

By: Callegari

H.B. No. 2939

A BILL TO BE ENTITLED

AN ACT

relating to the administration of agencies responsible for the regulation of, and workforce planning and policy development for, certain licensed health professions.

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

SECTION 1. Subtitle A, Title 3, Occupations Code, is amended by adding Chapter 113 to read as follows:

CHAPTER 113. TEXAS HEALTH PROFESSIONS COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Health Professions Commission;

(2) "Affiliated boards" means the appointed health professions licensing and regulatory boards for which the commission provides administrative and budget functions as listed in section 113.051.

(3) "Affiliated health professions" means the health professions over which the commission or an affiliated board has licensing and regulatory authority as listed in section 113.052;

(4) "License" means a license, certificate, registration, title, or permit issued by an affiliated board.

(5) "License holder" means a person who holds a license issued by an affiliated board.

(6) "Respondent" means a person, regardless of whether

1 the person is a license holder, who is charged with violating a law
2 establishing a regulatory program administered by the commission or
3 an affiliated board or a rule adopted or order issued by an the
4 commission or an affiliated board.

5 (7) "Sanction" means an action by the commission or an
6 affiliated board against a license holder or another person,
7 including the denial, suspension, or revocation of a license, the
8 reprimand of a license holder, or the placement of a license holder
9 on probation.

10 Sec. 113.002. TEXAS HEALTH PROFESSIONS COMMISSION. The
11 Texas Health Professions Commission is the primary state agency
12 responsible for:

13 (a) the oversight of health professions that are regulated
14 by the state and assigned to the commission by the legislature; and

15 (b) health workforce planning and policy development.

16 Sec. 113.003. APPLICATION OF SUNSET ACT. (a) The
17 commission and the affiliated boards are subject to Chapter 325,
18 Government Code (Texas Sunset Act). Unless continued in existence
19 as provided by that chapter, the commission and the affiliated
20 boards are abolished and this chapter expires September 1, 2019.

21 (b) Each law governing a profession regulated by the
22 commission is subject to Chapter 325, Government Code (Texas Sunset
23 Act). Unless this chapter is continued in existence as provided by
24 that chapter, that law expires September 1, 2019.

25 Sec. 113.004. APPLICABILITY. This chapter applies to each
26 regulatory program administered by the commission, including any
27 program under which a license is issued by an affiliated board.

1 [Sections 113.005-113.050 reserved for expansion]

2 SUBCHAPTER B. AFFILIATED BOARDS AND HEALTH PROFESSIONS

3 Sec. 113.051. AFFILIATED BOARDS. The administrative and
4 financial functions of the following boards shall be administered
5 by the commission:

6 (a) Texas Medical Board;

7 (b) Texas Physician Assistant Board;

8 (c) Texas State Board of Acupuncture Examiners;

9 (d) Texas Board of Nurse Examiners;

10 (e) Texas State Board of Pharmacy;

11 (f) Texas State Board of Dental Examiners;

12 (g) Texas State Board of Occupational Therapy Examiners;

13 (h) Texas State Board of Physical Therapy Examiners;

14 (i) Texas Advisory Board of Athletic Trainers;

15 (j) Texas State Board of Chiropractic Examiners;

16 (k) Texas State Board of Examiners of Marriage and Family
17 Therapy;

18 (l) Texas Optometry Board;

19 (m) Texas Board of Orthotics and Prosthetics;

20 (n) Texas State Board of Podiatric Medical Examiners;

21 (o) Texas State Board of Examiners of Professional
22 Counselors;

23 (p) Texas State Board of Examiners of Psychologists;

24 (q) Texas Board of Examiners of Social Workers;

25 (r) Texas State Committee of Examiners for Speech-Language
26 Pathology and Audiology;

27 (s) State Committee of Examiners in the Fitting and

1 Dispensing of Hearing Instruments;

2 (t) Texas Midwifery Board;

3 (u) Texas Board of Licensure for Professional Medical
4 Physicists;

5 (v) Texas State Board of Examiners of Dietitians; and

6 (w) Texas State Board of Examiners of Perfusionists.

