

CHAPTER 581

H.B. No. 2741

AN ACT

relating to the regulation of professional counselors and to the continuation of the Texas State Board of Examiners of Professional Counselors; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes) is amended by adding Section 1A to read as follows:

Sec. 1A. POLICY STATEMENT. It is the policy of this state that the activities of a person who provides services to the public as a counselor and uses the title licensed professional counselor should be regulated to protect the health, safety, and welfare of the public.

SECTION 2. Sections 2(1), (4), and (7), Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), are amended to read as follows:

(1) "Licensed professional counselor" means a person who:

(A) *has the authority to engage in the autonomous practice of counseling and who represents himself or herself to the public by any title or description of services incorporating the words "Licensed Counselor," who offers to render professional counseling services to individuals, couples, families, groups, organizations, corporations, institutions, government agencies, or the general public for compensation, implying that he or she is licensed and trained, experienced, or expert in counseling, and who holds a valid license issued under this Act to engage in the practice of counseling; or*

(B) a person who holds a valid license issued under this Act and who engages in any type of practice of counseling.

(4) "Applicant" means an individual who seeks a license [licensing] under this Act.

(7) "Practice of counseling" means rendering or offering to render, to individuals, couples, families, groups, organizations, or the general public, counseling or guidance services, for compensation, involving the application of principles, methods, or procedures of the counseling profession that include ~~[but are not restricted to]:~~

(A) "counseling" which means assisting ~~one or more clients [an individual or groups,]~~ through the ~~therapeutic [counseling]~~ relationship, using a combination of mental health and human development principles, methods, and techniques, including the use of psychotherapy, to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life ~~[to develop understanding of personal problems, to define goals, and to plan action reflecting an individual's or group's interests, abilities, aptitudes, and needs as they are related to personal-social concerns, educational progress, and occupations and careers];~~

(B) "appraisal activities" which means selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements, interests, and personal characteristics and the use of methods and techniques for understanding human behavior that may ~~[but does not]~~ include the evaluation and treatment by counseling methods, techniques, and procedures for mental and emotional disorders, alcoholism and substance abuse, and other habit or conduct disorders but does not include the use of projective techniques in the assessment of personality;

(C) "counseling, guidance, and personnel consulting" which means interpreting or reporting on scientific fact or theory in counseling, guidance, and personnel services to provide assistance in solving some current or potential problems of individuals, couples, families, groups, or organizations; and

(D) "referral ~~[activities]~~" which means evaluating and identifying needs of a counselee to determine the advisability of referral to other specialists, informing the counselee of such judgment, and communicating as requested or deemed appropriate to such referral sources ~~[the evaluating of data to identify problems and to determine advisability of referral to other specialists; and~~

~~[(E) "research activities" which means the designing, conducting, and interpreting of research with human subjects].~~

SECTION 3. Section 3(a), Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Except as provided by Subsection (b) of this section, this Act does not apply to:

(1) the activities and services of or use of an official title by a person employed as a counselor by a federal, state, county, or municipal agency or public or private educational institution, if the person is performing counseling or counseling-related activities within the scope of his employment;

(2) the activities and services of a student, intern, or trainee in counseling pursuing a course of study in counseling in a regionally accredited institution of higher education or training institution, if these activities and services constitute a part of the supervised course of study and the person is designated a "counselor intern";

(3) the activities and services of a nonresident rendered not more than 30 days during any year, if the person is authorized to perform the activities and services under the law of the state or country of his residence;

(4) the activities and services of ~~[licensed]~~ members of other professions licensed or certified by the state, such as physicians, registered nurses, psychologists, certified social workers, licensed marriage and family therapists, licensed chemical dependency counselors, licensed optometrists in the evaluation and remediation of learning or behavioral disabilities associated with or caused by a defective or abnormal condition of vision, Christian Science practitioners who are recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal, or other recognized religious

practitioners performing counseling consistent with the law of the state, their training, and any code of ethics of their professions, if they do not represent themselves by any title or description in the manner prescribed by Section 2 of this Act;

(5) the activities, services, titles, and descriptions of persons licensed to practice law;

