

CHAPTER 669

S.B. No. 674

AN ACT

relating to the regulation of health professions, including the profession of nursing facility administration, and to the abolition of the Texas Board of Licensure for Nursing Home Administrators; providing penalties.

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

ARTICLE 1. HEALTH PROFESSIONS COUNCIL

SECTION 1.01. Title 71, Revised Statutes, is amended by adding Article 4512p to read as follows:

Art. 4512p. HEALTH PROFESSIONS COUNCIL

Sec. 1. HEALTH PROFESSIONS COUNCIL. (a) The Health Professions Council shall administer the functions provided by this article and provide a means for the boards represented on the council to coordinate the boards' administrative and regulatory efforts.

(b) The council consists of one representative appointed by each of the following:

- (1) the Texas Board of Chiropractic Examiners;*
- (2) the State Board of Dental Examiners;*
- (3) the Texas Optometry Board;*
- (4) the State Board of Pharmacy;*
- (5) the Texas State Board of Podiatry Examiners;*
- (6) the State Board of Veterinary Medical Examiners;*
- (7) the Texas State Board of Medical Examiners;*
- (8) the Board of Nurse Examiners;*
- (9) the Texas State Board of Examiners of Psychologists;*
- (10) the Board of Vocational Nurse Examiners;*
- (11) the entity that regulates the practice of physical therapy;*
- (12) the entity that regulates the practice of occupational therapy;*
- (13) the health licensing division of the Department of Public Health; and*
- (14) the governor's office.*

(c) The council shall elect from the council's members a presiding officer and assistant presiding officer to conduct the business of the council.

(d) A member of the council is not entitled to compensation or a per diem for the member's service on the council.

(e) The council may employ staff or designate staff for the council from the employees of the boards listed by Subsection (b) of this section as necessary for the council to carry out the council's responsibilities.

(f) The council shall adopt an annual budget that is funded by a prorated assessment paid by the boards listed by Subsection (b) of this section.

Sec. 2. TOLL-FREE TELEPHONE COMPLAINT SYSTEM. (a) *The council shall establish and operate a toll-free telephone complaint system to provide assistance and referral services for persons making a complaint relating to a health profession regulated by the state.*

(b) *After the establishment of a toll-free telephone complaint system under this section, an agency of the state that regulates a health profession shall be required to list the toll-free telephone number of the system with the agency's regular telephone number.*

Sec. 3. TRAINING AND GUIDELINES FOR MEMBERS OF STATE BOARDS AND COMMISSIONS. (a) *The council shall establish a training program for the members of the boards and commissions in the state that regulate health professions.*

(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 or commission to which the member is appointed;*
- (2) *the programs operated by that state agency;*
- (3) *the role and functions of that state agency;*
- (4) *the rules of that state agency with an emphasis on the rules that relate to disciplinary and investigatory authority;*
- (5) *the current budget for that state agency;*
- (6) *the results of the most recent formal audit of that state agency;*
- (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 that state agency or the Texas Ethics Commission.*

Sec. 4. UNLAWFUL FALSE, MISLEADING, OR DECEPTIVE ADVERTISING. (a) *Advertising that is false, misleading, or deceptive or that is not readily subject to verification is declared unlawful and is subject to action by the appropriate health licensing agency as a ground for revocation or denial of a license and subject to action by the consumer protection division of the office of the attorney general under Sections 17.47, 17.58, 17.60, and 17.61, Business & Commerce Code.*

(b) *False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:*

- (1) *makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;*
- (2) *makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;*
- (3) *compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;*
- (4) *contains a testimonial;*
- (5) *causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;*

(6) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) A violation of this section does not create a private cause of action, including an action for breach of warranty or for an implied contract or warranty for good and workmanlike service.

Sec. 5. BILLING INFORMATION REQUIRED; PROHIBITED PRACTICES. (a) On the written request of a patient, a health care professional shall provide, in plain language, a written explanation of the charges for professional services previously made on a bill or statement for the patient.

(b) A health care professional may not persistently or flagrantly overcharge or overtreat a patient.

(c) A violation of this section is subject to action by the appropriate health licensing agency as a ground for revocation or denial of a license.

Sec. 6. CIVIL PENALTY. (a) A person who is in violation of this article is liable to the state for a civil penalty not to exceed \$1,000 for each violation. Each day of violation constitutes a separate violation. The attorney general may institute an action under this section.

