

By: Anchia

H.B. No. 2273

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments; providing an administrative penalty.

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

SECTION 1. Sections 402.001(1) and (3), Occupations Code, are amended to read as follows:

(1) "Board" means the executive commissioner of the Health and Human Services Commission [~~Texas Board of Health~~].

(3) "Department" means the [~~Texas~~] Department of State Health Services.

SECTION 2. Section 402.002, Occupations Code, is amended to read as follows:

Sec. 402.002. APPLICATION OF SUNSET ACT. The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this chapter expires September 1, 2017 [~~2011~~].

SECTION 3. Section 402.052, Occupations Code, is amended to read as follows:

Sec. 402.052. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the committee if the person or the person's spouse:

1 (1) is registered, certified, or licensed by an
2 occupational regulatory agency in the field of health care;

3 (2) is employed by or participates in the management
4 of a business entity or other organization that:

5 (A) provides health care services; ~~[or]~~

6 (B) sells, manufactures, or distributes health
7 care supplies or equipment; or

8 (C) is regulated by or receives money from the
9 committee or department;

10 (3) owns or controls, directly or indirectly, more
11 than a 10 percent ~~[an]~~ interest in a business entity or other
12 organization that:

13 (A) provides health care services; ~~[or]~~

14 (B) sells, manufactures, or distributes health
15 care supplies or equipment; or

16 (C) is regulated by or receives money from the
17 committee or department; or

18 (4) uses or receives a substantial amount of tangible
19 goods, services, or money from the committee or department, other
20 than compensation or reimbursement authorized by law for committee
21 membership, attendance, or expenses.

22 SECTION 4. Sections 402.053(a) and (b), Occupations Code,
23 are amended to read as follows:

24 (a) In this section, "trade association" means a
25 cooperative and voluntarily joined national or statewide
26 association of business or professional competitors designed to
27 assist its members and its industry or profession in dealing with

1 mutual business or professional problems and in promoting their
2 common interest. ~~[An officer, employee, or paid consultant of a~~
3 ~~statewide or national trade association in the hearing instrument~~
4 ~~industry may not be a member or employee of the committee.]~~

5 (b) A person may not be a member of the committee if:

6 (1) the person is an officer, employee, or paid
7 consultant of a trade association in the field of hearing
8 instrument fitting and dispensing; or

9 (2) the person's spouse or another person related to
10 the person within the second degree by affinity or consanguinity,
11 as determined under Chapter 573, Government Code, is an officer,
12 manager, or paid consultant of a trade association in the field of
13 hearing instrument fitting and dispensing. ~~[A member or employee~~
14 ~~of the committee may not be related within the second degree by~~
15 ~~affinity or consanguinity, as determined under Chapter 573,~~
16 ~~Government Code, to a person who is an officer, employee, or paid~~
17 ~~consultant of a statewide or national trade association in the~~
18 ~~hearing instrument industry.]~~

19 SECTION 5. Section 402.056, Occupations Code, is amended by
20 amending Subsection (a) and adding Subsection (c) to read as
21 follows:

22 (a) It is a ground for removal from the committee that a
23 member:

24 (1) does not have at the time of taking office
25 ~~[appointment]~~ the qualifications required by Sections 402.051,
26 402.052, and 402.053 ~~[402.053(d)]~~ for appointment to the committee;

27 (2) does not maintain during service on the committee

the qualifications required by Sections 402.051, 402.052, and 402.053 [~~402.053(d) for appointment to the committee~~];

(3) is ineligible for membership under Section 402.052 or 402.053 [~~violates a prohibition established by Section 402.053~~];
[~~or~~]

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

(5) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee [~~fails to attend at least half of the regularly scheduled committee meetings held in a calendar year, excluding meetings held while the person was not a committee member~~].

(c) If the commissioner of the department has knowledge that a potential ground for removal exists, the commissioner shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the commissioner shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 6. Section 402.057(a), Occupations Code, is amended to read as follows:

(a) The governor shall designate a member of the committee as the presiding officer of the committee to serve in that capacity

1 at the will of the governor [~~committee shall elect a president and~~
2 ~~vice president~~].

