

By: Nelson

S.B. No. 188

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of genetic counselors;  
providing penalties.

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

SECTION 1. Subtitle I, Title 3, Occupations Code, is amended by adding Chapter 506 to read as follows:

CHAPTER 506. LICENSED GENETIC COUNSELORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 506.001. SHORT TITLE. This chapter may be cited as the Licensed Genetic Counselor Act.

Sec. 506.002. GENERAL DEFINITIONS. In this chapter:

(1) "Advisory committee" means the Licensed Genetic Counselor Advisory Committee.

(2) "Board" means the Texas Medical Board.

(3) "Executive director" means the executive director of the board.

(4) "Licensed genetic counselor" means a person licensed under this chapter to engage in the practice of genetic counseling.

Sec. 506.003. DEFINITION: PRACTICE OF GENETIC COUNSELING.

In this chapter, "practice of genetic counseling" means, on the documented referral by a physician licensed to practice medicine in this state or by a person acting under authority delegated under Subchapter A, Chapter 157, providing professional services for

1 compensation to communicate genetic information to an individual,  
2 family, group, or other entity. The term includes:

3 (1) assessing the likelihood of an occurrence or  
4 recurrence of a birth defect or a potentially inherited or  
5 genetically influenced condition, including:

6 (A) obtaining and analyzing a complete health  
7 history of an individual and family;

8 (B) reviewing pertinent medical records;

9 (C) evaluating the risks associated with  
10 exposure to possible mutagens or teratogens; and

11 (D) recommending genetic testing to evaluate a  
12 condition or determine the carrier status of a family member;

13 (2) assisting an individual, family, or group to:

14 (A) appreciate the medical, psychological, and  
15 social implications of a disorder, including the disorder's  
16 features, variability, usual course, and management options;

17 (B) understand the effect genetic factors have on  
18 a disorder and on the chance for recurrence of the disorder in other  
19 family members;

20 (C) understand the options available for coping  
21 with, preventing, or reducing the occurrence or recurrence of a  
22 condition; and

23 (D) understand genetic or prenatal tests and  
24 coordinate testing for inherited disorders; and

25 (3) facilitating an individual's or family's:

26 (A) examination of the risk and burden perception  
27 associated with the disorder;

1           (B) decision-making related to testing or  
2 medical interventions consistent with the individual's or family's  
3 beliefs, goals, needs, resources, culture, and ethical or moral  
4 views; and

5           (C) adjustment and adaptation to the disorder or  
6 to the individual's or family's genetic risk by addressing the need  
7 for psychological, social, and medical support.

8           Sec. 506.004. PRACTICE OF MEDICINE NOT AUTHORIZED. This  
9 chapter does not authorize:

10           (1) the practice of medicine as defined by Subtitle B,  
11 Title 3; or

12           (2) the making of a medical diagnosis.

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

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

21           (b) A person may engage in the practice of genetic  
22 counseling without holding a license under this chapter if the  
23 person:

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

1 a genetic counselor under this chapter;

2 (2) is a student:

3 (A) pursuing a course of study or engaged in a  
4 training program for an occupation regulated by this state and  
5 acting within the occupation's scope of practice; or

6 (B) enrolled in a board-approved supervised  
7 genetic counseling training program and engaged in an activity  
8 constituting the practice of genetic counseling as a required part  
9 of the training program; or

10 (3) is a genetic counselor who:

11 (A) is certified by the American Board of Medical  
12 Genetics, the American Board of Genetic Counseling, or another  
13 certification body approved by the board;

14 (B) is not a resident of this state;

15 (C) performs an activity or provides a service in  
16 this state for not more than 30 days during any year and the  
17 activity or service is under the direction and supervision of a  
18 physician licensed to practice medicine in this state or a licensed  
19 genetic counselor; and

20 (D) meets any other requirements established by  
21 board rule.

22 (c) A student described by Subsection (b)(2) includes an  
23 individual who:

24 (1) is trained as:

25 (A) a genetic counselor and has applied to take  
26 the certification examination; or

27 (B) a doctoral medical geneticist and has applied

1 to take the certification examination; and

2 (2) has not failed the certification examination more  
3 than two times.

