

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1269
By: Sibley
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Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, clinical nutritionists are not registered, licensed, or regulated in Texas. Because the practices of clinical nutritionists affect public health and safety and welfare, it is in the public interest to have qualified individuals in this profession. C.S.S.B. 1269 establishes state regulation of clinical nutritionists and provides standards for qualifications, training, and experience for licensure as a clinical nutritionist.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Board of Examiners of Clinical Nutritionists in SECTION 1 (Sections 703.152, 703.154, 703.156, 703.202, 703.204, 703.252, 703.253, 703.261, 703.302, 703.305, 703.404, and 703.406, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 3M, Occupations Code, by adding Chapter 703, as follows:

CHAPTER 703. LICENSED CLINICAL NUTRITIONISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 703.001. SHORT TITLE. Provides that this chapter may be cited as the Licensed Clinical Nutritionist Act.

Sec. 703.002. DEFINITIONS. Defines "board of health," "clinical nutrition," "clinical nutrition practice," "clinical nutritionist," "commissioner," "department," "institution of higher education," "medical nutrition therapy," "nutritional assessment," "nutritional counseling," "nutritional supplements," "nutritionists board," "provisionally licensed clinical nutritionist," and "supervision."

Sec. 703.003. CLINICAL NUTRITION PRACTICE. (a) Provides that clinical nutrition is a specialization in the science of nutrition that requires an understanding of nutrition biochemistry that enables the practitioner to competently assess and evaluate signs of nutritional deficiency or imbalance, through the use or disuse of specific foods, vitamins, minerals, herbs, amino acids, trace elements, glandulars, or other substances as necessary to maintain optimal health.

(b) Authorizes clinical nutrition to be practiced through a client-counselor relationship and requires knowledge of certain specified areas.

(c) Provides that engaging in practice as a clinical nutritionist as described by this chapter does not constitute the practice of medicine as defined by state law.

Sec. 703.004. SUNSET PROVISION. Provides that the Texas State Board of Examiners of Clinical Nutritionists is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that unless continued in existence as provided by that chapter, the nutritionists board is abolished and this chapter expires September 1, 2005.

SUBCHAPTER B. BOARD OF EXAMINERS OF CLINICAL NUTRITIONISTS

Sec. 703.051. BOARD; MEMBERSHIP. (a) Provides that the Texas State Board of Examiners of Clinical Nutritionists (board) consists of nine members appointed by the governor with the advice and consent of the senate. Sets forth the composition of the board.

(b) Provides that associate clinical nutritionists are not eligible for appointment to the nutritionists board.

(c) Requires appointments to the nutritionists board to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(d) Provides that the professional discipline of clinical nutrition includes six primary areas of expertise: clinical, educational, research, management, consultation, and community service. Requires the governor, in appointing health care practitioners to the nutritionists board, to consider the broad spectrum of health care practitioners who practice clinical nutrition in those areas of expertise and attempt to achieve a continuing balance of representation among those practitioners. Provides that health care practitioners eligible for appointment under Subsection (a)(2) include physicians, chiropractors, dentists, pharmacists, registered nurses, and any other health care practitioners licensed by this state whose primary practices are other than as clinical nutritionists. Requires the appointee to have at least two years of experience in clinical nutrition practice, clinical nutrition education, or clinical nutrition research to be eligible for appointment under Subsection (a)(2).

Sec. 703.052. ELIGIBILITY OF PUBLIC MEMBERS. Provides that a person is not eligible for appointment as a public member of the nutritionists board if the person or the person's spouse meets certain requirements.

Sec. 703.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) Defines "Texas trade association."

(b) Prohibits an officer, employee, or paid consultant of a Texas trade association in the field of clinical nutrition from being a nutritionists board member and from being an employee of the nutritionists board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) Prohibits a person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of clinical nutrition from being a nutritionists board member and from being an employee of the nutritionists board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(d) Prohibits a person from serving as a member of the nutritionists board or acting as the general counsel to the nutritionists board if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the nutritionists board.