(6) the activities, services, titles, and descriptions of persons employed as professionals or who are [as] volunteers in the practice of counseling for public and private nonprofit organizations or charities who are accountable to the persons' sponsoring organization and do not use the title or hold themselves out to be licensed counselors; [or]

(7) persons supervised by a physician and recognized as physician assistants by the Texas State Board of Medical Examiners, if the persons act strictly within their scope of practice and do not use the titles covered by Section 15(b)(3) of this Act; or

(8) persons owning, operating, or employed by a certified career counseling service regulated under Chapter 222, Acts of the 70th Legislature, Regular Session, 1987 (Article 5221a-8, Vernon's Texas Civil Statutes) [providing counseling services exclusively related to marriage and family concerns and who hold a masters or doctorate degree in the area of marriage and family therapy from an accredited college or university].

SECTION 4. Sections 4(c)-(g), Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) ~~Five members of the board must be licensed professional counselors, at least one of whom is a [Not later than the 30th day after the effective date of this Act, the executive committee of the Texas Personnel and Guidance Association shall submit to the governor a list of qualified candidates for the board, including the names of four qualified counselor educators and 12 qualified practicing counselors. Not later than the 60th day after the date the list is received, the governor shall select from the list the membership of the board consisting of one] counselor educator and at least three of whom are [four counselors] in private practice. The governor shall appoint four citizens from the general public [who have no direct or indirect affiliation with the practice of counseling or delivery of mental health services].~~

(d) ~~Members [Except for the initial appointees, members] hold office for staggered terms of six years, with three members' terms expiring February 1 of each odd-numbered year. In making an appointment, the governor shall specify which member each new appointee succeeds. Before entering on the duties of his office, each member of the board shall take the constitutional oath of office and file it with the secretary of state.~~

(e) ~~An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a [A] member [of the board] or [an] employee of the department that carries out the functions of the 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 17, of the position classification salary schedule. A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a board member and may not be an employee of the 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 17, of the position classification salary schedule [or of the department that carries out the functions of the board may not:~~

~~(1) be an officer, employee, or paid consultant of a trade association in the counseling services industry;~~

~~(2) be related within the second degree by affinity or within the third degree by consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a trade association in the counseling services industry; or~~

~~(3) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the board unless notice and an opportunity to participate are given to each party to the proceeding, if the member or agent is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding].~~

(f) *For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest [A member of the board who is the designated representative of the general public may not have personally, nor be related to a person within the second degree by affinity or third degree by consanguinity, as determined under Article 5996h, Revised Statutes, who has, except as a consumer, a financial interest in counseling services as an officer, director, partner, owner, employee, attorney, or paid consultant].*

(g) *A person may not serve as a member of the board or act as the general counsel to the board if the person [who] is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board [may not serve as a member of the board or act as the general counsel to the board].*

SECTION 5. Section 5, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b), and (c) and adding Subsections (e) and (f) to read as follows:

(a) To be qualified for appointment as a professional member of the board, a person must:

(1) be a citizen of the United States and a resident of this state for the 30 months immediately preceding appointment;

(2) have engaged in the field of counseling for at least 24 months or 2,000 hours;

(3) be licensed under this Act, ~~except that an initial appointee to the board must, instead of being licensed under this Act, meet the requirements of Section 9 of this Act except that he must possess a graduate degree, 30 graduate semester hours in the field of counseling or its equivalent, and have engaged in the field of counseling for at least 24 months or 2,000 hours after the granting of a graduate degree;~~ and

(4) be appointed in accordance with Section 4 of this Act.

