

TX AT Act 12/04

OCCUPATIONS CODE
SUBTITLE H. PROFESSIONS RELATED TO CERTAIN TYPES OF [THERAPY\[0\]](#)
CHAPTER 451. ATHLETIC TRAINERS
SUBCHAPTER A. GENERAL PROVISIONS

§ 451.001. DEFINITIONS. In this chapter:

(1) "Athletic injury" means an injury sustained by a person as a result of the person's participation in an organized sport or sport-related exercise or activity, including interscholastic, intercollegiate, intramural, semiprofessional, and professional sports activities.

(2) "Athletic trainer" means a person who practices athletic training, is licensed by the board, and may use the initials "LAT," "LATC," and "AT" to designate the person as an athletic trainer. The terms "sports trainer" and "licensed athletic trainer" are equivalent to "athletic trainer."

(3) "Athletic training" means the form of health care that includes the practice of preventing, recognizing, assessing, managing, treating, disposing of, and reconditioning athletic injuries under the direction of a physician licensed in this state or another qualified, licensed health professional who is authorized to refer for health care services within the scope of the person's license.

(4) "Board" means the Advisory Board of Athletic Trainers.

(5) "Commissioner" means the commissioner of public health.

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

§ 451.002. INTERPRETATION; PRACTICE OF MEDICINE. This chapter does not authorize the practice of medicine by a person not licensed by the Texas State Board of Medical Examiners.

§ 451.003. APPLICABILITY. This chapter does not apply to:

(1) a physician licensed by the Texas State Board of Medical Examiners;

(2) a dentist, licensed under the laws of this state, engaged in the practice of dentistry;

(3) a licensed optometrist or therapeutic optometrist engaged in the practice of optometry or therapeutic optometry as defined by statute;

(4) an occupational therapist engaged in the practice of occupational [therapy\[0\]](#);

(5) a nurse engaged in the practice of nursing;

(6) a licensed podiatrist engaged in the practice of podiatry as defined by statute;

(7) a [physical\[0\]](#) therapist engaged in the practice of [physical\[0\]](#) [therapy\[0\]](#);

(8) a registered massage therapist engaged in the practice of massage [therapy\[0\]](#);

(9) a commissioned or contract physician, [physical\[0\]](#) therapist, or [physical\[0\]](#) therapist assistant in the United States Army, Navy, Air Force, or Public Health Service; or

(10) an athletic trainer who does not live in this state, who is licensed, registered, or certified by an authority recognized by the board, and who provides athletic training in this state for a period determined by the board.

SUBCHAPTER B. ADVISORY BOARD OF ATHLETIC TRAINERS

§ 451.051. BOARD; MEMBERSHIP. (a) The Advisory Board of Athletic Trainers is a part of the department and shall perform its duties as a board within the department.

(b) The board consists of five members appointed by the governor with the advice and consent of the senate as follows:

- (1) three members who are athletic trainers; and
- (2) two members who represent the public.

(c) Each member of the board must be a citizen of the United States and a resident of this state for the five years preceding appointment.

(d) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

§ 451.0511. PUBLIC MEMBER ELIGIBILITY. A person may not be a public member of the board if the person or the person's spouse:

- (1) is registered, certified, or licensed by a regulatory agency in the field of athletic training;
- (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board; or
- (4) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

§ 451.0512. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a 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.

(b) A person may not be a member of the board if:

- (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of athletic training; or
- (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of athletic training.

(c) A person may not be a member of the board if the person 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.

§ 451.0513. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

- (1) does not have at the time of taking office the qualifications required by Section 451.051;
- (2) does not maintain during service on the board the qualifications required by Section 451.051;
- (3) is ineligible for membership under Section 451.0512;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's
- (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by the board.

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

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the commissioner shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2001, 77th Leg., ch. 1420, § 14.202(b), eff. Sept. 1, 2001.

