

By: Davis of Harris

H.B. No. 2854

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to creating the Texas Patient Safety and Public Health  
3 Council and providing information to patients about high-risk  
4 personal lifestyle conduct.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 74.001, Civil Practice and Remedies  
7 Code, is amended by adding Subdivision (13-a) to read as follows:

8 (13-a) "High-risk personal lifestyle conduct" means  
9 voluntary personal conduct that is generally known to expose the  
10 individual patient or segments of the public to a substantial risk  
11 of serious illness, injury, or death or to significantly reduce the  
12 patient's life expectancy, including:

13 (A) smoking or consuming a tobacco product;

14 (B) morbid obesity;

15 (C) unprotected sexual activity;

16 (D) excessive exercise or extreme athletic  
17 activity; or

18 (E) other conduct identified by the disclosure  
19 panel.

20 SECTION 2. Section 74.103, Civil Practice and Remedies  
21 Code, is amended by adding Subsection (e) to read as follows:

22 (e) The panel shall identify and make a thorough examination  
23 of all high-risk personal lifestyle conduct that requires  
24 disclosure of the risks and hazards to the patient or person

1 authorized to consent for the patient.

2 SECTION 3. Chapter 74, Civil Practice and Remedies Code, is  
3 amended by adding Section 74.108 to read as follows:

4 Sec. 74.108. HIGH-RISK PERSONAL LIFESTYLE CONDUCT  
5 MATERIALS. (a) The disclosure panel shall develop and prepare  
6 written materials to inform a patient or a person authorized to  
7 consent for a patient of the risks and hazards of high-risk personal  
8 lifestyle conduct identified by the physician.

9 (b) The materials must be available in English, Spanish, and  
10 any other language the panel considers appropriate. The  
11 information must be presented in a manner understandable to a  
12 layperson.

13 (c) The materials must include:

14 (1) the name of the person providing and explaining  
15 the materials;

16 (2) a statement that the patient or person authorized  
17 to consent for the patient understands that the patient's  
18 continuing to engage in high-risk personal lifestyle conduct  
19 exposes the patient to a significant risk or hazard of serious  
20 illness, injury, or death or a significant reduction in the  
21 patient's life expectancy;

22 (3) a statement that the patient has the right to seek  
23 a consultation from a second physician;

24 (4) a description of the risks and hazards involved in  
25 the high-risk personal lifestyle conduct; and

26 (5) a written statement to be signed by the patient or  
27 person authorized to consent for the patient indicating that the

1 materials have been provided and explained to the patient or person  
2 authorized to consent for the patient and that the patient or person  
3 authorized to consent for the patient understands the nature and  
4 consequences of the patient's continuing to engage in the high-risk  
5 personal lifestyle conduct.

6 (d) The physician or health care provider shall include the  
7 signed written statement in the patient's medical record.

8 (e) The disclosure panel may not prescribe materials under  
9 this section without first consulting with the Texas Medical Board.

10 SECTION 4. Subtitle E, Title 2, Health and Safety Code, is  
11 amended by adding Chapter 115 to read as follows:

12 CHAPTER 115. TEXAS PATIENT SAFETY AND PUBLIC HEALTH COUNCIL

13 Sec. 115.001. DEFINITIONS. In this chapter:

14 (1) "Council" means the Texas Patient Safety and  
15 Public Health Council.

16 (2) "High-risk personal lifestyle conduct" has the  
17 meaning assigned by Section 74.001, Civil Practice and Remedies  
18 Code.

19 Sec. 115.002. COMPOSITION OF COUNCIL. (a) The Texas  
20 Patient Safety and Public Health Council is composed of 11 public  
21 members and one representative each from the Department of State  
22 Health Services, the Texas Medical Board, the Texas Cancer Council,  
23 the Texas Diabetes Council, the Advisory Council on Physical  
24 Fitness of the governor's office, and the Board of Nurse Examiners.

25 (b) The governor, with the advice and consent of the senate,  
26 shall appoint the following public members:

27 (1) a licensed physician with a specialization in

1 public health;

2 (2) a licensed physician with a specialization in  
3 communicable disease;

4 (3) a registered nurse with a specialization in public  
5 health;

6 (4) a person with experience and training in public  
7 health policy;

8 (5) three consumer members; and

9 (6) four members from the general public with  
10 expertise or demonstrated commitment to patient safety or public  
11 health issues.

12 (c) The executive head of each agency listed in Subsection  
13 (a) shall appoint that agency's representative. Agency  
14 representatives are nonvoting members of the council.

15 (d) The members of the council must represent the geographic  
16 and cultural diversity of the state. Appointments to the council  
17 shall be made without regard to the race, color, disability, creed,  
18 sex, religion, age, or national origin of the appointees.