7 Sec. 113.052. AFFILIATED HEALTH PROFESSIONS. (a)

8 Notwithstanding any other provision of law, the following health
9 professions shall be licensed and regulated by the commission or
10 affiliated boards:

11 (1) physicians under Subtitle B;

12 (2) nurses under Subtitle E;

13 (3) pharmacies and pharmacists under Subtitle J;

14 (4) dentists under Subtitle D;

15 (5) chiropractors under Chapter 201;

16 (6) podiatrists under Chapter 202;

17 (7) optometrists and therapeutic optometrists under
18 Chapter 351;

19 (8) psychologists under Chapter 501;

20 (9) marriage and family therapists under Chapter 502;

21 (10) licensed professional counselors under Chapter
22 503;

23 (11) social workers under Chapter 505;

24 (12) midwives under Chapter 203;

25 (13) dietitians under Chapter 701;

26 (14) perfusionists under Chapter 603;

27 (15) athletic trainers under Chapter 451;

- 1 (16) orthotists and prosthetists under Chapter 605;
2 (17) speech-language pathologists and audiologists
3 under Chapter 401;
4 (18) hearing instrument fitters and dispensers under
5 Chapter 402;
6 (19) medical physicists under Chapter 602;
7 (20) medical radiologic technologists under Chapter
8 601;
9 (21) respiratory care practitioners under Chapter
10 604;
11 (22) chemical dependency counselors under Chapter
12 504;
13 (23) contact lens dispensers under Chapter 353;
14 (24) massage therapists under Chapter 455;
15 (25) opticians under Chapter 352;
16 (26) personal emergency response system providers
17 under Chapter 1702; and
18 (27) acupuncturists under Chapter 205.

19 (b) A reference in Subsection (a) to the regulation by the
20 commission or an affiliated board of a profession under a specific
21 law includes the authority to regulate related health professions
22 and practices under that law and to exercise all powers and duties
23 assigned to the licensing authority under that law.

24 Sec. 113.053. AUTHORITY OF AFFILIATED BOARDS. (a)
25 Notwithstanding any other provision of this chapter, affiliated
26 boards shall have the licensing, enforcement, and regulatory powers
27 and duties assigned in each board's enabling statute.

1 (b) The executive commissioner shall have all statutorily
2 authorized licensing, enforcement, or regulatory powers and duties
3 relating to the health professions affiliated with the commission
4 that are not explicitly assigned in the enabling statute of an
5 affiliated board.

6 Sec. 113.054. FEES. (a) Each affiliated boards shall set
7 fees in a manner pursuant to its enabling statute.

8 (b) For each health profession that does not have an
9 affiliated board, the executive commissioner shall set fees, in
10 amounts reasonable and necessary to cover the costs of
11 administering the programs or activities, for:

12 (1) licenses issued by the department;

13 (2) license renewals and late renewals;

14 (3) examinations; and

15 (4) any other program or activity administered by the
16 department for which a fee is authorized.

17 (c) The executive commissioner by rule may provide for
18 prorating fees for the issuance of a license so that a person
19 regulated by the department pays only that portion of the
20 applicable fee that is allocable to the number of months during
21 which the license is valid.

22 Sec. 113.055. BOARD MEMBERSHIP. (a) Members of affiliated
23 boards shall be appointed and shall serve in a manner pursuant to
24 each board's enabling statute.

25 (b) Members of affiliated boards shall be subject to all
26 restrictions and responsibilities described in each board's
27 enabling statute.

1 Sec. 113.056. PERSISTENCE OF BOARDS AND BOARD POWERS. No
2 provision in this chapter shall be construed to: (a) eliminate any
3 affiliated board; or

4 (b) limit the rulemaking authority of any affiliated board
5 on licensing, enforcement, or regulatory matters.