4 [Sections 506.007-506.050 reserved for expansion]

5 SUBCHAPTER B. ADVISORY COMMITTEE

6 Sec. 506.051. ADVISORY COMMITTEE. (a) The advisory  
7 committee is an informal advisory committee to the board and is not  
8 subject to Chapter 2110, Government Code.

9 (b) The advisory committee has no independent rulemaking  
10 authority.

11 Sec. 506.052. APPOINTMENT OF ADVISORY COMMITTEE. The  
12 advisory committee consists of seven members appointed by the  
13 president of the board as follows:

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

17 (2) five licensed genetic counselor members, each of  
18 whom:

19 (A) has engaged for at least two years in the  
20 practice of genetic counseling as a genetic counselor:

21 (i) licensed under this chapter; or

22 (ii) certified by the American Board of  
23 Medical Genetics, the American Board of Genetic Counseling, or  
24 another certification body approved by the board;

25 (B) is a United States citizen; and

26 (C) has been a resident of this state for not less  
27 than six months preceding appointment.

1       Sec. 506.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

2       (a) In this section, "Texas trade association" means a cooperative  
3 and voluntarily joined association of business or professional  
4 competitors in this state designed to assist its members and its  
5 industry or profession in dealing with mutual business or  
6 professional problems and in promoting their common interest.

7       (b) A person may not be an advisory committee member if:

8               (1) the person is an officer, employee, or paid  
9 consultant of a Texas trade association in the field of genetic  
10 counseling; or

11               (2) the person's spouse is an officer, manager, or paid  
12 consultant of a Texas trade association in the field of genetic  
13 counseling.

14       (c) A person may not be an advisory committee member if the  
15 person is required to register as a lobbyist under Chapter 305,  
16 Government Code, because of the person's activities for  
17 compensation on behalf of a profession related to the field of  
18 genetic counseling.

19       Sec. 506.054. TERMS; VACANCY. (a) Advisory committee  
20 members serve two-year terms. The terms expire on February 1 of  
21 each odd-numbered year.

22       (b) If a vacancy occurs during an advisory committee  
23 member's term, the president of the board shall appoint a new member  
24 to fill the unexpired term.

25       (c) An advisory committee member may not serve more than two  
26 consecutive full terms.

27       Sec. 506.055. GROUNDS FOR REMOVAL. (a) It is a ground for

1 removal from the advisory committee that a member:

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

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

6 (3) is ineligible for membership under Section  
7 506.053;

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

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

14 (b) The executive director shall review the qualifications  
15 of the advisory committee members and notify the board of any action  
16 that may be required.

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

20 Sec. 506.056. OFFICERS. The president of the board  
21 biennially shall designate an advisory committee member as the  
22 presiding officer of the advisory committee to serve in that  
23 capacity at the will of the president.

24 Sec. 506.057. PER DIEM. An advisory committee member is not  
25 entitled to reimbursement for travel expenses or compensation.

26 Sec. 506.058. MEETINGS. (a) The advisory committee shall  
27 meet as requested by the board.

1        (b) A meeting may be held by telephone or other electronic  
2 conference call.

3            [Sections 506.059-506.100 reserved for expansion]

4            SUBCHAPTER C. POWERS AND DUTIES OF BOARD

5                    AND EXECUTIVE DIRECTOR

6        Sec. 506.101. GENERAL POWERS AND DUTIES. The board, in  
7 consultation with the advisory committee, shall:

8            (1) establish qualifications for licensed genetic  
9 counselors in this state;

10          (2) establish the examination requirements for  
11 issuance of a licensed genetic counselor license;

12          (3) establish minimum education and training  
13 requirements necessary for issuance of a licensed genetic counselor  
14 license;

15          (4) prescribe the application form for issuance of a  
16 licensed genetic counselor license; and

17          (5) develop an approved program of mandatory  
18 continuing education for licensed genetic counselors and the manner  
19 in which attendance at all approved courses, clinics, forums,  
20 lectures, programs, or seminars is monitored and recorded.

21        Sec. 506.102. RULES. In consultation with the advisory  
22 committee, the board shall adopt rules to implement and enforce  
23 this chapter.

