.]

SUBCHAPTER B. ADVISORY COMMITTEE

Sec. 506.051. ADVISORY COMMITTEE. (a) Provides that the advisory committee is an informal advisory committee to TMB and is not subject to Chapter 2110 (State Agency Advisory Committees), Government Code.

(b) Provides that the advisory committee has no independent rulemaking authority.

Sec. 506.052. APPOINTMENT OF ADVISORY COMMITTEE. Provides that the advisory committee consists of seven members appointed by the president of TMB as follows:

(1) two licensed physician members, one of whom is a board certified obstetrician gynecologist, a board certified oncologist, or a board certified clinical geneticist; and

(2) five licensed genetic counselor members, each of whom has engaged for at least two years in the practice of genetic counseling as a genetic counselor licensed under this chapter or certified by the American Board of Medical Genetics, the American Board of Genetic Counseling, or another certification body approved by TMB; is a United States citizen; and has been a resident of this state for not less than six months preceding appointment.

Sec. 506.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) Defines "Texas trade association."

(b) Prohibits a person from being an advisory committee member if the person is an officer, employee, or paid consultant of a Texas trade association in the field of genetic counseling, or the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of genetic counseling.

(c) Prohibits a person from being an advisory committee member if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the field of genetic counseling.

Sec. 506.054. TERMS; VACANCY. (a) Provides that advisory committee members serve two-year terms. Provides that the terms expire on February 1 of each odd-numbered year.

(b) Requires the president of TMB to appoint a new member to fill the unexpired term if a vacancy occurs during an advisory committee member's term.

(c) Prohibits an advisory committee member from serving more than two consecutive full terms.

Sec. 506.055. GROUNDS FOR REMOVAL. (a) Provides that it is a ground for removal from the advisory committee that a member:

(1) does not have at the time of appointment the qualifications required by Section 506.052;

(2) does not maintain during service on the advisory committee the qualifications required by Section 506.052;

(3) is ineligible for membership under Section 506.053;

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

(5) has had a restriction, suspension, or revocation of a license to perform genetic counseling in this state or any other state.

(b) Requires the executive director of TMB (executive director) to review the qualifications of the advisory committee members and notify TMB of any action that may be required.

(c) Provides that the validity of an action of the advisory committee is not affected by the fact that it is taken when a ground for removal of a member exists.

Sec. 506.056. OFFICERS. Requires the president of TMB biennially to designate an advisory committee member as the presiding officer of the advisory committee to serve in that capacity at the will of the president.

Sec. 506.057. PER DIEM. Provides that an advisory committee member is not entitled to reimbursement for travel expenses or compensation.

Sec. 506.058. MEETINGS. (a) Requires the advisory committee to meet as requested by TMB.

(b) Authorizes a meeting to be held by telephone or other electronic conference call.

[Reserves Sections 506.059-506.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES OF BOARD
AND EXECUTIVE DIRECTOR

Sec. 506.101. GENERAL POWERS AND DUTIES. Requires TMB, in consultation with the advisory committee, to establish qualifications for licensed genetic counselors in this state; establish the examination requirements for issuance of a licensed genetic counselor license; establish minimum education and training requirements necessary for issuance of a licensed genetic counselor license; prescribe the application form for issuance of a licensed genetic counselor license; and develop an approved program of mandatory continuing education for licensed genetic counselors and the manner in which attendance at all approved courses, clinics, forums, lectures, programs, or seminars is monitored and recorded.

Sec. 506.102. RULES. Requires TMB, in consultation with the advisory committee, to adopt rules to implement and enforce this chapter.

Sec. 506.103. FEES; SPECIAL ACCOUNT. (a) Requires TMB by rule to set fees required by this chapter in amounts reasonable and necessary to cover the costs of administering this chapter.

(b) Requires TMB to deposit all the fees collected to the credit of the genetic counseling licensing account. Provides that the genetic counseling licensing account is a special account in the general revenue fund that may be appropriated only to TMB to pay for TMB's administration of this chapter.

Sec. 506.104. ANNUAL REPORT. (a) Requires TMB to annually prepare a complete and detailed written report accounting for all money received and disbursed by TMB under this chapter during the preceding fiscal year.

(b) Requires that the annual report meet the reporting requirements applicable to financial reporting provided by the General Appropriations Act.