Sec. 703.054. TERMS. Provides that members of the nutritionists board serve staggered six-year terms, with three members' terms expiring on February 1 of each odd-numbered year.

Sec. 703.055. GROUND FOR REMOVAL FROM NUTRITIONISTS BOARD. (a) Provides grounds for removal from the nutritionists board.

(b) Provides that the validity of an action of the nutritionists board is not affected by the fact that it is taken when a ground for removal of a nutritionists board member exists.

(c) Requires the executive director, if the executive director has knowledge that a potential ground for removal exists, to notify the presiding officer of the nutritionists board of the potential ground. Requires the presiding officer to then notify the governor that a potential ground for removal exists.

Sec. 703.056. PER DIEM; REIMBURSEMENT. (a) Entitles each member of the nutritionists board to receive a per diem at the rate set by the legislature for state employees in the General Appropriations Act for each day the member engages in the business of the nutritionists board.

(b) Entitles a member to reimbursement for transportation expenses as provided by the General Appropriations Act.

Sec. 703.057. OFFICERS. (a) Requires the governor to designate one member of the nutritionists board to serve as presiding officer. Provides that the presiding officer serves at the will of the governor.

(b) Requires the nutritionists board to elect other officers from its membership at the first regular nutritionists board meeting each year.

Sec. 703.058. MEETINGS. Requires the nutritionists board to hold at least two regular meetings each year as provided by rules adopted by the nutritionists board.

Sec. 703.059. TRAINING. (a) Requires a nutritionists board member to complete at least one course of a training program established by the nutritionists board under this section, before the member may assume the member's duties and before the member may be confirmed by the senate.

(b) Requires the training program established by the nutritionists board to provide information to a participant regarding certain requirements and procedures.

(c) Requires the nutritionists board, in developing the training program, to consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.

(d) Requires the nutritionists board, if another state agency is given the authority to establish the training requirements, to use that training rather than develop its own program.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 703.101. EXECUTIVE DIRECTOR. Requires the commissioner of health, with the advice and consent of the nutritionists board, to appoint an executive director for the nutritionists board. Requires the executive director to be an employee of the department.

Sec. 703.102. EXECUTIVE DIRECTOR POWERS AND DUTIES. Requires the executive director, in addition to other duties prescribed by this chapter and by the department, to perform certain other duties.

Sec. 703.103. PERSONNEL AND FACILITIES. (a) Requires the department to provide the basic personnel and facilities required to administer this chapter. Provides that the department personnel administering this chapter act as agents of the nutritionists board.

(b) Authorizes the department by agreement to secure services as it considers necessary to administer this chapter, and provide compensation for those services.

(c) Authorizes the department to employ, on a full-time or part-time basis, the professional consultants, technical assistants, and employees necessary to administer this chapter.

Sec. 703.104. DIVISION OF RESPONSIBILITIES. Requires the nutritionists board to develop and implement policies that clearly define the respective responsibilities of the nutritionists board and the staff of the nutritionists board.

Sec. 703.105. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. Requires the nutritionists board to provide, as often as necessary, to its members and employees information regarding their qualifications for office or employment under this chapter and responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 703.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) Requires the executive director or the executive director's designee to prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. Requires the policy statement to include certain information.

(b) Requires a policy statement prepared under Subsection (a) to meet certain requirements.

(c) Requires the governor to deliver a biennial report to the legislature based on the information received under Subsection (b). Authorizes the report to be made separately or as part of other biennial reports to the legislature.

Sec. 703.107. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) Requires the executive director or the executive director's designee to develop an intra-agency career ladder program. Requires the program to require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) Requires the executive director or the executive director's designee to develop a system of annual performance evaluations based on measurable job tasks. Requires all merit pay for nutritionists board employees to be based on the system established under this subsection.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 703.151. GENERAL POWERS AND DUTIES OF NUTRITIONISTS BOARD. Requires the nutritionists board to perform certain duties.

Sec. 703.152. GENERAL RULEMAKING AUTHORITY. (a) Authorizes the nutritionists board to adopt rules as necessary to implement this chapter.