§ 451.052. OFFICIAL OATH. A person appointed to the board shall take the constitutional oath of office not later than the 15th day after the date of appointment. On presentation of the oath, the secretary of state shall issue a commission to the appointee as evidence of the appointee's authority to act as a member of the board.

§ 451.053. TERMS; VACANCY. (a) Board members serve staggered six-year terms with the terms of one or two members expiring on January 31 of each odd-numbered year.

(b) If a vacancy occurs on the board, the governor shall appoint a successor to serve for the unexpired portion of the term.

§ 451.054. COMPENSATION. A member or employee of the board is entitled to compensation and reimbursement of travel expenses incurred by the member or employee as provided by the General Appropriations Act.

§ 451.055. OFFICERS. (a) The governor shall designate a member of the board as the board's presiding officer to serve in that capacity at the will of the governor. The board shall elect an assistant presiding officer and secretary-treasurer from its members. The assistant presiding officer and secretary-treasurer serve a one-year term.

§ 451.056. MEETINGS. The board shall meet at least twice a year. The board may hold additional meetings on the call of the presiding officer or at the written request of any three members of the board.

§ 451.057. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the 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:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict of interest laws; and
- (8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

Added by Acts 2001, 77th Leg., ch. 1420, § 14.202(b), eff. Sept. 1, 2001.

SUBCHAPTER C. BOARD POWERS AND DUTIES

§ 451.101. GENERAL POWERS AND DUTIES. (a) The board shall:

- (1) adopt an official seal;
- (2) prescribe the application form for a license applicant;
- (3) prescribe a suitable form for a license certificate; and
- (4) prepare and conduct an examination for license applicants.

(b) The board shall have suitable office space to:

- (1) administer this chapter; and
- (2) maintain permanent records.

(c) The board may appoint committees that the board considers necessary to carry out its duties.

§ 451.1015. STANDARDS OF CONDUCT INFORMATION. The commissioner or the commissioner's designee shall provide to members of the board, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

§ 451.1016. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the commissioner and the staff of the department.

§ 451.102. EXECUTIVE SECRETARY AND EMPLOYEES. The board may employ an executive secretary and other personnel necessary to administer this chapter. The executive secretary has the duties and responsibilities determined by the board.

§ 451.103. RULES. The board may adopt rules necessary for the performance of its duties.

§ 451.1035. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the board may not include a rule that:

- (1) restricts the use of any medium for advertising;
- (2) restricts the use of a license holder's personal appearance or voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the license holder; or
- (4) restricts the license holder's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1420, § 14.205(a), eff. Sept. 1, 2001.

§ 451.104. RECORDS. (a) The board shall:

- (1) keep a record of its proceedings in a book kept for that purpose;
- (2) maintain a complete record of all licensed athletic trainers; and
- (3) annually prepare a roster showing the names and addresses of all licensed athletic trainers.

(b) The board shall make a copy of the roster available to any person requesting it on payment of a fee established by the board in an amount sufficient to cover the cost of the roster.

§ 451.105. EXPENDITURES. (a) The department may expend funds appropriated to it to administer this chapter.

(b) The board may authorize all necessary expenditures to administer this chapter, including expenditures for:

- (1) stationery;
- (2) equipment; and
- (3) facilities.

§ 451.106. FEES. After consultation with the commissioner of public health or the department, the board by rule shall set fees under this chapter in amounts reasonable and necessary to cover the cost of administering this chapter.

§ 451.107. ANNUAL REPORT. (a) The department 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 during the preceding fiscal year.

(b) The annual report must be in the form and reported in the time provided by the General Appropriations Act.

§ 451.108. PUBLIC PARTICIPATION. 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.

§ 451.109. COMPLAINTS. (a) The board shall maintain a file on each written complaint filed with the board. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the board;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the

complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

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

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

§ 451.110. SUBPOENAS. (a) In an investigation of a complaint filed with the board, the board may request that the commissioner or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with the subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board may delegate the authority granted under Subsection (a) to the secretary-treasurer or executive secretary of the board.

(f) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its records.