6 [Sections 113.056-113.100 reserved for expansion]

7 SUBCHAPTER C. EXECUTIVE COMMISSIONER

8 Sec. 113.101. APPOINTMENT AND ELIGIBILITY. (a) The
9 commission is governed by an executive commissioner appointed by
10 the governor with the advice and consent of the senate.

11 (b) The executive commissioner serves at the will of the
12 governor.

13 (c) A person is not eligible for appointment as executive
14 commissioner if the person or the person's spouse is regulated by
15 the commission or an affiliated board.

16 Sec. 113.102. POWERS AND DUTIES. (a) The executive
17 commissioner shall:

18 (1) implement the powers and duties given to the
19 commission under this Chapter;

20 (2) perform all other duties specified by law;

21 (3) administer all other programs of the commission;

22 (4) perform information systems planning and
23 management for affiliated boards;

24 (5) monitor and ensure the effective use of all funds
25 received by the commission in accordance with the General
26 Appropriations Act;

27 (6) perform administrative support services for

1 affiliated boards including strategic planning and evaluation,
2 audit, human resources, information resources, purchasing,
3 contract management, financial management, and accounting
4 services;

5 (7) formulate the policy objectives for the
6 commission;

7 (8) approve the commission's operating budget and the
8 commission's requests for legislative appropriations; and

9 (9) develop cost management procedures that enable the
10 board to determine with reasonable accuracy the cost to the
11 commission of each program and activity for which a fee is charged.

12 (b) The executive commissioner may:

13 (1) delegate any power or duty assigned to the
14 executive commissioner unless prohibited by statute or rule;

15 (2) adopt rules and policies as necessary to support
16 the operations of the commission; and

17 (3) adopt rules regarding regulation, licensing, and
18 enforcement of a health profession affiliated with the commission
19 if the corresponding affiliated board has not been granted
20 independent rule-making authority relating to regulation,
21 licensing, and enforcement or if a health profession affiliated
22 with the board does not have a corresponding affiliated board.

23 (c) The executive commissioner may not adopt rules
24 regarding regulation, licensing, and enforcement of a health
25 profession affiliated with the commission if the corresponding
26 affiliated board has been granted independent rule-making
27 authority relating to regulation, licensing, and enforcement.

1 Sec. 113.103. HEALTH PROFESSIONS COUNCIL. The commission
2 shall administer the health professions council under Chapter 101
3 and perform the duties assigned to the council under that chapter,
4 including the provision of administrative support for the office of
5 patient protection under Subchapter G, Chapter 101.

6 Sec. 113.104. RULES REGARDING PROGRAMS REGULATED BY
7 COMMISSION. The executive commissioner shall adopt rules as
8 necessary to implement each law establishing a program regulated by
9 the commission for which an affiliated board does not exist.

10 Sec. 113.105. RULES RESTRICTING ADVERTISING OR COMPETITIVE
11 BIDDING. (a) The executive commissioner may not adopt rules
12 restricting advertising or competitive bidding by a license holder
13 except to prohibit false, misleading, or deceptive practices.

14 (b) The board may not include in rules to prohibit false,
15 misleading, or deceptive practices by a license holder a rule that:

16 (1) restricts the use of any advertising medium;

17 (2) restricts the license holder's personal appearance
18 or the use of the license holder's voice in an advertisement;

19 (3) relates to the size or duration of an
20 advertisement; or

21 (4) restricts the use of a trade name in advertising.

22 [Sections 113.106-113.150 reserved for expansion]

23 SUBCHAPTER D. ADMINISTRATION

24 Sec. 113.151. PERSONNEL. (a) The executive commissioner
25 may employ persons to perform the commission's work and may
26 prescribe their duties and compensation, subject to the personnel
27 policies adopted by the executive commissioner.

1 (b) The executive commissioner shall organize the personnel
2 employed by the commission according to the various professions
3 regulated by the commission rather than by specific licensing,
4 enforcement, and regulatory functions.