3 SECTION 7. Section 402.058(b), Occupations Code, is amended
4 to read as follows:

5 (b) A special meeting of the committee shall be held at the
6 call of the presiding officer [~~president~~] or a majority of the
7 members.

8 SECTION 8. Subchapter B, Chapter 402, Occupations Code, is
9 amended by adding Section 402.0581 to read as follows:

10 Sec. 402.0581. TRAINING. (a) A person who is appointed to
11 and qualifies for office as a member of the committee may not vote,
12 deliberate, or be counted as a member in attendance at a meeting of
13 the committee until the person completes a training program that
14 complies with this section.

15 (b) The training program must provide the person with
16 information regarding:

- 17 (1) this chapter;
18 (2) the programs, functions, rules, and budget of the
19 committee;
20 (3) the results of the most recent formal audit of the
21 committee;
22 (4) the requirements of laws relating to open
23 meetings, public information, administrative procedure, and
24 conflicts of interest; and
25 (5) any applicable ethics policies adopted by the
26 committee or the Texas Ethics Commission.

27 (c) A person appointed to the committee is entitled to

1 reimbursement, as provided by the General Appropriations Act, for
2 the travel expenses incurred in attending the training program
3 regardless of whether the attendance at the program occurs before
4 or after the person qualifies for office.

5 SECTION 9. Subchapter C, Chapter 402, Occupations Code, is
6 amended by adding Sections 402.1021 and 402.1022 to read as
7 follows:

8 Sec. 402.1021. JOINT RULES FOR HEARING INSTRUMENTS. With
9 the assistance of the department, the committee and the State Board
10 of Examiners for Speech-Language Pathology and Audiology shall
11 jointly adopt rules to establish requirements for each sale of a
12 hearing instrument. The rules must:

13 (1) address:

14 (A) the information and other provisions
15 required in each written contract for the purchase of a hearing
16 instrument;

17 (B) records that must be retained under this
18 chapter or Chapter 401; and

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

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

25 Sec. 402.1022. DIVISION OF RESPONSIBILITIES. (a) The
26 committee shall develop and implement policies that clearly
27 separate the policy-making responsibilities of the committee and

1 the management responsibilities of the staff of the department.

2 (b) The committee has final authority to administer this
3 chapter and direct the actions of the staff of the department with
4 respect to this chapter, except in the administration of duties
5 specifically imposed on the department under this chapter.

6 SECTION 10. Section 402.104, Occupations Code, is amended
7 to read as follows:

8 Sec. 402.104. POWERS AND DUTIES REGARDING EXAMINATION.

9 (a) The department [~~committee~~] shall administer or arrange for the
10 administration of an [~~a written~~] examination. The examination may
11 include written, oral, or practical tests.

12 (b) The written examination shall be administered at least
13 twice each year.

14 (c) The written examination must be validated by an
15 independent testing professional.

16 (d) The practical examination must be administered by one or
17 more qualified proctors selected and assigned by the department.

18 (e) The committee by rule shall establish the
19 qualifications for a proctor. The rules must:

20 (1) require a proctor to be licensed in good standing
21 as a hearing instrument fitter and dispenser;

22 (2) specify the number of years a proctor must be
23 licensed as a hearing instrument fitter and dispenser; and

24 (3) specify the disciplinary actions or other actions
25 that disqualify a person from serving as a proctor.

26 SECTION 11. Section 402.105, Occupations Code, is amended
27 to read as follows:

1 Sec. 402.105. SUBCOMMITTEES. (a) From its members the
2 committee may appoint subcommittees to consider matters referred by
3 the committee pertaining to the enforcement of this chapter. The
4 subcommittees shall make recommendations to the committee.

5 (b) The committee shall appoint at least one public member
6 to each subcommittee.

7 SECTION 12. Subchapter D, Chapter 402, Occupations Code, is
8 amended by adding Section 402.1511 to read as follows:

9 Sec. 402.1511. PUBLIC PARTICIPATION. The committee shall
10 develop and implement policies that provide the public with a
11 reasonable opportunity to appear before the committee and to speak
12 on any issue under the jurisdiction of the committee.

13 SECTION 13. Section 402.154(e), Occupations Code, is
14 amended to read as follows:

15 (e) The committee may delegate the authority granted under
16 Subsection (a) to the presiding officer [~~president or vice~~
17 ~~president~~] of the committee.