19 Sec. 115.003. TRAINING. (a) A person who is appointed to and  
20 qualifies for office as a member of the council may not vote,  
21 deliberate, or be counted as a member in attendance at a meeting of  
22 the council until the person completes a training program that  
23 complies with this section.

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

26 (1) the legislation that created the council;

27 (2) the programs operated by the council;

1           (3) the role and functions of the council;  
2           (4) the rules of the council;  
3           (5) the current budget for the council;  
4           (6) the results of the most recent formal audit of the  
5 council;

6           (7) the requirements of:  
7                 (A) the open meetings law, Chapter 551,  
8 Government Code;  
9                 (B) the public information law, Chapter 552,  
10 Government Code;  
11                (C) the administrative procedure law, Chapter  
12 2001, Government Code; and  
13                (D) other laws relating to public officials,  
14 including conflict of interest laws; and

15           (8) any applicable ethics policies adopted by the  
16 council or the Texas Ethics Commission.

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

22           Sec. 115.004. INFORMATION ABOUT STANDARDS OF CONDUCT. The  
23 commissioner of state health services or the commissioner's  
24 designee shall provide to members of the council, as often as  
25 necessary, information regarding the requirements for office under  
26 this chapter, including information regarding a person's  
27 responsibilities under applicable laws relating to standards of

1 conduct for state officers.

2 Sec. 115.005. RESTRICTIONS ON COUNCIL APPOINTMENT AND  
3 MEMBERSHIP. (a) A person is not eligible for appointment or service  
4 as a public member if the person or the person's spouse:

5 (1) is employed by or participates in the management  
6 of a business entity or other organization receiving funds at the  
7 council's direction;

8 (2) owns or controls directly or indirectly more than  
9 a 10 percent interest in a business entity or other organization  
10 receiving funds at the council's direction; or

11 (3) uses or receives a substantial amount of tangible  
12 goods, services, or funds from the department at the council's  
13 direction, other than compensation or reimbursement authorized by  
14 law for council membership, attendance, or expenses.

15 (b) A person who is required to register as a lobbyist under  
16 Chapter 305, Government Code, may not serve as a member of the  
17 council.

18 (c) An officer, employee, or paid consultant of a trade  
19 association in the field of health care may not be a member of the  
20 council. A person who is the spouse of an officer, employee, or  
21 paid consultant of a trade association in the field of health care  
22 may not be a member of the council.

23 (d) For purposes of Subsection (c), a trade association is a  
24 nonprofit, cooperative, and voluntary association of business or  
25 professional competitors designed to assist its members and its  
26 industry or profession in dealing with mutual business or  
27 professional problems and in promoting their common interests.

1       Sec. 115.006. TERMS. (a) Council members appointed by the  
2 governor serve for staggered six-year terms, with the terms of  
3 three or five members expiring February 1 of each odd-numbered  
4 year.

5       (b) A council member appointed as a representative of an  
6 agency serves at the will of the appointing agency.

7       Sec. 115.007. PRESIDING OFFICER. The governor shall  
8 designate a member of the council as the presiding officer of the  
9 council to serve in that capacity at the will of the governor.

10       Sec. 115.008. REMOVAL OF COUNCIL MEMBER. (a) It is a ground  
11 for removal from the council if a member:

12               (1) is not eligible for appointment to the council at  
13 the time of appointment as provided by Section 115.005(a);

14               (2) is not eligible to serve on the council as provided  
15 by Section 115.005(a);

16               (3) violates a prohibition established by Section  
17 115.005(b) or (c);

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

21               (5) is absent from more than half of the regularly  
22 scheduled council meetings that the member is eligible to attend  
23 during each calendar year unless the absence is excused by majority  
24 vote of the council.

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

1        (c) If the presiding officer of the council has knowledge  
2 that a potential ground for removal exists, the presiding officer  
3 shall notify the governor of its existence.

4        (d) The council shall inform its members as often as  
5 necessary of:

6            (1) the qualifications for office prescribed by this  
7 chapter; and

8            (2) their responsibilities under applicable laws  
9 relating to standards of conduct for state officers or employees.

10        Sec. 115.009. VACANCY. (a) The office of a member appointed  
11 by an agency becomes vacant when the person terminates employment  
12 with the agency or when the agency elects to replace the person as  
13 provided by Section 115.006.

14        (b) If the office of a member who is an agency  
15 representative becomes vacant, the executive head of that agency  
16 shall appoint a replacement agency representative.

17        Sec. 115.010. COMPENSATION; REIMBURSEMENT. A member of the  
18 council is not entitled to compensation, but is entitled to  
19 reimbursement for actual and necessary expenses incurred in  
20 attending meetings or performing other official council duties  
21 authorized by the presiding officer as provided by the General  
22 Appropriations Act.

