

## **BILL ANALYSIS**

Senate Research Center  
78R6419 JMM-D

C.S.S.B. 161  
By: Nelson  
Health and Human Services  
2/27/2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Currently, the Texas Department of Health (TDH) has indications that enforcement sanctions are inadequate in some of the professional licensing programs. As proposed, S.B. 161 grants licensing programs the authority to issue emergency suspension of a license to practice, to assess administrative penalties to strengthen regulatory efforts, and to include civil and criminal penalties to further sanction individuals who are out of compliance, while ensuring standardization and consistency of enforcement measures for licensing programs housed within TDH.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 203I, Occupations Code, by adding Section 203.405, as follows:

Sec. 203.405. EMERGENCY SUSPENSION. (a) Requires the midwifery board, or a three-member committee designated thereby, to temporarily suspend the letter of documentation of a midwife should evidence or information indicate that continued practice by that midwife constitutes a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a letter of documentation without notice or hearing on the complaint under certain circumstances.

(c) Requires the State Office of Administrative Hearings (SOAH) to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

SECTION 2. Amends Chapter 352F, Occupations Code, by adding Section 352.254, as follows:

Sec. 352.254. EMERGENCY SUSPENSION. (a) Requires the Texas Department of Health (TDH), to temporarily suspend an optician's certificate of registration should evidence or information indicate that continued practice by that certificate holder constitutes a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a certificate of registration without notice or hearing on the complaint under certain circumstances.

(c) Requires SOAH to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

SECTION 3. Amends Chapter 353E, Occupations Code, by adding Section 353.2025, as follows:

Sec. 353.2025. EMERGENCY SUSPENSION. (a) Requires TDH to temporarily suspend

the contact lens dispensing permit of a permit holder should evidence or information indicate that continued practice by that permit holder constitutes a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a permit without notice or hearing on the complaint under certain circumstances.

(c) Requires SOAH to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

SECTION 4. Amends Chapter 401J, Occupations Code, by adding Section 401.460, as follows:

Sec. 401.460. EMERGENCY SUSPENSION. (a) Requires the State Board of Examiners for Speech-Language Pathology and Audiology, or a three-member committee designated thereby, to temporarily suspend the license of a license holder should evidence or information indicate that continued practice by that license holder constitutes a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a license without notice or hearing on the complaint under certain circumstances.

(c) Requires SOAH to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

SECTION 5. Amends Chapter 401, Occupations Code, by adding Subchapter L, as follows:

#### SUBCHAPTER L. ADMINISTRATIVE PENALTY

Sec. 401.551. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the State Board of Examiners for Speech-Language Pathology and Audiology (board) to impose an administrative penalty on a license holder who violates this chapter or the rules or orders thereof.

Sec. 401.552. AMOUNT OF ADMINISTRATIVE PENALTY. (a) Establishes that the penalty, with each day counting as a separate violation, ranges from \$50 to \$500 per violation.

(b) Specifies the relevant criteria required to be factored into the calculation of the penalty.

Sec. 401.553. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) Authorizes the commissioner of public health (commissioner) or the commissioner's designee to inform the board of a violation and recommend the imposition and amount of an administrative penalty.

(b) Requires the commissioner or the commissioner's designee to provide the person, within 14 days of the report's issuance, with a written notice that includes a summary of the alleged violation, the recommended administrative penalty, and either information on the person's right to a hearing or the amount of the penalty or both.

Sec. 401.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person, within 10 days, to accept the determination and penalty or to request a hearing.

(b) Requires the board to approve the determination and impose the penalty if the person accepts the determination and penalty.

Sec. 401.555. HEARING. Requires the commissioner or the commissioner's designee to set a hearing under certain circumstances and to provide written notification of the hearing to the person. Requires an administrative law judge of SOAH to hold the hearing and to promptly issue a decision on the violation and the penalty.

Sec. 401.556. DECISION BY BOARD. Authorizes the board to determine, based on certain criteria, whether or not a violation occurred. Requires the board's order to include information on the person's right to judicial review of the order.

Sec. 401.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person, within 30 days of the board's order becoming final, either to pay the penalty or to file for judicial review or both.

(b) Authorizes a person filing for judicial review under Subsection (a) to stay enforcement of a penalty in one of two ways: either by paying the penalty into an escrow account or provide the court with an appropriate bond; or to request the court to stay enforcement of the penalty by filing a sworn affidavit stating lack of financial ability to pay the penalty and providing it to the commissioner of public health by certified mail.

(c) Authorizes the commissioner or the commissioner's designee to contest the affidavit within a specified time frame.

