

By: Coleman

H.B. No. 4113

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the licensing and regulation of speech-language
3 pathologists and audiologists by the Executive Council of Physical
4 Therapy and Occupational Therapy Examiners; providing a fee.

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

6 SECTION 1. Section 401.001(4), Occupations Code, is amended
7 to read as follows:

8 (4) "Executive council" [~~"Department"~~] means the
9 Executive Council of Examiners of Physical Therapists,
10 Occupational Therapists, and Speech-Language Pathologists and
11 Audiologists [~~Department of State Health Services~~].

12 SECTION 2. Subchapter A, Chapter 401, Occupations Code, is
13 amended by adding Section 401.003 to read as follows:

14 Sec. 401.003. CONFLICT WITH OTHER LAW. To the extent of any
15 conflict between this chapter and Chapter 452, Chapter 452
16 controls.

17 SECTION 3. Section 401.053, Occupations Code, is amended to
18 read as follows:

19 Sec. 401.053. PERSONS TRAINED BY DEPARTMENT OF STATE HEALTH
20 SERVICES. (a) In this section, "department" means the Department
21 of State Health Services.

22 (a-1) This chapter does not apply to a person who shows
23 evidence of having received training by the department in a
24 communication, speech, language, or hearing screening training

1 program approved by the department if the person's activity is
2 limited to screening as defined by board rule.

3 (b) A person who has received training by the department in
4 a program under Subsection (a-1) [~~(a)~~] may not:

5 (1) practice speech-language pathology or audiology;
6 or

7 (2) represent that the person is a speech-language
8 pathologist or audiologist.

9 SECTION 4. Section 401.103, Occupations Code, is amended to
10 read as follows:

11 Sec. 401.103. ELIGIBILITY OF PUBLIC MEMBERS. A person may
12 not be a public member of the board, other than the public member
13 described by Section 401.102(d), if the person or the person's
14 spouse:

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

17 (2) is employed by or participating in the management
18 of an agency or business entity that:

19 (A) provides health care services;

20 (B) sells, manufactures, or distributes health
21 care supplies or equipment; or

22 (C) receives money from the board or executive
23 council [~~the department~~];

24 (3) owns, controls, or has a direct or indirect
25 interest of more than 10 percent in a business entity that:

26 (A) provides health care services;

27 (B) sells, manufactures, or distributes health

1 care supplies or equipment; or

2 (C) receives money from the board or executive
3 council [~~department~~]; or

4 (4) uses or receives a substantial amount of tangible
5 goods, services, or money from the board or executive council
6 [~~department~~] other than compensation or reimbursement authorized
7 by law for board membership, attendance, or expenses.

8 SECTION 5. Section 401.104(b), Occupations Code, is amended
9 to read as follows:

10 (b) A person may not serve as a member of the board [~~or act~~
11 ~~as the general counsel to the board~~] if the person is required to
12 register as a lobbyist under Chapter 305, Government Code, because
13 of the person's activities in a health-related area.

14 SECTION 6. The heading to Subchapter D, Chapter 401,
15 Occupations Code, is amended to read as follows:

16 SUBCHAPTER D. [~~BOARD~~] PERSONNEL

17 SECTION 7. Section 401.151, Occupations Code, is amended to
18 read as follows:

19 Sec. 401.151. EMPLOYEES. The board may request the
20 executive council to assign [~~department shall provide~~]
21 administrative and clerical employees necessary to administer the
22 board's functions [~~this chapter~~].

23 SECTION 8. Section 401.152, Occupations Code, is amended to
24 read as follows:

25 Sec. 401.152. DIVISION OF RESPONSIBILITIES. The board
26 shall develop and implement policies that clearly define the
27 respective responsibilities of the board and the staff of the

1 executive council [~~board~~].

2 SECTION 9. The heading to Subchapter E, Chapter 401,
3 Occupations Code, is amended to read as follows:

4 SUBCHAPTER E. [~~BOARD AND DEPARTMENT~~] POWERS AND DUTIES

5 SECTION 10. Section 401.201(a), Occupations Code, is
6 amended to read as follows:

7 (a) Except as provided by Chapter 452 [~~With the assistance~~
8 ~~of the department~~], the board shall:

9 (1) administer, coordinate, and enforce this chapter;

10 (2) evaluate the qualifications of license
11 applicants;

12 (3) provide for the examination of license applicants;

13 (4) in connection with a hearing under Section
14 401.454, issue subpoenas, examine witnesses, and administer oaths
15 under the laws of this state;

16 (5) conduct hearings and keep records and minutes
17 necessary to the orderly administration of this chapter; and

18 (6) investigate persons engaging in practices that
19 violate this chapter.