Sec. 506.105. GIFTS, GRANTS, AND DONATIONS. Authorizes TMB, in addition to any fees paid to TMB or money appropriated to TMB, to receive and accept under this chapter a gift, grant, donation, or other item of value from any source, including the United States or a private source.

[Reserves Sections 506.106-506.150 for expansion.]

SUBCHAPTER D. PUBLIC INTEREST INFORMATION;
COMPLAINT AND INVESTIGATIVE INFORMATION

Sec. 506.151. PUBLIC PARTICIPATION. (a) Requires TMB to develop and implement policies that provide the public with a reasonable opportunity to appear before TMB and speak on any issue relating to genetic counseling.

(b) Requires the executive director to prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to TMB's programs and services under this chapter.

Sec. 506.152. PUBLIC INTEREST INFORMATION. (a) Requires TMB to prepare information of public interest describing the functions of TMB under this chapter and the procedure by which complaints are filed and resolved under this chapter.

(b) Requires TMB to make the information available to the public and appropriate state agencies.

Sec. 506.153. COMPLAINTS. (a) Requires TMB by rule to establish methods by which consumers are notified of the name, mailing address, and telephone number of TMB for the purpose of directing complaints about licensed genetic counselors to TMB.

(b) Requires TMB to list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a licensed genetic counselor.

Sec. 506.154. RECORDS OF COMPLAINTS. (a) Requires TMB to maintain a file on each written complaint filed with TMB under this chapter. Requires that the file include the name of the person who filed the complaint, the date the complaint is received by TMB, the subject matter of the complaint, the name of each person contacted in relation to the complaint, a summary of the results of the review or investigation of the complaint, and an explanation of the reason the file was closed, if TMB closed the file without taking action other than to investigate the complaint.

(b) Requires TMB to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of TMB's policies and procedures relating to complaint investigation and resolution. Requires that a person who reports a complaint by telephone be given information on how to file a written complaint.

(c) Requires TMB, at least quarterly and until final disposition of the complaint, to notify the person filing the complaint and each person who is subject of the complaint of the status of the investigation unless the notice would jeopardize an ongoing investigation.

Sec. 506.155. LICENSE HOLDER ACCESS TO COMPLAINT INFORMATION. (a) Requires TMB to provide a license holder who is the subject of a formal complaint filed under this chapter with access to all information in its possession that TMB intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint, subject to any other privilege or restriction established by rule, statute, or legal precedent. Requires TMB to provide the information not later than the 30th day after receipt of a written request from the license holder or the license holder's counsel, unless good cause is shown for delay.

(b) Provides that, notwithstanding Subsection (a), TMB is not required to provide TMB investigative reports, investigative memoranda, the identity of a non-testifying complainant, attorney-client communications, attorney work product, or other material covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

Sec. 506.156. HEALTH CARE ENTITY REQUEST FOR INFORMATION. Requires TMB, on the written request of a health care entity, to provide to the entity:

(1) information about a complaint filed against the license holder that was resolved after investigation by a disciplinary order of TMB or an agreed settlement; and

(2) the basis of and current status of any complaint under active investigation that has been referred by the executive director or the director's designee for legal action.

Sec. 506.157. CONFIDENTIALITY OF INVESTIGATIVE INFORMATION. Provides that the following information is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than TMB or TMB employee or agent involved in license holder discipline:

(1) a complaint, adverse report, investigation file, or other report;

(2) the identity of and reports made by a physician or licensed genetic counselor performing or supervising compliance or monitoring for TMB; or

(3) other investigative information in the possession of, received by, or gathered by TMB or a TMB employee or agent relating to a license holder, a license application, or a criminal investigation or proceeding.

Sec. 506.158. PERMITTED DISCLOSURE OF INVESTIGATIVE INFORMATION.

(a) Authorizes that investigative information in the possession of TMB or a TMB employee or agent, notwithstanding Section 506.157, be disclosed to a licensing authority in another state or country in which the license holder is licensed or has applied for a license or similar authority.

(b) Requires TMB to report the information to the proper law enforcement agency if the investigative information in the possession of TMB or a TMB employee indicates a crime may have been committed. Requires TMB to cooperate with and assist all law enforcement agencies conducting criminal investigations of a license holder by providing information relevant to the investigation.

