

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 181.001(b), Health and Safety Code, is amended by amending Subdivisions (1) and (3) and adding Subdivisions (2-a) and (2-b) to read as follows:

(1) "Commission" [~~"Commissioner"~~] means the Health and Human Services Commission [~~commissioner of health and human services~~].

(2-a) "Disclose" means to release, transfer, provide access to, or otherwise divulge information outside the entity holding the information.

(2-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Health Insurance Portability and Accountability Act and Privacy Standards" means the privacy requirements in existence on September 1, 2011 [~~August 14, 2002~~], of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION 2. Subchapter A, Chapter 181, Health and Safety Code, is amended by adding Section 181.004 to read as follows:

Sec. 181.004. APPLICABILITY OF STATE AND FEDERAL LAW. (a) A covered entity, as that term is defined by 45 C.F.R. Section 160.103, shall comply with the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) Subject to Section 181.051, a covered entity, as that term is defined by Section 181.001, shall comply with this chapter.

SECTION 3. Section 181.005, Health and Safety Code, is

SENATE VERSION (IE)

SECTION 1. Same as House version.

SECTION 2. Same as House version.

SECTION 3. Same as House version.

CONFERENCE

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

amended to read as follows:

Sec. 181.005. DUTIES OF THE EXECUTIVE COMMISSIONER. (a) The executive commissioner shall administer this chapter and may adopt rules consistent with the Health Insurance Portability and Accountability Act and Privacy Standards to administer this chapter.

(b) The executive commissioner shall review amendments to the definitions in 45 C.F.R. Parts 160 and 164 that occur after September 1, 2011 [~~August 14, 2002~~], and determine whether it is in the best interest of the state to adopt the amended federal regulations. If the executive commissioner determines that it is in the best interest of the state to adopt the amended federal regulations, the amended regulations shall apply as required by this chapter.

(c) In making a determination under this section, the executive commissioner must consider, in addition to other factors affecting the public interest, the beneficial and adverse effects the amendments would have on:

(1) the lives of individuals in this state and their expectations of privacy; and

(2) governmental entities, institutions of higher education, state-owned teaching hospitals, private businesses, and commerce in this state.

(d) The executive commissioner shall prepare a report of the executive commissioner's determination made under this section and shall file the report with the presiding officer of each house of the legislature before the 30th day after the date the determination is made. The report must include an explanation of the reasons for the determination.

No equivalent provision.

SECTION 4. Section 181.006, Health and Safety Code, is amended to read as follows:

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

Sec. 181.006. PROTECTED HEALTH INFORMATION NOT PUBLIC. Notwithstanding Sections 181.004 and 181.051, for [F0F] a covered entity that is a governmental unit, an individual's protected health information:
(1) includes any information that reflects that an individual received health care from the covered entity; and
(2) is not public information and is not subject to disclosure under Chapter 552, Government Code.

No equivalent provision.

SECTION __. Subchapter B, Chapter 181, health and Safety Code, is amended by adding Section 181.059 as follows:
Sec. 181.059. CRIME VICTIM COMPENSATION. This Chapter does not apply to any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits regarding compensation to victims of crime as provided by Subchapter B, Article 56, Code of Criminal Procedure. [FA4]

No equivalent provision.

SECTION 5. Chapter 181, Health and Safety Code, is amended by adding Subchapter C to read as follows:
SUBCHAPTER C. ACCESS TO AND USE OF PROTECTED HEALTH INFORMATION
Sec. 181.101. TRAINING REQUIRED. (a) Each covered entity shall provide a training program to employees of the covered entity regarding the state and federal law concerning protected health information as it relates to:
(1) the covered entity's particular course of business; and
(2) each employee's scope of employment.
(b) An employee of a covered entity must complete training described by Subsection (a) not later than the 60th day after the date the employee is hired by the covered entity.
(c) An employee of a covered entity shall receive training