20 SECTION 11. Section 401.2021, Occupations Code, is amended
21 to read as follows:

22 Sec. 401.2021. JOINT RULES FOR HEARING INSTRUMENTS.

23 The [~~With the assistance of the department, the~~] board and the
24 State Committee of Examiners in the Fitting and Dispensing of
25 Hearing Instruments shall jointly adopt rules to establish
26 requirements for each sale of a hearing instrument. The rules
27 must:

1 (1) address:

2 (A) the information and other provisions
3 required in each written contract for the purchase of a hearing
4 instrument;

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

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

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

13 SECTION 12. Section 401.2022, Occupations Code, is amended
14 to read as follows:

15 Sec. 401.2022. JOINT RULES FOR FITTING AND DISPENSING OF
16 HEARING INSTRUMENTS BY TELEPRACTICE. The [~~With the assistance of~~
17 ~~the department, the~~] board and the State Committee of Examiners in
18 the Fitting and Dispensing of Hearing Instruments shall jointly
19 adopt rules to establish requirements for the fitting and
20 dispensing of hearing instruments by the use of telepractice.

21 SECTION 13. Section 401.204, Occupations Code, is amended
22 to read as follows:

23 Sec. 401.204. FEES. [~~(a)~~] The board may recommend to the
24 executive council [~~by rule shall establish fees in amounts~~]
25 reasonable and necessary [~~so that the~~] fees for licenses issued or
26 services performed under this chapter that in the aggregate provide
27 [~~are~~] sufficient revenue to cover the costs of administering this

1 chapter.

2 ~~[(b) All expenses for the administration of this chapter~~
3 ~~shall be paid from fees collected by the board under this chapter.]~~

4 SECTION 14. Section 401.252, Occupations Code, is amended
5 to read as follows:

6 Sec. 401.252. RECORDS OF COMPLAINTS. (a) The board shall
7 keep an information file about each complaint filed with the
8 executive council and referred to the board. The file must be
9 current and contain a record for each complaint of:

10 (1) each person contacted in relation to the
11 complaint;

12 (2) a summary of findings made at each step of the
13 complaint process;

14 (3) for a complaint that is dismissed, an explanation
15 of the legal basis and reason for dismissal;

16 (4) the schedule established for the complaint under
17 Section 401.253(b)(2) and a notation of any change in the schedule;
18 and

19 (5) other relevant information.

20 (b) If a written complaint is received by ~~[filed with]~~ the
21 board that the board has authority to resolve, the board, at least
22 quarterly and until final disposition of the complaint, shall
23 notify the parties to the complaint of the status of the complaint
24 unless the notice would jeopardize an undercover investigation.

25 SECTION 15. Section 401.253(a), Occupations Code, is
26 amended to read as follows:

27 (a) The board shall adopt rules concerning the

1 investigation of a complaint filed with the board. The rules must:

2 (1) distinguish among categories of complaints;

3 (2) ensure that a complaint is not dismissed without
4 appropriate consideration;

5 (3) require that the board be advised of a complaint
6 that is dismissed and that a letter be sent to the person who filed
7 the complaint explaining the action taken on the dismissed
8 complaint;

9 (4) ensure that the person who filed the complaint has
10 an opportunity to explain the allegations made in the complaint;
11 ~~[and]~~

12 (5) prescribe guidelines concerning the categories of
13 complaints that require the use of a private investigator and the
14 procedures for the board to obtain the services of a private
15 investigator; and

16 (6) require the board to advise the executive council
17 of complaints that have been disposed of.

18 SECTION 16. Section 401.302(a), Occupations Code, is
19 amended to read as follows:

20 (a) The board shall issue a license to an applicant who
21 meets the requirements of this chapter and who pays to the executive
22 council ~~[board]~~ the initial nonrefundable license fee.

23 SECTION 17. Section 401.3041(d), Occupations Code, is
24 amended to read as follows:

25 (d) The executive council ~~[Department of State Health~~
26 ~~Services]~~ on behalf of the board may:

27 (1) enter into an agreement with the Department of

1 Public Safety to administer a criminal history check required under
2 this section; and

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

6 SECTION 18. Section 401.352(a), Occupations Code, is
7 amended to read as follows:

8 (a) Each licensed speech-language pathologist or
9 audiologist must annually pay to the executive council the
10 nonrefundable fee for license renewal. The board shall allow a
11 60-day grace period. After expiration of the grace period, the
12 board may renew a license on payment to the executive council of a
13 late fee [penalty] set by the executive council [board rule].