18 SECTION 14. Section 402.202(a), Occupations Code, is
19 amended to read as follows:

20 (a) To engage in fitting and dispensing hearing instruments
21 in this state a person must pass an examination required [~~given~~] by
22 the committee.

23 SECTION 15. Sections 402.205(a) and (d), Occupations Code,
24 are amended to read as follows:

25 (a) The department [~~committee~~] shall give each applicant
26 due notice of the date and place of the examination and the
27 subjects, areas, and skills that will be included in the

1 examination. A change may not be made in those subjects, areas, and
2 skills after the date of the examination has been announced and
3 publicized.

4 (d) If requested in writing by a person who fails the
5 licensing examination administered under this chapter, the
6 department ~~[committee]~~ shall provide to the person an analysis of
7 the person's performance on the examination.

8 SECTION 16. Sections 402.209(b), (c), (d), (e), (f), and
9 (g), Occupations Code, are amended to read as follows:

10 (b) An applicant for a license under this section must
11 complete the application form completely and accurately. The
12 department ~~[committee]~~ may not consider an incomplete application.
13 If an applicant fails to provide any information required on the
14 application form, the department ~~[committee]~~ shall send the
15 applicant a notice of deficiency that explains the additional
16 information that must be submitted before the department
17 ~~[committee]~~ may review the application.

18 (c) An ~~[The committee shall require an]~~ applicant for a
19 license under this section shall ~~[to]~~ provide as part of the
20 application:

21 (1) written verification that the applicant is
22 licensed in good standing as a fitter and dispenser of hearing
23 instruments in another state and has held the license for at least
24 three years preceding the date of application;

25 (2) written verification that:

26 (A) the requirements to obtain a license to fit
27 and dispense hearing instruments in the state in which the

1 applicant is licensed include passing an examination approved by
2 the committee by rule; or

3 (B) the applicant holds a certification from a
4 professional organization approved by the committee by rule;

5 (3) [~~affirmation that the applicant is a resident of~~
6 ~~this state,~~

7 [~~(4)~~] a written statement from the licensing entity in
8 the state in which the applicant is licensed that details any
9 disciplinary action taken by the entity against the applicant; and

10 (4) [~~(5)~~] a statement of the applicant's criminal
11 history acceptable to the committee.

12 (d) The department [~~committee~~] may deny an application
13 under this section based on the applicant's criminal history or
14 history of disciplinary action.

15 (e) If the department [~~committee~~] approves an application,
16 on the next regularly scheduled examination date the applicant may
17 take the practical section of the examination required under
18 Section 402.202 and a written examination of Texas law administered
19 by the department [~~committee~~]. If the applicant passes the
20 examinations required under this section, the committee shall issue
21 to the applicant a license under this chapter.

22 (f) The department [~~committee~~] may allow an applicant under
23 this section who satisfies all application requirements other than
24 the requirement under Subsection (c)(2) to take all sections of the
25 examination required under Section 402.202. If the applicant
26 passes the examination, the committee shall issue to the applicant
27 a license under this chapter.

1 (g) An applicant under this section who fails an examination
2 may request in writing, not later than the 30th day after the date
3 the department [~~committee~~] sends the applicant notice of the
4 examination results, that the department [~~committee~~] furnish the
5 applicant with an analysis of the applicant's performance on the
6 examination.

7 SECTION 17. Subchapter E, Chapter 402, Occupations Code, is
8 amended by adding Section 402.210 to read as follows:

9 Sec. 402.210. CRIMINAL HISTORY RECORD INFORMATION
10 REQUIREMENT FOR LICENSE ISSUANCE. (a) The committee shall require
11 that an applicant for a license submit a complete and legible set of
12 fingerprints, on a form prescribed by the committee, to the
13 committee or to the Department of Public Safety for the purpose of
14 obtaining criminal history record information from the Department
15 of Public Safety and the Federal Bureau of Investigation.

16 (b) The committee may not issue a license to a person who
17 does not comply with the requirement of Subsection (a).

18 (c) The committee shall conduct a criminal history check of
19 each applicant for a license using information:

20 (1) provided by the individual under this section; and
21 (2) made available to the committee by the Department
22 of Public Safety, the Federal Bureau of Investigation, and any
23 other criminal justice agency under Chapter 411, Government Code.

