

BILL ANALYSIS

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By: Nichols, Hegar
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) regulates fitters and dispensers of hearing instruments who measure human hearing for the purposes of selecting, adapting, or selling hearing aids. The committee is administratively attached to the Department of State Health Services (DSHS), housed within its Professional Licensing and Certification Unit.

The committee's mission is to protect and promote public health by designing and enforcing licensure rules and regulations for fitters and dispensers of hearing instruments. To achieve its mission, the committee develops and updates standards of practice for the fitting and dispensing of hearing instruments; administers a written and practical exam for licensure; issues and renews licenses and permits to qualified individuals; and receives and investigates complaints concerning licensees and takes disciplinary action against individuals who violate the committee's statute or rules.

The committee is subject to the Sunset Act and will be abolished September 1, 2011, unless continued by the legislature. As a result of its review of the committee, the Sunset Advisory Commission recommended continuation of the committee, and several statutory modifications contained in S.B. 663 to improve the committee's licensing practices and consistency of its operations.

As proposed, S.B. 663 amends current law relating to the continuation and functions of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (FDHI) and the State Board of Examiners for Speech-Language Pathology and Audiology in SECTION 9 (Section 402.1021, Occupations Code) of this bill.

Rulemaking authority is expressly granted to FDHI in SECTION 10 (Section 402.104, Occupations Code), SECTION 19 (Section 402.303, Occupations Code), and SECTION 22 (Section 402.505, Occupations Code) of this bill.

Rulemaking authority previously granted to FDHI is modified in SECTION 19 (Section 402.303, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 402.001(1) and (3), Occupations Code, to redefine "board" and "department."

SECTION 2. Amends Section 402.002, Occupations Code, as follows:

Sec. 402.002. APPLICATION OF SUNSET ACT. Provides that the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (FDHI) is subject to

Chapter 325, Government Code (Texas Sunset Act). Provides that FDHI, unless continued in existence as provided by that chapter, is abolished and this chapter expires September 1, 2017, rather than September 1, 2011.

SECTION 3. Amends Section 402.052, Occupations Code, as follows:

Sec. 402.052. PUBLIC MEMBER ELIGIBILITY. Provides that a person is not eligible for appointment as a public member of FDHI if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by or participates in the management of a business entity or other organization that:
 - (A) provides health care services;
 - (B) sells, manufactures, or distributes health care supplies or equipment;
or
 - (C) is regulated by or receives money from FDHI or the Department of State Health Services (DSHS);
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:
 - (A) provides health care services;
 - (B) sells, manufactures, or distributes health care supplies or equipment;
or
 - (C) is regulated by or receives money from FDHI or DSHS; or
- (4) uses or receives a substantial amount of tangible goods, services, or money from FDHI or DSHS, other than compensation or reimbursement authorized by law for FDHI membership, attendance, or expenses.

Makes nonsubstantive changes.

SECTION 4. Amends Sections 402.053(a) and (b), Occupations Code, as follows:

- (a) Defines, in this section, "trade association." Deletes existing text prohibiting an officer, employee, or paid consultant of a statewide or national trade association in the hearing instrument industry from being a member or employee of FDHI.
- (b) Prohibits a person from being a member of FDHI if:
 - (1) the person is an officer, employee, or paid consultant of a trade association in the field of hearing instrument fitting and dispensing; or
 - (2) the person's spouse or another person related to the person within the second degree by affinity or consanguinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, is an officer, manager, or paid consultant of a trade association in the field of hearing instrument fitting and dispensing.

Deletes existing text prohibiting a member or employee of FDHI from being related within the second degree by affinity or consanguinity, as determined by Chapter 573, Government Code, to a person who is an officer, employee, or paid consultant of a statewide or national trade association in the hearing instrument industry.