14 SECTION 19. Section 401.353(b), Occupations Code, is
15 amended to read as follows:

16 (b) The person must pay to the executive council [board] a
17 fee that is equal to the amount of the license examination fee.

18 SECTION 20. Section 401.455(b), Occupations Code, is
19 amended to read as follows:

20 (b) Rules adopted under Subsection (a) must:

21 (1) provide the complainant, if applicable and
22 permitted by law, an opportunity to be heard;

23 (2) provide the license holder an opportunity to be
24 heard; and

25 (3) require the presence of [~~a legal representative of~~
26 ~~the department who represents the board or~~] the board's legal
27 counsel [employees] or a representative of the attorney general to

1 advise the board or the board's employees.

2 SECTION 21. The heading to Chapter 452, Occupations Code,
3 is amended to read as follows:

4 CHAPTER 452. EXECUTIVE COUNCIL OF EXAMINERS OF PHYSICAL THERAPISTS,
5 [~~THERAPY AND~~] OCCUPATIONAL THERAPISTS, AND SPEECH-LANGUAGE
6 PATHOLOGISTS AND AUDIOLOGISTS [~~THERAPY EXAMINERS~~]

7 SECTION 22. Section 452.001, Occupations Code, is amended
8 by amending Subdivision (1) and adding Subdivision (4) to read as
9 follows:

10 (1) "Executive council" means the Executive Council of
11 Examiners of Physical Therapists, [~~Therapy and~~] Occupational
12 Therapists, and Speech-Language Pathologists and Audiologists
13 [~~Therapy Examiners~~].

14 (4) "Speech-language pathology and audiology board"
15 means the State Board of Examiners for Speech-Language Pathology
16 and Audiology.

17 SECTION 23. Section 452.002, Occupations Code, is amended
18 to read as follows:

19 Sec. 452.002. APPLICATION OF SUNSET ACT. The Executive
20 Council of Examiners of Physical Therapists, [~~Therapy and~~]
21 Occupational Therapists, and Speech-Language Pathologists and
22 Audiologists [~~Therapy Examiners~~] is subject to Chapter 325,
23 Government Code (Texas Sunset Act). Unless continued in existence
24 as provided by that chapter, the executive council is abolished and
25 the following laws expire September 1, 2017:

26 (1) this chapter;

27 (2) Chapter 401;

1 (3) Chapter 453; and

2 (4) [~~(3)~~] Chapter 454.

3 SECTION 24. The heading to Subchapter B, Chapter 452,
4 Occupations Code, is amended to read as follows:

5 SUBCHAPTER B. EXECUTIVE COUNCIL OF EXAMINERS OF PHYSICAL
6 THERAPISTS, [THERAPY AND] OCCUPATIONAL THERAPISTS, AND
7 SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS [THERAPY EXAMINERS]

8 SECTION 25. Sections 452.051(a) and (b), Occupations Code,
9 are amended to read as follows:

10 (a) The executive council [~~Executive Council of Physical~~
11 ~~Therapy and Occupational Therapy Examiners~~] consists of:

12 (1) an occupational therapist member of the
13 occupational therapy board appointed by that board;

14 (2) a public member of the occupational therapy board
15 appointed by that board;

16 (3) a physical therapist member of the physical
17 therapy board appointed by that board;

18 (4) a public member of the physical therapy board
19 appointed by that board; [~~and~~]

20 (5) a speech-language pathologist or audiologist
21 member of the speech-language pathology and audiology board
22 appointed by that board;

23 (6) a public member of the speech-language pathology
24 and audiology board appointed by that board; and

25 (7) a public member appointed by the governor.

26 (b) The occupational therapy board, [~~and~~]
27 therapy board, and the speech-language pathology and audiology

1 board may designate an alternate to attend an executive council
2 meeting if a member appointed by that board cannot attend. The
3 alternate has the same powers and duties and is subject to the same
4 qualifications as the appointed member.

