

1-1 By: Duncan, et al. S.B. No. 894
1-2 (In the Senate - Filed February 23, 2011; March 1, 2011,
1-3 read first time and referred to Committee on State Affairs;
1-4 March 29, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; March 29, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 894 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to employment of physicians by certain hospitals.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Chapter 311, Health and Safety Code, is amended
1-13 by adding Subchapter E to read as follows:
1-14 SUBCHAPTER E. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS
1-15 Sec. 311.061. APPLICABILITY AND CONSTRUCTION OF
1-16 SUBCHAPTER. (a) This subchapter applies only to a hospital that
1-17 employs or seeks to employ a physician and that:
1-18 (1) is designated as a critical access hospital under
1-19 the authority of and in compliance with 42 U.S.C. Section 1395i-4;
1-20 (2) is a sole community hospital, as that term is
1-21 defined by 42 U.S.C. Section 1395ww(d)(5)(D)(iii); or
1-22 (3) is located in a county with a population of 50,000
1-23 or less.
1-24 (b) This subchapter may not be construed as authorizing the
1-25 governing body of a hospital to supervise or control the practice of
1-26 medicine, as prohibited under Subtitle B, Title 3, Occupations
1-27 Code.
1-28 (c) This subchapter applies to medical services provided by
1-29 a physician at the hospital and other health care facilities owned
1-30 or operated by the hospital.
1-31 Sec. 311.062. EMPLOYMENT OF PHYSICIANS PERMITTED. A
1-32 hospital may employ a physician and retain all or part of the
1-33 professional income generated by the physician for medical services
1-34 provided at the hospital and other health care facilities owned or
1-35 operated by the hospital if the hospital satisfies the requirements
1-36 of this subchapter.
1-37 Sec. 311.063. HOSPITAL DUTIES AND POLICIES. (a) A hospital
1-38 that employs physicians under this subchapter shall:
1-39 (1) appoint a chief medical officer who has been
1-40 recommended by the medical staff of the hospital and approved by the
1-41 governing board of the hospital; and
1-42 (2) adopt, maintain, and enforce policies to ensure
1-43 that a physician employed by the hospital exercises the physician's
1-44 independent medical judgment in providing care to patients at the
1-45 hospital and other health care facilities owned or operated by the
1-46 hospital.
1-47 (b) The policies adopted under this section must include:
1-48 (1) policies relating to:
1-49 (A) credentialing and privileges;
1-50 (B) quality assurance;
1-51 (C) utilization review;
1-52 (D) peer review and due process; and
1-53 (E) medical decision-making; and
1-54 (2) the implementation of a complaint mechanism to
1-55 process and resolve complaints regarding interference or attempted
1-56 interference with a physician's independent medical judgment.
1-57 (c) The policies adopted under this section must be approved
1-58 by the medical staff of the hospital.
1-59 (d) For all matters relating to the practice of medicine,
1-60 each physician employed by a hospital under this subchapter shall
1-61 ultimately report to the chief medical officer of the hospital. The
1-62 policies adopted under this section must be approved by the medical
1-63 staff of the hospital. In the event of a conflict between a policy

2-1 adopted by the medical staff and a policy of the hospital, a
2-2 conflict management process shall be jointly developed and
2-3 implemented to resolve any such conflict.

2-4 (e) The chief medical officer shall notify the Texas Medical
2-5 Board that the hospital is employing physicians under this
2-6 subchapter and that the chief medical officer will be the
2-7 hospital's designated contact with the Texas Medical Board. The
2-8 chief medical officer shall immediately report to the Texas Medical
2-9 Board any action or event that the chief medical officer reasonably
2-10 and in good faith believes constitutes a compromise of the
2-11 independent medical judgment of a physician in caring for a
2-12 patient.

2-13 (f) The hospital shall give equal consideration regarding
2-14 the issuance of medical staff membership and privileges to
2-15 physicians employed by the hospital and physicians not employed by
2-16 the hospital.

2-17 (g) A physician employed by a hospital shall retain
2-18 independent medical judgment in providing care to patients at the
2-19 hospital and other health care facilities owned or operated by the
2-20 hospital and may not be disciplined for reasonably advocating for
2-21 patient care.

2-22 (h) If a hospital provides professional liability coverage
2-23 for a physician employed by a hospital, the physician may
2-24 participate in the selection of the professional liability
2-25 coverage, has the right to an independent defense if the physician
2-26 pays for that independent defense, and shall retain the right to
2-27 consent to the settlement of any action or proceeding brought
2-28 against the physician.

2-29 (i) If a physician employed by a hospital enters into an
2-30 employment agreement that includes a covenant not to compete, the
2-31 agreement shall be subject to Section 15.50, Business & Commerce
2-32 Code, and any other applicable provisions.

2-33 SECTION 2. This Act takes effect immediately if it receives
2-34 a vote of two-thirds of all the members elected to each house, as
2-35 provided by Section 39, Article III, Texas Constitution. If this
2-36 Act does not receive the vote necessary for immediate effect, this
2-37 Act takes effect September 1, 2011.

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