SECTION 5. Amends Section 402.056, Occupations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that it is a ground for removal from FDHI that a member:

(1) does not have at the time of taking office, rather than at the time of appointment, the qualifications required by Sections 402.051 (Committee; Membership), 402.052 (Public Member Eligibility), and 402.053 (Membership and Employee Restrictions), rather than Sections 402.051, 402.052, and 402.053(d) (prohibiting an FDHI member appointed under Section 402.051(a)(2) from having a financing interest in a hearing instrument manufacturing company or in a wholesale or retail hearing instrument company), for appointment to FDHI;

(2) does not maintain during service on FDHI the qualifications required by Sections 402.051, 402.052, and 402.053, rather than Sections 402.051, 402.052, and 402.053(d) for appointment to FDHI;

(3) is ineligible for membership under Section 402.052 or 402.053, rather than violates a prohibition established by Section 402.053;

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

(5) is absent from more than half of the regularly schedule FDHI meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of FDHI, rather than fails to attend at least half of the regularly scheduled FDHI meetings held in a calendar year, excluding meetings held while the person was not an FDHI member.

Makes a nonsubstantive change.

(c) Requires the commissioner of DSHS (commissioner), if the commissioner has knowledge that a potential ground for removal exists, to notify the presiding officer of FDHI of the potential ground. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the commissioner, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of FDHI, who is then required to notify the governor and the attorney general that a potential ground for removal exists.

SECTION 6. Amends Section 402.057(a), Occupations Code, to require the governor to designate a member of FDHI as the presiding officer of FDHI to serve in that capacity at the will of the governor, rather than requiring FDHI to elect a president and vice president.

SECTION 7. Amends Section 402.058(b), Occupations Code, to require that a special meeting of FDHI be held at the call of the presiding officer or a majority of the members, rather than at the call of the president or a majority of the members.

SECTION 8. Amends Subchapter B, Chapter 402, Occupations Code, by adding Section 402.0581, as follows:

Sec. 402.0581. TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of FDHI from voting, deliberating, or counted as a member in attendance at a meeting of FDHI until the person completes a training program that complies with this section.

(b) Requires that the training program provide the person with information regarding:

- (1) this chapter;
- (2) the programs, functions, rules, and budget of FDHI;
- (3) the results of the most recent formal audit of FDHI;
- (4) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and
- (5) any applicable ethics policies adopted by FDHI or the Texas Ethics Commission.

(c) Entitles a person appointed to FDHI to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 9. Amends Subchapter C, Chapter 402, Occupations Code, by adding Sections 402.1021 and 402.1022, as follows:

Sec. 402.1021. JOINT RULES FOR HEARING INSTRUMENTS. Requires FDHI and the State Board of Examiners for Speech-Language Pathology and Audiology (board), with the assistance of DSHS, to jointly adopt rules to establish requirements for each sale of a hearing instrument. Requires that the rules:

- (1) address:
 - (A) the information and other provisions required in each written contract for the purchase of a hearing instrument;
 - (B) records that must be retained under this chapter or Chapter 401 (Speech-Language Pathologists and Audiologists); and
 - (C) guidelines for the 30-day trial period during which a person may cancel the purchase of a hearing instrument; and
- (2) require that the written contract and 30-day trial period information provided to a purchaser of a hearing instrument be in plain language designed to be easily understood by the average consumer.

Sec. 402.1022. DIVISION OF RESPONSIBILITIES. (a) Requires FDHI to develop and implement policies that clearly separate the policy-making responsibilities of FDHI and the management responsibilities of the staff of DSHS.

(b) Provides that FDHI has final authority to administer this chapter and direct the actions of the staff of DSHS with respect to this chapter, except in the administration of duties specifically imposed on DSHS under this chapter.

SECTION 10. Amends Section 402.104, Occupations Code, as follows:

Sec. 402.104. POWERS AND DUTIES REGARDING EXAMINATION. (a) Requires DSHS, rather than FDHI, to administer or arrange for the administration of an examination, rather than a written examination. Authorizes the examination to include written, oral, or practical tests.

- (b) Requires that the written examination be administered at least twice each year.
- (c) Requires that the written examination be validated by an independent testing professional.

(d) Requires that the practical examination be administered by one or more qualified proctors selected and assigned by DSHS.