5 SECTION 26. Section 452.052, Occupations Code, is amended
6 to read as follows:

7 Sec. 452.052. ELIGIBILITY OF PUBLIC MEMBER APPOINTED BY
8 GOVERNOR. A person is not eligible for appointment by the governor
9 as a public member of the executive council if the person or the
10 person's spouse:

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

13 (2) is employed by or participates in the management
14 of a business entity or other organization regulated by or
15 receiving funds from the executive council, the occupational
16 therapy board, ~~[or]~~ the physical therapy board, or the
17 speech-language pathology and audiology board;

18 (3) owns or controls, directly or indirectly, more
19 than a 10 percent interest in a business entity or other
20 organization regulated by or receiving funds from the executive
21 council, the occupational therapy board, ~~[or]~~ the physical therapy
22 board, or the speech-language pathology and audiology board; or

23 (4) uses or receives a substantial amount of tangible
24 goods, services, or funds from the executive council, the
25 occupational therapy board, ~~[or]~~ the physical therapy board, or the
26 speech-language pathology and audiology board, other than
27 compensation or reimbursement authorized by law for executive

1 council, occupational therapy board, ~~[or]~~ physical therapy board,
2 or speech-language pathology and audiology board membership,
3 attendance, or expenses.

4 SECTION 27. Section 452.053(d), Occupations Code, is
5 amended to read as follows:

6 (d) A person may not serve as a member of the executive
7 council or act as the general counsel to the executive council if
8 the person is required to register as a lobbyist under Chapter 305,
9 Government Code, because of the person's activities for
10 compensation on behalf of a profession related to the operation of
11 the executive council, the occupational therapy board, ~~[or]~~ the
12 physical therapy board, or the speech-language pathology and
13 audiology board.

14 SECTION 28. Sections 452.058(b) and (c), Occupations Code,
15 are amended to read as follows:

16 (b) The executive council may hold additional meetings on
17 the request of the presiding officer or on the written request of
18 four ~~[three]~~ members of the executive council.

19 (c) A quorum of the executive council exists if the
20 occupational therapist member, the physical ~~[both]~~ therapist
21 member, the speech-language pathologist or audiologist member,
22 ~~[members]~~ and one public member are present.

23 SECTION 29. Section 452.101, Occupations Code, is amended
24 to read as follows:

25 Sec. 452.101. DIRECTOR; PERSONNEL. (a) The executive
26 council shall employ a director and administrative and clerical
27 employees as necessary to carry out the functions of the executive

1 council, the occupational therapy board, ~~and~~ the physical therapy
2 board, and the speech-language pathology and audiology board.

3 (b) The director shall employ a coordinator of occupational
4 therapy programs, ~~and~~ a coordinator of physical therapy programs,
5 and a coordinator of speech-language pathology and audiology
6 programs to carry out the functions of the respective boards. The
7 coordinators may request the executive council to assign additional
8 employees to carry out the duties of the coordinators.

9 SECTION 30. Section 452.151, Occupations Code, is amended
10 to read as follows:

11 Sec. 452.151. GENERAL POWERS AND DUTIES. (a) Except as
12 otherwise provided by this chapter, the executive council shall
13 administer and enforce Chapters 401, 453, and 454.

14 (b) The executive council shall:

15 (1) develop and prepare a budget for the executive
16 council, the occupational therapy board, ~~and~~ the physical therapy
17 board, and the speech-language pathology and audiology board; and

18 (2) manage all physical property used by the executive
19 council, the occupational therapy board, ~~or~~ the physical therapy
20 board, or the speech-language pathology and audiology board.

21 SECTION 31. Section 452.152(a), Occupations Code, is
22 amended to read as follows:

23 (a) In administering Chapters 401, 453, and 454, the
24 executive council shall:

25 (1) perform data processing functions; and

26 (2) administer records relating to payroll, personnel
27 files, and employee leave, benefits, and applications.

1 SECTION 32. Section 452.158, Occupations Code, is amended
2 to read as follows:

3 Sec. 452.158. DISBURSEMENT OF FUNDS. The executive council
4 may authorize from its appropriated funds all necessary
5 disbursements to carry out:

- 6 (1) this chapter;
- 7 (2) Chapter 401;
- 8 (3) Chapter 453; and
- 9 (4) [~~3~~] Chapter 454.

10 SECTION 33. Section 452.201(a), Occupations Code, is
11 amended to read as follows:

12 (a) The executive council shall prepare information of
13 public interest describing the functions of the executive council
14 and the procedures by which complaints are filed with and resolved
15 by the executive council, the occupational therapy board, [~~or~~] the
16 physical therapy board, or the speech-language pathology and
17 audiology board.