(d) Requires the court to hold a hearing on the affidavit and to stay enforcement of the penalty upon verification of facts alleged in the affidavit of inability to pay the penalty. Specifies that the burden of proof is on the person filing the affidavit.

Sec. 401.558. COLLECTION OF PENALTY. Authorizes an administrative penalty to be collected if it is not paid and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue for collection of an unpaid penalty.

Sec. 401.559. DETERMINATION BY COURT. Authorizes the court, if it sustains that a violation occurred, to uphold or reduce the amount of the administrative penalty and to order the person to pay the full or reduced amount of the penalty.

Sec. 401.560. REMITTANCE OF PENALTY AND INTEREST. Requires the court to order, when its judgment becomes final, that the appropriate amount of the administrative penalty plus accrued interest be remitted to the person if the person paid the penalty is paid but reduced or not upheld by the court. Provides that the interest on such a penalty accrues at a certain rate. Requires that a certain time frame be used to calculate the administrative penalty. Requires the court to order the release of a supersedeas bond when its order becomes final if the penalty is not upheld or to order the release of a supersedeas bond minus the amount by which the penalty is reduced if the penalty is reduced.

Sec. 401.561. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 6. Amends Chapter 402K, Occupations Code, by adding Section 402.504, as follows:

Sec. 402.504. EMERGENCY SUSPENSION. (a) Requires the committee, or a three-member subcommittee of committee members designated thereby, to temporarily suspend the license or permit to fit and dispense hearing instruments of a license or permit holder should evidence or information indicate that continued practice by that license or permit holder constitutes a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a license or permit without notice or hearing on the complaint under certain circumstances.

(c) Requires SOAH to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

SECTION 7. Amends Chapter 402L, Occupations Code, by adding Section 402.553, as follows:

Sec. 402.553. CIVIL PENALTY. (a) Establishes a civil penalty of not more than \$5,000 a day against a person who violates this chapter or a rule or order of the committee.

(b) Requires the attorney general to bring action for recovery of a civil penalty, at the request of the committee.

SECTION 8. Amends Chapter 451F, Occupations Code, by adding Section 451.255, as follows:

Sec. 451.255. EMERGENCY SUSPENSION. (a) Requires the Advisory Board of Athletic Trainers (board), or a three-member committee designated thereby, to temporarily suspend the license of a license holder should evidence or information indicate that continued practice by that license holder constitutes a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a license without notice or hearing on the complaint under certain circumstances.

(c) Requires SOAH to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

SECTION 9. Amends Chapter 455F, Occupations Code, by adding Section 455.254, as follows:

Sec. 455.254. EMERGENCY SUSPENSION. (a) Requires TDH to temporarily suspend the certificate of registration of a massage therapist should evidence or information indicate that continued practice by that license holder constitutes a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a certificate of registration without notice or hearing on the complaint under certain circumstances.

(c) Requires SOAH to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

SECTION 10. Amends Chapter 502H, Occupations Code, by adding Section 502.356, as follows:

Sec. 502.356. EMERGENCY SUSPENSION. (a) Requires the Texas State Board of Examiners of Marriage and Family Therapists, or a three-member committee designated thereby, to temporarily suspend the license of a license holder should evidence or information indicate that continued practice by that license holder constitute a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a license without notice or hearing on the complaint under certain circumstances.

(c) Requires SOAH to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

SECTION 11. Amends Chapter 503, Occupations Code, by adding Subchapter K, as follows:

## SUBCHAPTER K. ADMINISTRATIVE PENALTY

Sec. 503.501. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the Texas State Board of Examiners of Licensed Counselors (board) to impose an administrative penalty on a license holder who violates this chapter or a rule or order thereof.

Sec. 503.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) Establishes that the penalty, with each day counting as a separate violation, ranges from \$50 to \$5000 per violation.

(b) Specifies the relevant criteria required to be factored into the calculation of the penalty.

Sec. 503.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.

(a) Authorizes the commissioner or the commissioner's designee to inform the board of a violation and recommend the imposition and amount of an administrative penalty.

(b) Requires the commissioner or the commissioner's designee to provide, within 14 days of the report's issuance, the person with a written notice that includes a summary of the alleged violation, the recommended administrative penalty, and either information on the person's right to a hearing or the amount of the penalty or both.

Sec. 503.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person, within 10 days, to accept the determination and penalty or request a hearing.

(b) Requires the board to approve the determination and impose the penalty if the person accepts the determination and penalty.

Sec. 503.505. HEARING. Requires the commissioner or the commissioner's designee to set a hearing under certain circumstances and to provide written notification of the hearing to the person. Requires an administrative law judge of SOAH to hold the hearing and to promptly issue a decision on the violation and the penalty.