(b) To be qualified for appointment as a member who is a representative of the general public, a person must:

(1) be a citizen of the United States and a resident of this state for the 30 months immediately preceding appointment; ~~and~~

(2) be at least 18 years old; *and*

(3) *meet the requirements of Subsection (e) of this section.*

(c) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) or (b) of this section, as appropriate, for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Subsection (a) or (b) of this section, as appropriate, for appointment to the board; ~~or~~

(3) violates a prohibition established by *Subsection (e) of this section if the member is a public member or* ~~[Subdivision (1) or (2) of]~~ Subsection (e) of Section 4 of this Act;

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

(5) *is absent for more than half of the regularly scheduled board meetings that a member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.*

(e) *A person is not eligible for appointment as a public member of the board 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 receiving funds from the board;*

(3) *owns or controls, directly or indirectly, more than 10 percent interest in a business entity or other organization receiving funds from the board; or*

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

(f) If the executive secretary has knowledge that a potential ground for removal exists, the executive secretary shall notify the governor and the attorney general that a potential ground for removal exists.

SECTION 6. Sections 6(a), (b), (d), and (e), Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The governor shall designate one member of the board as the chairman of the board to serve in that capacity at the pleasure of the governor. ~~[The board shall meet not later than the 30th day after the day its members are appointed by the governor.]~~ The board shall elect a ~~[chairman and a]~~ vice-chairman who shall hold office according to the rules adopted by the board.

(b) The board shall hold at least two regular meetings each year as provided by rules adopted by the board ~~[and approved by the department]~~. Five members constitute a quorum.

(d) The board shall ~~investigate and dispose of complaints as provided by Section 16B of this Act [keep an information file about each complaint filed with the board. If a written complaint is filed with the board relating to a licensee under this Act, the board, at least as frequently as quarterly and until the complaint is finally disposed of, shall notify the complainant of the status of the complaint].~~

(e) The board shall:

(1) determine the qualifications and fitness of applicants for licenses, renewal of licenses, and *provisional* ~~[reciprocal]~~ licenses;

(2) adopt and revise~~[, with the approval of the department,]~~ rules not inconsistent with the law of this state that are necessary to administer this Act. However, the board may not adopt rules restricting competitive bidding or advertising by licensees except to prohibit false, misleading, or deceptive practices. The board may not include in its rules to prohibit false, misleading, or deceptive practices by licensees a rule that:

(A) restricts a licensee's use of any medium for advertising;

(B) restricts a licensee's personal appearance or use of *the person's* ~~[his]~~ personal voice in an advertisement;

(C) relates to the size or duration of an advertisement by a licensee; or

(D) restricts a licensee's advertisement under a trade name;

(3) adopt and publish a code of ethics and adopt an official seal;

(4) examine for, deny, approve, issue, revoke, suspend, *suspend on an emergency basis, place on probation*, and renew the licenses of counselor applicants and licensees under this Act ~~[and conduct hearings in connection with these actions];~~

(5) *establish a mandatory continuing education program for licensees;*

(6) conduct hearings on ~~[complaints concerning violations of this Act and]~~ the rules adopted under this Act, *notify the appropriate prosecuting attorney of an alleged offense committed under this Act, and seek an injunction for a violation of this Act* ~~[and cause the prosecution and enjoinder of the violations];~~

~~[(6) expend money necessary for the proper administration of its assigned duties;]~~

(7) set fees ~~[with the approval of the department]~~ for the board's services in amounts that are sufficient to meet the expenses of administering this Act;

(8) request and receive the assistance of state educational institutions or other state agencies; ~~[and]~~

(9) *prepare and disseminate consumer information, including* ~~[of consumer interest]~~ describing the regulatory functions of the board and describing the board's procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the general public and appropriate state agencies; *and*

(10) *by rule adopt a list of authorized counseling methods or practices that a licensee may undertake or perform.*

SECTION 7. The Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes) is amended by adding Sections 6A, 6B, 6C, 6D, and 6E to read as follows:

Sec. 6A. PUBLIC COMPLAINTS; TOLL-FREE TELEPHONE SERVICE. (a) *The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification:*

(1) *on each registration form, application, or written contract for services of an individual or entity regulated under this Act;*

(2) *on a sign prominently displayed in the place of business of each individual or entity regulated under this Act; or*

(3) *in a bill for service provided by an individual or entity regulated under this Act.*

(b) *The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.*

Sec. 6B. PUBLIC PARTICIPATION IN BOARD HEARINGS. *The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.*

Sec. 6C. PROGRAM ACCESSIBILITY. *The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.*