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

described by Subsection (a) at least once every two years.
(d) A covered entity shall require an employee of the entity who attends a training program described by Subsection (a) to sign, electronically or in writing, a statement verifying the employee's attendance at the training program. The covered entity shall maintain the signed statement.
Sec. 181.102. CONSUMER ACCESS TO ELECTRONIC HEALTH RECORDS. (a) Except as provided by Subsection (b), if a health care provider is using an electronic health records system that is capable of fulfilling the request, the health care provider, not later than the 15th business day after the date the health care provider receives a written request from a person for the person's electronic health record, shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form.
(b) A health care provider is not required to provide access to a person's protected health information that is excepted from access, or to which access may be denied, under 45 C.F.R. Section 164.524.
(c) For purposes of Subsection (a), the executive commissioner, in consultation with the Department of State Health Services, the Texas Medical Board, and the Texas Department of Insurance, by rule may recommend a standard electronic format for the release of requested health records. The standard electronic format recommended under this section must be consistent, if feasible, with federal law regarding the release of electronic health records.
Sec. 181.103. CONSUMER INFORMATION WEBSITE. The attorney general shall maintain an Internet website that provides:
(1) information concerning a consumer's privacy rights regarding protected health information under federal and state

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

law;

(2) a list of the state agencies, including the Department of State Health Services, the Texas Medical Board, and the Texas Department of Insurance, that regulate covered entities in this state and the types of entities each agency regulates;

(3) detailed information regarding each agency's complaint enforcement process; and

(4) contact information, including the address of the agency's Internet website, for each agency listed under Subdivision (2) for reporting a violation of this chapter.

Sec. 181.104. CONSUMER COMPLAINT REPORT BY ATTORNEY GENERAL. (a) The attorney general annually shall submit to the legislature a report describing:

(1) the number and types of complaints received by the attorney general and by the state agencies receiving consumer complaints under Section 181.103; and

(2) the enforcement action taken in response to each complaint reported under Subdivision (1).

(b) Each state agency that receives consumer complaints under Section 181.103 shall submit to the attorney general, in the form required by the attorney general, the information the attorney general requires to compile the report required by Subsection (a).

(c) The attorney general shall de-identify protected health information from the individual to whom the information pertains before including the information in the report required by Subsection (a).

SECTION 4. Subchapter D, Chapter 181, Health and Safety Code, is amended by adding Sections 181.153 and 181.154 to read as follows:

Sec. 181.153. SALE OF PROTECTED HEALTH

SECTION 6. Subchapter D, Chapter 181, Health and Safety Code, is amended by adding Sections 181.153 and 181.154 to read as follows:

Sec. 181.153. SALE OF PROTECTED HEALTH

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

INFORMATION PROHIBITED; EXCEPTIONS. (a) A covered entity may not disclose an individual's protected health information to any other person in exchange for direct or indirect remuneration, except that a covered entity may disclose an individual's protected health information:

(1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of:

(A) treatment;

(B) payment;

(C) health care operations; or

(D) performing an insurance or health maintenance organization function described by Section 602.053, Insurance Code; or

(2) as otherwise **authorized** or required by state or federal law.

(b) The direct or indirect remuneration a covered entity receives for making a disclosure of protected health information authorized by Subsection (a)(1)(D) may not exceed the covered entity's reasonable costs of preparing or transmitting the protected health information.

Sec. 181.154. NOTICE AND AUTHORIZATION REQUIRED FOR ELECTRONIC DISCLOSURE OF PROTECTED HEALTH INFORMATION; EXCEPTIONS.

(a) A covered entity shall provide notice to an individual for whom the covered entity creates or receives protected health information if the individual's protected health information is subject to electronic disclosure. A covered entity may provide general notice by:

(1) posting a written notice in the covered entity's place of business;

(2) posting a notice on the covered entity's Internet website;

SENATE VERSION (IE)

INFORMATION PROHIBITED; EXCEPTIONS. (a) A covered entity may not disclose an individual's protected health information to any other person in exchange for direct or indirect remuneration, except that a covered entity may disclose an individual's protected health information:

(1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of:

(A) treatment;

(B) payment;

(C) health care operations; or

(D) performing an insurance or health maintenance organization function described by Section 602.053, Insurance Code; or

(2) as otherwise **permitted** or required by state or federal law.