Sec. 503.506. DECISION BY BOARD. Authorizes the board to determine, based on certain criteria, whether a violation occurred. Requires the board's order to include information on the person's right to judicial review of the order.

Sec. 503.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person, within 30 days of the board's order becoming final, either to pay the penalty or to file for judicial review or both.

(b) Authorizes a person filing for judicial review under Subsection (a) to stay enforcement of a penalty in one of two ways: either by paying the penalty into an escrow account or provide the court with an appropriate bond; or to request the court to stay enforcement of the penalty by filing a sworn affidavit stating lack of financial ability to pay the penalty and providing it to the commissioner of public health or the commissioner's designee by certified mail.

(c) Authorizes the commissioner or the commissioner's designee to contest the affidavit within a specified time frame.

(d) Requires the court to hold a hearing on the affidavit and to stay enforcement of the penalty upon verification of facts alleged in the affidavit of inability to pay the penalty. Specifies that the burden of proof is on the person filing the affidavit.

Sec. 503.508. COLLECTION OF PENALTY. Authorizes the administrative penalty to be

collected if it is not paid and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue for collection of an unpaid penalty.

Sec. 503.509. DETERMINATION BY COURT. Authorizes the court to uphold, reduce, or cancel the penalty depending upon whether it determines a violation has occurred.

Sec. 503.510. REMITTANCE OF PENALTY AND INTEREST. Requires the court to order, when its judgment becomes final, that the appropriate amount of the administrative penalty plus accrued interest be remitted to the person if the person paid the penalty is paid but reduced or not upheld by the court. Provides that the interest on such a penalty accrues at a certain rate. Requires that a certain time frame be used to calculate the administrative penalty. Requires the court to order the release of a supersedeas bond when its order becomes final if the penalty is not upheld or to order the release of a supersedeas bond minus the amount by which the penalty is reduced if the penalty is reduced.

Sec. 503.511. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 12. Amends Chapter 505J, Occupations Code, by adding Section 505.507, as follows:

Sec. 505.507. CRIMINAL PENALTY. Establishes that a person knowingly acting as a social worker without holding a required license commits a Class A misdemeanor.

SECTION 13. Amends Chapter 601G, Occupations Code, by adding Section 601.306, as follows:

Sec. 601.306. EMERGENCY SUSPENSION. (a) Requires TDH to temporarily suspend the certificate of a medical radiologic technologist should evidence or information indicate that continued practice by that certificate holder constitutes a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a certificate without notice or hearing on the complaint under certain circumstances.

(c) Requires SOAH to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

SECTION 14. Amends Chapter 602F, Occupations Code, by adding Section 602.254, as follows:

Sec. 602.254. EMERGENCY SUSPENSION. (a) Requires the Texas Board of Licensure for Professional Medical Physicists in TDH, or a three-member committee designated thereby, to temporarily suspend the license of a license holder should evidence or information indicate that continued practice by that license holder constitute a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a license without notice or hearing on the complaint under certain circumstances.

(c) Requires SOAH to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

SECTION 15. Amends Chapter 602G, Occupations Code, by adding Section 602.3015, as follows:

Sec. 602.3015. CIVIL PENALTY. (a) Establishes a civil penalty of not more than \$5,000 a day against a person who violates this chapter or a rule or order thereof.

(b) Requires the attorney general to bring action for recovery of a civil penalty, at the request of the Texas Board of Licensure for Professional Medical Physicists.

SECTION 16. Amends Section 602.302, Occupations Code, to add that a person commits a class A, rather than B, misdemeanor if the person knowingly practices medical physics or a specialty of medical physics without holding the required license. Makes a nonsubstantive change and redesignates Subdivisions (1) and (2) as (3) and (4).

SECTION 17. Amends Chapter 603I, Occupations Code, by adding Section 603.408, as follows:

Sec. 603.408. EMERGENCY SUSPENSION. (a) Requires the Texas State Board of Examiners of Perfusionists (board), or a three-member committee designated thereby, to temporarily suspend the license of a license holder should evidence or information indicate that continued practice by that license holder constitutes a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a license without notice or hearing on the complaint under certain circumstances.

(c) Requires SOAH to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

SECTION 18. Amends Chapter 603J, Occupations Code, by adding Section 603.4515, as follows:

Section 603.4515. CIVIL PENALTY. (a) Establishes a civil penalty of not more than \$5,000 a day against a person who violates this chapter or a rule or order of this chapter.

(b) Requires the attorney general to bring action for recovery of a civil penalty, at the request of the Texas State Board of Examiners of Perfusionists.