23        Sec. 115.011. STAFF SUPPORT. Each agency represented on the  
24 council shall provide the council with periodic staff support of  
25 specialists as needed and may provide staff support to an advisory  
26 committee.

27        Sec. 115.012. DIVISION OF POLICY AND MANAGEMENT



1 RESPONSIBILITIES. The council shall develop and implement policies  
2 that clearly separate the policymaking responsibilities of the  
3 council and the responsibilities of the staff provided to the  
4 council under Section 115.011.

5 Sec. 115.013. ADVISORY COMMITTEES. (a) The council may  
6 establish advisory committees the council considers necessary and  
7 may determine the appropriate membership for each committee.

8 (b) The council shall specify the purpose and duties of each  
9 advisory committee and shall specify any product the committee is  
10 required to develop.

11 (c) Members of an advisory committee serve at the will of  
12 the council. The council may dissolve an advisory committee when  
13 necessary.

14 Sec. 115.014. MEETINGS. (a) The council shall meet at least  
15 quarterly and shall adopt rules for the conduct of its meetings.

16 (b) Any action taken by the council must be approved by a  
17 majority of the voting members present.

18 Sec. 115.015. POWERS AND DUTIES. (a) The council shall  
19 address contemporary issues relating to high-risk personal  
20 lifestyle conduct, including:

21 (1) identifying high-risk personal lifestyle conduct  
22 and establishing priorities for efforts to address the potential  
23 consequences of such conduct;

24 (2) recommending to the Texas Medical Disclosure Panel  
25 high-risk personal lifestyle conduct that should be the subject of  
26 disclosure by health care professionals under Chapter 74, Civil  
27 Practice and Remedies Code;

1           (3) educating health care professionals, the public,  
2 and individual patients regarding high-risk personal lifestyle  
3 conduct and its potential consequences;

4           (4) developing successful education strategies;

5           (5) preparing continuing education courses for public  
6 health personnel and health care professionals;

7           (6) analyzing state expenditures for high-risk  
8 personal lifestyle conduct; and

9           (7) increasing public awareness of high-risk personal  
10 lifestyle conduct.

11           (b) The council shall advise the legislature on legislation  
12 that is needed to develop further and maintain efforts to mitigate  
13 or eliminate the risks, hazards, and consequences of high-risk  
14 personal lifestyle conduct. The council may develop and submit  
15 legislation to the legislature or comment on pending legislation  
16 that affects persons who engage in such conduct.

17           (c) The council may:

18           (1) design or adapt and publish a handbook in English  
19 and Spanish relating to the risks and hazards of high-risk personal  
20 lifestyle conduct;

21           (2) develop and maintain a library of data regarding  
22 high-risk personal lifestyle conduct and evidence-based medical  
23 and patient safety practices intended to mitigate or eliminate the  
24 risks and hazards of such conduct; and

25           (3) study the standards and structure of pilot  
26 programs to provide professional, public, and patient education and  
27 training in this state regarding high-risk personal lifestyle

1 conduct and its consequences.

2 (d) The council may engage in studies that it determines are  
3 necessary or suitable as provided by this chapter.

4 Sec. 115.016. GIFTS AND GRANTS. The council may accept  
5 gifts and grants from any public or private source to perform its  
6 duties under this chapter.

7 Sec. 115.017. PUBLIC INFORMATION AND PARTICIPATION. (a)  
8 The council shall prepare information of public interest describing  
9 the functions of the council and describing council procedures by  
10 which the interests or concerns of members of the public may be  
11 brought to the attention of the council. The council shall make the  
12 information available to the general public and appropriate state  
13 agencies.

14 (b) The council shall develop and implement policies that  
15 provide the public with a reasonable opportunity to appear before  
16 the council and to speak on any issue under the jurisdiction of the  
17 council.

18 Sec. 115.018. PUBLIC AWARENESS AND TRAINING. (a) The  
19 council shall develop, produce, and implement a general public  
20 awareness strategy focusing on high-risk personal lifestyle  
21 conduct and information and techniques for mitigating or  
22 eliminating the risks and hazards of such conduct.

23 (b) The strategy developed under Subsection (a) must  
24 include a plan under which the council provides public awareness  
25 information through businesses, civic organizations, and similar  
26 entities.

27 Sec. 115.019. ANNUAL REPORTS. The council shall file

1 annually with the governor and the presiding officer of each house  
2 of the legislature a complete and detailed written report  
3 accounting for all funds received and disbursed by or for the  
4 council during the preceding fiscal year. The form of the annual  
5 report and the reporting time are as provided by the General  
6 Appropriations Act.

7         SECTION 5. This Act takes effect immediately if it receives  
8 a vote of two-thirds of all the members elected to each house, as  
9 provided by Section 39, Article III, Texas Constitution. If this  
10 Act does not receive the vote necessary for immediate effect, this  
11 Act takes effect September 1, 2007.