(c) Provides that confidential information disclosed by TMB to a law enforcement agency remains confidential and may not be disclosed by the law enforcement agency except as necessary to further the investigation or prosecution.

Sec. 506.159. IMMUNITY AND REPORTING REQUIREMENTS. (a) Requires any person, including a physician or genetic counselor, to report relevant information to TMB related to the acts of a licensed genetic counselor in this state if, in the person's opinion, the licensed genetic counselor poses a continuing threat to the public welfare. Prohibits the duty to report under this section from being nullified through contract.

(b) Provides that a person who without malice furnished records, information, or assistance to TMB under this section is immune from any civil liability arising from that action in a suit against the person brought by or on behalf of a licensed genetic counselor who is reported under this section.

[Reserves Sections 506.160-506.200 for expansion.]

SUBCHAPTER E. LICENSING REQUIREMENTS

Sec. 506.201. LICENSE REQUIRED. (a) Prohibits a person, except as provided by Section 506.006, from acting as a genetic counselor or engaging in the practice of genetic counseling in this state unless the person holds a license under this chapter.

(b) Prohibits a person, except as provided by Section 506.006, from using the title or representing or implying that the person has the title "genetic counselor," "certified genetic counselor," "licensed genetic counselor," "gene counselor," "genetic consultant," or "genetic associate," or using any other word, abbreviation or insignia indicating or implying the person is a licensed genetic counselor unless the person holds a license under this chapter.

(c) Provides that nothing in this chapter may be construed to prohibit a physician or an employee or other person acting under the physician's delegated authority from representing to a patient or the public that the physician, employee, or person provides genetic counseling.

Sec. 506.202. LICENSE APPLICATION. Requires an applicant for a license to file a written application with TMB on a form prescribed by TMB, and pay the application fee set by TMB.

Sec. 506.203. LICENSE ELIGIBILITY. (a) Requires a license applicant, to be eligible for a license, to demonstrate to the satisfaction of TMB that the applicant:

- (1) is of good moral character;
- (2) has not been convicted of a felony or a crime involving moral turpitude;
- (3) has not used drugs or alcohol to an extent that affects the applicant's professional competency;
- (4) has not had a certificate of registration or license revoked by a licensing agency or by a certifying professional organization; and
- (5) has not engaged in fraud or deceit in applying for a license under this chapter.

(b) Requires an applicant, in addition to meeting the requirements of Subsection (a), to successfully complete the examination required by Section 506.204; to have successfully completed a master's degree in a genetic counseling training program that is approved by TMB and that is at least as stringent as a genetic counseling training program accredited by the American Board of Genetic Counselors or a master's degree in a medical genetics training program that is approved by TMB and that is at least as stringent as a medical genetics training program accredited by the American Board of Medical Genetics, and meet any other requirement prescribed by TMB.

Sec. 506.204. EXAMINATION. (a) Requires an applicant for a license under this chapter to successfully complete an examination approved by TMB that demonstrates the applicant's knowledge of genetic counseling.

(b) Requires TMB to adopt rules to govern the development and administration of an examination for issuance of a genetic counselor license. Requires that any written portion of the examination be validated by an independent testing professional.

Sec. 506.205. TEMPORARY LICENSE. (a) Authorizes TMB, through the executive director, to issue a temporary license to an applicant who submits an application on a form prescribed by TMB, has successfully completed the examination required by TMB, pays the appropriate fee set by TMB, and meets all the qualifications for a license under this chapter and is waiting for the next scheduled meeting of TMB for the license to be issued.

(b) Provides that a temporary license is valid until the 100th day after the date issued and may be extended until the 130th day after the date issued.

Sec. 506.206. ISSUANCE OF LICENSE. Requires TMB to issue a genetic counselor license to a person who meets the requirements of this chapter and the rules adopted under this chapter.

Sec. 506.207. TERM; RENEWAL. (a) Provides that a genetic counselor license expires on the second anniversary of the date of issuance. Requires TMB by rule to provide for the renewal of the license.

(b) Authorizes TMB by rule to adopt a system under which licenses expire on various dates during the year. Requires that license fees, for the year in which the license expiration date is changed, be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license or license renewal is valid. Provides

that on renewal of the license on the new expiration date, the total license renewal fee is payable.