(b) The direct or indirect remuneration a covered entity receives for making a disclosure of protected health information authorized by Subsection (a)(1)(D) may not exceed the covered entity's reasonable costs of preparing or transmitting the protected health information.

Sec. 181.154. NOTICE AND AUTHORIZATION REQUIRED FOR ELECTRONIC DISCLOSURE OF PROTECTED HEALTH INFORMATION; EXCEPTIONS.

(a) A covered entity shall provide notice to an individual for whom the covered entity creates or receives protected health information if the individual's protected health information is subject to electronic disclosure. A covered entity may provide general notice by:

(1) posting a written notice in the covered entity's place of business;

(2) posting a notice on the covered entity's Internet website;

CONFERENCE

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

or

(3) posting a notice in any other place where individuals whose protected health information is subject to electronic disclosure are likely to see the notice.

(b) Except as provided by Subsection (c), a covered entity may not electronically disclose an individual's protected health information to any person without a separate authorization from the individual or the individual's legally authorized representative for each disclosure. An authorization for disclosure under this subsection may be made in written or electronic form or in oral form if it is documented in writing by the covered entity.

(c) The authorization for electronic disclosure of protected health information described by Subsection (b) is not required if the disclosure is made:

(1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of:

(A) treatment;

(B) payment; or

(C) health care operations; or

(2) as **authorized** or required by state or federal law.

(d) The attorney general **by rule** shall adopt a standard authorization form for use in complying with this section. The form must comply with the Health Insurance Portability and Accountability Act and Privacy Standards and this chapter.

(e) This section does not apply to a covered entity, as defined by Section 602.001, Insurance Code, if that entity is not a

SENATE VERSION (IE)

or

(3) posting a notice in any other place where individuals whose protected health information is subject to electronic disclosure are likely to see the notice.

(b) Except as provided by Subsection (c), a covered entity may not electronically disclose an individual's protected health information to any person without a separate authorization from the individual or the individual's legally authorized representative for each disclosure. An authorization for disclosure under this subsection may be made in written or electronic form or in oral form if it is documented in writing by the covered entity.

(c) The authorization for electronic disclosure of protected health information described by Subsection (b) is not required if the disclosure is made:

(1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of:

(A) treatment;

(B) payment;

(C) health care operations; or

(D) performing an insurance or health maintenance organization function described by Section 602.053, Insurance Code; or

(2) as **otherwise permitted** or required by state or federal law.

(d) The attorney general shall adopt a standard authorization form for use in complying with this section. The form must comply with the Health Insurance Portability and Accountability Act and Privacy Standards and this chapter.

(e) This section does not apply to a covered entity, as defined by Section 602.001, Insurance Code, if that entity is not a

CONFERENCE

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

covered entity as defined by 45 C.F.R. Section 160.103 or Section 181.001 of this code.

SECTION 5. Section 181.201, Health and Safety Code, is amended by amending Subsection (c) and adding Subsections (d), (e), and (f) to read as follows:

SENATE VERSION (IE)

covered entity as defined by 45 C.F.R. Section 160.103.

SECTION 7. Section 181.201, Health and Safety Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1), (d), (e), and (f) to read as follows:

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity for a violation of this chapter. A civil penalty assessed under this section may not exceed:

(1) \$5,000 [~~\$3,000~~] for each violation that occurs in one year, regardless of how long the violation continues during that year, committed negligently;

(2) \$25,000 for each violation that occurs in one year, regardless of how long the violation continues during that year, committed knowingly or intentionally; or

(3) \$250,000 for each violation in which the covered entity knowingly or intentionally uses protected health information for financial gain.

