

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 662  
By: Nichols  
Government Organization  
4/5/2011  
Committee Report (Substituted)

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

The State Board of Examiners for Speech-Language Pathology and Audiology (board) regulates speech-language pathologists (SLPs) and audiologists in Texas. SLPs evaluate and treat disorders related to communication, language, and swallowing. Audiologists evaluate and treat ailments related to hearing functions, including the fitting and dispensing of hearing instruments, commonly known as hearing aids.

The board is administratively attached to the Department of State Health Services (DSHS), housed within its Professional Licensing and Certification Unit.

The board is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the legislature. The Sunset Advisory Commission found there is a continuing need for the board, but found several inconsistencies in the board's regulation of hearing aid sales, and identified several changes that would enhance efficiency, fairness, and public protection of the board's operations.

C.S.S.B. 662 requires the board and the state committee of examiners in the fitting and dispensing of hearing instruments to jointly develop rules and adopt rules for hearing aid sales. The rules must address the information required in written contracts and the records that must be retained for hearing aid sales.

C.S.S.B. 662 aligns key elements of the board's licensing and regulatory functions to common licensing standards; requires that fingerprint criminal background checks be conducted on all licensees; authorizes the board to require a license to issue a refund to a hearing aid consumer according to the terms of the 30-day trial period policy; and gives the board cease-and-desist authority for unlicensed practice of speech-language pathology and audiology.

This bill continues the board for six years. The six year continuation allows the next Sunset review to coincide with the review of six other licensing programs administered by DSHS, enabling their structure and administration to be evaluated together. This date also provides sufficient time for the board to implement changes from this Sunset review as well as any changes resulting from the Sunset review of DSHS in 2013.

This substitute removes an exemption for SLPs and SLP assistants employed by the state's school system from the original bill because federal law prohibits the Department of Public Safety of the State of Texas (DPS) from sharing Federal Bureau of Investigation (FBI) data with more than one entity. DPS can grant access to the FBI data to only one entity—DSHS or the school district. Because FBI data cannot be shared, school districts cannot share this information with DSHS and DSHS cannot share this data with school districts. Therefore, DSHS would not be able to obtain the FBI's fingerprint-based criminal background information for the exempt SLPs and SLP assistants from DPS or the school districts. C.S.S.B. 662 removes the exemption from the board's requirement of fingerprint-based criminal background checks for licensed SLPs and SLP assistants employed by a K-12 school and for whom a criminal history check was already performed as a condition of employment.

C.S.S.B. 662 amends current law relating to the continuation and functions of the State Board of Examiners for Speech-Language Pathology and Audiology, and provides an administrative penalty.

## **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the State Board of Examiners for Speech-Language Pathology and Audiology (board) and to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments in SECTION 8 (Section 401.2021, Occupations Code) of this bill.

Rulemaking authority previously granted to the board is modified in SECTION 13 of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 401.001, Occupations Code, by amending Subdivision (4) and adding Subdivision (4-a), to redefine "department" and to define "hearing instrument."

SECTION 2. Amends Section 401.002, Occupations Code, to provide that the State Board of Examiners for Speech-Language Pathology and Audiology Board (board) is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides that unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017, rather than September 1, 2011.

SECTION 3. Amends Section 401.101, Occupations Code, as follows:

Sec. 401.101. New heading: BOARD WITHIN DEPARTMENT. Provides that the board is within the Department of State Health Services (DSHS), rather than the Texas Department of Health.

SECTION 4. Amends Section 401.103, Occupations Code, as follows:

Sec. 401.103. ELIGIBILITY OF PUBLIC MEMBERS. Prohibits a person from being a public member of the board, other than the public member described by Section 401.102(d) (relating to requiring one of the public board members to be a physician licensed in this state and certified in otolaryngology and pediatrics), if the person or 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 participating in the management of an agency or business entity that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment;  
or

(C) receives money from the board or DSHS; or

(3) owns, controls, or has a direct or indirect interest in more than 10 percent in a business entity that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment;  
or

(C) receives money from the board or DSHS; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the board or DSHS, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Deletes existing text prohibiting the two public members who are not physicians from being licensed by an occupational regulatory agency in the field of health care; being employed by and participating in the management of an agency or business entity that provides health care services or that sells, manufactures, or distributes health care supplies or equipment; owning, controlling, or having direct or indirect interest of more than 10 percent in a business entity that provides health care services or that sells, manufactures, or distributes health care supplies or equipment; or being an officer, employee, or paid consultant of a trade association in the field of health care. Makes nonsubstantive changes.