(b) Requires the nutritionists board, in adopting rules, to consider the rules and procedures of the board of health and the department and to adopt procedural rules consistent with similar rules and procedures of those entities.

Sec. 703.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING.

(a) Prohibits the nutritionists board from adopting a rule restricting advertising or competitive bidding by a person regulated by the nutritionists board except to prohibit a false, misleading, or deceptive practice.

(b) Prohibits the nutritionists board from including in rules to prohibit false, misleading, or deceptive practices by a person regulated by the nutritionists board a rule that restricts the person's use of any medium for advertising, restricts the person's personal appearance or use of the person's voice in an advertisement, relates to the size or duration of an advertisement by the person, or restricts the use of a trade name in advertising by the person.

Sec. 703.154. FEES. Requires the nutritionists board by rule to set fees in amounts reasonable and necessary to cover the cost of administering this chapter.

Sec. 703.155. FUNDS. Requires the department to receive and account for money received under this chapter.

Sec. 703.156. SEAL. (a) Authorizes the nutritionists board by rule to require a license holder to obtain a seal authorized by the nutritionists board, bearing the license holder's name and the legend "Licensed Clinical Nutritionist," and affix the seal to formal documentation of nutrition services provided by a license holder.

(b) Requires that if the nutritionists board adopts rules under Subsection (a), the rules require a license holder to comply with Subsection (a)(2) by maintaining a facsimile of the license holder's seal on file at the location where services are provided under certain conditions.

Sec. 703.157. POWERS AND DUTIES OF BOARD OF HEALTH. Requires the board of health to carry out certain duties, to implement this chapter.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION
AND COMPLAINT PROCEDURES

Sec. 703.201. PUBLIC INTEREST INFORMATION. (a) Requires the nutritionists board to prepare information of public interest describing the functions of the nutritionists board and the nutritionists board's procedures by which complaints are filed with and resolved by the nutritionists board.

(b) Requires the nutritionists board to make the information available to the public and appropriate state agencies.

Sec. 703.202. COMPLAINTS. (a) Requires the nutritionists board by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the nutritionists board for the purpose of directing complaints to the nutritionists board. Authorizes the nutritionists board to provide for that notification in certain forms.

(b) Requires the nutritionists board to list along with its regular telephone number any toll-free telephone number established under state law that may be called to present a complaint about a health professional.

Sec. 703.203. RECORDS OF COMPLAINTS. (a) Requires the nutritionists board to keep an information file on each complaint filed with the nutritionists board. Requires the file to

include certain information.

(b) Requires the nutritionists board to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the nutritionists board's policies and procedures relating to complaint investigation and resolution.

(c) Requires the nutritionists board, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) Requires the nutritionists board to review a complaint regarding certain issues.

Sec. 703.204. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) Requires the nutritionists board to adopt rules concerning the investigation of a complaint filed with the nutritionists board. Requires the rules adopted under this subsection to meet certain standards.

(b) Requires the nutritionists board to carry out certain duties relating to complaints received.

(c) Requires each party to the complaint to be notified of the projected time requirements for pursuing the complaint. Requires each party to be notified of any change in the schedule established under Subsection (b)(2) not later than the seventh day after the date the change is made.

(d) Requires the executive director to notify the nutritionists board of a complaint that is not resolved in the time prescribed by the nutritionists board for resolving the complaint so that the nutritionists board may take necessary action on the complaint.

Sec. 703.205. PUBLIC PARTICIPATION. (a) Requires the nutritionists board to develop and implement policies that provide the public with a reasonable opportunity to appear before the nutritionists board and to speak on any issue under the jurisdiction of the nutritionists board.

(b) Requires the nutritionists board to prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the nutritionists board's programs.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 703.251. LICENSE REQUIRED; EXEMPTIONS. (a) Prohibits a person from using the title of or advertising services as a clinical nutritionist or associate clinical nutritionist unless the person holds a license issued under this chapter, except as provided by Subsection (b).

