

## **BILL ANALYSIS**

Senate Research Center

S.B. 361  
By: Madla  
Health & Human Services  
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As Filed

### **DIGEST**

The Texas State Board of Acupuncture Examiners (acupuncture board) was created as an administratively attached board to the Board of Medical Examiners (medical board) in 1993 by the 73rd Legislature. The acupuncture board is responsible for providing an orderly system of regulating the practice of acupuncture, subject to the advice and approval of the medical board. The acupuncture board carries out its programs and functions through a nine-member board appointed by the governor and through the use of the staff of the medical board. To carry out these programs, the acupuncture board has a budget of \$59,614 and 2.18 medical board employees for fiscal year 1996.

The acupuncture board is subject to the Sunset Act and will be abolished September 1, 1997, unless continued by the legislature. As a result of its review of the acupuncture board, the Sunset Advisory Commission recommended continuation and several statutory modifications that are contained in this legislation.

### **PURPOSE**

As proposed, S.B. 361 continues the Texas State Board of Acupuncture Examiners for an eight-year period and makes statutory modifications recommended by the Sunset Advisory Commission.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Board of Acupuncture Examiners in SECTION 4 (Section 6.051(b), Article 4495b, V.T.C.S.) and to the Board of Medical Examiners in SECTIONS 4 and 6 (Sections 6.085(a) and 6.10(j), Article 4495b, V.T.C.S.) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 6.04, Article 4495b, V.T.C.S. (Medical Practice Act), by amending Subsections (b), (d), (g), and (h), and by adding Subsections (i)-(l), to update the standard language developed by the Sunset Commission prohibiting lobbyists from serving as a member on the Board of Acupuncture Examiners (acupuncture board). Deletes provision relating to persons employed by certain statewide or national organizations. Updates standard language developed by the Sunset Commission regarding the presiding officer of the acupuncture board. Adds standard language developed by the Sunset Commission regarding the eligibility of a person for an appointment to the acupuncture board. Adds standard language developed by the Sunset Commission regarding an officer, employee, or paid consultant of a Texas trade association in the field of health care, or that person's spouse. Defines "Texas trade association." Deletes provision regarding the open meetings law, open records law, and the Administrative Procedure Act. Adds standard language developed by the Sunset Commission regarding appointments to the acupuncture board. Provides that unless continued in existence as provided by this chapter, the acupuncture board is abolished and this subchapter expires September 1, 2005, rather than September 1, 1997. Makes a conforming change.

SECTION 2. Amends Subchapter F, Article 4495b, V.T.C.S., by adding Sections 6.041 and 6.042, as follows:

Sec. 6.041. GROUND FOR REMOVAL FROM ACUPUNCTURE BOARD. Adds standard language developed by the Sunset Commission regarding grounds for removal from

the acupuncture board and requiring the executive director of the Board of Medical Examiners (medical board) or the executive director's designee to provide to members of the acupuncture board certain information regarding their qualifications for office and their legal responsibilities.

Sec. 6.042. BOARD MEMBER TRAINING. Adds standard language developed by the Sunset Commission regarding board member training prior to joining the acupuncture board and prior to senate confirmation.

SECTION 3. Amends Section 6.05, Article 4495b, V.T.C.S., to update standard language developed by the Sunset Commission regarding the powers and duties of the acupuncture board. Deletes a clause requiring the acupuncture board to establish a procedure for reporting and processing complaints relating to the practice of acupuncture under this article. Makes conforming changes.

SECTION 4. Amends Subchapter F, Article 4495b, V.T.C.S., by adding Sections 6.051, 6.071, 6.075, and 6.085, as follows:

Sec. 6.051. PUBLIC INTEREST INFORMATION; COMPLAINTS. Adds standard language developed by the Sunset Commission regarding public interest information, consumer complaints, and a complaint file.

Sec. 6.071. EXAMINATION RESULTS. Adds standard language developed by the Sunset Commission regarding notification of examination.

Sec. 6.075. TEMPORARY LICENSE. Authorizes the acupuncture board to issue a temporary license to certain applicants. Provides that a temporary license is valid for 100 days from the date issued and may be extended only for another 30 days after the date the initial temporary license expires.

Sec. 6.085. ADVERTISING. Adds standard language developed by the Sunset Commission regarding restrictions by the medical board of advertising to prohibit false, misleading, or deceptive practices.