SECTION 5. Amends Section 401.104, Occupations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Redefines, in this section, "Texas trade association."

(c) Prohibits a person from being a member of the board if the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care, or the person's spouse is an officer, employee, or paid consultant of a Texas trade association in the field of health care.

SECTION 6. Amends Section 401.107(a), Occupations Code, as follows:

(a) Requires the governor to designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. Deletes existing text requiring the board to organize itself annually and select a presiding officer, assistant presiding officer, and secretary-treasurer.

SECTION 7. Amends Subchapter C, Chapter 401, Occupations Code, by adding Sections 409.109 and 401.110, as follows:

Sec. 409.109. GROUND FOR REMOVAL. (a) Provides that it is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 401.102 (Board Membership);

(2) does not maintain during service on the board the qualifications required by Section 401.102;

(3) is ineligible for membership under Section 401.103 or 401.104 (Membership Restrictions);

(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 scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

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

(c) Requires the commissioner of state health services, if the commissioner 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 for removal

exists. Requires the commissioner, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 410.110. TRAINING. (a) Prohibits 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 of the board 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 the board;

(3) the results of the most recent formal audit of the board;

(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 the board or the Texas Ethics Commission.

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

SECTION 8. Amends Subchapter E, Chapter 401, Occupations Code, by adding Section 401.2021, as follows:

Sec. 401.2021. JOINT RULES FOR HEARING INSTRUMENTS. Requires the board and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee), 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 the information and other provisions required in each written contract for the purchase of a hearing instrument, records that must be retained under this chapter or Chapter 402 (Hearing Instrument Fitters and Dispensers), and 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.

SECTION 9. Amends Subchapter G, Chapter 401, Occupations Code, by adding Section 401.3041, as follows:

Sec. 401.3041. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) Requires the board to require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board 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 the board from issuing a license to a person who does not comply with the requirement of Subsection (a).

(c) Requires the board 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 the board 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 the board 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 10. Amends Subchapter H, Chapter 401, Occupations Code, by adding Section 401.3521, as follows:

Sec. 401.3521. 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 401.3041.

(b) Prohibits the board 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 401.3041.

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

SECTION 11. Amends Subchapter J, Chapter 401, Occupations Code, by adding Section 401.4531, as follows:

Sec. 401.4531. RECUSAL OF BOARD MEMBER. (a) Provides that a board member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint:

(1) is prohibited from voting on the matter at a board meeting related to the complaint; and

(2) is required to state at the meeting why the member is prohibited from voting on the matter.

(b) Requires that a statement under Subsection (a)(2) be entered into the minutes of the meeting.

SECTION 12. Amends Subchapter K, Chapter 401, Occupations Code, by adding Sections 401.5021 and 401.5022, as follows:

Sec. 401.5021. BOARD-ORDERED REFUND. Authorizes the board to order an audiologist to pay a refund to a consumer who returns a hearing instrument during the 30-day trial period required by rules adopted under Section 401.2021.

Sec. 401.5022. CEASE AND DESIST ORDER. (a) Authorizes the board, after notice and opportunity for a hearing, if it appears to the board 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 speech-language pathology or audiology, 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 Subchapter L (Administrative Penalty).

SECTION 13. (a) Requires the board, not later than February 1, 2012, to adopt rules necessary to implement Sections 401.3041 and 401.3521, Occupations Code, as added by this Act.

(b) Requires the board and the committee, not later than May 1, 2012, to adopt rules required by Section 401.2021, Occupations Code, as added by this Act.

(c) Provides that the changes in law made by Sections 401.103 and 401.104, Occupations Code, as amended by this Act, and Section 401.110, Occupations Code, as added by this Act, regarding the prohibitions on or qualifications of members of the board do not affect the entitlement of a member serving on the board immediately before September 1, 2011, to continue to serve and function as a member of the board for the remainder of the member's term. Provides that the changes in law made by those sections apply only to a member appointed on or after September 1, 2011.

(d) Makes application of Section 401.4531, Occupations Code, prospective.

(e) Makes application Sections 401.3041 and 401.3521, Occupations Code, as added by this Act, prospective to March 1, 2012.

SECTION 14. Effective date: September 1, 2011.