(b) A civil action filed by the attorney general under this section shall be filed in a district court in Travis County or in the county in which the violation occurred.

(c) The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney fees, reasonable investigative costs, witness fees, and deposition expenses.

(d) A civil penalty recovered under this section shall be deposited in the state treasury to the credit of the general revenue fund.

Sec. 7. INJUNCTIVE ACTION. (a) The attorney general or the appropriate health licensing board may bring an injunctive action to stop a violation or threatened violation of this article.

(b) The attorney general or health licensing agency may recover reasonable expenses incurred in obtaining injunctive relief under this section, including court costs, reasonable attorney fees, reasonable investigative costs, witness fees, and deposition expenses.

Sec. 8. REPORTS AND STUDIES. (a) The council shall prepare an annual report to be sent to the governor, the lieutenant governor, and the speaker of the house of representatives not later than February 1 of each year.

(b) A report under this section shall include:

(1) a statistical compilation of enforcement actions taken by a board listed by Section 1(b) of this article;

(2) recommendations for statutory changes to improve the regulation of the health care professions; and

(3) other relevant information and recommendations determined necessary by the council.

(c) The council shall determine and adopt additional relevant information to be included in the reports.

(d) The council shall:

(1) adopt a memorandum of understanding with the General Services Commission to develop and implement a plan to collocate the staffs of the boards listed by Section 1(b) of

this article, except that the memorandum shall provide for a study of the feasibility of relocating the health licensing division of the Department of Public Health with the collocated staffs;

(2) study and report to the 74th Legislature those administrative functions performed by the boards listed in Section 1(b) of this article that would be feasible for consolidation, provided that the boards listed in Section 1(b) of this article may adopt memoranda of understanding and contract with each other to share services and personnel at any time prior to submission of the report, subject to approval of the Legislative Budget Board;

(3) study and report to the 74th Legislature, in coordination with the Legislative Budget Board and the governor's office of budget and planning, a uniform budget plan and standardized budget performance objectives, provided the Legislative Budget Board may force compliance with this subdivision at an earlier date;

(4) develop and implement, in coordination with the staffs of the Legislative Budget Board, the governor's office of budget and planning, and the licensing division of the Department of Public Health, information necessary to prepare statistical comparisons of licensing functions and unit costs of all boards represented on the council;

(5) develop and implement a plan to centralize the receipt and referral of complaints for member agencies using the toll-free complaint number established under Section 2 of this article;

(6) study the feasibility of centralizing the investigation of complaints; and

(7) study and report to the 74th Legislature on the consequences to the quality of health care services by third-party review and approval of health care provider treatment decisions and claims submission by nonlicensed personnel and determine the feasibility of establishing a statutory requirement to limit the reviews and approvals to licensed professionals in their respective health care fields within their respective scopes of practice and the feasibility of enacting a statutory limitation or prohibition to prevent individuals who are not licensed health care providers from intervening in health care decisions. The report shall also consider the necessity of requiring due process steps for appeals of claims and treatment denials for health care providers.

(e) To carry out its duties under Subsection (d) of this section, the council shall appoint working groups consisting of the executive director of the member boards who shall report to the council.

(f) The results of the council's studies under Subsection (d) of this section shall be reported to the governor, the lieutenant governor, and the speaker of the house of representatives not later than January 1, 1995.

Sec. 9. **REMEDIES NOT EXCLUSIVE.** The provisions of this article are in addition to any other remedy provided by any other statute, rule, or common law.

ARTICLE 2. NURSING FACILITY ADMINISTRATION

SECTION 2.01. Title 71, Revised Statutes, is amended by adding Article 4512q to read as follows:

Art. 4512q. NURSING FACILITY ADMINISTRATION

Sec. 1. **SHORT TITLE.** This article may be cited as the Texas Nursing Facility Administrators Licensure Act.

Sec. 2. **DEFINITIONS.** In this article:

(1) "Board" means the Texas Board of Nursing Facility Administrators.

(2) "Department" means the Texas Department of Health.

(3) "Nursing facility" means an institution or facility that is licensed as a nursing home, nursing facility, skilled nursing facility, or custodial care home by the department under Chapter 242, Health and Safety Code.

(4) "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility administration without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.

