

## **BILL ANALYSIS**

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### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

The Texas State Board of Examiners of Professional Counselors (board) was created in 1981 by the 67th Legislature to ensure that safe and quality professional counseling services are provided to the citizens of Texas. To accomplish its mission, the board licenses qualified individuals to provide professional counseling services; sets standards relating to the practice of counseling; ensures compliance with the Licensed Professional Counselor Act and board rules by investigating and resolving complaints, and taking disciplinary action when necessary; and provides information to licensees and the public.

The board is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the legislature. As a result of its review of the Board of Professional Counselors, the Sunset Advisory Committee recommended continuation of the agency and several statutory modifications.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas State Board of Examiners of Professional Counselors in SECTION 9 (Section 503.2045, Occupations Code), SECTION 14 (Section 503.302, Occupations Code), SECTION 16 (Section 503.3055, Occupations Code), and SECTION 23 (Section 503.502, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 503.002, Occupations Code, by adding Subdivision (1-a) and amending Subdivision (2), to define "commissioner" and redefine "department."

SECTION 2. Amends Section 503.005, Occupations Code, to abolish the Texas State Board of Examiners of Professional Counselors (board), unless continued in existence by Chapter 325, Government Code (Texas Sunset Act), on September 1, 2017, rather than 2005.

SECTION 3. Amends Section 503.101, Occupations Code, to require that board membership appointments be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

SECTION 4. Amends Section 503.104, Occupations Code, to redefine "Texas trade association." Prohibits a person from being a member of the board and a employee of the Department of State Health Services (department) employed in a certain capacity and under certain circumstances. Prohibits certain persons from being a member of the board or acting as the general counsel to the board or the department. Deletes existing text relating to a person who is a spouse of an officer, manager, or paid consultant.

SECTION 5. Amends Sections 503.107(a) and (c), Occupations Code, to provide that it is a ground for removal from the board that a member meets certain criteria. Deletes existing text relating to appointment to the board, violations of certain prohibitions, and certain absences. Requires the executive director, if the executive director has knowledge that a potential ground for removal exists, to notify the presiding officer of the board of the potential ground. Requires the presiding officer to then notify the governor and the attorney general that a potential ground exists. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the board who then is required to notify the governor and the attorney general that a potential ground for removal exists.

SECTION 6. Amends Section 503.108, Occupations Code, as follows:

Sec. 503.108. New heading: REIMBURSEMENT. Deletes existing text relating to a member being entitled to a per diem.

SECTION 7. Amends Sections 503.110 (a), (b), and (c), Occupations Code, to prohibit a person who is appointed to and qualifies for office as a member of the board from voting, deliberating, or being counted as a member in attendance at a meeting until the person completes a training program that complies with this section. Requires the training program to provide the person with certain information. Provides that a person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending the training program whether the attendance occurs before or after the person qualifies for office. Deletes existing text relating to a member assuming the member's duties and training program requirements.

SECTION 8. Amends Section 503.154, Occupations Code, to require the board to develop and implement policies that clearly separate, rather than define, the policymaking, rather than respective, responsibilities of the board and the management responsibilities of the executive director and staff of the department, rather than the board.

SECTION 9. Amends Subchapter E, Chapter 503, Occupations Code, by adding Section 503.2045, to read as follows:

Sec. 503.2045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. Requires the board to adopt rules necessary to comply with Chapter 53 (Consequences of Criminal Conviction). Requires the board, in its rules under this section, to list the specific offences for which a conviction would constitute grounds for the board to take action under Section 53.021.

SECTION 10. Amends Section 503.205, Occupations Code, to read as follows:

Sec. 503.205. New heading: DELEGATION TO COMMITTEE. Authorizes the board to delegate a function or activity required by this chapter to a committee of board members, rather than to an individual member of the board, on a permanent or temporary basis if the board agrees to the delegation. Deletes existing text relating to a person possessing certain qualifications.

SECTION 11. Amends Subchapter E, Chapter 503, Occupations Code, by adding Sections 503.210 and 503.211, to read as follows:

Sec. 503.210. USE OF TECHNOLOGY. Requires the board to implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the board on the Internet.

Sec. 503.211. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. Requires the board to develop and implement a policy to encourage the use of certain procedures. Requires the board's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. Requires the board to designate a trained person to take certain actions relating to training, implementation, and assessing the effectiveness of said procedures.

SECTION 12. Amends Section 503.253, Occupations Code, to read as follows:

Sec. 503.253. RECORDS OF COMPLAINTS. Requires the board to maintain a system to promptly and efficiently act on complaints filed with the board. Requires the board to maintain certain information relating to complaints filed with the board. Requires the board to make information available describing its

procedures for complaint investigation and resolution. Requires the board to periodically notify the parties of the status of the complaint until final disposition of the complaint. Deletes existing text relating to certain information required to be maintained by the board, and certain notification requirements.

SECTION 13. Amends Subchapter F, Chapter 503, Occupations Code, by adding Section 503.2555, as follows:

Sec. 503.2555. COMPLAINT COMMITTEE. Requires the board to appoint at least one public member to any board committee established to review a complaint filed with the board or review an enforcement action against a license holder related to a complaint filed with the board.

SECTION 14. Amends Section 503.302(a), Occupations Code, to include that a person qualifies for a license under this chapter if the person has successfully completed a graduate degree at a regionally accredited institution of higher education and the number of graduate semester hours required by board rule, rather than a planned graduate program of 48 graduate semester hours.. Adds a requirement for a person to pass a jurisprudence examination.