24        Sec. 506.103. FEES; SPECIAL ACCOUNT. (a) The board by  
25 rule shall set fees required by this chapter in amounts reasonable  
26 and necessary to cover the costs of administering this chapter.

27        (b) The board shall deposit all the fees collected to the



1 credit of the genetic counseling licensing account. The genetic  
2 counseling licensing account is a special account in the general  
3 revenue fund that may be appropriated only to the board to pay for  
4 the board's administration of this chapter.

5 Sec. 506.104. ANNUAL REPORT. (a) The board annually shall  
6 prepare a complete and detailed written report accounting for all  
7 money received and disbursed by the board under this chapter during  
8 the preceding fiscal year.

9 (b) The annual report must meet the reporting requirements  
10 applicable to financial reporting provided by the General  
11 Appropriations Act.

12 Sec. 506.105. GIFTS, GRANTS, AND DONATIONS. In addition to  
13 any fees paid to the board or money appropriated to the board, the  
14 board may receive and accept under this chapter a gift, grant,  
15 donation, or other item of value from any source, including the  
16 United States or a private source.

17 [Sections 506.106-506.150 reserved for expansion]

18 SUBCHAPTER D. PUBLIC INTEREST INFORMATION;

19 COMPLAINT AND INVESTIGATIVE INFORMATION

20 Sec. 506.151. PUBLIC PARTICIPATION. (a) The board shall  
21 develop and implement policies that provide the public with a  
22 reasonable opportunity to appear before the board and speak on any  
23 issue relating to genetic counseling.

24 (b) The executive director shall prepare and maintain a  
25 written plan that describes how a person who does not speak English  
26 may be provided reasonable access to the board's programs and  
27 services under this chapter.

1       Sec. 506.152. PUBLIC INTEREST INFORMATION. (a) The board  
2 shall prepare information of public interest describing the  
3 functions of the board under this chapter and the procedure by which  
4 complaints are filed and resolved under this chapter.

5       (b) The board shall make the information available to the  
6 public and appropriate state agencies.

7       Sec. 506.153. COMPLAINTS. (a) The board by rule shall  
8 establish methods by which consumers are notified of the name,  
9 mailing address, and telephone number of the board for the purpose  
10 of directing complaints about licensed genetic counselors to the  
11 board.

12       (b) The board shall list with its regular telephone number  
13 any toll-free telephone number established under other state law  
14 that may be called to present a complaint about a licensed genetic  
15 counselor.

16       Sec. 506.154. RECORDS OF COMPLAINTS. (a) The board shall  
17 maintain a file on each written complaint filed with the board under  
18 this chapter. The file must include:

19               (1) the name of the person who filed the complaint;  
20               (2) the date the complaint is received by the board;  
21               (3) the subject matter of the complaint;  
22               (4) the name of each person contacted in relation to  
23 the complaint;

24               (5) a summary of the results of the review or  
25 investigation of the complaint; and

26               (6) an explanation of the reason the file was closed,  
27 if the board closed the file without taking action other than to

1 investigate the complaint.

2 (b) The board shall provide to the person filing the  
3 complaint and to each person who is a subject of the complaint a  
4 copy of the board's policies and procedures relating to complaint  
5 investigation and resolution. A person who reports a complaint by  
6 telephone shall be given information on how to file a written  
7 complaint.

8 (c) The board, at least quarterly and until final  
9 disposition of the complaint, shall notify the person filing the  
10 complaint and each person who is a subject of the complaint of the  
11 status of the investigation unless the notice would jeopardize an  
12 ongoing investigation.

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

23 (b) Notwithstanding Subsection (a), the board is not  
24 required to provide:

25 (1) board investigative reports;

26 (2) investigative memoranda;

27 (3) the identity of a non-testifying complainant;

1           (4) attorney-client communications;  
2           (5) attorney work product; or  
3           (6) other material covered by a privilege recognized  
4 by the Texas Rules of Civil Procedure or the Texas Rules of  
5 Evidence.