(b-1) The total amount of a penalty assessed against a covered entity under Subsection (b) in relation to a violation or violations of Section 181.154 may not exceed \$250,000 annually if the court finds that the disclosure was made only to another covered entity and only for a purpose described by Section 181.154(c) and the court finds that:

(1) the protected health information disclosed was encrypted or transmitted using encryption technology designed to protect against improper disclosure;

(2) the recipient of the protected health information did not use or release the protected health information; or

(3) at the time of the disclosure of the protected health

CONFERENCE

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(c) If the court in which an action under Subsection (b) is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed \$1.5 million annually [~~\$250,000~~].

(d) In determining the amount of a penalty imposed under Subsection (b), the court shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;

(2) the covered entity's compliance history;

(3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;

(4) whether the covered entity was certified at the time of the violation as described by Section 182.108;

(5) the amount necessary to deter a future violation; and

(6) the covered entity's efforts to correct the violation.

(e) The attorney general may institute an action against a covered entity that is licensed by a licensing agency of this state for a civil penalty under this section only if the licensing agency refers the violation to the attorney general under Section 181.202(2).

(f) The office of the attorney general may retain a reasonable portion of a civil penalty recovered under this section, not to exceed amounts specified in the General Appropriations Act, for the enforcement of this subchapter.

SECTION 6. Section 181.202, Health and Safety Code, is

SENATE VERSION (IE)

information, the covered entity had developed, implemented, and maintained security policies, including the education and training of employees responsible for the security of protected health information.

(c) If the court in which an action under Subsection (b) is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed \$1.5 million annually [~~\$250,000~~].

(d) In determining the amount of a penalty imposed under Subsection (b), the court shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;

(2) the covered entity's compliance history;

(3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;

(4) whether the covered entity was certified at the time of the violation as described by Section 182.108;

(5) the amount necessary to deter a future violation; and

(6) the covered entity's efforts to correct the violation.

(e) The attorney general may institute an action against a covered entity that is licensed by a licensing agency of this state for a civil penalty under this section only if the licensing agency refers the violation to the attorney general under Section 181.202(2).

(f) The office of the attorney general may retain a reasonable portion of a civil penalty recovered under this section, not to exceed amounts specified in the General Appropriations Act, for the enforcement of this subchapter. [FA2(1)]

SECTION 8. Same as House version.

CONFERENCE

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

amended to read as follows:

Sec. 181.202. **DISCIPLINARY ACTION.** In addition to the penalties prescribed by this chapter, a violation of this chapter by a covered entity [~~an individual or facility~~] that is licensed by an agency of this state is subject to investigation and disciplinary proceedings, including probation or suspension by the licensing agency. If there is evidence that the violations of this chapter are egregious and constitute a pattern or practice, the agency may:

- (1) revoke the covered entity's [~~individual's or facility's~~] license; or
- (2) refer the covered entity's case to the attorney general for the institution of an action for civil penalties under Section 181.201(b).

SECTION 7. Subchapter E, Chapter 181, Health and Safety Code, is amended by adding Section 181.204 to read as follows:

Sec. 181.204. ADMINISTRATIVE PENALTY. (a) The executive commissioner may impose an administrative penalty on a covered entity that is not licensed by a licensing agency of this state and that violates this chapter or a rule adopted under this chapter.

(b) The amount of the penalty may not exceed \$3,000 for each violation, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;
- (2) the covered entity's compliance history;
- (3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected

No equivalent provision.

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

health information is involved in the violation;

(4) whether the covered entity was certified at the time of the violation as described by Section 182.108;

(5) the amount necessary to deter a future violation; and

(6) the covered entity's efforts to correct the violation.

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the covered entity pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A covered entity that cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the executive commissioner to contest the affidavit as provided by those rules.

(d) The attorney general may sue to collect the penalty.

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

SECTION 8. Section 181.205, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) In determining the amount of a penalty imposed under other law in accordance with Section 181.202, a court or state agency shall consider the following factors:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;

(2) the covered entity's compliance history;

(3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;

(4) whether the covered entity was certified at the time of the

SECTION 9. Same as House version.