SECTION 19. Amends Chapter 603, Occupations Code, by adding Subchapter K, as follows:

#### SUBCHAPTER K. ADMINISTRATIVE PENALTY

Sec. 603.501. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the Texas State Board of Examiners of Perfusionists (board) to impose an administrative penalty on a license holder who violates the rules or orders of this chapter.

Sec. 603.502 AMOUNT OF ADMINISTRATIVE PENALTY. (a) Establishes that the penalty, with each day counting as a separate violation, ranges from \$50 to \$5,000 per violation.

(b) Specifies the relevant criteria required to be factored into the calculation of the penalty.

Sec. 603.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.

(a) Authorizes the commissioner or the commissioner's designee to inform the board of a violation and to recommend the imposition and amount of an administrative penalty.

(b) Requires the commissioner or the commissioner's designee to provide, within 14 days of the report's issuance, the person with a written notice that includes a summary of the alleged violation, the recommended administrative penalty, and either information on the person's right to a hearing or the amount of the penalty or both.

Sec. 603.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the

person, within 10 days, to accept the determination and penalty or to request a hearing.

(b) Requires the board to approve the determination and to impose the penalty if the person accepts the determination and penalty.

Sec. 603.505. HEARING. Requires the commissioner or the commissioner's designee to set a hearing under certain circumstances and to provide written notification of the hearing to the person. Requires an administrative law judge of SOAH to hold the hearing and to promptly issue a decision on the violation and the penalty.

Sec. 603.506. DECISION BY BOARD. Authorizes the board to determine, based on certain criteria, whether a violation occurred. Requires the board's order to include information on the person's right to judicial review of the order.

Sec. 603.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person, within 30 days of the board's order becoming final, either to pay the penalty or to file for judicial review or both.

(b) Authorizes a person filing for judicial review under Subsection (a) to stay enforcement of a penalty in one of two ways: either by paying the penalty into an escrow account or provide the court with an appropriate bond; or to request the court to stay enforcement of the penalty by filing a sworn affidavit stating lack of financial ability to pay the penalty and providing it to the commissioner of public health by certified mail.

(c) Authorizes the commissioner or the commissioner's designee to contest the affidavit within a specified time frame.

(d) Requires the court to hold a hearing on the affidavit and to stay enforcement of the penalty upon verification of facts alleged in the affidavit of inability to pay the penalty. Specifies that the burden of proof is on the person filing the affidavit.

Sec. 603.508. COLLECTION OF PENALTY. Authorizes the administrative penalty to be collected if it is not paid and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue for collection of an unpaid penalty.

Sec. 603.509. DETERMINATION BY COURT. Authorizes the court to uphold, reduce, or cancel the penalty depending upon whether it determines that a violation has occurred.

Sec. 603.510. REMITTANCE OF PENALTY AND INTEREST. Requires the court to order, when its judgment becomes final, that the appropriate amount of the administrative penalty plus accrued interest be remitted to the person if the person paid the penalty is paid but reduced or not upheld by the court. Provides that the interest on such a penalty accrues at a certain rate. Requires that a certain time frame be used to calculate the administrative penalty. Requires the court to order the release of a supersedeas bond when its order becomes final if the penalty is not upheld or to order the release of a supersedeas bond minus the amount by which the penalty is reduced if the penalty is reduced.

Sec. 603.511. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 20. Amends Chapter 605H, Occupations Code, by adding Section 605.3535, as follows:

Sec. 605.3535. EMERGENCY SUSPENSION. (a) Requires the Texas Board of Orthotics

and Prosthetics, or a three-member committee designated thereby, to temporarily suspend the license of a license holder should evidence or information indicate that continued practice by that license holder constitutes a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a license without notice or hearing on the complaint under certain circumstances.

(c) Requires SOAH to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

SECTION 21. Amends Chapter 605H, Occupations Code, by adding Section 605.356, as follows:

Sec. 605.356 CRIMINAL PENALTY. Establishes that a person who knowingly practices, attempts to or offers to practice, orthotics or prosthetics without holding a required license commits a Class A misdemeanor.

SECTION 22. Amends Chapter 605, Occupations Code, by adding Subchapter I, as follows:

#### SUBCHAPTER I. ADMINISTRATIVE PENALTY

Sec. 605.401. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the Texas Board of Orthotics and Prosthetics (board) to impose an administrative penalty on a license holder who violates the rules or orders of this chapter.

Sec. 605.402 AMOUNT OF ADMINISTRATIVE PENALTY. (a) Establishes that the penalty, with each day counting as a separate violation, ranges from \$50 to \$5,000 per violation.

(b) Specifies the relevant criteria required to be factored into the calculation of the penalty.