(g) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

(h) All information and materials subpoenaed or compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in discipline of the holder of a license, except that this information may be disclosed to:

- (1) persons involved with the board in a disciplinary action against the holder of a license;
- (2) athletic trainer licensing or disciplinary boards in other jurisdictions;
- (3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;
- (4) law enforcement agencies; and
- (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the board against a holder of a license, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

SUBCHAPTER D. LICENSE REQUIREMENTS

§ 451.151. LICENSE REQUIRED. A person may not hold the person out as an athletic trainer or perform any activity of an athletic trainer unless the person holds a license under this chapter.

§ 451.152. LICENSE APPLICATION. An applicant for an athletic trainer license must submit to the board:

- (1) an application on a form prescribed by the board; and
- (2) the required examination fee.

§ 451.153. APPLICANT QUALIFICATIONS. (a) An applicant for an athletic trainer license must:

- (1) have met the athletic training curriculum requirements of a college or university approved by the board and give proof of graduation;
- (2) hold a degree or certificate in [physical\[0\] therapy\[0\]](#) and have completed:

(A) a basic athletic training course from an accredited college or university; and

(B) an apprenticeship described by Subsection

(b); or

- (3) have a degree in corrective [therapy\[0\]](#) with at least a minor in [physical\[0\]](#) education or health that includes a basic athletic training course and meet the apprenticeship requirement or any other requirement established by the board.

(b) The apprenticeship required to be completed by an applicant consists of 720 hours completed in two years under the direct supervision of a licensed athletic trainer acceptable to the board. Actual working hours include a minimum of 20 hours a week during each fall semester.

§ 451.154. OUT-OF-STATE LICENSE APPLICANTS. (a) An out-of-state applicant must:

(1) satisfy the requirements under Section 451.153; and
(2) submit proof of active engagement as an athletic trainer in this state as described by Subsection (b).

(b) A person is actively engaged as an athletic trainer if the person:

(1) is employed on a salary basis by an educational institution for the institution's school year or by a professional or other bona fide athletic organization for the athletic organization's season; and

(2) performs the duties of athletic trainer as the major responsibility of that employment.

§ 451.155. EXAMINATION RESULTS. (a) Not later than the 30th day after the day on which a licensing examination is administered under this chapter, the board shall notify each examinee of the results of the examination. 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 after the day on which the board receives the results from the testing service.

(b) If the notice of examination results graded or reviewed by a national testing service will be delayed for longer 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 a licensing examination administered under this chapter, the board shall furnish the person with an analysis of the person's performance on the examination.

§ 451.156. REQUIREMENTS FOR LICENSE ISSUANCE. An applicant for an athletic trainer license is entitled to receive the license if the applicant:

(1) satisfies the requirements of Section 451.153 or 451.154;

(2) satisfactorily completes the examination administered by the board;

(3) pays the required license fee; and

(4) has not committed an act that constitutes grounds for refusal of a license under Section 451.251.

§ 451.157. TEMPORARY LICENSE. (a) The board may issue a temporary license to an applicant if the applicant satisfies:

(1) the requirements of Section 451.153 or 451.154; and

(2) any other requirement established by the board.

(b) The board by rule shall prescribe the time during which a temporary license is valid.

SUBCHAPTER E. LICENSE RENEWAL

§ 451.201. LICENSE EXPIRATION. (a) A license issued under Section 451.156 expires on the first anniversary of the date of issuance.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the license fee shall be prorated on a monthly basis so that a license holder pays 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.

§ 451.202. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the board a renewal fee that is 1-1/2 times the normally required renewal fee.

(c) If the 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 a renewal fee that is equal to two times the normally required renewal fee for the license.

(d) If the 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 submitting to reexamination and complying with the requirements and procedures for obtaining an original 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 person's last known address.

§ 451.203. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without examination the 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.

(b) The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, § 14.206(b), eff. Sept. 1, 2001.

§ 451.204. CONTINUING EDUCATION. The board shall recognize, prepare, or administer continuing education programs for its license holders. A license holder must participate in the programs to the extent required by the board to keep the person's license.

