

By: Anchia

H.B. No. 2272

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the continuation and functions of the State Board of
3 Examiners for Speech-Language Pathology and Audiology; providing
4 an administrative penalty.

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

6 SECTION 1. Section 401.001, Occupations Code, is amended by
7 amending Subdivision (4) and adding Subdivision (4-a) to read as
8 follows:

9 (4) "Department" means the [~~Texas~~] Department of State
10 Health Services.

11 (4-a) "Hearing instrument" has the meaning assigned by
12 Section 402.001.

13 SECTION 2. Section 401.002, Occupations Code, is amended to
14 read as follows:

15 Sec. 401.002. APPLICATION OF SUNSET ACT. The State Board of
16 Examiners for Speech-Language Pathology and Audiology is subject to
17 Chapter 325, Government Code (Texas Sunset Act). Unless continued
18 in existence as provided by that chapter, the board is abolished and
19 this chapter expires September 1, 2017 [~~2011~~].

20 SECTION 3. Section 401.101, Occupations Code, is amended to
21 read as follows:

22 Sec. 401.101. BOARD WITHIN [~~HEALTH~~] DEPARTMENT. The State
23 Board of Examiners for Speech-Language Pathology and Audiology is
24 within the department [~~Texas Department of Health~~].

1 SECTION 4. Section 401.103, Occupations Code, is amended to
2 read as follows:

3 Sec. 401.103. ELIGIBILITY OF PUBLIC MEMBERS. A person may
4 not be a [The two] public member [members] of the board, other than
5 the public member described by Section 401.102(d), if the person or
6 the person's spouse [who are not physicians may not]:

7 (1) is registered, certified, or [be] licensed by an
8 occupational regulatory agency in the field of health care;

9 (2) is [be] employed by or [and] participating in the
10 management of an agency or business entity that:

11 (A) provides health care services;

12 (B) [or—that] sells, manufactures, or
13 distributes health care supplies or equipment; or

14 (C) receives money from the board or the
15 department;

16 (3) owns, controls [own, control], or has [have] a
17 direct or indirect interest of more than 10 percent in a business
18 entity that:

19 (A) provides health care services;

20 (B) [or—that] sells, manufactures, or
21 distributes health care supplies or equipment; or

22 (C) receives money from the board or department;

23 or

24 (4) uses or receives a substantial amount of tangible
25 goods, services, or money from the board or department, other than
26 compensation or reimbursement authorized by law for board
27 membership, attendance, or expenses [be an officer, employee, or

1 ~~paid consultant of a trade association in the field of health care].~~

2 SECTION 5. Section 401.104, Occupations Code, is amended by
3 amending Subsection (a) and adding Subsection (c) to read as
4 follows:

5 (a) In this section, "Texas trade association" means a
6 cooperative and voluntarily joined statewide association of
7 business or professional competitors in this state designed to
8 assist its members and its industry or profession in dealing with
9 mutual business or professional problems and in promoting their
10 common interest. [~~A board member may not be related within the~~
11 ~~second degree by consanguinity or affinity, as determined under~~
12 ~~Subchapter B, Chapter 573, Government Code, to an officer,~~
13 ~~employee, or paid consultant of a trade association in the field of~~
14 ~~health care.]~~

15 (c) A person may not be a member of the board if:

16 (1) the person is an officer, employee, or paid
17 consultant of a Texas trade association in the field of health care;
18 or

19 (2) the person's spouse is an officer, manager, or paid
20 consultant of a Texas trade association in the field of health care.

21 SECTION 6. Section 401.107(a), Occupations Code, is amended
22 to read as follows:

23 (a) The governor shall designate a member of the board as
24 the presiding officer of the board to serve in that capacity at the
25 will of the governor. [~~The board shall organize itself annually and~~
26 ~~select a presiding officer, assistant presiding officer, and~~
27 ~~secretary-treasurer.]~~

1 SECTION 7. Subchapter C, Chapter 401, Occupations Code, is
2 amended by adding Sections 401.109 and 401.110 to read as follows:

3 Sec. 401.109. GROUNDS FOR REMOVAL. (a) It is a ground for
4 removal from the board that a member:

5 (1) does not have at the time of taking office the
6 qualifications required by Section 401.102;

7 (2) does not maintain during service on the board the
8 qualifications required by Section 401.102;

9 (3) is ineligible for membership under Section 401.103
10 or 401.104;

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

14 (5) is absent from more than half of the regularly
15 scheduled board meetings that the member is eligible to attend
16 during a calendar year without an excuse approved by a majority vote
17 of the board.