SECTION 5. Amends Section 6.09, Article 4495b, V.T.C.S., by adding Subsections (c) and (d), to add standard language developed by the Sunset Commission regarding the acupuncture board's funds and the acupuncture board's annual financial report.

SECTION 6. Amends Section 6.10, Article 4495b, V.T.C.S., as follows:

Sec. 6.10. New heading: ISSUANCE AND RENEWAL OF LICENSE. Adds standard language developed by the Sunset Commission regarding licensing of out-of-state applicants and renewal of licenses. Makes a conforming change.

SECTION 7. Amends Subchapter F, Article 4495b, V.T.C.S., by adding 6.101, as follows:

Sec. 6.101. LICENSE HOLDER INFORMATION. Sets forth the information each license holder is required to file with the acupuncture board. Requires a license holder to notify the acupuncture board of a change of address by a certain date.

SECTION 8. Amends Section 6.11, Article 4495b, V.T.C.S., and redesignates Sections 6.11(b)-(g) as Section 6.115, as follows:

Sec. 6.11. DENIAL OF LICENSE; DISCIPLINE OF LICENSE HOLDER. Authorizes a license to practice acupuncture to be denied, suspended, probated, or revoked if the applicant for a license or the holder of a license, among other items, has been, rather than is, adjudged mentally incompetent by a court of competent jurisdiction or has a mental or physical condition that renders the person unable to perform safely as an acupuncturist; has practiced, rather than practices, acupuncture in a manner detrimental to the public health and welfare;

fraudulently or deceptively uses a license; has acted in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure a member of the public; has committed an act in violation of state law if the act is connected with the person's practice as an acupuncturist; or has had the person's license suspended, revoked, or restricted, has had other disciplinary action taken by another state regarding the person's practice as an acupuncturist, or has had disciplinary action taken against the person by the uniformed services of the U.S. based on acts by the license holder similar to acts described in this section. Provides that a complaint, indictment, or conviction of a law violation is not necessary for the enforcement of a denial, suspension, probation, or revocation of an applicant for a license or the holder of a license who has committed an act in violation of certain state laws. Provides that proof of the commission of an act while in practice as an acupuncturist or under the guise of practice as an acupuncturist is sufficient for action by the medical board. Provides that a certified copy of the record of the state or uniformed services of the U.S. taking an action is conclusive evidence that a person's license has been suspended, revoked, or restricted, or the person has had other disciplinary action taken against the person by another state or the U.S. Makes conforming and nonsubstantive changes.

Sec. 6.115. SCOPE OF PRACTICE. Redesignated from Sections 6.11(b)-(g), Article 4495b, V.T.C.S. Makes conforming changes.

SECTION 9. Amends Subchapter F, Article 4495b, by adding Sections 6.116 and 6.117, as follows:

Sec. 6.116. ADDITIONAL DISCIPLINARY AUTHORITY. Adds standard language developed by the Sunset Commission regarding additional disciplinary authority and punishment by the acupuncture board upon a finding that an acupuncturist has committed an offense described in Section 6.11 of this Act.

Sec. 6.117. SUSPENSION, REVOCATION, OR NONRENEWAL OF LICENSE. Adds standard language developed by the Sunset Commission regarding disciplinary hearings conducted by the State Office of Administrative Hearings.

SECTION 10. Amends Section 6.12(b), Article 4495b, V.T.C.S., to provide that a person commits a third degree felony, rather than a Class A misdemeanor, if the person violates Section 6.06, Article 4495b, V.T.C.S., requiring a person to practice acupuncture with a license issued by the medical board.

SECTION 11. Amends Subchapter F, Article 4495b, V.T.C.S., by adding Section 6.125, as follows:

Sec. 6.125. SUBPOENAS. Authorizes the executive director of the medical board or the presiding officer of the acupuncture board to issue a subpoena or subpoena duces tecum for certain purposes. Provides that failure to timely comply with a subpoena issued under this section is a ground for disciplinary action by the acupuncture board or any other licensing or regulatory agency with jurisdiction over the individual or entity subject to the subpoena; and denial of a license application.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Makes application of changes in law made by this Act, relating to members of the acupuncture board, prospective to September 1, 1997. Provides that this Act does not prohibit a person who is a member of the acupuncture board on September 1, 1997, from being reappointed to the acupuncture board if the person has the qualifications required for a member under Subchapter F, Article 4495b, V.T.C.S., as amended by this Act.

SECTION 14. Effective date: September 1, 1997. Makes application of this Act prospective.

SECTION 15. Emergency clause.