(e) Requires FDHI by rule to establish the qualifications for a proctor. Requires that the rules:

(1) require a proctor to be licensed in good standing as a hearing instrument fitter and dispenser;

(2) specify the number of years a proctor must be licensed as a hearing instrument fitter and dispenser; and

(3) specify the disciplinary actions or other actions that disqualify a person from serving as a proctor.

SECTION 11. Amends Section 402.105, Occupations Code, as follows:

Sec. 402.105. SUBCOMMITTEES. (a) Creates this subsection from existing text. Authorizes FDHI to appoint subcommittees from its members to consider matters referred by FDHI pertaining to the enforcement of this chapter. Requires the subcommittees to make recommendations to FDHI.

(b) Requires FDHI to appoint at least one public member to each subcommittee.

SECTION 12. Amends Subchapter D, Chapter 402, Occupations Code, by adding Section 402.1511, as follows:

Sec. 402.1511. PUBLIC PARTICIPATION. Requires FDHI to develop and implement policies that provide the public with a reasonable opportunity to appear before FDHI and to speak on any issue under the jurisdiction of FDHI.

SECTION 13. Amends Section 402.154(e), Occupations Code, to authorize FDHI to delegate the authority granted under Subsection (a) (relating to authorizing FDHI, in investigation of a complaint filed with FDHI, to request the commissioner of public health or the commissioner of public health's designee to approve the issuance of a subpoena) to the presiding officer of FDHI, rather than to the president or vice president of FDHI.

SECTION 14. Amends Section 402.202(a), Occupations Code, to require a person, to engage in fitting and dispensing hearing instruments in this state, to pass an examination required by FDHI, rather than an examination given by FDHI.

SECTION 15. Amends Sections 402.205(a) and (d), Occupations Code, as follows:

(a) Requires DSHS, rather than FDHI, to give each applicant due notice of the date and place of the examination and the subjects, areas, and skills that will be included in the examination. Prohibits a change from being made in those subjects, areas, and skills after the date of the examination has been announced and publicized.

(d) Requires DSHS, rather than FDHI, if requested in writing by a person who fails the licensing examination administered under this chapter, to provide to the person an analysis of the person's performance on the examination.

SECTION 16. Amends Sections 402.209(b), (c), (d), (e), (f), and (g), Occupations Code, as follows:

(b) Requires an applicant for a license under this section to complete the application form completely and accurately. Prohibits DSHS, rather than FDHI, from considering an incomplete application. Makes conforming changes.

(c) Requires an applicant for a license under this section to provide as part of the application, rather than requires FDHI to require an applicant for a license under this section to be provide as part of the application:

(1) written verification that the applicant is licensed in good standing as a fitter and dispenser of hearing instruments in another state and has held the license for at least three years preceding the date of application;

(2) written verification that:

(A) the requirements to obtain a license to fit and dispense hearing instruments in the state in which the applicant is licensed include passing an examination approved by FDHI by rule; or

(B) the applicant holds a certification from a professional organization approved by FDHI by rule;

(3) Redesignates existing Subdivision (4) as Subdivision (3); and

(4) Redesignates existing Subdivision (5) as Subdivision (4).

Deletes existing text of Subdivision (3) affirming that the applicant is a resident of this state.

(d) Authorizes DSHS, rather than FDHI, to deny an application under this section based on the applicant's criminal history or history of disciplinary action.

(e)-(f) Makes conforming changes.

SECTION 17. Amends Subchapter E, Chapter 402, Occupations Code, by adding Section 402.210, as follows:

Sec. 402.210. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) Requires FDHI to require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by FDHI, to FDHI or to the Department of Public Safety of the State of Texas (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation (FBI).

(b) Prohibits FDHI from issuing a license to a person who does not comply with the requirement of Subsection (a).

(c) Requires FDHI to conduct a criminal history check of each applicant for a license using information provided by the individual under this section, and made available to FDHI by DPS, the FBI, and any other criminal justice agency under Chapter 411 (Department of Public Safety of the State of Texas), Government Code.