Sec. 6D. TRAINING; STANDARDS OF CONDUCT INFORMATION. (a) *Each board member shall comply with the board member training requirements established by any other state agency that is given authority to establish the requirements for the board.*

(b) *The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this Act and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.*

(c) *The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.*

Sec. 6E. TRAINING AND GUIDELINES FOR MEMBERS OF THE BOARD. (a) *The board shall establish a training program for the members of the board.*

(b) *Before a member of a board may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.*

(c) *A training program established under this section shall provide information to a participant regarding:*

(1) *the enabling legislation that created the board;*

(2) *the programs operated by the board;*

(3) *the role and functions of the board;*

(4) *the rules of the board with an emphasis on the rules that relate to disciplinary and investigatory authority;*

(5) *the current budget for the board;*

(6) *the results of the most recent formal audit of the board;*

(7) *the requirements of the:*

(A) *open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;*

(B) *open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and*

(C) *Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;*

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(d) In developing the training requirements provided for in this section, the board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.

(e) In the event that another state agency or entity is given the authority to establish the training requirements, the board shall allow that training in lieu of developing its own program.

SECTION 8. Section 7, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. REIMBURSEMENTS OF BOARD EXPENSES. A member of the board is entitled to a per diem as set by the General Appropriations Act [~~may not receive a fixed salary for his services, but each member is entitled to a per diem as set by legislative appropriation~~] for each day that the member engages in the business of the board. A member may [~~not~~] receive [~~any~~] compensation for [~~travel~~] expenses [~~, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses~~] as provided by the General Appropriations Act.

SECTION 9. Section 8, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. BOARD PERSONNEL. (a) The executive secretary must be an employee of the department. The Commissioner of Health, *with the advice and consent of* [~~after consulting with~~] the board, shall designate an employee to serve as executive secretary of the board. The executive secretary shall be the administrator of professional counselor licensing activities for the board. In addition to his other duties prescribed by this Act and by the department, the executive secretary shall:

(1) keep full and accurate minutes of the transactions and proceedings of the board;

(2) be the custodian of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this Act, including rules and proposals on administrative procedures not inconsistent with this Act;

(4) exercise general supervision over persons employed by the department in the administration of this Act;

(5) be responsible for the investigation of complaints and for the presentation of formal complaints;

(6) attend all meetings of the board, but the executive secretary is not entitled to vote at board meetings; and

(7) handle or arrange for the handling of the correspondence of the board, make or arrange for necessary inspections and investigations, and obtain, assemble, or prepare the reports and information that the board may direct or authorize.

(b) *The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.*

(c) The basic personnel and necessary facilities that are required to administer this Act shall be the personnel and facilities of the department acting as the agents of the board. The department may secure by agreement services that it considers necessary and provide for compensation for these services and may employ and compensate, within appropriations available, the professional consultants, technical assistants, and employees on a full- or part-time basis necessary to administer this Act.

SECTION 10. Section 10, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. APPLICANT QUALIFICATIONS. *A person is a qualified applicant if the person* [~~An applicant is qualified for a license to practice counseling if the applicant~~]:

(1) is at least 18 years old;

(2) has submitted an application as required by the board, accompanied by the application fee set by the board; the board may require that the statements on the application be made under oath;

(3) has a *master's or doctorate degree in counseling or a related field* [~~met requirements prescribed by the board~~];

(4) has successfully completed a *graduate degree* at a regionally accredited institution of higher education *and* a planned graduate program of *48 graduate* [45] semester hours or the substantial equivalent, including 300 clock hours of supervised practicum that is primarily counseling in nature and that meets the specific academic course content and training standards established by the board. The board shall *review and consider* [use] the standards as developed by the appropriate professional association; [~~and~~]

(5) has *completed* 24 months or 2,000 hours of supervised experience working in a counseling setting that meets the requirements established by the board *after the completion of the 48 graduate semester hour or equivalent graduate program*;

(6) *has successfully completed the examination required under this Act*; and

(7) *has met the requirements prescribed by the board.*

SECTION 11. Sections 12(b), (c), and (d), Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) If a written examination is required, the board shall grade the examination and recommend to the chairman action to be taken. To ensure impartiality, written examination documents shall be identified by number, and no paper may be marked with the name of an applicant but shall be anonymously graded by the board. *The board shall have the written portion of the examination, if any, validated under the direction of a testing professional.* In the event an applicant fails to receive a passing grade on the entire examination, he may reapply and shall be allowed to take a subsequent examination. An applicant who has failed two successive examinations may not reapply until two years have elapsed from the date of the last examination or he has satisfactorily completed nine graduate semester hours in the applicant's weakest portion of the examination.