5 Sec. 113.152. INFORMATION ON STANDARDS OF CONDUCT. The
6 executive commissioner or the executive commissioner's designee
7 shall provide to members of affiliated boards and to commission
8 employees, as often as necessary, information regarding the
9 requirements for office or employment under this chapter, including
10 information regarding a person's responsibilities under applicable
11 laws relating to standards of conduct for state officers or
12 employees.

13 Sec. 113.153. CAREER LADDER PROGRAM; PERFORMANCE
14 EVALUATIONS. (a) The executive commissioner shall develop a
15 career ladder program. The program must require intra-agency
16 postings of all nonentry level positions concurrently with any
17 public posting.

18 (b) The executive commissioner shall develop a system of
19 employee performance evaluations. The system must require that
20 evaluations be conducted at least annually. All merit pay for
21 commission employees must be based on the system established under
22 this subsection.

23 Sec. 113.154. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a)
24 The executive commissioner or the executive commissioner's
25 designee shall prepare and maintain a written policy statement that
26 implements a program of equal employment opportunity to ensure that
27 all personnel decisions are made without regard to race, color,

1 disability, sex, religion, age, or national origin.

2 (b) The policy statement must include:

3 (1) personnel policies, including policies relating
4 to recruitment, evaluation, selection, training, and promotion of
5 personnel, that show the intent of the commission to avoid the
6 unlawful employment practices described by Chapter 21, Labor Code;
7 and

8 (2) an analysis of the extent to which the composition
9 of the commission's personnel is in accordance with state and
10 federal law and a description of reasonable methods to achieve
11 compliance with state and federal law.

12 (c) The policy statement must:

13 (1) be updated annually;

14 (2) be reviewed by the civil rights division of the
15 Texas Workforce Commission for compliance with Subsection (b)(1);
16 and

17 (3) be filed with the governor.

18 Sec. 113.155. STATE EMPLOYEE INCENTIVE PROGRAM. The
19 executive commissioner or the executive commissioner's designee
20 shall provide to commission employees information and training on
21 the benefits and methods of participation in the state employee
22 incentive program.

23 Sec. 113.156. USE OF TECHNOLOGY. The executive
24 commissioner shall develop and implement a policy requiring the
25 executive commissioner and commission employees to research and
26 propose appropriate technological solutions to improve the
27 commission's ability to perform its functions. The technological

1 solutions must:

2 (1) ensure that the public is able to easily find
3 information about the commission on the Internet;

4 (2) ensure that persons who want to use the
5 commission's services are able to:

6 (A) interact with the commission through the
7 Internet; and

8 (B) access any service that can be provided
9 effectively through the Internet; and

10 (3) be cost-effective and developed through the
11 commission's planning processes.

12 Sec. 113.157. NEGOTIATED RULEMAKING AND ALTERNATIVE
13 DISPUTE RESOLUTION PROCEDURES. (a) The executive commissioner
14 shall develop and implement a policy to encourage the use of:

15 (1) negotiated rulemaking procedures under Chapter
16 2008, Government Code, for the adoption of commission rules; and

17 (2) appropriate alternative dispute resolution
18 procedures under Chapter 2009, Government Code, to assist in the
19 resolution of internal and external disputes under the commission's
20 jurisdiction.

21 (b) The commission's procedures relating to alternative
22 dispute resolution must conform, to the extent possible, to any
23 model guidelines issued by the State Office of Administrative
24 Hearings for the use of alternative dispute resolution by state
25 agencies.

26 (c) The executive commissioner shall designate a trained
27 person to:

1 (1) coordinate the implementation of the policy
2 adopted under Subsection (a);

3 (2) serve as a resource for any training needed to
4 implement the procedures for negotiated rulemaking or alternative
5 dispute resolution; and

6 (3) collect data concerning the effectiveness of those
7 procedures, as implemented by the commission.

8 [Sections 113.158-113.200 reserved for expansion]

9 SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

10 Sec. 113.201. PUBLIC INTEREST INFORMATION. (a) The
11 commission shall prepare information of public interest describing
12 the functions of the board and commission and the procedures by
13 which complaints are filed with and resolved by the board or
14 executive commissioner.