Sec. 506.208. NOTICE OF LICENSE EXPIRATION. Requires TMB, at least 30 days before the expiration of a person's license, to send written notice of the impending license expiration to the license holder's last known address according to the records of TMB.

Sec. 506.209. PROCEDURE FOR RENEWAL. (a) Authorizes a person who is otherwise eligible to renew a license to renew an unexpired license by paying the required renewal fee to TMB before the expiration date of the license. Prohibits a person whose license has expired to engage in activities that require a license.

(b) Authorizes a person, if the person's license has been expired for 90 days or less to renew the license by paying to TMB one and one-half times the required renewal fee.

(c) Authorizes a person, if the person's license has been expired for longer than 90 days but less than one year to renew the license by paying TMB two times the required renewal fee.

(d) Prohibits a person from renewing the license if the person's license has been expired for one year or longer. Authorizes a person to obtain a new license by complying with the requirements and procedures for obtaining an original license.

[Reserves Sections 506.210-506.300 for expansion.]

SUBCHAPTER F. DISCIPLINARY PROCEEDINGS

Sec. 506.301. DISCIPLINARY ACTIONS BY BOARD. (a) Authorizes TMB by order, on determination that an applicant or license holder committed an act or attempted to commit an act described by Section 506.302, 506.303, or 506.304 to take any of the following actions:

(1) deny the person's license application or revoke the person's license;

(2) require the person to complete additional training;

(3) stay the enforcement of an order and place the person on probation;

(4) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by TMB;

(5) suspend, limit, or restrict the person's license including limiting the practice of the person to, or excluding from the person's practice, one or more of the specified activities of genetic counseling, or stipulating periodic TMB review;

(6) assess an administrative penalty against the person as provided by Section 506.351; or

(7) administer a public reprimand.

(b) Provides that if TMB stays the enforcement of an order and places a person on probation, TMB retains the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation, or impose any other remedial measure or sanction authorized by this section.

(c) Authorizes TMB to restore or reissue a license or remove any disciplinary or corrective measure that TMB has imposed.

Sec. 506.302. CONDUCT RELATED TO MISREPRESENTATION OR FRAUD. Authorizes TMB to take action under Section 506.301 against an applicant or a license holder who fraudulently or deceptively obtains or attempts to obtain a license; fraudulently or deceptively uses a license; falsely represents that the person is a physician, nurse, physician assistant, or other licensed health care provider; acts in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure the public; fraudulently alters any license; uses any genetic counselor license that has been fraudulently purchased, issued, or counterfeited or that has been materially altered; directly or indirectly aids or abets the practice of genetic counseling by any person not authorized to practice genetic counseling under this chapter; or unlawfully advertises in a false, misleading or deceptive manner as defined in Section 101.201 (False, Misleading, or Deceptive Advertising).

Sec. 506.303. CONDUCT RELATED TO VIOLATION OF LAW. (a) Authorizes TMB to take action under Section 506.301 against an applicant or license holder who:

- (1) violates this chapter or a rule adopted under this chapter;
- (2) is convicted of a felony, placed on deferred adjudication, or placed in a pretrial diversion program; or
- (3) violates state law if the violation is connected with the practice of genetic counseling.

(b) Provides that a complaint, indictment, or conviction of a law violation is not necessary for TMB to act under Subsection (a)(3). Provides that proof of the commission of the act while in practice as a genetic counselor or under the guise of a genetic counselor is sufficient for action by TMB.

Sec. 506.304. CONDUCT INDICATING LACK OF FITNESS. (a) Authorizes TMB to take action under Section 506.301 against an applicant or license holder who:

- (1) habitually uses drugs or intoxicating liquors to the extent that, in TMB's opinion, the person cannot safely act as a genetic counselor;
- (2) has been adjudicated as mentally incompetent;
- (3) has a mental or physical condition that renders the person unable to safely act as a genetic counselor;
- (4) has committed an act of moral turpitude;
- (5) has failed to practice genetic counseling in an acceptable manner consistent with public health and welfare;
- (6) has had the person's license or other authorization to practice genetic counseling suspended, revoked, or restricted;
- (7) has had other disciplinary action taken by another state regarding the practice of genetic counseling;
- (8) was removed or suspended or has had disciplinary action taken by the person's peers in any professional association or society, if

that action, in the opinion of TMB, was based on unprofessional conduct or professional incompetence that was likely to harm the public;

(9) has repeated or recurring meritorious professional liability claims that, in TMB's opinion, are evidence of professional incompetence likely to harm the public; or

(10) sexually abuses or exploits another person during the person's practice of genetic counseling.