(c) *Not later than the 30th day* [~~Within 30 days~~] after the day a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination *not later than the 14th day* [~~within two weeks~~] after the day the board receives the results from the testing service. If the notice of the examination results *graded or reviewed by the national testing service* will be delayed for more than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(d) If requested *in writing* by a person who fails the examination for a license, the board shall furnish to the person an analysis of the person's performance on the examination.

SECTION 12. Section 14, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), is amended by amending Subsections (d), (f), (g), and (h) and adding Subsections (i)–(r) to read as follows:

(d) Each year the board shall prepare a registry of licensed professional counselors [~~with specialties, if any, identified~~]. The registry shall be made available to the licensees, other state agencies, and the general public on request.

(f) *The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this Act. The board may assess the continuing education needs of licensees and may require licensees to attend continuing education courses specified by the board. The board by rule shall develop a process to evaluate and approve continuing education courses.*

(g) *The board shall identify the key factors for the competent performance by a licensee of the licensee's professional duties. The board shall implement a procedure to assess a licensee's participation in continuing education programs.*

(h) Each person licensed under this Act is responsible for renewing his license before the expiration date.

(i) ~~[(g)]~~ The board shall adopt a system under which licenses expire on various dates during the year. For the year in which the *initial license* ~~[expiration date]~~ is issued ~~[changed]~~, license fees payable on the date of issuance shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is applicable to the number of months during which the license is valid. On renewal of the license ~~[on the new expiration date]~~, the total license fee is payable.

(j) *A person may renew an unexpired license by paying to the board before the expiration of the license the required renewal fee.*

(k) *If a person's license has been expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.*

(l) *If a person's license has been expired for longer than 90 days but less than one year because of the person's failure to pay the renewal fee or failure to meet continuing education requirements, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license and providing the board with proof of completing the required continuing education.*

(m) *If a person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license. However, the board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee that is equal to the examination fee for the license.*

(n) *At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the board. ~~[Failure to renew a license by the expiration date shall result in an increase of the renewal fee by an amount to be determined by the board with the approval of the department. If failure to renew continues for more than 30 days after the date of expiration, the board shall notify the person licensed under this Act of the expiration date of his license and the amount of the fee required for renewal. If failure to renew continues for more than 90 days after the date of expiration of the license, the license shall be revoked. Any licensee whose license is revoked because of failure to pay the annual license renewal fee may secure reinstatement of his license at any time within one year from the expiration date on payment of the license fee and a penalty fee in an amount to be determined by the board with the approval of the department. After the expiration of the year for which the license fee was not paid, a license may not be reinstated unless the licensee fulfills current requirements applicable to all licensees as provided by the rules adopted by the board.]~~*

(o) ~~[(h)]~~ A licensee may request that *the licensee's* ~~[his]~~ license be declared inactive. The licensee then foregoes the licensing rights granted under this Act but is relieved of renewal fees and penalty fees. *The* ~~[At any time in the future, the]~~ license shall be declared active on the payment of a license fee if the applicant is not in violation of this Act at the time of application for reactivation ~~[or renewal]~~ of the license and if the applicant fulfills current requirements applicable to all *inactive* licensees as provided by the rules adopted by the board.