Sec. 605.403. REPORT AND NOTICE OF VIOLATION AND PENALTY.

(a) Authorizes the commissioner or the commissioner's designee to inform the board of a violation and recommend the imposition and amount of an administrative penalty.

(b) Requires the commissioner or the commissioner's designee to provide the person, within 14 days of the report's issuance, with a written notice that includes a summary of the alleged violation, the recommended administrative penalty, and either information on the person's right to a hearing or the amount of the penalty or both.

Sec. 605.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person, within 10 days, to accept the determination and penalty or request a hearing.

(b) Requires the board to approve the determination and impose the penalty if the person accepts the determination and penalty.

Sec. 605.405. HEARING. Requires the commissioner or the commissioner's designee to set a hearing under certain circumstances and to provide written notification of the hearing to the person. Requires an administrative law judge of SOAH to hold the hearing and to promptly issue a decision on the violation and the penalty.

Sec. 605.406. DECISION BY BOARD. Authorizes the board to determine, based on certain criteria, whether a violation occurred. Requires the board's order to include information on the person's right to judicial review of the order.

Sec. 605.407. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person, within 30 days of the board's order becoming final, either to pay the penalty or to file for judicial review or both.

(b) Authorizes a person filing for judicial review under Subsection (a) to stay enforcement of a penalty in one of two ways: either by paying the penalty into an escrow account or provide the court with an appropriate bond; or to request the court to stay enforcement of the penalty by filing a sworn affidavit stating lack of financial ability to pay the penalty and providing it to the commissioner of public health by certified mail.

(c) Authorizes the commissioner or the commissioner's designee to contest the affidavit within a specified time frame.

(d) Requires the court to hold a hearing on the affidavit and to stay enforcement of the penalty upon verification of facts alleged in the affidavit of inability to pay the penalty. Specifies that the burden of proof is on the person filing the affidavit.

Sec. 605.408. COLLECTION OF PENALTY. Authorizes the administrative penalty to be collected if it is not paid and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue for collection of an unpaid penalty.

Sec. 605.409. DETERMINATION BY COURT. Authorizes the court to uphold, reduce, or cancel the penalty depending upon whether it determines a violation has occurred.

Sec. 605.410. REMITTANCE OF PENALTY AND INTEREST. Requires the court to order, when its judgment becomes final, that the appropriate amount of the administrative penalty plus accrued interest be remitted to the person if the person paid the penalty is paid but reduced or not upheld by the court. Provides that the interest on such a penalty accrues at a certain rate. Requires that a certain time frame be used to calculate the administrative penalty. Requires the court to order the release of a supersedeas bond when its order becomes final if the penalty is not upheld or to order the release of a supersedeas bond minus the amount by which the penalty is reduced if the penalty is reduced.

Sec. 605.411. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 23. Amends Chapter 701I, Occupations Code, by adding Section 701.408, as follows:

Sec. 701.408. EMERGENCY SUSPENSION. (a) Requires the Texas State Board of Examiners of Dietitians (dietitians board), or a three-member committee designated thereby, to temporarily suspend the license of a license holder should evidence or information indicate that continued practice by that license holder constitutes a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a license without notice or hearing on the complaint under certain circumstances.

(c) Requires SOAH to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

SECTION 24. Amends Chapter 701, Occupations Code, by adding Subchapter K, as follows:

#### SUBCHAPTER K. ADMINISTRATIVE PENALTY

Sec. 701.501. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the dietitians board to impose an administrative penalty on a license holder who violates the rules or orders of this chapter.

Sec. 701.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) Establishes that the penalty, with each day counting as a separate violation, ranges from \$50 to \$5,000 per violation.

(b) Specifies the relevant criteria required to be factored into calculation of the penalty.

Sec. 701.503. REPORT AND NOTICE OF VIOLATION AND PENALTY.

(a) Authorizes the commissioner or the commissioner's designee to inform the dietitians board of a violation and to recommend the imposition and amount of an administrative penalty.

(b) Requires the commissioner or the commissioner's designee to provide, within 14 days of the report's issuance, the person with a written notice that includes a summary of the alleged violation, the recommended administrative penalty, and either information on the person's right to a hearing or the amount of the penalty or both.

Sec. 701.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person, within 10 days, to accept the determination and penalty or to request a hearing.

(b) Requires the dietitians board to approve the determination and to impose the penalty if the person accepts the determination and penalty.

Sec. 701.505. HEARING. Requires the commissioner or the commissioner's designee to set a hearing under certain circumstances and to provide written notification of the hearing to the person. Requires an administrative law judge of SOAH to hold the hearing and to promptly issue a decision on the violation and the penalty.