(b) Provides that an action described by Subsection (a)(8) does not constitute state action on the part of the association or society.

Sec. 506.305. SUBPOENA. (a) Authorizes the executive director, the director's designee, or the secretary-treasurer of TMB to issue a subpoena or subpoena duces tecum:

(1) to conduct an investigation or a contested case proceeding related to alleged misconduct by a genetic counselor, an alleged violation of this chapter or another law related to the practice of genetic counseling, or the practice of genetic counseling under this chapter;

(2) for purposes of determining whether to issue, suspend, restrict, or revoke a license under this chapter; or

(3) for purposes of determining whether to issue or deny a license under this chapter.

(b) Provides that failure to timely comply with a subpoena issued under this section is a ground for disciplinary action by TMB or another licensing or regulatory agency with jurisdiction over the person subject to the subpoena, and denial of a license or license application.

Sec. 506.306. PROTECTION OF PATIENT IDENTITY. Requires TMB in a disciplinary investigation or proceeding conducted under this chapter, to protect the identity of each patient whose medical records are examined and used in a public proceeding unless the patient testifies in a public proceeding or submits to TMB a written release in regard to the patient's record or identity.

Sec. 506.307. RULES FOR DISCIPLINARY PROCEEDINGS. Prohibits the rules of practice adopted under this chapter by TMB under Section 2001.004 (Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions), Government Code, applicable to the proceeding for a disciplinary action from conflicting with rules adopted by the State Office of Administrative Hearings (SOAH).

Sec. 506.308. REQUIRED SUSPENSION OF INCARCERATED GENETIC COUNSELOR. Requires TMB, regardless of the offense, to suspend the license of a licensed genetic counselor serving a prison term in a state or federal penitentiary during the term of the incarceration.

Sec. 506.309. TEMPORARY SUSPENSION. (a) Requires the president of TMB, with TMB approval, to appoint a three-member disciplinary panel consisting of TMB members to determine whether a licensed genetic counselor's license should be temporarily suspended.

(b) Requires the disciplinary panel, if the disciplinary panel determines from the evidence or information presented to the panel that a licensed genetic counselor would, by continuing in practice, constitute a threat to the public welfare, to temporarily suspend the license.

(c) Authorizes that a license be suspended under this section without notice or hearing on the complaint if institution of proceedings for a hearing before TMB is initiated simultaneously with the temporary suspension, and a hearing is held under Chapter 2001 (Administrative Procedure), Government Code, and this chapter as soon as possible.

(d) Authorizes the disciplinary panel, notwithstanding Chapter 551 (Open Meetings), Government Code, to hold a meeting by telephone conference call if immediate action is required and convening the disciplinary panel at one location is inconvenient for any member of the panel.

Sec. 506.310. INFORMAL PROCEEDINGS. (a) Requires that TMB by rule adopt procedures under this chapter governing:

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

(2) informal proceedings held in compliance with Section 2001.054 (Licenses).

(b) Requires that rules adopted under this section require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date TMB's official investigation of the complaint is commenced, unless good cause is shown by TMB for scheduling the informal meeting after that date;

(2) TMB give notice to the license holder of the time and place of the meeting not later than the 30th day before the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one TMB member or committee member participating in the informal meeting as a member of the disciplinary panel be a member who represents the public;

(5) TMB's legal counsel or a representative of the attorney general be present to advise TMB or TMB's staff; and

(6) a member of TMB's staff be at the meeting to present to the panel the facts that the staff reasonably believes could be proven by competent evidence or qualified witnesses at a hearing.

(c) Entitles an affected license holder, orally or in writing, to reply to the staff's presentation and present the facts the license holder reasonably believes the license holder could prove by competent evidence or qualified witnesses at a hearing.