(b) Provides that this chapter does not prohibit a person from providing free oral nutritional information as an operator or employee of a health food store or business that sells health products, including dietary supplements, foods, or food materials, or disseminating written nutrition information in connection with the distribution of those products. Provides that this chapter does not prohibit or limit any person from conducting a class or seminar or from giving a speech related to nutrition. Provides that this chapter does not apply to a health care practitioner licensed under another law, including a physician, dentist, chiropractor, pharmacist, registered nurse, or licensed vocational nurse who provides nutritional services under certain conditions.

Sec. 703.252. LICENSE APPLICATION. (a) Requires each applicant for a clinical

nutritionist license to submit a sworn application, accompanied by the refundable application fee. Requires the applicant to specify the category of license for which the person is applying.

(b) Requires the nutritionists board to prescribe the application form and authorizes the board to by rule establish dates by which applications and fees must be received. Requires the rules to be consistent with present rules of the department related to application dates of other licenses.

(c) Requires each license application to be accompanied by proof of liability insurance coverage issued by an insurer authorized by the Texas Department of Insurance to engage in the business of liability insurance in this state and in amounts prescribed by the nutritionists board as appropriate for the category of license for which the person is applying.

Sec. 703.253. EXAMINATION. (a) Requires an applicant, except as provided by Subsection (c), to pass a competency examination to qualify for a license under this chapter.

(b) Authorizes the nutritionists board by rule to adopt an examination given by an approved scientific nutritionists board of clinical nutritionist experts, instead of an examination prepared by the nutritionists board.

(c) Authorizes the nutritionists board to waive the examination requirement for an applicant who, at the time of application, is registered as a registered clinical nutritionist by the Commission on Clinical Nutritionist Registration or another professional organization recognized by the nutritionists board.

Sec. 703.254. QUALIFICATIONS FOR EXAMINATION. (a) Requires an applicant to meet certain requirements to qualify for the licensed clinical nutritionist examination under this chapter.

(b) Requires an applicant to meet certain requirements to qualify for the licensed associate clinical nutritionist examination under this chapter.

(c) Provides that a licensed physician, dentist, chiropractor, pharmacist, or registered nurse is exempt from the requirements of Subsection (a).

Sec. 703.255. INVESTIGATION. (a) Requires the department to notify an applicant in writing of the receipt and investigation of the applicant's application and any other relevant evidence relating to applicant qualifications established by the nutritionists board rule not later than the 45th day after the date a properly submitted and timely application is received and not later than the 30th day before the next examination date.

(b) Requires the notice to state whether the applicant has qualified for examination based on the application and other submitted evidence. Requires the notice to state the reasons for the applicant's failure to qualify, if the applicant has not qualified.

Sec. 703.256. EXAMINATION RESULTS. (a) Requires the nutritionists board to notify each examinee of the results of the examination not later than the 30th day after the date the examination is administered.

(b) Sets forth provisions governing a examination graded or reviewed by a testing service

(c) Authorizes the nutritionists board to require a testing service to notify a person of the results of the person's examination.

(d) Requires the nutritionists board, if requested in writing by a person who fails the examination, to furnish the person with an analysis of the person's performance on the examination.

Sec. 703.257. REEXAMINATION. Requires an applicant who fails the examination three times to provide evidence to the nutritionists board that the applicant has successfully completed credit hours in the applicant's areas of weakness before the applicant may apply for reexamination.

Sec. 703.258. QUALIFIED PERSON ENTITLED TO LICENSE. Requires the nutritionists board to issue the appropriate clinical nutritionist license under this chapter to a person who meets the qualifications for the license. Requires the license to specify on its face the category under which the person is licensed.

Sec. 703.259. PROVISIONAL LICENSE. (a) Authorizes the nutritionists board to issue a license to use the title "provisionally licensed clinical nutritionist" to an applicant who files an application, pays an application fee, and submits evidence of successful completion of the educational requirements under Section 703.254.

(b) Requires a provisionally licensed clinical nutritionist to practice under the supervision and direction of a licensed clinical nutritionist. Requires the supervising licensed clinical nutritionist to sign the application.