(5) "Practice of nursing facility administration" means the performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

Sec. 3. CREATION OF THE BOARD. (a) The Texas Board of Nursing Facility Administrators is created within the department.

(b) The board is composed of nine members appointed by the governor. Three members must be members of the public, and six members must be nursing facility administrators licensed under this article. Appointments to the board shall be made without regard to the race, color, disability, sex, religion, or national origin of the person appointed.

(c) Members of the board serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year. A person appointed to fill a vacancy on the board shall serve for the unexpired portion of the term for which the person is appointed.

(d) The board shall include the state long-term care ombudsman of the Texas Department on Aging and the Commissioner of Human Services, or the commissioner's designee, as nonvoting, ex officio members. These ex officio members shall serve at no expense to the department or the board.

Sec. 4. MEMBERSHIP REQUIREMENTS. (a) A member of the board who is an administrator must:

(1) be a resident of this state and a citizen of the United States;

(2) be licensed under this article and currently serving as a nursing facility administrator or have direct supervisory responsibility on a daily basis over an administrator who works in a nursing facility; and

(3) hold a degree from an accredited four-year college or university.

(b) An administrator who does not have a degree as required by Subsection (a)(3) of this section may be qualified to serve as a member of the board if the administrator has two years of practical experience as an administrator for every year less than four that the administrator has completed at a four-year college or university.

(c) At least one administrator member of the board must be associated with and a representative of a nonproprietary nursing facility, and at least one administrator member of the board must have an ownership interest in a nursing facility.

(d) A member or employee of the board may not:

(1) be an officer, employee, or paid consultant of a trade association in the nursing facility industry; or

(2) be related within the second degree by affinity or within the third degree by consanguinity to an officer, employee, or paid consultant of a trade association in the nursing facility industry.

(e) A member of the board who represents the general public may not have a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant or be related within the second degree by affinity or within the third degree by consanguinity to a person who has a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant.

(f) A 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 on the board.

Sec. 5. GROUNDS FOR REMOVAL. 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 Section 4 of this article for appointment to the board;

(2) does not maintain during service on the board the qualifications required by Section 4 of this article for appointment to the board;

(3) violates a prohibition established by Section 4 of this article;

(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 from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year, unless the absence is excused by a majority vote of the board.

Sec. 6. **BOARD OFFICERS; MEETINGS; QUORUM; EXPENSES.** (a) The board shall elect from its members a presiding officer and assistant presiding officer who serve according to 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.

(c) A majority of the members constitutes a quorum.

(d) Each member of the board is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

Sec. 7. **APPLICATION OF OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE ACTS.** The board is subject to the 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, and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

Sec. 8. **POWERS AND DUTIES OF BOARD.** (a) The board may adopt rules consistent with this article.

(b) The board shall:

(1) adopt and publish a code of ethics;

(2) establish the qualifications of applicants for licenses and the renewal of licenses;

(3) spend funds necessary for the proper administration of the board's assigned duties;

(4) establish reasonable and necessary fees for the administration and implementation of this article; and

(5) establish a minimum number of hours of continuing education required to renew a license and periodically assess the continuing education needs of license holders to determine whether specific course content should be required.

Sec. 9. **ADMINISTRATIVE FUNCTIONS; EXECUTIVE SECRETARY.** (a) The department shall provide the personnel and necessary facilities required to administer this article. If necessary to the administration of this article, the department may secure and provide for compensation for services that the department considers necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

(b) The commissioner of health shall designate an employee to serve as executive secretary of the board. The executive secretary must be an employee of the department. The executive secretary is the administrator of the licensing activities under this article. The executive secretary shall carry out other functions as may be required by the board or the department to administer this article.

Sec. 10. **PUBLIC INTEREST INFORMATION.** (a) The board shall prepare information of public interest describing the functions of the board and the department under this article and the procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) 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.

Sec. 11. **FEES; FUNDS; ANNUAL REPORT.** (a) The board by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this article. The board by rule may set different licensing fees for different categories of licenses.

(b) The board shall receive and account for funds received under this article. The funds shall be deposited in the state treasury to the credit of the general revenue fund in an

account known as the licensed nursing facility administrator's account to be used only for the administration of this article.

(c) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board or the department for the administration of this article during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(d) The board may receive and disburse funds received from any federal source for the furtherance of the board's functions under this article.