(d) Requires the TMB panel, after ample time is given for the presentations, to recommend that the investigation be closed or to attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) Requires TMB, if the license holder has previously been the subject of disciplinary action by TMB, to schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

Sec. 506.311. ROLES AND RESPONSIBILITIES OF PARTICIPANT IN INFORMAL PROCEEDINGS. (a) Requires a TMB or committee member that serves as a panelist at an informal meeting under Section 506.310 to make recommendations for the disposition of a complaint or allegation. Authorizes the member to request the assistance of a TMB employee at any time.

(b) Requires TMB employees to present a summary of the allegations against the affected license holder and offer the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) Requires a TMB attorney to act as counsel to the panel and, notwithstanding Subsection (e), be present during the informal meeting as the panel's deliberation to advise the panel on legal issues that arise during the proceeding. Authorizes the attorney to ask questions of participants in the informal meeting to clarify any statement made by the participant.

(d) Requires the attorney to provide to the panel a historical perspective on comparable cases that have appeared before TMB, keep the proceedings focused on the case being discussed, and ensure that TMB's employees and the affected license holder have an opportunity to present information related to the case.

(e) Authorizes the attorney, during the panel's deliberations, to be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before TMB.

[Reserves Sections 506.312-506.350 for expansion.]

SUBCHAPTER G. ADMINISTRATIVE PENALTY

Sec. 506.351. ADMINISTRATIVE PENALTY. (a) Authorizes TMB by order to impose an administrative penalty against a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) Provides that the penalty may be in an amount not to exceed \$5,000. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) Requires TMB to base the amount of the penalty on the severity of patient harm; the severity of economic harm to any person, the increased potential of harm to the public, any attempted concealment of misconduct, the motive for the violation, any prior misconduct of a similar or related nature, the license holder's disciplinary history, any prior written warning or written admonishments from any government agency or official regarding statutes or rules relating to the misconduct, whether the violation is of a TMB order, the person's failure to implement remedial measures to correct or mitigate harm from the misconduct, the person's lack of rehabilitative potential or likelihood of future misconduct of a similar nature, any relevant circumstances increasing the seriousness of the misconduct, or any other matter that justice may require.

Sec. 506.352. NOTICE OF VIOLATION AND PENALTY. Requires TMB to give notice to the person of the order if TMB by order determines that a violation has occurred and imposes an administrative penalty. Requires that the notice include a statement of the person's right to judicial review of the order.

Sec. 506.353. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person, not later than the 30th day after the date TMB's order imposing the administrative penalty is final, to:

(1) pay the penalty;

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

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

(b) Authorizes a person, who acts under Subsection (a)(3), within the 30-day period, to:

(1) stay the enforcement of the penalty by paying the penalty to the court for placement in an escrow account or giving the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of TMB's order is final; or

(2) request the court to stay enforcement of the penalty by filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond and giving a copy of the affidavit to the executive director by certified mail.

(c) Authorizes the executive director, if the executive director receives a copy of an affidavit under Subsection (b)(2), to file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and 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 the penalty and to give a supersedeas bond.

Sec. 506.354. COLLECTION OF PENALTY. Authorizes the executive director, if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, to refer the matter to the attorney general for collection of the penalty.

Sec. 506.355. DETERMINATION BY COURT. (a) Authorizes the court, if on appeal the court sustains the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) Requires the court, if the court does not sustain the determination that a violation occurred, to order that a penalty is not owed.

Sec. 506.356. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court, if after judicial review the administrative penalty is reduced or not imposed by the court, to after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) Provides that the interest paid under Subsection (a)(1) is a rate charged on loans to depository institutions by the New York Federal Reserve Bank. Provides that the interest is paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

[Reserves Sections 506.357-506.400 for expansion.]

SUBCHAPTER H. INJUNCTIVE RELIEF

Sec. 506.401. INJUNCTIVE AUTHORITY. Authorizes TMB, in addition to any other action authorized by law, to institute an action in its own name to enjoin a violation of this chapter.

SECTION 2. (a) Requires the president of TMB, not later than October 1, 2011, to appoint the members of the Licensed Genetic Counselor Advisory Committee created under Chapter 506, Occupations Code, as added by this Act.

(b) Requires TMB to adopt rules under Chapter 506, Occupations Code, as added by this Act, not later than June 30, 2012.

SECTION 3. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2011.

(b) Effective date, Section 506.201, Occupations Code, as added by this Act and Subchapters F, G, and H, Chapter 506, Occupations Code, as added by this Act: July 1, 2012.