24 (d) The department on behalf of the committee may:

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

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

4 SECTION 18. Subchapter G, Chapter 402, Occupations Code, is
5 amended by adding Section 402.302 to read as follows:

6 Sec. 402.302. CRIMINAL HISTORY RECORD INFORMATION
7 REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a
8 license issued under this chapter shall submit a complete and
9 legible set of fingerprints for purposes of performing a criminal
10 history check of the applicant as provided by Section 402.210.

11 (b) The committee may not renew the license of a person who
12 does not comply with the requirement of Subsection (a).

13 (c) The requirements of this section do not apply to a
14 license holder who has previously submitted fingerprints under this
15 section or Section 402.210.

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

17 SECTION 19. Section 402.303, Occupations Code, is amended
18 by amending Subsections (a), (b), (d), and (f) and adding
19 Subsection (e-1) to read as follows:

20 (a) The committee by rule shall adopt requirements for the
21 continuing education of a license holder, including online
22 continuing education requirements and a requirement that a license
23 holder complete 20 hours of continuing education every two years
24 ~~[each year. For purposes of this requirement, each year runs~~
25 ~~concurrently with the effective date of a license issued under this~~
26 ~~chapter]~~. The committee may not renew a license unless the license
27 holder demonstrates compliance with the continuing education

1 requirements established by the committee.

2 (b) A license holder shall provide written proof of
3 attendance or ~~and~~ completion of an approved course on a form
4 prescribed by the committee.

5 (d) The committee shall adopt rules to establish reasonable
6 requirements for continuing education sponsors and courses and to
7 clearly define what constitutes a manufacturer or nonmanufacturer
8 sponsor. The department shall review and approve continuing
9 education sponsor and course applications. The department may
10 request assistance from licensed members of the committee in
11 approving a sponsor or course. The department ~~[committee]~~ must
12 provide a list of approved continuing education sponsors and
13 continuing education courses, including online courses ~~[~~
14 ~~designated by the committee]~~. The list must be revised and updated
15 periodically. Any continuing education activity must be provided
16 by an approved sponsor. The department ~~[committee]~~ shall approve
17 at least five hours of specific courses each year.

18 (e-1) The committee must allow a license holder to report at
19 least 10 hours of online continuing education credit hours in a
20 single reporting period.

21 (f) A course summary and resume for each teacher of a course
22 seeking approval from the department ~~[committee]~~ must be submitted
23 at least 30 days before the date the course is scheduled to take
24 place, unless the course is an online course. The committee shall
25 establish criteria for the approval of submitted courses and
26 reasonable requirements for the approval of online courses and
27 sponsors.

SECTION 20. Section 402.304, Occupations Code, is amended to read as follows:

Sec. 402.304. ALTERNATIVES TO CONTINUING EDUCATION REQUIREMENT. (a) On written request to the department ~~[committee]~~, a license holder may take the state examination ~~[given by the committee]~~. A license holder who pays the examination fee and passes the examination is exempt from the continuing education requirement for the reporting period ~~[year]~~ in which the test is taken.

(b) A license holder may be credited with continuing education credit hours for a published book or article written by the license holder that contributes to the license holder's professional competence. The continuing education committee may grant credit hours based on the degree to which the published book or article advances knowledge regarding the fitting and dispensing of hearing instruments. A license holder may claim in a an ~~[an annual]~~ reporting period not more than five credit hours for preparation of a publication.

SECTION 21. Section 402.305, Occupations Code, is amended to read as follows:

Sec. 402.305. CONTINUING EDUCATION EXEMPTIONS. The committee may renew the license of a license holder who does not comply with the continuing education requirements of Sections 402.303 or 402.304 if the license holder:

(1) was licensed for the first time during the 24 ~~[12]~~ months before the ~~[annual]~~ reporting date;

(2) has served in the regular armed forces of the

United States during part of the 24 [~~12~~] months before the [~~annual~~] reporting date; or

(3) submits proof from an attending physician that the license holder suffered a serious or disabling illness or physical disability that prevented compliance with the continuing education requirements during the 24 [~~12~~] months before the [~~annual~~] reporting date.