Sec. 12. PRACTICING WITHOUT A LICENSE. A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this article.

Sec. 13. LICENSE APPLICATION; QUALIFICATIONS. (a) An applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.

(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received. The rules under this section may not be inconsistent with the rules of the department related to the application dates of other licenses administered by the department.

(c) An applicant for a nursing facility administrator's license must take a licensing examination under this article. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the board that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:

- (1) the needs served by nursing facilities;
- (2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and
- (3) the elements of nursing facility administration.

(d) An applicant who has not completed the course of instruction and training described by Subsection (c) of this section must present evidence satisfactory to the board of having completed sufficient education, training, and experience in the fields described by Subsection (c) of this section to enable the applicant to engage in the practice of nursing facility administration.

Sec. 14. EXAMINATION. (a) The licensing examination shall be prepared or approved by the board and administered by the board to qualified applicants at least twice each calendar year. The board shall have the written portion of the examination, if any, validated by a testing professional.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this article, the board shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the board shall notify examinees of the results of the examination not later than two weeks after the date the board receives the results from the testing service. If the notice of the examination results 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.

(c) If requested in writing by a person who fails the licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination.

(d) The board may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

Sec. 15. LICENSES; TEMPORARY LICENSE; INACTIVE STATUS; PROVISIONAL LICENSE. (a) A person who meets the requirements for licensing under this article is entitled to receive a license. A nursing facility administrator's license is not transferable.

(b) A person licensed under this article must notify the board of the license holder's correct mailing address.

(c) A license is valid for two years. The board by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(d) The board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.

(e) The board by rule may provide for a license holder to be placed on inactive status.

Sec. 16. PROVISIONAL LICENSE. (a) On application, the board shall grant a provisional license under this article. An applicant for a provisional license under this section must:

(1) be licensed in good standing as a nursing facility administrator in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this article;

(2) have passed a national or other examination recognized by the board relating to the practice of nursing facility administration; and

(3) be sponsored by a person licensed under this article with whom the provisional license holder 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 license holder's application for a license. The board shall issue a license under this article to the holder of a provisional license under this section if:

(1) the provisional license holder passes the examination required by Section 14 of this article;

(2) the board verifies that the provisional license holder has the academic and experience requirements for a license under this article; and

(3) the provisional license holder satisfies any other license requirements under this article.

(d) The board shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend this time in order to receive the results of a national examination or other examination administered or graded by an outside organization recognized by the board.

Sec. 17. LICENSE RENEWAL. (a) A person may renew an unexpired license by paying to the board before the expiration of the license the required renewal fee.

(b) 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.

(c) If a person's license has been expired for longer than 90 days but less than one year, 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.

(d) 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.

(e) 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 license holder's last known address according to the records of the board.

Sec. 18. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this article. The board may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board.

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

Sec. 19. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. (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.

(e) 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.*

(f) The board shall dispose of all complaints in a timely manner. The board by rule 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.

(g) The executive secretary shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Sec. 20. SANCTIONS. (a) The board may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation after due notice and hearing on proof of any of the following grounds:

- (1) the license holder has wilfully or repeatedly violated a provision of this article or a rule adopted under this article;*

(2) *the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of a facility of which the license holder is an administrator;*

(3) *the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;*

(4) *the intemperate use of alcohol or drugs by the license holder in the board's opinion creates a hazard to the patients of a facility;*

(5) *a judgment of a court of competent jurisdiction finds that the license holder is mentally incapacitated;*

(6) *the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude; or*

(7) *the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.*

(b) *If a license suspension is probated, the board may require the license holder 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 license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.*

(c) *A license holder is entitled to a hearing before the hearings examiner designated by the board before a sanction is imposed under this section.*

(d) *The board by rule shall adopt a broad schedule of sanctions for violations under this article. The designated hearings examiner shall use the schedule for any sanction imposed as the result of a hearing conducted by the designated hearings examiner.*

Sec. 21. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS. *In addition to the other disciplinary actions authorized under this article, the board may issue a written reprimand to a license holder who violates this article or require that a license holder who violates this article participate in continuing education programs. The board shall specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.*

Sec. 22. ADMINISTRATIVE PENALTY. (a) *The board may impose an administrative penalty against a person licensed or regulated under this article who violates this article or a rule or order adopted by the board under this article.*