(p) *The board by rule may provide for the issuance of a temporary license. Rules adopted under this subsection shall include a time limit for a temporary license.*

(q) *The board by rule may adopt a system under which a temporary license may be issued to individuals who have met all of the academic requirements for licensing and who have entered into a supervisory agreement with a supervisor approved by the board.*

(r) *The board by rule may adopt a system for placing a licensee on retirement status.*

SECTION 13. Section 15, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. *LICENSE REQUIRED; PENALTY.* (a) *Unless the person is exempt under Section 3 of this Act, a person may not engage on or after January 1, 1994, in the practice of counseling without a license issued under this Act.*

(b) A person commits an offense if the person, ~~after one year from the effective date of this Act,~~ knowingly or intentionally: ~~[acts as a licensed professional counselor without a license issued under this Act]~~

(1) *engages in the practice of counseling without holding a license issued under this Act;*

(2) *engages in the practice of counseling after the person's license under this Act has expired;*

(3) *represents the person by the title "Licensed Professional Counselor" or "Licensed Counselor" without being licensed under this Act; or*

(4) *makes use of any title, words, letters, or abbreviations that imply that the person is licensed under this Act if the person is not licensed under this Act.*

(c) ~~[(b)]~~ An offense under Subsection (b) of this section is a Class B misdemeanor.

SECTION 14. Section 16, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. **DISCIPLINARY ACTIONS** ~~[REVOCAION OR SUSPENSION OF LICENSE]~~. (a) The board shall ~~[may]~~ revoke, *suspend,* ~~[or]~~ suspend on an emergency basis the license of a counselor; *place on probation a counselor whose license has been suspended, or reprimand a counselor if* ~~[on proof that]~~ the counselor:

(1) has violated this Act or a rule or code of ethics adopted by the board; ~~[or]~~

(2) is legally committed to an institution because of mental incompetence from any cause;

or

(3) *offers to pay or agrees to accept any remuneration, directly or indirectly, to or from any person or entity for securing or soliciting a patient or patronage.*

(b) If a license suspension is probated, the board may require the licensee to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) *continue or review continuing professional education until the licensee attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.*

(c) A licensee is entitled to a hearing conducted by the State Office of Administrative Hearings before a sanction is imposed under this section.

(d) The board by rule shall adopt a broad schedule of sanctions for violations under this Act. The State Office of Administrative Hearings shall use the schedule for any sanction imposed as the result of a hearing conducted by that office.

(e) Proceedings for revocation or suspension of a license and appeals from those proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 15. The Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes) is amended by adding Sections 16A, 16B, 16C, 16D, and 16E to read as follows:

Sec. 16A. **TEMPORARY SUSPENSION OF LICENSE.** *If the majority of the board or a three-member committee of board members designated by the board determines from the evidence or information presented to it that a licensed professional counselor by continuation in practice would constitute a continuing and imminent threat to the public welfare, the board or the three-member committee shall temporarily suspend the license of the licensed professional counselor. The license may be suspended under this section without notice or hearing on the complaint, provided institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under this chapter and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments. The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if probable cause exists that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of temporary suspension.*

Sec. 16B. COMPLAINT PROCEDURE IN GENERAL. (a) The board shall keep an information file about each complaint filed with the board. The board's information file shall be kept current and contain a record for each complaint of:

- (1) all persons contacted in relation to the complaint;*
- (2) a summary of findings made at each step of the complaint process;*
- (3) an explanation of the legal basis and reason for a complaint that is dismissed; and*
- (4) other relevant information.*

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.

(d) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Sec. 16C. COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection shall:

- (1) distinguish between categories of complaints;*
- (2) ensure that complaints are not dismissed without appropriate consideration;*
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;*
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and*
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.*

(b) The board shall dispose of all complaints in a timely manner. The board shall establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(c) The executive secretary of the board shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint.

Sec. 16D. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

- (1) informal disposition of a contested case under Section 19(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and*
- (2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.*

(b) Rules adopted under this section must provide the complainant and the licensee an opportunity to be heard and must require the presence of a representative of the department's legal staff or the attorney general's office to advise the board or board's employees.

Sec. 16E. MONITORING OF LICENSEES. The board by rule shall develop a system for monitoring licensees' compliance with the requirements of this Act. Rules adopted under this section shall include procedures for monitoring a licensee who is ordered by the board to

perform certain acts to ascertain that the licensee performs the required acts and to identify and monitor licensees who represent a risk to the public.