(c) Provides that a provisional license expires on the first anniversary of the date of issuance and, if the supervising licensed clinical nutritionist signs the renewal application, may be renewed annually not more than twice by complying with the renewal procedures under Section 703.301.

(d) Requires a provisionally licensed clinical nutritionist to comply with Sections 703.351 and 703.352.

Sec. 703.260. TEMPORARY LICENSE. (a) Authorizes the nutritionists board, on receipt of an application and payment of an application fee, to grant a temporary license to an applicant who meets certain requirements.

(b) Authorizes the nutritionists board to waive the requirement of Subsection (a)(3) if the nutritionists board determines that compliance with that provision is a hardship to the applicant.

(c) Provides that a temporary license is valid until the date the nutritionists board approves or denies the temporary license holder's application for a license. Requires the nutritionists board to issue a license under this chapter to the holder of a temporary license under certain conditions.

(d) Requires the nutritionists board to complete the processing of a temporary license holder's application for a license not later than the 180th day after the date the nutritionists board issues the temporary license. Authorizes the nutritionists board to extend this deadline to receive pending examination results.

Sec. 703.261. INACTIVE STATUS. Authorizes the nutritionists board by rule to provide for a license holder to place the person's license on inactive status. Requires the nutritionists board by rule to provide for a time limit for a license to remain on inactive status.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 703.301. LICENSE RENEWAL. Requires the nutritionists board to renew the license of a qualified clinical nutritionist in good standing who carries out certain requirements.

Sec. 703.302. TERM OF LICENSE; EXPIRATION DATE. (a) Provides that a license is valid for one year from the date of issuance and may be renewed annually.

(b) Authorizes the nutritionists board by rule to adopt a system under which licenses expire on various dates during the year. Requires that for the year in which the license expiration date is changed, a license fee payable on the original expiration date be prorated on a monthly basis so that the license holder pays only that portion of the fee allocable to the number of months the license is valid. Requires the license holder to pay the total license renewal fee on renewal of the license on the new expiration date.

Sec. 703.303. LICENSE RENEWAL PROCEDURE. (a) Authorizes a person to renew an unexpired license by paying the required renewal fee to the nutritionists board before the license expiration date.

(b) Authorizes a person whose license has been expired for 90 days or less to renew the license by paying to the nutritionists board the required renewal fee and a fee that is equal to half the amount of the required renewal fee. Authorizes the person, if a license has been expired for more than 90 days but less than one year, to renew the license by paying to the nutritionists board a fee equal to twice the amount of the required renewal fee.

(c) Prohibits a person whose license has been expired for one year or more from renewing the license, except as provided by Section 703.304. Authorizes the person to obtain a new license by complying with the requirements and procedures for obtaining an original license.

(d) Requires the nutritionists board, not later than the 30th day before a person's license expiration date, to send written notice of the impending expiration to the person at the person's last known address according to the records of the nutritionists board.

Sec. 703.304. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. Authorizes the nutritionists board to renew without examination an expired license of a person who was licensed in this state, moved to another state, and is licensed and has been in practice in the other state for the two years preceding the date the person applies for renewal. Requires the person to pay to the nutritionists board a fee that is equal to twice the required renewal fee for the license.

Sec. 703.305. CONTINUING EDUCATION. (a) Requires the nutritionists board by rule to establish a minimum number of hours of continuing education required for license renewal under this chapter.

(b) Authorizes the nutritionists board to assess the continuing education needs of license holders and to require license holders to attend continuing education courses specified by the nutritionists board. Requires the nutritionists board to develop a process to evaluate and approve continuing education courses.

(c) Requires the nutritionists board to identify the key factors for the competent performance of professional duties. Requires the nutritionists board to adopt a procedure to assess a license holder's participation in continuing education programs.

Sec. 703.306. DUPLICATE LICENSE. Requires the nutritionists board to issue a new

license to replace a license that is lost, destroyed, or mutilated, subject to nutritionists board rules and on payment of a reasonable fee.