(d) Authorizes DSHS on behalf of FDHI to enter into an agreement with DPS to administer a criminal history check required under this section, and authorize DPS to collect from each applicant the costs incurred by DPS in conducting the criminal history check.

SECTION 18. Amends Subchapter G, Chapter 402, Occupations Code, by adding Section 402.302, as follows:

Sec. 402.302. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) Requires an applicant renewing a license issued under this chapter to submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by Section 402.210.

(b) Prohibits FDHI from renewing the license of a person who does not comply with the requirement of Subsection (a).

(c) Provides that the requirements of this section do not apply to a license holder who has previously submitted fingerprints under this section or Section 402.210.

(d) Provides that this section expires February 1, 2015.

SECTION 19. Amends Section 402.303, Occupations Code, by amending Subsections (a), (b), (d), and (f), and adding Subsection (e-1), as follows:

(a) Requires FDHI by rule to adopt requirements for the continuing education of a license holder, including online continuing education requirements and a requirement that a license holder complete 20 hours of continuing education every two years, rather than each year. Deletes existing text providing that for the purposes of this requirement, each year runs concurrently with the effective date of a license issued under this chapter. Prohibits FDHI from reviewing a license unless the license holder demonstrates compliance with the continuing education requirements established by the committee.

(b) Requires a license holder to provide written proof of attendance or completion of an approved course, rather than requiring a license holder to provide written proof of attendance and completion of an approved course, on a form prescribed by FDHI.

(d) Requires FDHI to adopt rules to establish reasonable requirements for continuing education sponsors and courses and to clearly define what constitutes a manufacturer or nonmanufacturer sponsor. Requires DSHS to review and approve continuing education sponsor and course applications. Authorizes DSHS to request assistance from licensed members of FDHI in approving a sponsor or course. Requires DSHS to provide a list of approved continuing education sponsors and continuing education courses, including online courses, rather than requiring FDHI to provide a list of approved continuing education sponsors, designated by FDHI. Requires that the list be revised and updated periodically. Requires that any continuing education activity be provided by an approved sponsor. Requires DSHS, rather than FDHI, to approve at least five hours of specific courses each year.

(e-1) Requires FDHI to allow a license holder to report at least 10 hours of online continuing education credit hours in a single reporting period.

(f) Requires that a course summary and resume for each teacher of a course seeking approval from DSHS, rather than the committee, be submitted at least 30 days before the date the course is scheduled to take place, unless the course is an online course. Requires the committee to establish criteria for approval of submitted courses and reasonable requirements for the approval of online courses and sponsors.

SECTION 20. Amends Section 402.304, Occupations Code, as follows:

Sec. 402.304. ALTERNATIVES TO CONTINUING EDUCATION REQUIREMENT.

(a) Authorizes a license holder, on written request to DSHS, rather than FDHI, to take the state examination, rather than the state examination given by FDHI. Provides that a license holder who pays the examination fee and passes the examination is exempt from the continuing education requirement for the reporting period in which the test is taken, rather than the year in which the test is taken.

(b) Authorizes a license holder to be credited with continuing education credit hours for a published book or article written by the license holder that contributes to the license holder's professional competence. Authorizes the continuing education committee to grant credit hours based on the degree to which the published book or article advances knowledge regarding the fitting and dispensing of hearing instruments. Authorizes a license holder to claim in a reporting period,

rather than an annual reporting period, not more than five credit hours for preparation of a publication.

SECTION 21. Amends Section 402.305, Occupations Code, as follows:

Sec. 402.305. CONTINUING EDUCATION EXEMPTIONS. Authorizes FDHI to renew the license of a license holder who does not comply with the continuing education requirements of Sections 402.303 or 402.304 if the license holder:

- (1) was licensed for the first time during the 24 months, rather than 12 months, before the reporting date, rather than the annual reporting date;
- (2) has served in the regular armed forces of the United States during part of the 24 months before the reporting date, rather than 12 months before the annual reporting date; or
- (3) submits proof from an attending physician that the license holder suffered a serious or disabling illness or physical disability that prevented compliance with the continuing education requirements during the 24 months before the reporting date, rather than the 12 months before the annual reporting date.