(b) *The penalty for a violation may be in an amount not to exceed \$1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.*

(c) *The amount of the penalty shall be based on:*

(1) *the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;*

(2) *the economic harm to property or the environment caused by the violation;*

(3) *the history of previous violations;*

(4) *the amount necessary to deter future violations;*

(5) *efforts to correct the violation; and*

(6) *any other matter that justice may require.*

(d) *If the executive secretary determines that a violation has occurred, the executive secretary may issue to the board a report that states the facts on which the determination is based and the executive secretary's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.*

(e) *Within 14 days after the date the report is issued, the executive secretary shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a*

hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive secretary or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the executive secretary, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the board shall set a hearing and give notice of the hearing to the person. The hearing shall be held by a hearings examiner designated by the board. The hearings examiner shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the board by certified mail.

(l) If the board receives a copy of an affidavit under Subsection (k)(2) of this section, the board may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the board may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

Sec. 23. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(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 license holder an opportunity to be heard and must require the presence of a legal representative to advise the board or the board's employees.

Sec. 24. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this article. Rules adopted under this section shall include procedures for monitoring a license holder who is ordered by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Sec. 25. CIVIL PENALTY. A person who violates this article is liable to the state for a civil penalty of \$1,000 for each day of violation. At the request of the board, the attorney general shall bring an action to recover a civil penalty established by this section.

Sec. 26. ASSISTANCE OF ATTORNEY GENERAL. The attorney general shall provide legal assistance as necessary in enforcing the provisions of this article. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Sec. 27. OFFENSE. (a) A person commits an offense if the person knowingly or intentionally violates Section 12 of this article.

(b) An offense under this section is a Class B misdemeanor.

Sec. 28. SUNSET PROVISION. The Texas Board of Nursing Facility Administrators is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this article expires September 1, 2005.

ARTICLE 3. EFFECTIVE DATE; TRANSITION; EMERGENCY

SECTION 3.01. This Act takes effect September 1, 1993.

SECTION 3.02. (a) The Texas Board of Licensure for Nursing Home Administrators is abolished on the effective date of this Act. As soon as possible after the effective date of this Act, the governor shall appoint the initial members of the Texas Board of Nursing Facility Administrators. In making the initial appointments, the governor shall designate members to serve terms as follows:

(1) two licensed nursing facility administrator members and one public member serve terms expiring February 1, 1995;

(2) two licensed nursing facility administrator members and one public member serve terms expiring February 1, 1997; and

(3) two licensed nursing facility administrator members and one public member serve terms expiring February 1, 1999.

(b) On the effective date of this Act, the Texas Board of Nursing Facility Administrators assumes the functions of the Texas Board of Licensure for Nursing Home Administrators. The obligations, right, contracts, and records of the Texas Board of Licensure for Nursing Home Administrators are transferred to the Texas Board of Nursing Facility Administrators. The equipment and other property and personnel of and unspent money appropriated to or for the Texas Board of Licensure for Nursing Home Administrators are transferred to the Texas Board of Health. The rules of the abolished board are continued in effect as rules of the Texas Board of Health or the Texas Board of Nursing Facility Administrators, as appropriate, until superseded by rule of the Texas Board of Health or the Texas Board of Nursing Facility Administrators, as appropriate. A license in effect that was issued by the abolished board is continued in effect as a license of the Texas Board of Nursing Facility Administrators. A complaint, investigation, or other proceeding pending before the abolished board is transferred without change in status to the Texas Board of Nursing Facility Administrators. Any reference in law to the Texas Board of Licensure for Nursing Home Administrators means the Texas Board of Nursing Facility Administrators.

SECTION 3.03. The changes in law made by this Act relating to a penalty that may be imposed apply only to a violation that occurs on or after the effective date of this Act. A violation occurs on or after the effective date of this Act only if each element of the violation occurs on or after that date. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 3.04. 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 the Senate on May 6, 1993, by a viva-voce vote; May 19, 1993, Senate refused to concur in House amendment and requested appointment of Conference Committee; May 22, 1993, House granted request of the Senate; May 26, 1993, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendment, on May 18, 1993, by a non-record vote; May 22, 1993, House granted request of the Senate for appointment of Conference Committee; May 26, 1993, House adopted Conference Committee Report by a non-record vote.

Approved June 15, 1993.

Effective Sept. 1, 1993.