SUBCHAPTER H. PRACTICE BY LICENSE HOLDER

Sec. 703.351. PRACTICE STRATEGIES FOR CLINICAL NUTRITIONISTS. (a) Authorizes a licensed clinical nutritionist to work independently in a general office setting, or as a member of a health care team in an office, hospital, or clinical setting, as a nutritionist, nutritional coach, or nutritional advisor in a corporation, providing referrals to and receiving referrals from licensed physicians, chiropractors, nurses, pharmacists, and dentists, or the general public.

(b) Authorizes a licensed clinical nutritionist to carry out certain duties in providing services under this chapter.

Sec. 703.352. DISPLAY OF LICENSE. (a) Requires each license holder to display the person's license in an appropriate and public manner.

(b) Provides that a license issued by the nutritionists board is the property of the nutritionists board and must be surrendered on demand.

Sec. 703.353. LICENSE HOLDER INFORMATION. Requires a license holder to keep the department informed of the license holder's current address.

Sec. 703.354. PROHIBITED USE OF SEAL. (a) Prohibits a person from using a seal authorized by the nutritionists board unless the person holds a license issued under this chapter.

(b) Prohibits a person may from affixing a seal to a document if the license of the license holder named on the seal is expired, suspended, or revoked.

SUBCHAPTER I. PROHIBITED ACTS; DISCIPLINARY PROCEDURES

Sec. 703.401. PROHIBITED ACTS. (a) Prohibits a person from performing certain acts unless the person holds an appropriate license issued under this chapter.

(b) Prohibits a person from using any title or initials, or any facsimile of those titles or initials, or from representing or implying that the person has the right to use any title implying such a registration or certification, unless the person holds an appropriate registration or certification issued by the Commission on Clinical Nutritionist Registration or other organization recognized by the nutritionists board.

Sec. 703.402. GROUNDS FOR DISCIPLINARY ACTION. Requires the nutritionists board to assess administrative penalties, revoke or suspend a license, refuse to renew a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of this chapter, a rule of the nutritionists board, or the code of ethics adopted by the nutritionists board.

Sec. 703.403. HEARING. (a) Entitles a person to a hearing if the nutritionists board proposes to suspend or revoke the person's license.

(b) Authorizes a member or employee of the nutritionists board or a department employee who carries out the functions of the nutritionists board and who proposes to make a decision, a finding of fact, or a conclusion of law in a proceeding pending before the nutritionists board to communicate directly or indirectly with a party to the proceeding or with the party's representative only if notice and an opportunity to

participate are given to each party.

Sec. 703.404. SANCTIONS. Requires the State Office of Administrative Hearings to use the schedule of sanctions adopted by the nutritionists board by rule for a sanction imposed as the result of a hearing conducted by the office.

Sec. 703.405. PROBATION. Authorizes the nutritionists board to require a license holder whose license suspension is probated to take certain actions.

Sec. 703.406. MONITORING OF LICENSE HOLDER. (a) Requires the nutritionists board by rule to develop a system for monitoring a license holder's compliance with this chapter.

(b) Requires rules adopted under this section to include procedures to monitor for compliance a license holder who is ordered by the nutritionists board to perform certain acts and to identify and monitor license holders who represent a risk to the public.

Sec. 703.407. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to suspend or revoke a license under this subchapter is governed by Chapter 2001 (Administrative Procedure), Government Code.

SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 703.451. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the nutritionists board to impose an administrative penalty on a person who violates this chapter or a rule adopted under this chapter.

Sec. 703.452. AMOUNT OF PENALTY. (a) Prohibits the amount of an administrative penalty from exceeding \$1,000 for each violation. Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) Requires the amount of the penalty to be based on certain criteria.

Sec. 703.453. NOTICE OF VIOLATION AND PENALTY. Requires the nutritionist board, if after the investigation of a possible violation and the facts surrounding the possible violation the nutritionists board determines that a violation occurred, to give written notice of the violation to the person on whom the administrative penalty may be imposed. Requires the notice to contain certain information.

Sec. 703.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes a person, not later than the 20th day after the date the person receives the notice under Section 703.453, to take certain actions.

