

BILL ANALYSIS

Senate Research Center
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H.B. 1155
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Government Organization
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas State Board of Examiners of Dietitians (board) is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the Legislature. The Sunset Advisory Commission review found that the licensing and regulation of dietitians is needed, but that some of the board's processes could be improved to make them fairer and more efficient for both licensees and the public.

H.B. 1155 contains the recommended improvements.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Board of Examiners of Dietitians in SECTION 10 (Section 701.1535, Occupations Code), SECTION 19 (Section 701.2575, Occupations Code), and SECTION 26 (Section 701.502, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 701.002(1) and (2), Occupations Code, to redefine "commissioner" and "department."

SECTION 2. Amends Section 701.003, Occupations Code, to extend the sunset date for the Texas State Board of Examiners of Dietitians (dietitians board) to September 1, 2017, from September 1, 2005.

SECTION 3. Amends Section 701.053, Occupations Code, as follows:

- (a) Redefines "Texas trade association."
- (b) Prohibits a person, rather than an officer, employee, or paid consultant of a Texas trade association in the field of dietetics, from being a dietitians board member and from being an employee of the Department of State Health Services (department) employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if the person falls under certain categories. Deletes existing text related previous prohibitions.
- (c) Redesignated from existing text of Subsection (d). Prohibits a person from being, rather than serving as, a member of the dietitians board or acting as the general counsel to the board, or to the department, if the person is required to register as a lobbyist.

SECTION 4. Amends Sections 701.055(a) and (c), Occupations Code, as follows:

- (a) Sets forth grounds for removal from the dietitians board.
- (c) Requires the presiding officer to notify the governor, as well as the attorney general, if the presiding officer has knowledge that a potential ground for removal exists. Requires the executive secretary to notify the assistant presiding officer, who is then required to notify the governor and the attorney general, if the potential ground for removal involves the presiding officer.

SECTION 5. Amends the heading to Section 701.056, Occupations Code, to read as follows:

Sec. 701.056. REIMBURSEMENT.

SECTION 6. Amends Section 701.056(b), Occupations Code, to provide that a member is entitled to reimbursement for travel, rather than transportation, expenses as provided by the General Appropriations Act.

SECTION 7. Amends Section 701.057, Occupations Code, as follows:

Sec. 701.057. OFFICERS. (a) Requires the governor to designate a member of the dietitians board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) Creates subsection from existing text. Makes conforming changes.

SECTION 8. Amends Sections 701.059(a), (b), and (c), Occupations Code, as follows:

(a) Prohibits a person who is appointed to and qualifies for office as a member of the dietitians board from voting, deliberating, or being counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section. Deletes existing text referencing a member's confirmation by the senate.

(b) Requires the training program to provide the person with certain information. Makes nonsubstantive and conforming changes.

(c) Provides that a person appointed to the dietitians board is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office. Deletes existing text relating to the development of the training program.

SECTION 9. Amends Section 701.104, Occupations Code, as follows:

Sec. 701.104. DIVISION OF RESPONSIBILITIES. Requires the dietitians board to develop and implement policies that clearly separate, rather than define, the policymaking, rather than respective, responsibilities of the board as well as the management responsibilities of the executive secretary and staff of the department, rather than board.

SECTION 10. Amends Subchapter D, Chapter 701, Occupations Code, by adding Section 701.1535, as follows:

Sec. 701.1535. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. (a) Requires the dietitians board to adopt rules necessary to comply with Chapter 53 (Consequences of Criminal Conviction).

(b) Requires the board to list the specific offenses in its rules for which a conviction would constitute grounds for the board to take action under Section 53.021 (Authority to Revoke, Suspend, or Deny License).

SECTION 11. Amends Subchapter D, Chapter 701, Occupations Code, by adding Sections 701.159, 701.160, and 701.161, as follows:

Sec. 701.159. DELEGATION TO COMMITTEE. Authorizes the dietitians board to delegate a function or activity required by this chapter to a committee of board members on a permanent or temporary basis if the board agrees to the delegation.

Sec. 701.160. USE OF TECHNOLOGY. Requires the dietitians 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. 701.161. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires the dietitians board to develop and implement a policy to encourage the use of negotiated rulemaking procedures and appropriate alternative dispute resolution procedures.

(b) Requires the dietitians 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 that use.

(c) Requires the dietitians board to designate a trained person to administer certain aspects of the negotiated rulemaking and alternative dispute resolution policy.

SECTION 12. Amends Section 701.203, Occupations Code, as follows:

Sec. 701.203. RECORDS OF COMPLAINTS. (a) Requires the dietitians board to maintain a system that contains certain information to promptly and efficiently act on complaints filed with the board. Deletes existing text requiring the board to keep an information file about each complaint.