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

violation as described by Section 182.108;

(5) the amount necessary to deter a future violation; and

(6) the covered entity's efforts to correct the violation.

(c) On receipt of evidence under Subsections ~~[Subsection]~~ (a) and (b), a court or state agency shall consider the evidence and mitigate imposition of an administrative penalty or assessment of a civil penalty accordingly.

SECTION 9. Subchapter E, Chapter 181, Health and Safety Code, is amended by adding Sections 181.206, 181.207, 181.208, 181.209, and 181.210 to read as follows:

Sec. 181.206. RULES. The attorney general may adopt rules as necessary to enforce this chapter.

Sec. 181.207. AUDITS OF COVERED ENTITIES. (a) The commission, in coordination with the attorney general, the Texas Health Services Authority, and the Texas Department of Insurance:

(1) may request that the United States secretary of health and human services conduct an audit of a covered entity in this state to determine compliance with the Health Insurance Portability and Accountability Act and Privacy Standards; and

(2) shall periodically monitor and review the results of audits of covered entities in this state conducted by the United States secretary of health and human services.

(b) If the commission has evidence that a covered entity has committed violations of this chapter that are egregious and constitute a pattern or practice, the commission may:

(1) require the covered entity to submit to the commission the results of a risk analysis conducted by the covered entity as described by 45 C.F.R. Section 164.308(a)(1)(ii)(A); or

(2) if the covered entity is licensed by a licensing agency of

SENATE VERSION (IE)

SECTION 10. Subchapter E, Chapter 181, Health and Safety Code, is amended by adding Sections 181.206, 181.207, and 181.208 to read as follows:

Sec. 181.206. AUDITS OF COVERED ENTITIES. (a) The commission, in coordination with the attorney general, the Texas Health Services Authority, and the Texas Department of Insurance:

(1) may request that the United States secretary of health and human services conduct an audit of a covered entity, as that term is defined by 45 C.F.R. Section 160.103, in this state to determine compliance with the Health Insurance Portability and Accountability Act and Privacy Standards; and

(2) shall periodically monitor and review the results of audits of covered entities in this state conducted by the United States secretary of health and human services.

(b) If the commission has evidence that a covered entity has committed violations of this chapter that are egregious and constitute a pattern or practice, the commission may:

(1) require the covered entity to submit to the commission the results of a risk analysis conducted by the covered entity if required by 45 C.F.R. Section 164.308(a)(1)(ii)(A); or

(2) if the covered entity is licensed by a licensing agency of

CONFERENCE

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

this state, request that the licensing agency conduct an audit of the covered entity's system to determine compliance with the provisions of this chapter.

Sec. 181.208. REVIEW OF COMPLAINT BY COMMISSION. (a) The commission shall review a complaint received from an individual or an individual's legally authorized representative alleging that a covered entity violated this chapter with respect to the individual's protected health information.

(b) The commission shall refer a complaint reviewed under Subsection (a) to the appropriate licensing agency or the attorney general, as applicable.

Sec. 181.209. AUDIT AND COMPLAINT REPORT BY COMMISSION. (a) The commission annually shall submit to the appropriate standing committees of the senate and the house of representatives a report that includes:

(1) the number and types of complaints received by the commission regarding violations of this chapter;

(2) enforcement action taken by the commission, a licensing agency, or the office of the attorney general under this chapter; and

(3) the number of federal audits of covered entities in this state conducted and the number of audits required under Section 181.207(b).

(b) The commission and the Texas Health Services Authority shall each publish the report required by Subsection (a) on the agency's Internet website.

Sec. 181.210. FUNDING. The commission and the Texas Department of Insurance, in consultation with the Texas Health Services Authority, shall apply for and actively pursue

SENATE VERSION (IE)

this state, request that the licensing agency conduct an audit of the covered entity's system to determine compliance with the provisions of this chapter.