18 (b) The validity of an action of the board is not affected by
19 the fact that the action is taken when a ground for removal of a
20 board member exists.

21 (c) If the commissioner of state health services has
22 knowledge that a potential ground for removal exists, the
23 commissioner shall notify the presiding officer of the board of the
24 potential ground. The presiding officer shall then notify the
25 governor and the attorney general that a potential ground for
26 removal exists. If the potential ground for removal involves the
27 presiding officer, the commissioner shall notify the next highest

1 ranking officer of the board, who shall then notify the governor and
2 the attorney general that a potential ground for removal exists.

3 Sec. 401.110. TRAINING. (a) A person who is appointed to
4 and qualifies for office as a member of the board may not vote,
5 deliberate, or be counted as a member in attendance at a meeting of
6 the board until the person completes a training program that
7 complies with this section.

8 (b) The training program must provide the person with
9 information regarding:

10 (1) this chapter;

11 (2) the programs, functions, rules, and budget of the
12 board;

13 (3) the results of the most recent formal audit of the
14 board;

15 (4) the requirements of laws relating to open
16 meetings, public information, administrative procedure, and
17 conflicts of interest; and

18 (5) any applicable ethics policies adopted by the
19 board or the Texas Ethics Commission.

20 (c) A person appointed to the board is entitled to
21 reimbursement, as provided by the General Appropriations Act, for
22 the travel expenses incurred in attending the training program
23 regardless of whether the attendance at the program occurs before
24 or after the person qualifies for office.

25 SECTION 8. Subchapter E, Chapter 401, Occupations Code, is
26 amended by adding Section 401.2021 to read as follows:

27 Sec. 401.2021. JOINT RULES FOR HEARING INSTRUMENTS. With

1 the assistance of the department, the board and the State Committee
2 of Examiners in the Fitting and Dispensing of Hearing Instruments
3 shall jointly adopt rules to establish requirements for each sale
4 of a hearing instrument. The rules must:

5 (1) address:

6 (A) the information and other provisions
7 required in each written contract for the purchase of a hearing
8 instrument;

9 (B) records that must be retained under this
10 chapter or Chapter 402; and

11 (C) guidelines for the 30-day trial period during
12 which a person may cancel the purchase of a hearing instrument; and

13 (2) require that the written contract and 30-day trial
14 period information provided to a purchaser of a hearing instrument
15 be in plain language designed to be easily understood by the average
16 consumer.

17 SECTION 9. Subchapter G, Chapter 401, Occupations Code, is
18 amended by adding Section 401.3041 to read as follows:

19 Sec. 401.3041. CRIMINAL HISTORY RECORD INFORMATION
20 REQUIREMENT FOR LICENSE ISSUANCE. (a) Except as provided by
21 Subsection (e), the board shall require that an applicant for a
22 license submit a complete and legible set of fingerprints, on a form
23 prescribed by the board, to the board or to the Department of Public
24 Safety for the purpose of obtaining criminal history record
25 information from the Department of Public Safety and the Federal
26 Bureau of Investigation.

27 (b) The board may not issue a license to a person who does

1 not comply with the requirement of Subsection (a).

2 (c) The board shall conduct a criminal history check of each
3 applicant for a license using information:

4 (1) provided by the individual under this section; and

5 (2) made available to the board by the Department of
6 Public Safety, the Federal Bureau of Investigation, and any other
7 criminal justice agency under Chapter 411, Government Code.

8 (d) The Department of State Health Services on behalf of the
9 board may:

10 (1) enter into an agreement with the Department of
11 Public Safety to administer a criminal history check required under
12 this section; and

13 (2) authorize the Department of Public Safety to
14 collect from each applicant the costs incurred by the Department of
15 Public Safety in conducting the criminal history check.

16 (e) The requirements of this section do not apply to a
17 licensed speech-language pathologist or a licensed assistant in
18 speech-language pathology:

19 (1) employed by a public or private school in any grade
20 level from kindergarten through grade 12; and

21 (2) for whom a criminal history check was performed as
22 a condition of the person's employment with the school.