6           Sec. 506.156. HEALTH CARE ENTITY REQUEST FOR INFORMATION.  
7 On the written request of a health care entity, the board shall  
8 provide to the entity:

9           (1) information about a complaint filed against the  
10 license holder that was resolved after investigation by:

11                   (A) a disciplinary order of the board; or

12                   (B) an agreed settlement; and

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

16           Sec. 506.157. CONFIDENTIALITY OF INVESTIGATIVE  
17 INFORMATION. The following information is privileged and  
18 confidential and is not subject to discovery, subpoena, or other  
19 means of legal compulsion for release to any person other than the  
20 board or board employee or agent involved in license holder  
21 discipline:

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

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

27           (3) other investigative information in the possession

1 of, received by, or gathered by the board or a board employee or  
2 agent relating to a license holder, a license application, or a  
3 criminal investigation or proceeding.

4 Sec. 506.158. PERMITTED DISCLOSURE OF INVESTIGATIVE  
5 INFORMATION. (a) Notwithstanding Section 506.157, investigative  
6 information in the possession of the board or a board employee or  
7 agent may be disclosed to a licensing authority in another state or  
8 country in which the license holder is licensed or has applied for a  
9 license or similar authority.

10 (b) If the investigative information in the possession of  
11 the board or a board employee or agent indicates a crime may have  
12 been committed, the board shall report the information to the  
13 proper law enforcement agency. The board shall cooperate with and  
14 assist all law enforcement agencies conducting criminal  
15 investigations of a license holder by providing information  
16 relevant to the investigation.

17 (c) Confidential information disclosed by the board to a law  
18 enforcement agency remains confidential and may not be disclosed by  
19 the law enforcement agency except as necessary to further the  
20 investigation or prosecution.

21 Sec. 506.159. IMMUNITY AND REPORTING REQUIREMENTS.

22 (a) Any person, including a physician or genetic counselor, shall  
23 report relevant information to the board related to the acts of a  
24 licensed genetic counselor in this state if, in that person's  
25 opinion, the licensed genetic counselor poses a continuing threat  
26 to the public welfare. The duty to report under this section may  
27 not be nullified through contract.

1       (b) A person who without malice furnishes records,  
2 information, or assistance to the board under this section is  
3 immune from any civil liability arising from that action in a suit  
4 against the person brought by or on behalf of a licensed genetic  
5 counselor who is reported under this section.

6           [Sections 506.160-506.200 reserved for expansion]

7                   SUBCHAPTER E. LICENSING REQUIREMENTS

8       Sec. 506.201. LICENSE REQUIRED. (a) Except as provided by  
9 Section 506.006, a person may not act as a genetic counselor or  
10 engage in the practice of genetic counseling in this state unless  
11 the person holds a license under this chapter.

12       (b) Except as provided by Section 506.006, a person may not  
13 use the title or represent or imply the person has the title  
14 "genetic counselor," "certified genetic counselor," "licensed  
15 genetic counselor," "gene counselor," "genetic consultant," or  
16 "genetic associate" or use any other word, abbreviation, or  
17 insignia indicating or implying the person is a licensed genetic  
18 counselor unless the person holds a license under this chapter.

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

24       Sec. 506.202. LICENSE APPLICATION. An applicant for a  
25 license must:

26           (1) file a written application with the board on a form  
27 prescribed by the board; and

1           (2) pay the application fee set by the board.

2           Sec. 506.203. LICENSE ELIGIBILITY. (a) To be eligible for  
3 a license, a license applicant must demonstrate to the satisfaction  
4 of the board that the applicant:

5           (1) is of good moral character;

6           (2) has not been convicted of a felony or a crime  
7 involving moral turpitude;

8           (3) has not used drugs or alcohol to an extent that  
9 affects the applicant's professional competency;

10           (4) has not had a certificate of registration or  
11 license revoked by a licensing agency or by a certifying  
12 professional organization; and

13           (5) has not engaged in fraud or deceit in applying for  
14 a license under this chapter.

15           (b) In addition to meeting the requirements of Subsection  
16 (a), an applicant must:

17           (1) successfully complete the examination required by  
18 Section 506.204;

19           (2) have successfully completed:

20           (A) a master's degree in a genetic counseling  
21 training program that is approved by the board and that is at least  
22 as stringent as a genetic counseling training program accredited by  
23 the American Board of Genetic Counselors; or

24           (B) a master's degree in a medical genetics  
25 training program that is approved by the board and that is at least  
26 as stringent as a medical genetics training program accredited by  
27 the American Board of Medical Genetics; and

1           (3) meet any other requirement prescribed by the  
2 board.