(b) Requires the presiding officer of the nutritionists board or the presiding officer's designee, if the person accepts the nutritionists board's determination, by order to approve the determination and require the person to pay the recommended penalty.

Sec. 703.455. HEARING ON DETERMINATION. (a) Requires the nutritionists board to carry out certain duties if the person makes a timely request for a hearing.

(b) Requires the hearings examiner to carry out certain duties.

Sec. 703.456. DECISION BY NUTRITIONISTS BOARD. (a) Authorizes the nutritionists board by order to make certain determinations based on the findings of fact, conclusions of law, and recommendations of the hearings examiner.

(b) Requires the nutritionists board to give notice of the order to the person. Requires the notice to include certain information.

Sec. 703.457. OPTIONS FOLLOWING DECISION; PAY OR APPEAL. (a) Requires the person to carry out certain duties not later than the 30th day after the date the order issued under Section 703.456 becomes final.

(b) Authorizes a person who acts under Subsection (a)(3), within the 30-day period, to carry out certain duties.

(c) Authorizes the nutritionists board, if the board receives a copy of an affidavit under Subsection (b)(2), to file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

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

Sec. 703.458. DETERMINATION BY COURT. (a) Authorizes the court, if the court sustains the finding 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.

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

Sec. 703.459. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court, after the judgment becomes final and if after judicial review the administrative penalty is reduced or not imposed by the court, to carry out certain duties.

(b) Provides that the interest paid under Subsection (a)(1) is accrued at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 703.460. COLLECTION OF PENALTY. (a) Defines “reasonable expenses and costs.”

(b) Sets forth provisions relating to expenses and costs associated with the administrative penalty.

(c) Authorizes the nutritionists board, if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, to refer the matter to the attorney general for collection of the amount of the penalty.

(d) Sets forth provisions if the attorney general brings an action against a person to enforce an administrative penalty.

Sec. 703.461. ADMINISTRATIVE PROCEDURE. Provides that a proceeding to assess an administrative penalty under this chapter is subject to Chapter 2001, Government Code.

SUBCHAPTER K. CRIMINAL AND CIVIL PENALTIES

Sec. 703.501. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person knowingly or intentionally violates this chapter or a rule adopted by the nutritionists

board or board of health under this chapter.

(b) Provides that an offense under this section is a Class B misdemeanor.

Sec. 703.502. CIVIL PENALTY. (a) Provides that a person who violates this chapter is subject to a civil penalty of \$200 for the first violation and \$500 for each subsequent violation.

(b) Provides that each day a violation of Section 703.402 continues is a separate violation for the purposes of this section.

(c) Requires the attorney general to bring an action in the name of the state at the board's request to collect a civil penalty assessed under this section.

SECTION 2. (a) Requires that until September 1, 2003, the Texas State Board of Examiners of Clinical Nutritionists waive the examination requirement under Chapter 703, Occupations Code, as added by this Act, and grant a license under that chapter to any person who meets certain requirements.

(b) Requires the Texas State Board of Examiners of Clinical Nutritionists, until September 1, 2004, to waive the examination requirement under Chapter 703, Occupations Code, as added by this Act, and grant an associate clinical nutritionist license under that chapter to any person who meets certain requirements.

(c) Requires the governor to appoint the initial members of the Texas State Board of Examiners of Clinical Nutritionists not later than December 1, 2001. Sets forth provisions governing the initial appointments.

(d) Provides that a person appointed as a clinical nutritionist member of the Texas State Board of Examiners of Clinical Nutritionists before September 1, 2005, is not required to be licensed under Chapter 703, Occupations Code, as added by this Act, but requires the person to be eligible to hold a license issued under that chapter, prohibits the person from having an additional primary practice, and requires the person to have at least two years of professional experience in the field of clinical nutrition.

SECTION 3. (a) Effective date: September 1, 2001, except as provided by Subsection (b) of this section.

(b) Provides that Sections 703.251 and Subchapters J and K, Chapter 703, Occupations Code, as added by this Act, take effect September 1, 2002.