(c) The commission annually shall submit to the appropriate standing committees of the senate and the house of representatives a report regarding the number of federal audits of covered entities in this state and the number of audits required under Subsection (b).

Sec. 181.208. FUNDING. The commission and the Texas Department of Insurance, in consultation with the Texas Health Services Authority, shall apply for and actively pursue

CONFERENCE

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

available federal funding for enforcement of this chapter.

SECTION 10. Section 182.002, Health and Safety Code, is amended by adding Subdivisions (2-a), (3-a), and (3-b) to read as follows:

(2-a) "Covered entity" has the meaning assigned by Section 181.001.

(3-a) "Disclose" has the meaning assigned by Section 181.001.

(3-b) "Health Insurance Portability and Accountability Act and Privacy Standards" has the meaning assigned by Section 181.001.

SECTION 11. Subchapter C, Chapter 182, Health and Safety Code, is amended by adding Section 182.108 to read as follows:

Sec. 182.108. STANDARDS FOR ELECTRONIC SHARING OF PROTECTED HEALTH INFORMATION; COVERED ENTITY CERTIFICATION. (a) The corporation shall develop and submit to the commission for ratification privacy and security standards for the electronic sharing of protected health information.

(b) The commission shall review and by rule adopt acceptable standards submitted for ratification under Subsection (a).

(c) Standards adopted under Subsection (b) must be designed to:

(1) comply with the Health Insurance Portability and Accountability Act and Privacy Standards and Chapter 181;

(2) comply with any other state and federal law relating to the security and confidentiality of information electronically maintained or disclosed by a covered entity;

SENATE VERSION (IE)

available federal funding for enforcement of this chapter.
[FA1;FA2(2)]

SECTION 11. Same as House version.

SECTION 12. Same as House version.

CONFERENCE

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

- (3) ensure the secure maintenance and disclosure of personally identifiable health information;
- (4) include strategies and procedures for disclosing personally identifiable health information; and
- (5) support a level of system interoperability with existing health record databases in this state that is consistent with emerging standards.
- (d) The corporation shall establish a process by which a covered entity may apply for certification by the corporation of a covered entity's past compliance with standards adopted under Subsection (b).
- (e) The corporation shall publish the standards adopted under Subsection (b) on the corporation's Internet website.

No equivalent provision.

SENATE VERSION (IE)

SECTION 13. Section 521.053, Business & Commerce Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) A person who conducts business in this state and owns or licenses computerized data that includes sensitive personal information shall disclose any breach of system security, after discovering or receiving notification of the breach, to any individual ~~[resident of this state]~~ whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made as quickly as possible, except as provided by Subsection (d) or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b-1) Notwithstanding Subsection (b), the requirements of Subsection (b) apply only if the individual whose sensitive personal information was or is reasonably believed to have been acquired by an unauthorized person is a resident of this state or another state that does not require a person described

CONFERENCE

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

by Subsection (b) to notify the individual of a breach of system security. If the individual is a resident of a state that requires a person described by Subsection (b) to provide notice of a breach of system security, the notice of the breach of system security provided under that state's law satisfies the requirements of Subsection (b).

No equivalent provision.

SECTION 14. Section 521.151, Business & Commerce Code, is amended by adding Subsection (a-1) to read as follows:
(a-1) In addition to penalties assessed under Subsection (a), a person who fails to take reasonable action to comply with Section 521.053(b) is liable to this state for a civil penalty of not more than \$100 for each individual to whom notification is due under that subsection for each consecutive day that the person fails to take reasonable action to comply with that subsection. Civil penalties under this section may not exceed \$250,000 for all individuals to whom notification is due after a single breach. The attorney general may bring an action to recover the civil penalties imposed under this subsection.

No equivalent provision.