Sec. 701.506. DECISION BY DIETITIANS BOARD. Authorizes the dietitians board to determine, based on certain criteria, whether a violation occurred. Requires the board's order to include certain information on the person's right to judicial review of the order.

Sec. 701.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person, within 30 days of the board's order becoming final, either to pay the penalty or to file for judicial review or both.

(b) Authorizes a person filing for judicial review under Subsection (a) to stay enforcement of a penalty in one of two ways: either by paying the penalty into an escrow account or provide the court with an appropriate bond; or to request the court to stay enforcement of the penalty by filing a sworn affidavit stating lack of financial ability to pay the penalty and providing it to the commissioner or the commissioner's designee of public health by certified mail.

(c) Authorizes the commissioner or the commissioner's designee to contest the affidavit within a specified time frame.

(d) Requires the court to hold a hearing on the affidavit and to stay enforcement of the penalty upon verification of facts alleged in the affidavit of inability to pay the penalty. Specifies that the burden of proof is on the person filing the affidavit.

Sec. 701.508. COLLECTION OF PENALTY. Authorizes the administrative penalty to be collected if it is not paid and the enforcement of the penalty is not stayed. Authorizes the

attorney general to sue for collection of an unpaid penalty.

Sec. 701.509. DETERMINATION BY COURT. Authorizes the court to uphold, reduce, or cancel the penalty depending upon whether it determines a violation has occurred.

Sec. 701.510. REMITTANCE OF PENALTY AND INTEREST. Requires the court to order, when its judgment becomes final, that the appropriate amount of the administrative penalty plus accrued interest be remitted to the person if the person paid the penalty is paid but reduced or not upheld by the court. Provides that the interest on such a penalty accrues at a certain rate. Requires that a certain time frame be used to calculate the administrative penalty. Requires the court to order the release of a supersedeas bond when its order becomes final if the penalty is not upheld or to order the release of a supersedeas bond minus the amount by which the penalty is reduced if the penalty is reduced.

Sec. 701.511. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 25. Amends Chapter 1952, Occupations Code, by adding Subchapter F, as follows:

Sec. 1952.251. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the department to impose an administrative penalty on a person registered under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 1952.252. AMOUNT OF ADMINISTRATIVE PENALTY. (a) Sets forth a penalty range of \$50 to \$5,000 and provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) Requires the amount to be based on several factors.

Sec. 1952.253. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) Authorizes the commissioner or the commissioner's designee, if they find that a violation occurred, to issue to the department a report stating certain facts and recommendations.

(b) Requires the commissioner or the commissioner's designee within a certain time frame to give written notice of the report to the person. Requires the notice to include certain information.

Sec. 1952.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person, within a certain time frame, to accept the determination and recommended administrative penalty of the commissioner or the commissioner's designee or to make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) Requires the department by order, if the person accepts the determination and recommended penalty of the commissioner or the commissioner's designee, to approve the determination and impose the recommended penalty.

Sec. 1952.255. HEARING. (a) Requires the commissioner or the commissioner's designee, if the person requests a hearing or fails to respond in a timely manner to the notice, to set a hearing and give written notice of the hearing to the person.

(b) Requires an administrative law judge of SOAH to hold the hearing.

(c) Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the

occurrence of the violation and the amount of a proposed administrative penalty.

Sec. 1952.256. DECISION BY DEPARTMENT. (a) Authorizes the department by order and based on findings of fact, conclusions of law, and proposal for decision, to determine that a violation occurred and impose an administrative penalty or to determine that a violation did not occur.

(b) Requires the notice of the department's order given to the person to include a statement of the person's right to judicial review of the order.

Sec. 1952.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person within 30 days after the date the department's order becomes final, to take certain actions.

(b) Authorizes a person who files a petition for judicial review within a certain time period to take certain actions regarding a stay of enforcement of the penalty.

(c) Authorizes the commissioner or the commissioner's designee, upon receipt of a copy of an affidavit under Subsection (b) (2), to within a certain time frame file with the court a contest to the affidavit.

(d) Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Requires the person who files an affidavit to prove that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 1952.258. COLLECTION OF PENALTY. (a) Authorizes the penalty to be collected if the person does not pay the administrative penalty and the enforcement is not stayed.

(b) Authorizes the attorney general to sue to collect the penalty.

Sec. 1952.259. DETERMINATION BY COURT. (a) Authorizes the court, if the court sustains the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) Requires the court, if the court does not sustain the finding that a violation occurred, to order that a penalty is not owed.

Sec. 1952.260. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court when a penalty is reduced or not sustained to order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) Provides that the interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) Requires the interest to be paid for the period beginning and ending on certain dates.