SECTION 16. Section 18, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 18. **ENDORSEMENT [RECIPROCITY]**. (a) The board may grant, on application and payment of fees, a *provisional license [without examination]* to a person who at the time of application holds a valid license or certificate as a counselor issued by another state or any political territory or jurisdiction acceptable to the board [~~if in the board's opinion the requirements for that license or certificate are substantially the same as the requirements of this Act~~]. ~~An applicant for a provisional license under this section must:~~

(1) *be licensed in good standing as a counselor in another state, territory, or jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this Act;*

(2) *have passed a national or other examination recognized by the board relating to counseling; and*

(3) *be sponsored by a person licensed by the board under this Act with whom the provisional licensee may practice under this section.*

(b) *An applicant for a provisional license may be excused from the requirement of Subsection (a)(3) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.*

(c) *A provisional license is valid until the date the board approves or denies the provisional licensee's application for a license. The board shall issue a license under this Act to the holder of a provisional license under this section if:*

(1) *the provisional licensee passes the examination required by Section 12 of this Act;*

(2) *the board verifies that the provisional licensee has the academic and experience requirements for a license under this Act; and*

(3) *the provisional licensee satisfies any other license requirements under this Act.*

(d) *The board must complete the processing of a provisional licensee's application for a license not later than the 180th day after the date the provisional license is issued or at the time licenses are issued following the successful completion of the examination, whichever is later.*

SECTION 17. Section 19, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 19. **REVENUE, RECEIPTS AND DISBURSEMENTS**. (a) *All money paid to the [The] department [shall receive and account for funds derived] under this Act[-. The funds] shall be deposited in the State Treasury to the credit of a special fund to be known as the professional counselors licensing fund and may be used only for the administration of this Act.*

(b) ~~[The board may impose application, examination, license, and renewal fees and any other appropriate fees in an amount fixed by the board.]~~ *The board by rule shall establish reasonable and necessary [fix the amounts of the] fees so that the fees, in the aggregate, produce [to collect] sufficient revenue to meet the expenses of administering this Act without accumulating unnecessary surpluses.*

(c) *The fees set by the board may be adjusted so that the total fees collected are sufficient to meet the expenses of administering this Act. The board may not set a fee for an amount less than the amount of that fee on September 1, 1993.*

SECTION 18. Section 21, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 21. **SUNSET PROVISION**. The Texas State Board of Examiners of Professional Counselors is subject to Chapter 325, Government Code (Texas Sunset Act). Unless the board is continued in existence as provided by that chapter, the board is abolished September 1, 2005 [1993].

SECTION 19. The changes in law made by this Act in the qualifications of, and prohibitions applying to, members of the Texas State Board of Examiners of Professional Counselors do not affect the entitlement of a member appointed before September 1, 1993, to

continue to hold office on the board for the term for which the member was appointed. The changes in law apply only to a member appointed on or after September 1, 1993.

SECTION 20. Sections 9, 13, and 22, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), are repealed.

SECTION 21. (a) This Act takes effect September 1, 1993.

(b) The change in law made by this Act to Section 10, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), applies only to a person who applies for a professional counselor's license on or after September 1, 1996. A person who applies for a professional counselor's license before that date is covered by the law in effect when the person applied, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act to Section 15, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes), applies only to an offense committed on or after January 1, 1994. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before that date. An offense committed before January 1, 1994, is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 22. On and after January 1, 1994, the State Office of Administrative Hearings shall assume responsibility for hearings held with respect to contested cases arising under the Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes) and its subsequent amendments. The Texas State Board of Examiners of Professional Counselors and the chief administrative law judge of the State Office of Administrative Hearings may agree to transfer contested cases pending before the board to the State Office of Administrative Hearings before January 1, 1994.

SECTION 23. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 6, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 2741 on May 26, 1993, by a non-record vote; passed by the Senate, with amendments, on May 24, 1993, by a viva-voce vote.

Approved June 11, 1993.

Effective Sept. 1, 1993.