3           Sec. 506.204. EXAMINATION. (a) An applicant for a license  
4 under this chapter must successfully complete an examination  
5 approved by the board that demonstrates the applicant's knowledge  
6 of genetic counseling.

7           (b) The board shall adopt rules to govern the development  
8 and administration of an examination for issuance of a genetic  
9 counselor license. Any written portion of the examination must be  
10 validated by an independent testing professional.

11           Sec. 506.205. TEMPORARY LICENSE. (a) The board may,  
12 through the executive director, issue a temporary license to an  
13 applicant who:

14           (1) submits an application on a form prescribed by the  
15 board;

16           (2) has successfully completed the examination  
17 required by the board;

18           (3) pays the appropriate fee set by the board; and

19           (4) meets all the qualifications for a license under  
20 this chapter and is waiting for the next scheduled meeting of the  
21 board for the license to be issued.

22           (b) A temporary license is valid until the 100th day after  
23 the date issued and may be extended until the 130th day after the  
24 date issued.

25           Sec. 506.206. ISSUANCE OF LICENSE. The board shall issue a  
26 genetic counselor license to a person who meets the requirements of  
27 this chapter and the rules adopted under this chapter.



1       Sec. 506.207. TERM; RENEWAL. (a) A genetic counselor  
2 license expires on the second anniversary of the date of issuance.  
3 The board by rule shall provide for the renewal of the license.

4       (b) The board by rule may adopt a system under which  
5 licenses expire on various dates during the year. For the year in  
6 which the license expiration date is changed, license fees shall be  
7 prorated on a monthly basis so that each license holder pays only  
8 that portion of the license fee that is allocable to the number of  
9 months during which the license or license renewal is valid. On  
10 renewal of the license on the new expiration date, the total license  
11 renewal fee is payable.

12       Sec. 506.208. NOTICE OF LICENSE EXPIRATION. At least 30  
13 days before the expiration of a person's license, the board shall  
14 send written notice of the impending license expiration to the  
15 license holder's last known address according to the records of the  
16 board.

17       Sec. 506.209. PROCEDURE FOR RENEWAL. (a) A person who is  
18 otherwise eligible to renew a license may renew an unexpired  
19 license by paying the required renewal fee to the board before the  
20 expiration date of the license. A person whose license has expired  
21 may not engage in activities that require a license.

22       (b) If the person's license has been expired for 90 days or  
23 less, the person may renew the license by paying to the board one  
24 and one-half times the required renewal fee.

25       (c) If the person's license has been expired for longer than  
26 90 days but less than one year, the person may renew the license by  
27 paying to the board two times the required renewal fee.

1        (d) If the person's license has been expired for one year or  
2 longer, the person may not renew the license. The person may obtain  
3 a new license by complying with the requirements and procedures for  
4 obtaining an original license.

5            [Sections 506.210-506.300 reserved for expansion]

6            SUBCHAPTER F. DISCIPLINARY PROCEEDINGS

7            Sec. 506.301. DISCIPLINARY ACTIONS BY BOARD. (a) On a  
8 determination that an applicant or license holder committed an act  
9 or attempted to commit an act described by Section 506.302,  
10 506.303, or 506.304, the board by order may take any of the  
11 following actions:

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

14            (2) require the person to complete additional  
15 training;

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

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

21            (5) suspend, limit, or restrict the person's license,  
22 including:

23            (A) limiting the practice of the person to, or  
24 excluding from the person's practice, one or more of the specified  
25 activities of genetic counseling; or

26            (B) stipulating periodic board review;

27            (6) assess an administrative penalty against the

1 person as provided by Section 506.351; or

2 (7) administer a public reprimand.

3 (b) If the board stays enforcement of an order and places a  
4 person on probation, the board retains the right to:

5 (1) vacate the probationary stay and enforce the  
6 original order for noncompliance with the terms of probation; or

7 (2) impose any other remedial measure or sanction  
8 authorized by this section.

9 (c) The board may restore or reissue a license or remove any  
10 disciplinary or corrective measure that the board has imposed.