23 (f) The board shall obtain the results of a criminal history
24 check of a person described by Subsection (e) from the entity that
25 conducted the check.

26 SECTION 10. Subchapter H, Chapter 401, Occupations Code, is
27 amended by adding Section 401.3521 to read as follows:

1 Sec. 401.3521. CRIMINAL HISTORY RECORD INFORMATION
2 REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a
3 license issued under this chapter shall submit a complete and
4 legible set of fingerprints for purposes of performing a criminal
5 history check of the applicant as provided by Section 401.3041.

6 (b) The board may not renew the license of a person who does
7 not comply with the requirement of Subsection (a).

8 (c) The requirements of this section do not apply to a
9 license holder who has previously submitted fingerprints under this
10 section or Section 401.3041 or to a person described by Section
11 401.3041(e).

12 (d) This section expires February 1, 2015.

13 SECTION 11. Subchapter J, Chapter 401, Occupations Code, is
14 amended by adding Section 401.4531 to read as follows:

15 Sec. 401.4531. RECUSAL OF BOARD MEMBER. (a) A board
16 member who participated in the investigation of a complaint or in
17 informal settlement negotiations regarding the complaint:

18 (1) may not vote on the matter at a board meeting
19 related to the complaint; and

20 (2) shall state at the meeting why the member is
21 prohibited from voting on the matter.

22 (b) A statement under Subsection (a)(2) shall be entered
23 into the minutes of the meeting.

24 SECTION 12. Subchapter K, Chapter 401, Occupations Code, is
25 amended by adding Sections 401.5021 and 401.5022 to read as
26 follows:

27 Sec. 401.5021. BOARD-ORDERED REFUND. The board may order

1 an audiologist to pay a refund to a consumer who returns a hearing
2 instrument during the 30-day trial period required by rules adopted
3 under Section 401.2021.

4 Sec. 401.5022. CEASE AND DESIST ORDER. (a) If it appears
5 to the board that a person who is not licensed under this chapter is
6 violating this chapter, a rule adopted under this chapter, or
7 another state statute or rule relating to the practice of
8 speech-language pathology or audiology, the board, after notice and
9 opportunity for a hearing, may issue a cease and desist order
10 prohibiting the person from engaging in the activity.

11 (b) A violation of an order under this section constitutes
12 grounds for imposing an administrative penalty under Subchapter L.

13 SECTION 13. (a) Not later than February 1, 2012, the State
14 Board of Examiners for Speech-Language Pathology and Audiology
15 shall adopt rules necessary to implement Sections 401.3041 and
16 401.3521, Occupations Code, as added by this Act.

17 (b) Not later than May 1, 2012, the State Board of Examiners
18 for Speech-Language Pathology and Audiology and the State Committee
19 of Examiners in the Fitting and Dispensing of Hearing Instruments
20 shall adopt rules required by Section 401.2021, Occupations Code,
21 as added by this Act.

22 (c) The changes in law made by Sections 401.103 and 401.104,
23 Occupations Code, as amended by this Act, and Section 401.110,
24 Occupations Code, as added by this Act, regarding the prohibitions
25 on or qualifications of members of the Texas State Board of
26 Examiners for Speech-Language Pathology and Audiology do not affect
27 the entitlement of a member serving on the board immediately before

1 September 1, 2011, to continue to serve and function as a member of
2 the board for the remainder of the member's term. The changes in
3 law made by those sections apply only to a member appointed on or
4 after September 1, 2011.

5 (d) Section 401.4531, Occupations Code, as added by this
6 Act, applies only to a complaint filed with the Texas State Board of
7 Examiners for Speech-Language Pathology and Audiology on or after
8 the effective date of this Act. A complaint filed before the
9 effective date of this Act is governed by the law as it existed
10 immediately before that date, and the former law is continued in
11 effect for that purpose.

12 (e) Sections 401.3041 and 401.3521, Occupations Code, as
13 added by this Act, apply only to an application for a license or
14 renewal of a license filed with the Texas State Board of Examiners
15 for Speech-Language Pathology and Audiology on or after March 1,
16 2012. An application filed before that date is governed by the law
17 in effect at the time the application was filed, and the former law
18 is continued in effect for that purpose.

19 SECTION 14. This Act takes effect September 1, 2011.