SECTION 22. Subchapter K, Chapter 402, Occupations Code, is amended by adding Sections 402.505 and 402.506 to read as follows:

Sec. 402.505. INFORMAL PROCEEDINGS; INFORMAL SETTLEMENT CONFERENCE. (a) The committee by rule shall adopt procedures governing:

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

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

(b) The committee by rule shall establish procedures by which a panel appointed by the department may conduct an informal settlement conference to resolve a complaint against a person licensed under this chapter.

(c) Procedures established under Subsection (b) must:

(1) require the panel conducting the conference to use the schedule of sanctions adopted by the committee to determine the appropriate disciplinary action, if any, to recommend to the committee; and

(2) require the panel to:

(A) recommend a settlement of the complaint to

1 the committee; or

2 (B) refer the complaint to the State Office of
3 Administrative Hearings for a formal hearing and notify the
4 committee of the referral.

5 (d) The committee may approve, modify, or reject the
6 settlement recommendation of the panel.

7 (e) Rules adopted under this section must:

8 (1) provide the complainant and the license holder
9 with an opportunity to be heard; and

10 (2) require the presence of an attorney to advise the
11 panel.

12 Sec. 402.506. RECUSAL OF COMMITTEE MEMBER. (a) A
13 committee member who participated in the investigation of a
14 complaint or in informal settlement negotiations regarding the
15 complaint:

16 (1) may not vote on the matter at a committee meeting
17 related to the complaint; and

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

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

22 SECTION 23. Subchapter L, Chapter 402, Occupations Code, is
23 amended by adding Sections 402.5521 and 402.5522 to read as
24 follows:

25 Sec. 402.5521. COMMITTEE-ORDERED REFUND. The committee may
26 order a license holder to pay a refund to a consumer who returns a
27 hearing instrument during the 30-day trial period required by rules

1 adopted under Section 402.1021.

2 Sec. 402.5522. CEASE AND DESIST ORDER. (a) If it appears
3 to the committee that a person who is not licensed under this
4 chapter is violating this chapter, a rule adopted under this
5 chapter, or another state statute or rule relating to the practice
6 of fitting and dispensing hearing instruments, the committee, after
7 notice and opportunity for a hearing, may issue a cease and desist
8 order prohibiting the person from engaging in the activity.

9 (b) A violation of an order under this section constitutes
10 grounds for imposing an administrative penalty under this
11 subchapter.

12 SECTION 24. (a) Except as provided by Subsection (b) of
13 this section, not later than February 1, 2012, the State Committee
14 of Examiners in the Fitting and Dispensing of Hearing Instruments
15 shall adopt rules necessary to implement the changes in law made by
16 this Act to Chapter 402, Occupations Code.

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 402.1021, Occupations Code,
21 as added by this Act.

22 (c) The changes in law made by Subchapter B, Chapter 402,
23 Occupations Code, as amended by this Act, regarding the
24 prohibitions on or qualifications of members of the State Committee
25 of Examiners in the Fitting and Dispensing of Hearing Instruments
26 do not affect the entitlement of a member serving on the committee
27 immediately before September 1, 2011, to continue to serve and

1 function as a member of the committee for the remainder of the
2 member's term. The changes in law made by this Act apply only to a
3 member appointed on or after September 1, 2011.

4 (d) Sections 402.505 and 402.506, Occupations Code, as
5 added by this Act, apply only to a complaint filed with the State
6 Committee of Examiners in the Fitting and Dispensing of Hearing
7 Instruments on or after the effective date of this Act. A complaint
8 filed before the effective date of this Act is governed by the law
9 in effect on the date the complaint was filed, and the former law is
10 continued in effect for that purpose.

11 (e) Sections 402.210 and 402.302, Occupations Code, as
12 added by this Act, and Sections 402.303, 402.304, and 402.305,
13 Occupations Code, as amended by this Act, apply only to an
14 application for a license or renewal of a license filed with the
15 State Committee of Examiners in the Fitting and Dispensing of
16 Hearing Instruments on or after May 1, 2012. An application filed
17 before that date is governed by the law in effect on the date the
18 application was filed, and the former law is continued in effect for
19 that purpose.

20 SECTION 25. This Act takes effect September 1, 2011.