11 Sec. 506.302. CONDUCT RELATED TO MISREPRESENTATION OR  
12 FRAUD. The board may take action under Section 506.301 against an  
13 applicant or a license holder who:

14 (1) fraudulently or deceptively obtains or attempts to  
15 obtain a license;

16 (2) fraudulently or deceptively uses a license;

17 (3) falsely represents that the person is a physician,  
18 nurse, physician assistant, or other licensed health care provider;

19 (4) acts in an unprofessional or dishonorable manner  
20 that is likely to deceive, defraud, or injure the public;

21 (5) fraudulently alters any license;

22 (6) uses any genetic counselor license that has been  
23 fraudulently purchased, issued, or counterfeited or that has been  
24 materially altered;

25 (7) directly or indirectly aids or abets the practice  
26 of genetic counseling by any person not authorized to practice  
27 genetic counseling under this chapter; or

1           (8) unlawfully advertises in a false, misleading, or  
2 deceptive manner as defined in Section 101.201.

3           Sec. 506.303. CONDUCT RELATED TO VIOLATION OF LAW.

4 (a) The board may take action under Section 506.301 against an  
5 applicant or license holder who:

6           (1) violates this chapter or a rule adopted under this  
7 chapter;

8           (2) is convicted of a felony, placed on deferred  
9 adjudication, or placed in a pretrial diversion program; or

10           (3) violates state law if the violation is connected  
11 with the practice of genetic counseling.

12           (b) A complaint, indictment, or conviction of a law  
13 violation is not necessary for the board to act under Subsection  
14 (a)(3). Proof of the commission of the act while in practice as a  
15 genetic counselor or under the guise of a genetic counselor is  
16 sufficient for action by the board.

17           Sec. 506.304. CONDUCT INDICATING LACK OF FITNESS. (a) The  
18 board may take action under Section 506.301 against an applicant or  
19 license holder who:

20           (1) habitually uses drugs or intoxicating liquors to  
21 the extent that, in the board's opinion, the person cannot safely  
22 act as a genetic counselor;

23           (2) has been adjudicated as mentally incompetent;

24           (3) has a mental or physical condition that renders  
25 the person unable to safely act as a genetic counselor;

26           (4) has committed an act of moral turpitude;

27           (5) has failed to practice genetic counseling in an

1 acceptable manner consistent with public health and welfare;

2 (6) has had the person's license or other  
3 authorization to practice genetic counseling suspended, revoked,  
4 or restricted;

5 (7) has had other disciplinary action taken by another  
6 state regarding the practice of genetic counseling;

7 (8) was removed or suspended or has had disciplinary  
8 action taken by the person's peers in any professional association  
9 or society, if that action, in the opinion of the board, was based  
10 on unprofessional conduct or professional incompetence that was  
11 likely to harm the public;

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

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

17 (b) An action described by Subsection (a)(8) does not  
18 constitute state action on the part of the association or society.

19 Sec. 506.305. SUBPOENA. (a) The executive director, the  
20 director's designee, or the secretary-treasurer of the board may  
21 issue a subpoena or subpoena duces tecum:

22 (1) to conduct an investigation or a contested case  
23 proceeding related to:

24 (A) alleged misconduct by a genetic counselor;

25 (B) an alleged violation of this chapter or  
26 another law related to the practice of genetic counseling; or

27 (C) the practice of genetic counseling under this

1 chapter;

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

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

6 (b) Failure to timely comply with a subpoena issued under  
7 this section is a ground for:

8 (1) disciplinary action by the board or another  
9 licensing or regulatory agency with jurisdiction over the person  
10 subject to the subpoena; and

11 (2) denial of a license or license application.

12 Sec. 506.306. PROTECTION OF PATIENT IDENTITY. In a  
13 disciplinary investigation or proceeding conducted under this  
14 chapter, the board shall protect the identity of each patient whose  
15 medical records are examined and used in a public proceeding unless  
16 the patient:

17 (1) testifies in a public proceeding; or

18 (2) submits to the board a written release in regard to  
19 the patient's record or identity.

20 Sec. 506.307. RULES FOR DISCIPLINARY PROCEEDINGS. Rules of  
21 practice adopted under this chapter by the board under Section  
22 2001.004, Government Code, applicable to the proceedings for a  
23 disciplinary action may not conflict with rules adopted by the  
24 State Office of Administrative Hearings.