SECTION 15. Amends Section 503.305(b), Occupations Code, to require the board to contract with a nationally recognized testing organization to develop and administer a written professional counselor licensing examination to applicants who apply for a license under this chapter. Deletes existing text regarding certain examinations prescribed by the board.

SECTION 16. Amends Subchapter G, Chapter 503, Occupations Code, by adding Section 503.3055, to read as follows:

Sec. 503.3055. JURISPRUDENCE EXAMINATION. Requires the board to develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, board rules, and any other applicable laws of this state affecting the applicant's professional counseling practice. Requires the board to adopt rules to implement this section, including rules relating to specific aspects of the jurisprudence examination.

SECTION 17. Amends Section 503.306, Occupations Code, by adding Subsection (d), to authorize the board, notwithstanding the other provisions of this section, to notify an applicant of the applicant's examination results in a manner provided in a contract between the board and a testing organization selected by the board under Section 503.305.

SECTION 18. Amends Section 503.310(b), Occupations Code, to require an applicant for a provisional license to have passed the required license examination, rather than a national or other examination recognized by the board relating to counseling or art therapy.

SECTION 19. Amends Sections 503.351, Occupations Code, as follows:

Sec. 503.351. New heading: RENEWAL; ELIGIBILITY. Authorizes a person licensed under this chapter to renew the license biennially, rather than annually.

SECTION 20. Amends Sections 503.354(c) and (d), Occupations Code, to authorize a person whose license has been expired for 90 days or less to renew the license by paying to the board a fee that is equal to 1-1/4 times the amount of the renewal, rather than the required renewal fee and a fee that is equal to the amount of the license examination fee. Authorizes a person whose license has been expired for more than 90 days, but less than one year, rather than because the person did not pay the renewal fee or did not meet continuing education requirements, to renew the license by paying to the board a fee that is equal to 1-1/2 times the amount of the renewal fee, rather than all unpaid renewal fees and a fee equal to the amount of the license examination fee. Deletes existing text relating to continuing education requirements and makes conforming and nonsubstantive changes.

SECTION 21. Amends Subchapter I, Chapter 503, Occupations Code, by adding Section 503.407, as follows:

Sec. 503.407. REFUND. (a) Authorizes the board, subject to Subsection (b), to order a license holder to pay a refund to a consumer as provided in agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) Prohibits the amount of a refund ordered as provided in an agreement resulting from an informal settlement conference from exceeding the amount the consumer paid to the license holder for a service regulated by this chapter. Prohibits the board from requiring payment of other damages or estimate harm in a refund order.

SECTION 22. Amends Subchapter J, Chapter 503, Occupations Code, by adding Section 503.454, as follows:

Sec. 503.454. CEASE AND DESIST ORDER. Authorizes the board under certain circumstances and after notice and opportunity for a hearing, to issue a cease and desist order prohibiting the person from engaging in certain activities. Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

SECTION 23. Amends Section 503.502, Occupations Code, by adding Subsection (c), to require the board, by rule, to adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or board rules to ensure that the amounts of penalties imposed are appropriate to the violation. Requires the board to provide the administrative penalty schedule to the public on request.

SECTION 24. Repealer: Sections 503.053 (Temporary Counseling By A Person Authorizes By Another Jurisdiction), 503.110(d) (Training), 503.302(b) and (c) (Qualifications For License), 503.305(c), (d), and (e) (License Examination), and 503.309 (Temporary License To Practice Art Therapy), Occupations Code.

SECTION 25. Requires the Texas State Board of Examiners of Professional Counselors, not later than January 1, 2006, to adopt rules and policies required by Sections 503.210 and 503.211, Occupations Code, and Chapter 503, Occupations Code. Requires the board, not later than March 1, 2006, to develop the jurisprudence examination and contract with a nationally recognized testing organization for the administration of the license examination.

SECTION 26. (a) Sets forth that the change in law made by Sections 503.104, 503.107, and 503.110, as amended by this Act, regarding the prohibitions on or qualifications of members of the Texas State Board of Examiners of Professional Counselors do not affect the entitlement of a member serving on the board immediately before September 1, 2005, to continue to serve and function as a member of the board for the remainder of the member's term. Sets forth that the changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

(b) Sets forth that the changes in law made by this Act relating to the filing or investigation of a complaint under Chapter 503, as amended by this Act, apply only to a complaint filed with the Texas State Board of Examiners of Professional Counselors on or after the effective date of this Act. Sets forth that a complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continues in effect for that purpose.

(c) Sets forth that the changes in law made by this Act relating to the eligibility of a person for a license under Chapter 503, as amended by this Act, apply only to an application for a license filed with the Texas State Board of Examiners of Professional Counselors on or after the effective date of this Act. Sets forth that a license application filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continues in effect for that purpose.

(d) Sets forth that the change in law made by this Act with respect to conduct that is grounds for imposition of a disciplinary sanction, including a refund, temporary license suspension, or cease and desist order applies only to conduct that occurs on or after the effective date of this Act. Sets forth that conduct that occurs before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continues in effect for that purpose.

(e) Sets forth that the changes in law made by Section 503.302(a) and 503.3055, as amended by this Act, regarding the jurisprudence examination, apply only to an application for a license filed with the Texas State Board of Examiners of Professional Counselors under Chapter 503 on or after September 1, 2006.

SECTION 27. Makes application of this Act, notwithstanding Section 503.354, Occupations Code prospective to September 1, 2007.

SECTION 28. Effective date: September 1, 2005.