18 SECTION 34. Section 452.202(a), Occupations Code, is
19 amended to read as follows:

20 (a) The executive council by rule shall establish methods by
21 which consumers and service recipients are notified of the name,
22 mailing address, and telephone number of the executive council for
23 the purpose of directing complaints to the executive council. The
24 executive council may provide for that notice:

- 25 (1) on each registration form, application, or written
26 contract for services of a person regulated by the executive
27 council, the occupational therapy board, [~~or~~] the physical therapy

1 board, or the speech-language pathology and audiology board;

2 (2) on a sign prominently displayed in the place of
3 business of each person regulated by the executive council, the
4 occupational therapy board, ~~[or]~~ the physical therapy board, or the
5 speech-language pathology and audiology board; or

6 (3) in a bill for service provided by a person
7 regulated by the executive council, the occupational therapy board,
8 ~~[or]~~ the physical therapy board, or the speech-language pathology
9 and audiology board.

10 SECTION 35. Section 453.001(3), Occupations Code, is
11 amended to read as follows:

12 (3) "Executive council" means the Executive Council of
13 Examiners of Physical Therapists, ~~[Therapy and]~~ Occupational
14 Therapists, and Speech-Language Pathologists and Audiologists
15 ~~[Therapy Examiners]~~.

16 SECTION 36. Section 454.002(3), Occupations Code, is
17 amended to read as follows:

18 (3) "Executive council" means the Executive Council of
19 Examiners of Physical Therapists, ~~[Therapy and]~~ Occupational
20 Therapists, and Speech-Language Pathologists and Audiologists
21 ~~[Therapy Examiners]~~.

22 SECTION 37. Section 2054.352(a), Government Code, is
23 amended to read as follows:

24 (a) The following licensing entities shall participate in
25 the system established under Section 2054.353:

26 (1) Texas Board of Chiropractic Examiners;

27 (2) Judicial Branch Certification Commission;

- 1 (3) State Board of Dental Examiners;
- 2 (4) Texas Funeral Service Commission;
- 3 (5) Texas Board of Professional Land Surveying;
- 4 (6) Texas Medical Board;
- 5 (7) Texas Board of Nursing;
- 6 (8) Texas Optometry Board;
- 7 (9) Department of Agriculture, for licenses issued
- 8 under Chapter 1951, Occupations Code;
- 9 (10) Texas State Board of Pharmacy;
- 10 (11) Executive Council of Examiners of Physical
- 11 Therapists, [Therapy—and] Occupational Therapists, and
- 12 Speech-Language Pathologists and Audiologists [Therapy Examiners];
- 13 (12) Texas State Board of Plumbing Examiners;
- 14 (13) Texas State Board of Podiatric Medical Examiners;
- 15 (14) Texas State Board of Examiners of Psychologists;
- 16 (15) State Board of Veterinary Medical Examiners;
- 17 (16) Texas Real Estate Commission;
- 18 (17) Texas Appraiser Licensing and Certification
- 19 Board;
- 20 (18) Texas Department of Licensing and Regulation;
- 21 (19) Texas State Board of Public Accountancy;
- 22 (20) State Board for Educator Certification;
- 23 (21) Texas Board of Professional Engineers;
- 24 (22) Department of State Health Services;
- 25 (23) Texas Board of Architectural Examiners;
- 26 (24) Texas Racing Commission;
- 27 (25) Texas Commission on Law Enforcement; and

1 (26) Texas Private Security Board.

2 SECTION 38. Section 401.101, Occupations Code, is repealed.

3 SECTION 39. A fee under Chapter 401, Occupations Code, in
4 effect on the effective date of this Act remains in effect until
5 changed by the Executive Council of Examiners of Physical
6 Therapists, Occupational Therapists, and Speech-Language
7 Pathologists and Audiologists.

8 SECTION 40. As soon as practicable after the effective date
9 of this Act, the Department of State Health Services and the
10 Executive Council of Examiners of Physical Therapists,
11 Occupational Therapists, and Speech-Language Pathologists and
12 Audiologists shall adopt a transition plan to provide for the
13 transfer not later than January 1, 2016, of the following from the
14 department to the executive council to the extent necessary for the
15 exercise of the executive council's powers and duties related to
16 Chapters 401 and 452, Occupations Code, as amended by this Act:

17 (1) personnel;

18 (2) equipment, files, and records; and

19 (3) money appropriated for the fiscal biennium ending
20 August 31, 2017.

21 SECTION 41. Not later than December 1, 2015, the State Board
22 of Examiners for Speech-Language Pathology and Audiology shall
23 appoint members to the Executive Council of Examiners of Physical
24 Therapists, Occupational Therapists, and Speech-Language
25 Pathologists and Audiologists as required by Section 452.051,
26 Occupations Code, as amended by this Act, for terms expiring
27 February 1, 2017.

1 SECTION 42. This Act takes effect September 1, 2015.