

BILL ANALYSIS

S.B. 404
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Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Recent legislation enacted certain due process reforms relating to complaints filed with the Texas Medical Board. Interested parties contend that similar due process reforms applicable to complaints filed with the Texas State Board of Pharmacy should also be enacted. S.B. 404 seeks to implement such reforms by amending current law relating to complaints filed with the Texas State Board of Pharmacy.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas State Board of Pharmacy in SECTIONS 4 and 5 of this bill.

ANALYSIS

S.B. 404 amends the Occupations Code to include a complainant's identity among the information the Texas State Board of Pharmacy is required to maintain regarding a complaint received by the board and to prohibit the board from considering or acting on a complaint involving a violation alleged to have occurred more than seven years before the date the board receives the complaint. The bill requires a procedural rule adopted by the board to govern certain informal proceedings relating to a disciplinary action against the holder of a pharmacy license to require, if an informal meeting is to be held, notice of the time and place of the meeting to be given to the license holder not later than the 45th day before the date the meeting is held. The bill requires such notice to be accompanied by a written statement of the nature of the allegations against the license holder and the information the board intends to use at the informal meeting and authorizes the license holder, if the board does not provide the statement or information when the notice is provided, to use that failure as grounds for rescheduling the informal meeting. The bill requires the license holder to provide to the board the license holder's rebuttal not later than the 15th day before the date of the meeting in order for that information to be considered at the meeting. The bill requires the board, on request by a license holder under review, to make a recording of the informal meeting and establishes that such a recording is a part of the investigative file and may not be released to a third party unless authorized under the Texas Pharmacy Act. The bill authorizes the board to charge the license holder a fee to cover the cost of recording the meeting and requires the board to provide a copy of the recording to the license holder on the license holder's request.

S.B. 404 authorizes the board to issue and establish the terms of a remedial plan to resolve the investigation of a complaint relating to the Texas Pharmacy Act and prohibits a remedial plan from being imposed to resolve a complaint concerning a death, a hospitalization, the commission of a felony, or any other matter designated by board rule or a complaint in which the appropriate resolution may involve a restriction on the manner in which a license holder practices pharmacy. The bill prohibits the board from issuing a remedial plan to resolve a complaint against a license holder if the license holder has entered into a remedial plan with the board in the preceding 24 months for the resolution of a different complaint. The bill requires the board to remove all records of the remedial plan from the board's records on the fifth anniversary of the date the

board issued the terms of the remedial plan if a license holder complies with and successfully completes the terms of a remedial plan. The bill authorizes the board to assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan and requires the board, not later than January 1, 2014, to adopt rules necessary to implement the bill's provisions regarding remedial plans.

EFFECTIVE DATE

September 1, 2013.