(b) Requires the board to make information available describing its procedures for complaint investigation and resolution.

(c) Requires the dietitians board to periodically notify the parties of the status of the complaint until final disposition of the complaint. Deletes existing text relating to previous complaint notification requirements.

SECTION 13. Amends Subchapter E, Chapter 701, Occupations Code, by adding Section 701.206, as follows:

Sec. 701.206. COMPLAINT COMMITTEE. Requires the dietitians 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 the heading to Section 701.253, Occupations Code, to read as follows:

Sec. 701.253. LICENSE EXAMINATION.

SECTION 15. Amends Section 701.253(b), Occupations Code, to require an applicant to pass a license, rather than competency, examination to qualify for a license under this chapter.

SECTION 16. Amends the heading to Section 701.256, Occupations Code, to read as follows:

Sec. 701.256. LICENSING EXAMINATION RESULTS.

SECTION 17. Amends Section 701.256(a), Occupations Code, to make a conforming change.

SECTION 18. Amends Section 701.257, Occupations Code, to make conforming changes.

SECTION 19. Amends Subchapter F, Chapter 701, Occupations Code, by adding Section 701.2575, as follows:

Sec. 701.2575. JURISPRUDENCE EXAMINATION. (a) Requires the dietitians 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 dietetics practice.

(b) Requires an applicant to pass a jurisprudence examination to qualify for a license under this chapter.

(c) Requires the dietitians board to adopt rules to implement this section, including rules related to the development and administration of the examination.

SECTION 20. Amends Sections 701.301(a) and (d), Occupations Code, as follows:

(a) Provides that a license is valid for two years, rather than one year, after the date of issuance and authorizes a license to be renewed biennially, rather than annually.

(d) Sets forth requirements for renewing an expired license.

SECTION 21. Amends Subchapter G, Chapter 701, Occupations Code, by adding Section 701.304, as follows:

Sec. 701.304. **GROUND FOR REFUSING RENEWAL.** Authorizes the dietitians board to refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter K (Administrative Penalty), unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

SECTION 22. Amends Section 701.401, Occupations Code, to make a conforming change.

SECTION 23. Amends Section 701.402(a), Occupations Code, to make conforming changes.

SECTION 24. Amends the heading to Subchapter J, Chapter 701, Occupations Code, to read as follows:

SUBCHAPTER J. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

SECTION 25. Amends Subchapter J, Chapter 701, Occupations Code, by adding Sections 701.452 and 701.453, as follows:

Sec. 701.452. **CEASE AND DESIST ORDER.** (a) Authorizes the dietitians board, after notice and opportunity for a hearing, to issue a cease and desist order to a person who is not licensed under this chapter and is violating this chapter or a rule adopted under this chapter.

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

Sec. 701.453. **INJUNCTION.** (a) Authorizes the dietitians board to apply to a district court in any county for an injunction to restrain a violation of Section 701.251 (License Required; Commission Registration) by a person.

(b) Requires the attorney general, at the request of the board, to initiate and conduct an action in a district court in the state's name to obtain an injunction under this section.

SECTION 26. Amends Section 701.502, Occupations Code, by adding Subsection (c), to require the dietitians 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 are appropriate to the violation. Requires the board to provide the administrative penalty schedule to the public on request.

SECTION 27. Amends Subchapter K, Chapter 701, Occupations Code, by adding Section 701.512, as follows:

Sec. 701.512. **REFUND.** (a) Authorizes the dietitians board to order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty.

(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 estimating harm in a refund order.

SECTION 28. Repealer: Sections 701.056(a) (per diem received by a member) and 701.059(d) (use of training programs established by other state agencies), Occupations Code.

SECTION 29. (a) Requires the Texas State Board of Examiners of Dietitians to develop and implement the policies required by Sections 701.160 and 701.161, Occupations Code, as added by this Act, and to adopt the rules required by Chapter 701, Occupations Code, as amended by this Act, not later than January 1, 2006.

(b) Requires the Texas State Board of Examiners of Dietitians to develop the jurisprudence examination required by Section 701.2575, Occupations Code, as added by this Act, not later than March 1, 2006.

SECTION 30. (a) Makes application of Sections 701.053, 701.055, and 701.059, Occupations Code, as amended by this Act, prospective.

(b) Makes application of laws relating to disciplinary actions as changed by this Act prospective.

(c) Makes application of Section 701.2575, Occupations Code, as added by this Act, prospective to September 1, 2006.

SECTION 31. Makes application of Section 701.301, Occupations Code, as amended by this Act, prospective to September 1, 2007.

SECTION 32. Effective date: September 1, 2005.