

SENATE AMENDMENTS

2nd Printing

By: Schwertner, Torres

H.B. No. 680

A BILL TO BE ENTITLED

1 AN ACT

2 relating to complaints filed with the Texas Medical Board.

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

4 SECTION 1. Section 154.057(b), Occupations Code, is amended
5 to read as follows:

6 (b) The board shall complete a preliminary investigation of
7 the complaint not later than the 45th [~~30th~~] day after the date of
8 receiving the complaint. The board shall first determine whether
9 the physician constitutes a continuing threat to the public
10 welfare. On completion of the preliminary investigation, the board
11 shall determine whether to officially proceed on the complaint. If
12 the board fails to complete the preliminary investigation in the
13 time required by this subsection, the board's official
14 investigation of the complaint is considered to commence on that
15 date.

16 SECTION 2. Section 164.003(b), Occupations Code, is amended
17 to read as follows:

18 (b) Rules adopted under this section must require that:

19 (1) an informal meeting in compliance with Section
20 2001.054, Government Code, be scheduled not later than the 180th
21 day after the date the board's official investigation of the
22 complaint is commenced as provided by Section 154.057(b), unless
23 good cause is shown by the board for scheduling the informal meeting
24 after that date;

1 (2) the board give notice to the license holder of the
2 time and place of the meeting not later than the 45th [~~30th~~] day
3 before the date the meeting is held;

4 (3) the complainant and the license holder be provided
5 an opportunity to be heard;

6 (4) at least one of the board members or district
7 review committee members participating in the informal meeting as a
8 panelist be a member who represents the public;

9 (5) the board's legal counsel or a representative of
10 the attorney general be present to advise the board or the board's
11 staff; and

12 (6) a member of the board's staff be at the meeting to
13 present to the board's representative the facts the staff
14 reasonably believes it could prove by competent evidence or
15 qualified witnesses at a hearing.

16 SECTION 3. Sections 154.057 and 164.003, Occupations Code,
17 as amended by this Act, apply only to the investigation of a
18 complaint filed on or after the effective date of this Act. The
19 investigation of a complaint filed before that date is governed by
20 the law in effect on the date the complaint was filed, and that law
21 is continued in effect for that purpose.

22 SECTION 4. This Act takes effect September 1, 2011.

ADOPTED

MAY 25 2011

Atty. Gen.
Secretary of the Senate

By: SCHWERTNER

H.B. No. 680

Substitute the following for H.B. No. 680 :

By: *Janthoff*

C.S.H.B. No. 680

A BILL TO BE ENTITLED

AN ACT

relating to complaints filed with the Texas Medical Board.

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

SECTION 1. Section 154.051, Occupations Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The board may not consider or act on a complaint involving care provided more than seven years before the date on which the complaint is received by the board unless the care was provided to a minor. If the care was provided to a minor, the board may not consider or act on a complaint involving the care after the later of:

(1) the date the minor is 21 years of age; or

(2) the seventh anniversary of the date of the care.

(e) On receipt of a complaint, the board may consider a previously investigated complaint to determine whether there is a pattern of practice violating this subtitle.

SECTION 2. Subchapter B, Chapter 154, Occupations Code, is amended by adding Section 154.0535 to read as follows:

Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a)

In this section:

(1) "Anonymous complaint" means a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(2) "Insurance agent" means a person licensed under

1 Chapter 4054, Insurance Code.

2 (3) "Insurer" means an insurance company or other
3 entity authorized to engage in the business of insurance under
4 Subtitle C, Title 6, Insurance Code.

5 (4) "Third-party administrator" means a person
6 required to have a certificate of authority under Chapter 4151,
7 Insurance Code.

8 (b) The board may not accept anonymous complaints.

9 (c) Notwithstanding any confidentiality requirements under
10 Chapter 552, Government Code, this subtitle, or rules adopted under
11 this subtitle, a complaint filed with the board by an insurance
12 agent, insurer, pharmaceutical company, or third-party
13 administrator against a physician must include the name and address
14 of the insurance agent, insurer, pharmaceutical company, or
15 third-party administrator filing the complaint. Not later than the
16 15th day after the date the complaint is filed with the board, the
17 board shall notify the physician who is the subject of the complaint
18 of the name and address of the insurance agent, insurer,
19 pharmaceutical company, or third-party administrator who filed the
20 complaint, unless the notice would jeopardize an investigation.

21 SECTION 3. Section 154.057(b), Occupations Code, is amended
22 to read as follows:

23 (b) The board shall complete a preliminary investigation of
24 the complaint not later than the 45th [~~30th~~] day after the date of
25 receiving the complaint. The board shall first determine whether
26 the physician constitutes a continuing threat to the public
27 welfare. On completion of the preliminary investigation, the board

1 shall determine whether to officially proceed on the complaint. If
2 the board fails to complete the preliminary investigation in the
3 time required by this subsection, the board's official
4 investigation of the complaint is considered to commence on that
5 date.