15 (b) The commission shall make the information available to
16 the public and appropriate state agencies.

17 Sec. 113.202. COMPLAINTS. (a) The executive commissioner
18 shall establish methods by which consumers and service recipients
19 are notified of the name, mailing address, and telephone number of
20 the commission for the purpose of directing complaints to the
21 commission. The commission shall provide to the person filing the
22 complaint and to each person who is a subject of the complaint
23 information about the commission's policies and procedures
24 relating to complaint investigation and resolution.

25 (b) The commission shall maintain a file on each written
26 complaint filed with the commission. The file must include:

27 (1) the name of the person who filed the complaint;

1 (2) the date the complaint is received by the
2 commission;

3 (3) the subject matter of the complaint;

4 (4) the name of each person contacted in relation to
5 the complaint;

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

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

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

16 (d) The board shall adopt a procedure for documenting
17 complaints to the commission from the time of the submission of the
18 initial complaint to the final disposition of the complaint. The
19 board shall publish the procedure in the Texas Register.

20 Sec. 113.203. PUBLIC PARTICIPATION. (a) The executive
21 commissioner shall develop and implement policies that provide the
22 public with a reasonable opportunity to appear before the
23 commission and affiliated boards and to speak on any issue under the
24 jurisdiction of the commission or affiliated boards.

25 (b) The executive commissioner shall prepare and maintain a
26 written plan that describes how a person who does not speak English
27 or who has a physical, mental, or developmental disability may be

1 provided reasonable access to the commission's programs.

2 [Sections 113.204-113.250 reserved for expansion]

3 SUBCHAPTER F. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

4 Sec. 113.251. INSPECTIONS AND INVESTIGATIONS. (a) The
5 commission and affiliated boards may conduct inspections or
6 investigations as necessary to enforce the laws administered by the
7 commission.

8 (b) The commission and affiliated boards, during reasonable
9 business hours, may:

10 (1) enter the business premises of a person regulated
11 by the commission or a person suspected of being in violation of or
12 threatening to violate a law establishing a regulatory program
13 administered by the commission or affiliated board or a rule or
14 order of the commission or an affiliated board related to a
15 regulatory program administered by the commission or an affiliated
16 board; and

17 (2) examine and copy records pertinent to the
18 inspection or investigation.

19 Sec. 113.252. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The
20 attorney general or the executive commissioner may institute an
21 action for injunctive relief to restrain a violation by and to
22 collect a civil penalty from a person that appears to be in
23 violation of or threatening to violate a law establishing a
24 regulatory program administered by the commission or a rule or
25 order of the board related to the regulatory program.

26 (b) An action filed under this section must be filed in a
27 district court in Travis County.

1 (c) The attorney general and the commission may recover
2 reasonable expenses incurred in obtaining injunctive relief under
3 this section, including court costs, reasonable attorney's fees,
4 investigative costs, witness fees, and deposition expenses.

5 Sec. 113.253. ADMINISTRATIVE SANCTIONS. (a) The
6 commission or an affiliated board shall revoke, suspend, or refuse
7 to renew a license or shall reprimand a license holder for a
8 violation of this chapter, a law establishing a regulatory program
9 administered by the commission or an affiliated board, or a rule or
10 order of the commission or an affiliated board.

11 (b) The commission or an affiliated board may place on
12 probation a person whose license is suspended. If a license
13 suspension is probated, the commission or affiliated board may
14 require the person to:

15 (1) report regularly to the commission or affiliated
16 board on matters that are the basis of the probation;

17 (2) limit practice to the areas prescribed by the
18 commission or affiliated board; or

19 (3) continue or renew professional education until the
20 person attains a degree of skill satisfactory to the commission or
21 affiliated board in those areas that are the basis for the
22 probation.

23 Sec. 113.254. RIGHT TO HEARING; ADMINISTRATIVE PROCEDURE.

24 (a) A respondent is entitled to a hearing conducted by the State
25 Office of Administrative Hearings if the commission or an
26 affiliated board proposes to deny, suspend, or revoke a license.