SECTION __. Section 522.002(b), Business & Commerce Code, is amended to read as follows:
(b) An offense under this section is a Class B misdemeanor, except that the offense is a state jail felony if the information accessed, read, scanned, stored, or transferred was protected health information as defined by the Health Insurance Portability and Accountability Act and Privacy Standards, as defined by Section 181.001, Health and Safety Code.
[FA2(3)]

No equivalent provision.

SECTION __. The change in law made by Section 522.002(b), Business & Commerce Code, as amended by this

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date. [FA2(3)]

No equivalent provision.

SECTION 15. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0994 to read as follows:

Sec. 531.0994. STUDY; ANNUAL REPORT. (a) The commission, in consultation with the Department of State Health Services, the Texas Medical Board, and the Texas Department of Insurance, shall explore and evaluate new developments in safeguarding protected health information.

(b) Not later than December 1 each year, the commission shall report to the legislature on new developments in safeguarding protected health information and recommendations for the implementation of safeguards within the commission.

SECTION 12. Subchapter B, Chapter 602, Insurance Code, is amended by adding Section 602.054 to read as follows:

Sec. 602.054. COMPLIANCE WITH OTHER LAW. A covered entity shall comply with:

(1) Subchapter D, Chapter 181, Health and Safety Code, except as otherwise provided by that subchapter; and

(2) the standards adopted under Section 182.108, Health and Safety Code.

SECTION 16. Same as House version.

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 13. (a) In this section, "unsustainable covered entity" means a covered entity, as defined by Section 181.001, Health and Safety Code, that ceases to operate.

(b) The Health and Human Services Commission, in consultation with the Texas Health Services Authority and the Texas Medical Board, shall review issues regarding the security and accessibility of protected health information maintained by an unsustainable covered entity.

(c) Not later than December 1, 2012, the Health and Human Services Commission shall submit to the appropriate standing committees of the senate and the house of representatives recommendations for:

(1) the state agency to which the protected health information maintained by an unsustainable covered entity should be transferred for storage;

(2) ensuring the security of protected health information maintained by unsustainable covered entities in this state, including secure transfer methods from the covered entity to the state;

(3) the method and period of time for which protected health information should be maintained by the state after transfer from an unsustainable covered entity;

(4) methods and processes by which an individual should be able to access the individual's protected health information after transfer to the state; and

(5) funding for the storage of protected health information after transfer to the state.

(d) This section expires January 1, 2013.

SECTION 14. (a) A task force on health information technology is created.

(b) The task force is composed of:

SENATE VERSION (IE)

SECTION 17. Same as House version.

CONFERENCE

SECTION 18. (a) A task force on health information technology is created.

(b) The task force is composed of:

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(1) 11 members appointed by the attorney general with the advice of the chairs of the standing committees of the senate and house of representatives having primary jurisdiction over health information technology issues, including:

- (A) at least two physicians;
- (B) at least two individuals who represent hospitals; and
- (C) at least one private citizen who represents patient and parental rights; and

(2) the following ex officio members:

- (A) the executive commissioner of the Health and Human Services Commission or an employee of the commission designated by the executive commissioner;
- (B) the commissioner of the Department of State Health Services or an employee of the department designated by the commissioner; and
- (C) the presiding officer of the Texas Health Services Authority or an employee of the authority designated by the presiding officer.

(c) Not later than December 1, 2012, the attorney general shall appoint the members of the task force and appoint a chair of the task force from among its membership. The chair of the task force must have expertise in:

- (1) state and federal health information privacy law;
- (2) patient rights; and
- (3) electronic signatures and other consent tools.

(d) The task force shall develop recommendations regarding:

- (1) the improvement of informed consent protocols for the electronic exchange of protected health information, as that term is defined by the Health Insurance Portability and Accountability Act and Privacy Standards, as defined by Section 181.001, Health and Safety Code, as amended by this

SENATE VERSION (IE)

(1) 11 members appointed by the attorney general with the advice of the chairs of the standing committees of the senate and house of representatives having primary jurisdiction over health information technology issues, including:

- (A) at least two physicians;
- (B) at least two individuals who represent hospitals;
- (C) at least one private citizen who represents patient and parental rights; and

(D) at least one pharmacist; and

(2) the following ex officio members:

- (A) the executive commissioner of the Health and Human Services Commission or an employee of the commission designated by the executive commissioner;
- (B) the commissioner of the Department of State Health Services or an employee of the department designated by the commissioner; and
- (C) the presiding officer of the Texas Health Services Authority or an employee of the authority designated by the presiding officer.