6 SECTION 4. Subchapter A, Chapter 164, Occupations Code, is
7 amended by adding Section 164.0015 to read as follows:

8 Sec. 164.0015. REMEDIAL PLAN. (a) In addition to the
9 authority under Sections 164.001 and 164.002, the board may issue
10 and establish the terms of a remedial plan to resolve the
11 investigation of a complaint relating to this subtitle.

12 (b) A remedial plan may not contain a provision that:

13 (1) revokes, suspends, limits, or restricts a person's
14 license or other authorization to practice medicine; or

15 (2) assesses an administrative penalty against a
16 person.

17 (c) A remedial plan may not be imposed to resolve a
18 complaint:

19 (1) concerning:

20 (A) a patient death;

21 (B) the commission of a felony; or

22 (C) a matter in which the physician engaged in
23 inappropriate sexual behavior or contact with a patient or became
24 financially or personally involved with a patient in an
25 inappropriate manner; or

26 (2) in which the appropriate resolution may involve a
27 restriction on the manner in which a license holder practices

1 medicine.

2 (d) The board may not issue a remedial plan to resolve a
3 complaint against a license holder if the license holder has
4 previously entered into a remedial plan with the board for the
5 resolution of a different complaint relating to this subtitle.

6 (e) The board may assess a fee against a license holder
7 participating in a remedial plan in an amount necessary to recover
8 the costs of administering this plan.

9 (f) The board shall adopt rules necessary to implement this
10 section.

11 SECTION 5. Sections 164.002(c) and (d), Occupations Code,
12 are amended to read as follows:

13 (c) An agreed disposition is a disciplinary order for
14 purposes of reporting under this subtitle and of administrative
15 hearings and proceedings by state and federal regulatory agencies
16 regarding the practice of medicine. An agreed disposition or a
17 remedial plan under Section 164.0015 is public information.

18 (d) In civil litigation, an agreed disposition or a remedial
19 plan under Section 164.0015 is a settlement agreement under Rule
20 408, Texas Rules of Evidence. This subsection does not apply to a
21 license holder who has previously entered into an agreed
22 disposition with the board of a different disciplinary matter or
23 whose license the board is seeking to revoke.

24 SECTION 6. Section 164.003, Occupations Code, is amended by
25 amending Subsections (b) and (f) and adding Subsection (i) to read
26 as follows:

27 (b) Rules adopted under this section must require that:

1 (1) an informal meeting in compliance with Section
2 2001.054, Government Code, be scheduled not later than the 180th
3 day after the date the board's official investigation of the
4 complaint is commenced as provided by Section 154.057(b), unless
5 good cause is shown by the board for scheduling the informal meeting
6 after that date;

7 (2) the board give notice to the license holder of the
8 time and place of the meeting not later than the 45th [~~30th~~] day
9 before the date the meeting is held;

10 (3) the complainant and the license holder be provided
11 an opportunity to be heard;

12 (4) at least one of the board members or district
13 review committee members participating in the informal meeting as a
14 panelist be a member who represents the public;

15 (5) the board's legal counsel or a representative of
16 the attorney general be present to advise the board or the board's
17 staff; and

18 (6) a member of the board's staff be at the meeting to
19 present to the board's representative the facts the staff
20 reasonably believes it could prove by competent evidence or
21 qualified witnesses at a hearing.

22 (f) The notice required by Subsection (b)(2) must be
23 accompanied by a written statement of the nature of the allegations
24 and the information the board intends to use at the meeting. If the
25 board does not provide the statement or information at that time,
26 the license holder may use that failure as grounds for rescheduling
27 the informal meeting. If the complaint includes an allegation that

1 the license holder has violated the standard of care, the notice
2 must include a copy of the report by the expert physician reviewer.
3 The license holder must provide to the board the license holder's
4 rebuttal at least 15 [~~five~~] business days before the date of the
5 meeting in order for the information to be considered at the
6 meeting.

7 (i) On request by a physician under review, the board shall
8 make a recording of the informal settlement conference proceeding.
9 The recording is a part of the investigative file and may not be
10 released to a third party unless authorized under this subtitle.
11 The board may charge the physician a fee to cover the cost of
12 recording the proceeding.

13 SECTION 7. Sections 164.007(a) and (a-1), Occupations Code,
14 are amended to read as follows:

15 (a) The board by rule shall adopt procedures governing
16 formal disposition of a contested case under Chapter 2001,
17 Government Code. A formal hearing shall be conducted by an
18 administrative law judge employed by the State Office of
19 Administrative Hearings. After receiving the administrative law
20 judge's findings of fact and conclusions of law, the board shall
21 dispose of the contested case by issuing a final order based on the
22 administrative law judge's findings of fact and conclusions of law
23 [~~determine the charges on the merits~~].