27 (b) A proceeding under this chapter to deny, suspend, or

1 revoke a license is considered to be a contested case under Chapter
2 2001, Government Code.

3 Sec. 113.255. AMOUNT OF ADMINISTRATIVE PENALTY.
4 Notwithstanding any provision in a law governing a profession
5 regulated by the commission, an administrative penalty imposed
6 under that law shall be in an amount not to exceed \$5,000 for each
7 day of a violation.

8 [Sections 113.256-113.300 reserved for expansion]

9 SUBCHAPTER G. LICENSE REQUIREMENTS

10 Sec. 113.301. TERM OF LICENSE. (a) Notwithstanding any
11 provision in a law governing an affiliated health profession
12 regulated by the commission for which an affiliated board does not
13 exist, a license issued by the commission expires on the second
14 anniversary of the date the license is issued.

15 (b) No provision of this chapter should be construed to
16 limit or otherwise change the terms of licenses issued by
17 affiliated boards.

18 [Sections 113.302-113.350 reserved for expansion]

19 SUBCHAPTER H. STATE HEALTH WORKFORCE POLICY

20 Sec. 113.351. STATEWIDE HEALTH COORDINATING COUNCIL. The
21 Statewide Health Coordinating Council under Texas Health and Safety
22 Code, Chapter 104, shall be administered by the commission.

23 Sec. 113.352. HEALTH PROFESSIONS RESOURCE CENTER. The
24 Health Professions Resource Center under Texas Health and Safety
25 Code, Chapter 105, shall be administered by the commission.

26 Sec. 113.353. CENTER FOR NURSING WORKFORCE STUDIES. The
27 Center for Nursing Workforce Studies within the Department of State

1 Health Services shall be administered by the commission.

2 [Sections 113.354-113.400 reserved for expansion]

3 SUBCHAPTER I. TRANSITION

4 Sec. 113.401. TRANSITION PLAN. (a) The commissioner of the
5 Department of State Health Services, the executive commissioner of
6 the Texas Health Professions Commission, the executive director or
7 comparable official responsible for the administration of each
8 affiliated board listed in Section 113.051, and executive director
9 or comparable official responsible for the regulation and of each
10 affiliated health profession listed in Section 113.052 shall
11 develop a transition plan to be submitted to the governor,
12 lieutenant governor, and speaker of the house of representatives
13 not later than January 1, 2008.

14 (b) The transition plan described must provide for the
15 transfer of powers, duties, functions, programs, and activities
16 related to the regulation of the affected licensed professions to
17 the commission to ensure that the transfer is accomplished in a
18 careful and deliberative manner. The plan must provide for the
19 transition to be completed not later than September 1, 2009.

20 (c) The commission's responsibilities under this chapter
21 are subject to the transition plan.

22 (d) This subchapter expires September 1, 2010.

23 SECTION 2. (a) Section 104.002, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 104.002. DEFINITION. In this chapter[7]:

26 (1) "Health care facility" means a public or private
27 hospital, skilled nursing facility, intermediate care facility,

1 ambulatory surgical facility, family planning clinic that performs
2 ambulatory surgical procedures, rural or urban health initiative
3 clinic, kidney disease treatment facility, inpatient
4 rehabilitation facility, and any other facility designated a health
5 care facility by federal law. The term does not include the office
6 of physicians or practitioners of the healing arts practicing
7 individually or in groups.

8 (2) "Department" means the Texas Health Professions
9 Commission.

10 (b) Section 105.001, Health and Safety Code, is amended to
11 read as follows:

12 Sec. 105.001. DEFINITIONS. In this chapter:

13 (1) "Health profession" means any health or allied
14 health profession that is licensed, certified, or registered by a
15 state board, agency, or association.

16 (2) "Council" means the statewide health coordinating
17 council.

18 (3) "Department" means the Texas Health Professions
19 Commission.

20 SECTION 3. This Act takes effect September 1, 2007.