25 Sec. 506.308. REQUIRED SUSPENSION OF INCARCERATED GENETIC  
26 COUNSELOR. Regardless of the offense, the board shall suspend the  
27 license of a licensed genetic counselor serving a prison term in a

1 state or federal penitentiary during the term of the incarceration.

2 Sec. 506.309. TEMPORARY SUSPENSION. (a) The president of  
3 the board, with board approval, shall appoint a three-member  
4 disciplinary panel consisting of board members to determine whether  
5 a licensed genetic counselor's license should be temporarily  
6 suspended.

7 (b) If the disciplinary panel determines from the evidence  
8 or information presented to the panel that a licensed genetic  
9 counselor would, by continuing in practice, constitute a threat to  
10 the public welfare, the disciplinary panel shall temporarily  
11 suspend the license.

12 (c) A license may be suspended under this section without  
13 notice or hearing on the complaint if:

14 (1) institution of proceedings for a hearing before  
15 the board is initiated simultaneously with the temporary  
16 suspension; and

17 (2) a hearing is held under Chapter 2001, Government  
18 Code, and this chapter as soon as possible.

19 (d) Notwithstanding Chapter 551, Government Code, the  
20 disciplinary panel may hold a meeting by telephone conference call  
21 if immediate action is required and convening the disciplinary  
22 panel at one location is inconvenient for any member of the panel.

23 Sec. 506.310. INFORMAL PROCEEDINGS. (a) The board by rule  
24 shall adopt procedures under this chapter governing:

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

27 (2) informal proceedings held in compliance with

1 Section 2001.054, Government Code.

2 (b) Rules adopted under this section must require that:

3 (1) an informal meeting in compliance with Section  
4 2001.054, Government Code, be scheduled not later than the 180th  
5 day after the date the board's official investigation of the  
6 complaint is commenced, unless good cause is shown by the board for  
7 scheduling the informal meeting after that date;

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

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

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

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

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

23 (c) An affected license holder is entitled, orally or in  
24 writing, to:

25 (1) reply to the staff's presentation; and

26 (2) present the facts the license holder reasonably  
27 believes the license holder could prove by competent evidence or



1 qualified witnesses at a hearing.

2 (d) After ample time is given for the presentations, the  
3 board panel shall recommend that the investigation be closed or  
4 shall attempt to mediate the disputed matters and make a  
5 recommendation regarding the disposition of the case in the absence  
6 of a hearing under applicable law concerning contested cases.

7 (e) If the license holder has previously been the subject of  
8 disciplinary action by the board, the board shall schedule the  
9 informal meeting as soon as practicable but not later than the  
10 deadline prescribed by Subsection (b)(1).

11 Sec. 506.311. ROLES AND RESPONSIBILITIES OF PARTICIPANT IN  
12 INFORMAL PROCEEDINGS. (a) A board or committee member that serves  
13 as a panelist at an informal meeting under Section 506.310 shall  
14 make recommendations for the disposition of a complaint or  
15 allegation. The member may request the assistance of a board  
16 employee at any time.

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

21 (c) A board attorney shall act as counsel to the panel and,  
22 notwithstanding Subsection (e), shall be present during the  
23 informal meeting and the panel's deliberation to advise the panel  
24 on legal issues that arise during the proceeding. The attorney may  
25 ask questions of participants in the informal meeting to clarify  
26 any statement made by the participant.

27 (d) The attorney shall provide to the panel a historical

1 perspective on comparable cases that have appeared before the  
2 board, keep the proceedings focused on the case being discussed,  
3 and ensure that the board's employees and the affected license  
4 holder have an opportunity to present information related to the  
5 case.

6 (e) During the panel's deliberations, the attorney may be  
7 present only to advise the panel on legal issues and to provide  
8 information on comparable cases that have appeared before the  
9 board.

10 [Sections 506.312-506.350 reserved for expansion]

11 SUBCHAPTER G. ADMINISTRATIVE PENALTY

12 Sec. 506.351. ADMINISTRATIVE PENALTY. (a) The board by  
13 order may impose an administrative penalty against a person  
14 licensed under this chapter who violates this chapter or a rule or  
15 order adopted under this chapter.