24 (a-1) Notwithstanding Section 2001.058(e), Government
25 Code, the [The] board may not change a finding of fact or conclusion
26 of law or vacate or modify an order of the administrative law judge.
27 The board may obtain judicial review of any finding of fact or

1 conclusion of law issued by the administrative law judge as
2 provided by Section 2001.058(f)(5), Government Code. For each
3 case, the board has the sole authority and discretion to determine
4 the appropriate action or sanction, and the administrative law
5 judge may not make any recommendation regarding the appropriate
6 action or sanction [~~only if the board makes a determination~~
7 ~~required by Section 2001.058(e), Government Code~~].

8 SECTION 8. (a) Sections 154.051, 154.057, and 164.003,
9 Occupations Code, as amended by this Act, and Section 154.0535,
10 Occupations Code, as added by this Act, apply only to the
11 investigation of a complaint filed on or after the effective date of
12 this Act. The investigation of a complaint filed before that date
13 is governed by the law in effect on the date the complaint was
14 filed, and that law is continued in effect for that purpose.

15 (b) The Texas Medical Board shall adopt rules under Section
16 164.0015, Occupations Code, as added by this Act, not later than
17 January 1, 2012.

18 (c) Section 164.0015, Occupations Code, as added by this
19 Act, applies only to a complaint under Subtitle B, Title 3,
20 Occupations Code, filed on or after the effective date of this Act.
21 A complaint under Subtitle B, Title 3, Occupations Code, filed
22 before that date is governed by the law in effect on the date the
23 complaint was filed, and that law is continued in effect for that
24 purpose.

25 (d) Sections 164.007(a) and (a-1), Occupations Code, as
26 amended by this Act, apply only to a contested case for which an
27 administrative law judge employed by the State Office of

1 Administrative Hearings issues written findings of fact and
2 conclusions of law on or after the effective date of this Act. A
3 contested case for which an administrative law judge employed by
4 the State Office of Administrative Hearings issues written findings
5 of fact and conclusions of law before the effective date of this Act
6 is governed by the law in effect on the date the findings of fact and
7 conclusions of law were issued, and the former law is continued in
8 effect for that purpose.

9 SECTION 9. This Act takes effect September 1, 2011.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 26, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB680 by Schwertner (Relating to complaints filed with the Texas Medical Board.), As
Passed 2nd House

No significant fiscal implication to the State is anticipated.

This bill would amend the Occupations Code relating to complaints filed with the Texas Medical Board.

Based on the analysis of the Texas Medical Board and the State Office of Administrative Hearings, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 360 State Office of Administrative Hearings, 503 Texas Medical Board

LBB Staff: JOB, SD, CL, MW, NV

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 20, 2011

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB680 by Schwertner (Relating to complaints filed with the Texas Medical Board.),
Committee Report 2nd House, Substituted

No significant fiscal implication to the State is anticipated.

This bill would amend the Occupations Code relating to complaints filed with the Texas Medical Board.

Based on the analysis of the Texas Medical Board and the State Office of Administrative Hearings, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 360 State Office of Administrative Hearings, 503 Texas Medical Board

LBB Staff: JOB, CL, MW, NV

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 18, 2011

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB680 by Schwertner (Relating to complaints filed with the Texas Medical Board.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

This bill would amend the Occupations Code relating to a physician's response to a complaint filed with the Texas Medical Board.

Based on the analysis of the Texas Medical Board, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 503 Texas Medical Board

LBB Staff: JOB, CL, MW, NV

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 5, 2011

TO: Honorable Lois W. Kolkhorst, Chair, House Committee on Public Health

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB680 by Schwertner (Relating to complaints filed with the Texas Medical Board.),
Committee Report 1st House, Substituted

No significant fiscal implication to the State is anticipated.

This bill would amend the Occupations Code relating to a physician's response to a complaint filed with the Texas Medical Board.

Based on the analysis of the Texas Medical Board, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 503 Texas Medical Board

LBB Staff: JOB, CL, MW, NV

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 14, 2011

TO: Honorable Lois W. Kolkhorst, Chair, House Committee on Public Health

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB680 by Schwertner (Relating to a physician's response to a complaint filed with the Texas Medical Board.), **As Introduced**

No significant fiscal implication to the State is anticipated.

This bill would amend the Occupations Code relating to a physician's response to a complaint filed with the Texas Medical Board.

Based on the analysis of the Texas Medical Board, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 503 Texas Medical Board

LBB Staff: JOB, CL, MW, NV