Added by Acts 2001, 77th Leg., ch. 1420, § 14.204(b), eff. Sept. 1, 2001.

SUBCHAPTER F. DISCIPLINARY PROCEDURES

§ 451.251. GROUNDS FOR DENIAL OF LICENSE OR DISCIPLINARY ACTION. (a) The board may refuse to issue a license to an applicant and shall reprimand a license holder or suspend, revoke, or refuse to renew a person's license if the person:

- (1) has been convicted of a misdemeanor involving moral turpitude or a felony;
- (2) obtained the license by fraud or deceit;
- (3) violated or conspired to violate this chapter or a rule adopted under this chapter; or
- (4) provided services outside the scope of practice of athletic training.

(b) For the purposes of Subsection (a)(1), the record of conviction is conclusive evidence of conviction.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, § 14.207(a), eff. Sept. 1, 2001.

§ 451.2512. PROBATION. The board may place on probation

a person whose license is suspended. If a suspension is probated, the board may require the person 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 professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1420, § 14.207(b), eff. Sept. 1, 2001.

§ 451.252. ADMINISTRATIVE HEARING. A person whose application for a license or license renewal is denied is entitled to a hearing before the board in accordance with Chapter 2001, Government Code, if the person submits to the board a written request for a hearing not later than the 30th day after the day the license or license renewal is denied.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 451.253. AUTHORITY TO ISSUE SUBPOENA. The board may issue a subpoena to compel a witness to testify or produce evidence in a proceeding to deny, revoke, or suspend a license.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 451.254. ADMINISTRATIVE PROCEDURE. A proceeding to revoke or suspend a license and an appeal from the proceeding are governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

§ 451.255. EMERGENCY SUSPENSION. (a) The board or a three-member committee of board members designated by the board shall temporarily suspend the license of a license holder if the board or committee determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) 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 there is probable cause to believe 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 the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, § 8, eff. Sept. 1, 2003.

SUBCHAPTER G. PENALTIES

§ 451.301. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$25 or more than \$200.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

SUBCHAPTER H. ADMINISTRATIVE PENALTY

§ 451.351. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 451.352 shall be deposited in the state treasury in the general revenue fund.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The amount of the penalty may not exceed \$500 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$2,500.

(d) The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the threat to health or safety caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) whether the violator demonstrated good faith, including, when applicable, whether the violator made good faith efforts to correct the violation; and
- (6) any other matter that justice may require.

(e) If the executive secretary determines that a violation occurred, the executive secretary shall give written notice of the violation by certified mail to the person.

(f) The notice under Subsection (e) must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the notice under Subsection (e), the person in writing may:

- (1) accept the determination and recommended penalty of the executive secretary; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the board by order shall approve the determination and impose the recommended

penalty.

(i) If the person requests a hearing, the board shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(j) The administrative law judge 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.

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may determine that:

- (1) a violation occurred and impose a penalty; or
- (2) a violation did not occur.

(l) The notice of the board's order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2001, 77th Leg., ch. 1420, § 14.208(a), eff. Sept. 1, 2001.

§ 451.352. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the board under Section 451.351(k) that imposes an administrative penalty becomes final, the person shall:

- (1) pay the penalty; or
- (2) file a petition for judicial review of the board's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

- (1) stay enforcement of the penalty by:
 - (A) paying the penalty to the court for placement in an escrow account; or
 - (B) giving the court a supersedeas bond approved by the court that is:

- (i) for the amount of the penalty; and
 - (ii) 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 penalty and is financially unable to give the supersedeas bond; and
 - (B) sending a copy of the affidavit to the board by certified mail.

(c) If the board receives a copy of an affidavit under Subsection (b)(2), 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 penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the

enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the determination that a violation occurred, 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.

(f) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date the judgment of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2001, 77th Leg., ch. 1420, § 14.208(a), eff. Sept. 1, 2001.