(d) Requires the court, if the person has a supersedeas bond and the penalty is not upheld by the court, to order the release of the bond when the court's judgment becomes final.

(e) Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 1952.261. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

SECTION 26. Amends Chapter 1953, Occupations Code, by adding Subchapter G, as follows:

#### SUBCHAPTER G. ADMINISTRATIVE PENALTY

Sec. 1953.301 IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the board to impose an administrative penalty on a person registered under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 1953.302. AMOUNT OF ADMINISTRATIVE PENALTY. (a) Sets forth the amount limits for the administrative penalty and provides that each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) Requires the amount to be based on certain factors.

Sec. 1953.303. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) Authorizes the commissioner or the commissioner's designee, upon finding that a violation occurred, to issue to the board a report stating certain facts and recommendations.

(b) Requires the commissioner or the commissioner's designee, within a certain time frame to give written notice of the report to the person. Requires the notice to include certain information.

Sec. 1953.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person within a certain time frame to accept the determination and recommended administrative penalty or make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) Requires the board by order, if the person accepts the determination and recommended penalty of the commissioner or the commissioner's designee, to approve the determination and impose the recommended penalty.

Sec. 1953.305. HEARING. (a) Requires the commissioner or the commissioner's designee, if the person requests a hearing or fails to respond in a timely manner to the notice, to set a hearing and inform the person in writing.

(b) Requires an administrative law judge of SOAH to hold the hearing.

(c) Requires the administrative law judge to make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Sec. 1953.306. DECISION BY BOARD. Authorizes the board by order, and based on the finding of fact, conclusion of law and proposal for decision, to make certain determinations.

Sec. 1953.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person, within a certain time frame, to pay the administrative penalty or file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Authorizes a person who files a petition for judicial review, within a certain time frame, to take certain actions relating to the staying of enforcement of the penalty.

(c) Authorizes the commissioner or the commissioner's designee, under certain circumstances to file with the court, within a certain time frame, a contest to the affidavit.

(d) Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files and affidavit must prove that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 1953.308. COLLECTION OF PENALTY. (a) Authorizes the administrative penalty to be collected if the person does not pay the penalty and the penalty is not stayed.

(b) Authorizes the attorney general to sue to collect the penalty.

Sec. 1953.309. DETERMINATION BY COURT. (a) Authorizes the court, if it sustains the determination that a violation occurred, to uphold or reduce the amount of the penalty and order the person to pay the full or deduced amount of the penalty.

(b) Requires the court, if it does not sustain the finding that a violation occurred, to order that a penalty is not owed.

Sec. 1953.310. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court, if the penalty is reduced or not upheld, to order that the appropriate amount plus accrued interest be remitted to the person.

(b) Provides that the interest accrues at the rate charge on loans to depository institutions by the New York Federal Reserve Bank.

(c) Requires the interest to be paid for a certain period.

(d) Requires the court, if the person gave a supersedeas bond and the penalty is not upheld by the court, to order the release of the bond after the person pays the reduced amount.

(e) Requires the court, if the person gave a supersedeas bond and the amount of the penalty is reduced, to order the release of the bond after the person pays the reduced amount.

Sec. 1953.311. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 27. Amends Article 4413(51), V.T.C.S., by adding Sections 13D and 13E, as follows:

Sec. 13D. EMERGENCY SUSPENSION. (a) Requires the Council on Sex Offender Treatment (council), or a three-member committee designated thereby, to temporarily suspend the registration of a person registered under this Act if the council or committee determines from the evidence or information presented to it that continued practice by the person would constitute a continuing and imminent threat to public welfare.

(b) Authorizes the suspension of a registration without notice or hearing on the complaint under certain circumstances.

(c) Requires SOAH to hold preliminary and final hearings regarding such a temporary suspension within a certain time frame.

Sec. 13E. ADMINISTRATIVE PENALTY (a) Authorizes the council to impose an administrative penalty on a registration holder who violates this chapter or the rules or orders thereof.

(b) Establishes that the penalty, with each day counting as a separate violation, ranges from \$50 to \$5,000 per violation. Specifies the relevant criteria required to be factored into the calculation of the penalty.

(c) Authorizes the commissioner of public health or the commissioner's designee, if the commissioner or the commissioner's designee determines that a violation occurred, to issue to the council a report stating certain information.

(d) Requires the commissioner or the commissioner's designee, within 14 days after the date the report is issued, to give written notice of the report to the person. Requires the notice to include certain information.

(e) Authorizes the person, within 10 days, to accept the determination and penalty or to request a hearing.