16 (b) The penalty may be in an amount not to exceed \$5,000.  
17 Each day a violation continues or occurs is a separate violation for  
18 purposes of imposing a penalty.

19 (c) The board shall base the amount of the penalty on:

20 (1) the severity of patient harm;

21 (2) the severity of economic harm to any person;

22 (3) the increased potential of harm to the public;

23 (4) any attempted concealment of misconduct;

24 (5) the motive for the violation;

25 (6) any prior misconduct of a similar or related  
26 nature;

27 (7) the license holder's disciplinary history;

1           (8) any prior written warning or written admonishments  
2 from any government agency or official regarding statutes or rules  
3 relating to the misconduct;

4           (9) whether the violation is of a board order;

5           (10) the person's failure to implement remedial  
6 measures to correct or mitigate harm from the misconduct;

7           (11) the person's lack of rehabilitative potential or  
8 likelihood of future misconduct of a similar nature;

9           (12) any relevant circumstances increasing the  
10 seriousness of the misconduct; or

11           (13) any other matter that justice may require.

12           Sec. 506.352. NOTICE OF VIOLATION AND PENALTY. If the board  
13 by order determines that a violation has occurred and imposes an  
14 administrative penalty, the board shall give notice to the person  
15 of the order. The notice must include a statement of the person's  
16 right to judicial review of the order.

17           Sec. 506.353. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

18           (a) Not later than the 30th day after the date the board's order  
19 imposing the administrative penalty is final, the person shall:

20           (1) pay the penalty;

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

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

27           (b) Within the 30-day period, a person who acts under

1 Subsection (a)(3) may:

2 (1) stay the enforcement of the penalty by:

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

5 (B) giving the court a supersedeas bond approved  
6 by the court for the amount of the penalty and that is effective  
7 until all judicial review of the board's order is final; or

8 (2) request the court to stay enforcement of the  
9 penalty by:

10 (A) filing with the court an affidavit of the  
11 person stating that the person is financially unable to pay the  
12 penalty and is financially unable to give the supersedeas bond; and

13 (B) giving a copy of the affidavit to the  
14 executive director by certified mail.

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

19 (d) The court shall hold a hearing on the facts alleged in  
20 the affidavit as soon as practicable and shall stay the enforcement  
21 of the penalty on finding that the alleged facts are true. The  
22 person who files an affidavit has the burden of proving that the  
23 person is financially unable to pay the penalty and to give a  
24 supersedeas bond.

25 Sec. 506.354. COLLECTION OF PENALTY. If the person does not  
26 pay the administrative penalty and the enforcement of the penalty  
27 is not stayed, the executive director may refer the matter to the

1 attorney general for collection of the penalty.

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

6 (b) If the court does not sustain the determination that a  
7 violation occurred, the court shall order that a penalty is not  
8 owed.

9 Sec. 506.356. REMITTANCE OF PENALTY AND INTEREST. (a) If  
10 after judicial review the administrative penalty is reduced or not  
11 imposed by the court, the court shall, after the judgment becomes  
12 final:

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

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

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

25 [Sections 506.357-506.400 reserved for expansion]

26 SUBCHAPTER H. INJUNCTIVE RELIEF

27 Sec. 506.401. INJUNCTIVE AUTHORITY. In addition to any

1 other action authorized by law, the board may institute an action in  
2 its own name to enjoin a violation of this chapter.

3 SECTION 2. (a) Not later than October 1, 2011, the  
4 president of the Texas Medical Board shall appoint the members of  
5 the Licensed Genetic Counselor Advisory Committee created under  
6 Chapter 506, Occupations Code, as added by this Act.

7 (b) The Texas Medical Board shall adopt rules under Chapter  
8 506, Occupations Code, as added by this Act, not later than June 30,  
9 2012.

10 SECTION 3. (a) Except as provided by Subsection (b) of this  
11 section, this Act takes effect September 1, 2011.

12 (b) Section 506.201, Occupations Code, as added by this Act,  
13 and Subchapters F, G, and H, Chapter 506, Occupations Code, as added  
14 by this Act, take effect July 1, 2012.