SECTION 22. Amends Subchapter K, Chapter 402, Occupations Code, by adding Sections 402.505 and 402.506, as follows:

Sec. 402.505. INFORMAL PROCEEDINGS; INFORMAL SETTLEMENT CONFERENCE. (a) Requires FDHI by rule to adopt procedures governing:

- (1) informal disposition of a contested case under Section 2001.056 (Informal Disposition of Contested Case), Government Code; and
- (2) an informal proceeding held in compliance with Section 2001.054 (Licenses), Government Code.

(b) Requires FDHI by rule to establish procedures by which a panel appointed by DSHS may conduct an informal settlement conference to resolve a complaint against a person licensed under this chapter.

(c) Requires that procedures established under Subsection (b):

- (1) require the panel conducting the conference to use the schedule of sanctions adopted by FDHI to determine the appropriate disciplinary action, if any, to recommend to FDHI; and
- (2) require the panel to recommend a settlement of the complaint to FDHI, or refer the complaint to the State Office of Administrative Hearings for a formal hearing and notify FDHI of the referral.

(d) Authorizes FDHI to approve, modify, or reject the settlement recommendation of the panel.

(e) Requires that rules adopted under this section provide the complainant and the license holder with an opportunity to be heard, and require the presence of an attorney to advise the panel.

Sec. 402.506. RECUSAL OF COMMITTEE MEMBER. (a) Prohibits an FDHI member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint from voting on the matter at a FDHI meeting relating to the complaint, and requires the FDHI member to state at the meeting why the member is prohibited from voting on the matter.

(b) Requires that a statement under Subsection (a)(2) (requiring an FDHI member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint to state at the meeting why the member is prohibited from voting on the matter) be entered into the minutes of the meeting.

SECTION 23. Amends Subchapter L, Chapter 402, Occupations Code, by adding Sections 402.5521 and 402.5522, as follows:

Sec. 402.5521. COMMITTEE-ORDERED REFUND. Authorizes FDHI to order a license holder to pay a refund to a consumer who returns a hearing instrument during the 30-day trial period required by rules adopted under Section 402.1021.

Sec. 402.5522. CEASE AND DESIST ORDER. (a) Authorizes FDHI, if it appears to FDHI that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of fitting and dispensing hearing instruments, after notice and opportunity for a hearing, to issue a cease and desist order prohibiting the person from engaging in the activity.

(b) Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under this subchapter.

SECTION 24. (a) Requires FDHI, except as provided by Subsection (b) of this section, not later than February 1, 2012, to adopt rules necessary to implement the changes in law made by this Act to Chapter 402, Occupations Code.

(b) Requires the board and FDHI, not later than May 1, 2012, to adopt rules required by Section 402.1021, Occupations Code, as added by this Act.

(c) Provides that the changes in law made by Subchapter B, Chapter 402, Occupations Code, as amended by this Act, regarding the prohibitions on or qualifications of members of FDHI do not affect the entitlement of a member serving on FDHI immediately before September 1, 2011, to continue to serve and function as a member of the committee for the remainder of the member's term. Provides that the changes in law made by this Act apply only to a member appointed on or after September 1, 2011.

(d) Provides that Sections 402.505 and 402.506, Occupations Code, as added by this Act, apply only to a complaint filed with FDHI on or after the effective date of this Act. Provides that a complaint filed before the effective date of this Act is governed by the law in effect on the date the complaint was filed, and the former law is continued in effect for that purpose.

(e) Provides that Sections 402.210 and 402.302, Occupations Code, as added by this Act, and Sections 402.303, 402.304, and 402.305, Occupations Code, as amended by this Act, apply only to an application for a license or renewal of a license filed with FDHI on or after May 1, 2012. Provides that an application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 25. Effective date: September 1, 2011.