(f) Requires the council by order, if the person accepts the determination and recommended penalty of the commissioner or the commissioner's designee, to approve the determination and impose the recommended penalty.

(g) Establishes the circumstances under which the commissioner or the commissioner's designee is required to set a hearing.

(h) Requires an administrative law judge of SOAH to hold the hearing.

(i) Requires the administrative law judge to issue a proposal for a decision on the determination of a violation and the amount of the administrative penalty.

(j) Authorizes the council to determine, based on certain criteria, whether a violation occurred.

(k) Requires the council's order to include information on the person's right to judicial review of the order.

(l) Requires the person to pay the penalty or file for judicial review within 30 days of the council's order becoming final.

(m) Authorizes a person filing for judicial review to pay the penalty into an escrow account or to provide the court with an appropriate bond to stay enforcement of the penalty. Authorizes the person to request the court to stay enforcement of the penalty by filing a sworn affidavit stating lack of financial ability to pay the penalty and providing it to the commissioner or the commissioner's designee by certified mail.

(n) Authorizes the commissioner or the commissioner's designee to contest the affidavit within a specified time frame.

(o) Requires the court to hold a hearing on the affidavit and to render a decision. Specifies that the burden of proof is on the person filing the affidavit.

(p) Authorizes the attorney general to sue for collection of an unpaid penalty.

(q) Authorizes the court to uphold, reduce, or cancel the penalty depending upon whether

it determines a violation has occurred.

(r) Requires the court to remit money paid, plus interest, if the penalty is not upheld or the amount is reduced.

(s) Requires the court to release the supersedeas bond if the penalty is not upheld for if the penalty amount is reduced, after the person has paid the reduced amount.

(t) Specifies that a proceeding under this subchapter is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 28. (a) Effective date: September 1, 2003.

(b) Makes prospective the application of the changes in law made to Sections 505.507, 602.302, and 605.356, Occupations Code.

(c) Makes prospective the changes in law made by this Act to the imposition of an administrative or civil penalty.

### **SUMMARY OF COMMITTEE CHANGES**

In SECTION 5: Provides that the commissioner's designee may also take certain actions assigned to the commissioner in the original bill in Sections 401.553-401.557, Occupations Code.

In SECTION 6: Grants a responsibility to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments that was originally granted to TDH in the original bill and specifies that a certain subcommittee be made up of committee members.

In SECTION 7: Makes a person subject to a \$5,000 fine, rather than the \$1,000 fine specified in the original bill, a rule of the committee, rather than TDH or the TBH. Grants the committee the authority to make a request, rather than TDH.

In SECTION 11: Raises the limit of an administrative penalty to \$5,000 from \$500 in Section 503.502, Occupations Code. Provides that the commissioner's designee may also take certain actions assigned to the commissioner in the original bill in Sections 503.503-503.504 and 503.507, Occupations Code.

In SECTION 12: Specifies that a certain offense is a Class A, rather than Class B, misdemeanor.

In SECTION 15: Raises the limit on a civil penalty to \$5,000 per day, from the \$1,000 per day specified in the original. Deletes TDH from those entities authorized to make a certain request from the attorney general.

In SECTION 16: Adds the word "knowingly" before descriptions of certain offenses.

In SECTION 18: Changes the limit on a civil penalty to \$5,000 per day from the 1,000 per day specified in the original. Deletes TDH from those entities authorized to make a certain request from the attorney general.

In SECTION 19: Raises the limit of an administrative penalty to \$5,000 from \$500. Provides that the commissioner's designee may also take certain actions assigned to the commissioner in the original bill in Sections 603.503-603.505, Occupations Code.

In SECTION 21: Changes the classification of an offense under this subsection from a Class B misdemeanor to a Class A misdemeanor.

In SECTION 22: Raises the limit of an administrative penalty to \$5,000 from \$500. Provides that the commissioner's designee may also take certain actions assigned to the executive director in the original bill.

In SECTION 24: Raises the limit of an administrative penalty to \$5,000 from \$500. Provides that the commissioner's designee may also take certain actions assigned to the commissioner in the original bill.

Redesignates SECTION 25 in As Filed, as SECTION 27 in Substitute.

Adds new proposed SECTION 25 amending Chapter 1952, Occupations Code, and SECTION 26 amending Chapter 1953, Occupations Code.

Redesignates SECTION 26 in original bill as SECTION 28 in substitute.

In SECTION 27: Replaces "registration holder" with "person registered under this Act" relating to temporary emergency suspension.

In SECTION 28: Adds the changes made by this Act to Sections 505.507 and 605.356 to the prospective clause contained in Subsection (b) of this SECTION.