(c) Not later than December 1, 2012, the attorney general shall appoint the members of the task force and appoint a chair of the task force from among its membership. The chair of the task force must have expertise in:

- (1) state and federal health information privacy law;
- (2) patient rights; and
- (3) electronic signatures and other consent tools.

(d) The task force shall develop recommendations regarding:

- (1) the improvement of informed consent protocols for the electronic exchange of protected health information, as that term is defined by the Health Insurance Portability and Accountability Act and Privacy Standards, as defined by Section 181.001, Health and Safety Code, as amended by this

CONFERENCE

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

Act;

(2) the improvement of patient access to and use of electronically maintained and disclosed protected health information for the purpose of personal health and coordination of health care services; and

(3) any other critical issues, as determined by the task force, related to the exchange of protected health information.

(e) Not later than January 1, 2014, the task force shall submit to the standing committees of the senate and house of representatives having primary jurisdiction over health information technology issues and the Texas Health Services Authority a report including the task force's recommendations under Subsection (d).

(f) The Texas Health Services Authority shall publish the report submitted under Subsection (e) on the authority's Internet website.

(g) This section expires February 1, 2014.

No equivalent provision.

SECTION 15. Not later than January 1, 2013:

(1) the attorney general shall adopt the form required by Section 181.154, Health and Safety Code, as added by this Act; and

(2) the Health and Human Services Commission shall adopt the standards required by Section 182.108, Health and Safety Code, as added by this Act.

SECTION 16. The change in law made by Section 181.154, Health and Safety Code, as added by this Act, applies only to an electronic disclosure of protected health information made

SENATE VERSION (IE)

Act;

(2) the improvement of patient access to and use of electronically maintained and disclosed protected health information for the purpose of personal health and coordination of health care services; and

(3) any other critical issues, as determined by the task force, related to the exchange of protected health information.

(e) Not later than January 1, 2014, the task force shall submit to the standing committees of the senate and house of representatives having primary jurisdiction over health information technology issues and the Texas Health Services Authority a report including the task force's recommendations under Subsection (d).

(f) The Texas Health Services Authority shall publish the report submitted under Subsection (e) on the authority's Internet website.

(g) This section expires February 1, 2014. [FA3(1),(2)]

SECTION 19. Section 531.0315(b), Government Code, is repealed.

SECTION 20. Same as House version.

No equivalent provision.

CONFERENCE

House Bill 300
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

on or after the effective date of this Act. An electronic disclosure of protected health information made before the effective date of this Act is governed by the law in effect at the time the disclosure was made, and the former law is continued in effect for that purpose.

No equivalent provision.

No equivalent provision.

No equivalent provision.

SECTION 17. This Act takes effect September 1, 2012.

SENATE VERSION (IE)

SECTION 21. (a) Not later than May 1, 2012, the attorney general shall establish the Internet website required by Section 181.103, Health and Safety Code, as added by this Act.
(b) Not later than December 1, 2013, the attorney general shall submit the initial report required by Section 181.104, Health and Safety Code, as added by this Act.

SECTION 22. Not later than December 1, 2013, the Health and Human Services Commission shall submit the initial report required by Section 531.0994, Government Code, as added by this Act.

SECTION 23. The changes in law made by Section 181.201, Health and Safety Code, as amended by this Act, Section 521.053, Business & Commerce Code, as amended by this Act, and Section 521.151(a-1), Business & Commerce Code, as added by this Act, apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect at the time the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 24. Same as House version.

CONFERENCE