

By: Schwertner
(S. Davis of Harris)

S.B. No. 404

A BILL TO BE ENTITLED

AN ACT

relating to complaints filed with the Texas State Board of
Pharmacy; authorizing fees.

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

SECTION 1. Section 555.005, Occupations Code, is amended to
read as follows:

Sec. 555.005. RECORDS OF COMPLAINTS. For each complaint
received by the board, the board shall maintain information about
parties to the complaint, including the complainant's identity, the
subject matter of the complaint, a summary of the results of the
review or investigation of the complaint, and the ~~[its]~~ disposition
of the complaint.

SECTION 2. Section 555.007, Occupations Code, is amended by
adding Subsection (d) to read as follows:

(d) The board may not consider or act on a complaint
involving a violation alleged to have occurred more than seven
years before the date the complaint is received by the board.

SECTION 3. Section 565.056, Occupations Code, is amended by
amending Subsection (b) and adding Subsections (d) and (e) to read
as follows:

(b) A rule adopted under this section must:

(1) provide the complainant, if applicable and
permitted by law, and the license holder an opportunity to be heard;
~~[and]~~

1 (2) require the presence of an attorney to advise the
2 board or a board employee; and

3 (3) if an informal meeting will be held, require
4 notice of the time and place of the informal meeting to be given to
5 the license holder not later than the 45th day before the date the
6 informal meeting is held.

7 (d) The notice required by Subsection (b)(3) must be
8 accompanied by a written statement of the nature of the allegations
9 against the license holder and the information the board intends to
10 use at the informal meeting. If the board does not provide the
11 statement or information when the notice is provided, the license
12 holder may use that failure as grounds for rescheduling the
13 informal meeting. The license holder must provide to the board the
14 license holder's rebuttal not later than the 15th day before the
15 date of the meeting in order for that information to be considered
16 at the meeting.

17 (e) On request by a license holder under review, the board
18 shall make a recording of the informal meeting. The recording is a
19 part of the investigative file and may not be released to a third
20 party unless authorized under this subtitle. The board may charge
21 the license holder a fee to cover the cost of recording the meeting.
22 The board shall provide a copy of the recording to the license
23 holder on the license holder's request.

24 SECTION 4. Subchapter B, Chapter 565, Occupations Code, is
25 amended by adding Section 565.060 to read as follows:

26 Sec. 565.060. REMEDIAL PLAN. (a) The board may issue and
27 establish the terms of a remedial plan to resolve the investigation

1 of a complaint relating to this subtitle.

2 (b) A remedial plan may not be imposed to resolve a
3 complaint:

4 (1) concerning:

5 (A) a death;

6 (B) a hospitalization;

7 (C) the commission of a felony; or

8 (D) any other matter designated by board rule; or

9 (2) in which the appropriate resolution may involve a
10 restriction on the manner in which a license holder practices
11 pharmacy.

12 (c) The board may not issue a remedial plan to resolve a
13 complaint against a license holder if the license holder has
14 entered into a remedial plan with the board in the preceding 24
15 months for the resolution of a different complaint relating to this
16 subtitle.

17 (d) If a license holder complies with and successfully
18 completes the terms of a remedial plan, the board shall remove all
19 records of the remedial plan from the board's records on the fifth
20 anniversary of the date the board issued the terms of the remedial
21 plan.

22 (e) The board may assess a fee against a license holder
23 participating in a remedial plan in an amount necessary to recover
24 the costs of administering the plan.

25 (f) The board shall adopt rules necessary to implement this
26 section.

27 SECTION 5. (a) Sections 555.005 and 565.056, Occupations

1 Code, as amended by this Act, and Subsection (d), Section 555.007,
2 Occupations Code, as added by this Act, apply only to the
3 investigation of a complaint filed on or after the effective date of
4 this Act. The investigation of a complaint filed before that date
5 is governed by the law in effect on the date the complaint was
6 filed, and that law is continued in effect for that purpose.

7 (b) The Texas State Board of Pharmacy shall adopt rules
8 under Section 565.060, Occupations Code, as added by this Act, not
9 later than January 1, 2014.

10 (c) Section 565.060, Occupations Code, as added by this Act,
11 applies only to a complaint under Subtitle J, Title 3, Occupations
12 Code, filed on or after the effective date of this Act. A complaint
13 under Subtitle J, Title 3, Occupations Code, filed before that date
14 is governed by the law in effect on the date the complaint was
15 filed, and that law is continued in effect for that purpose.

16 SECTION 6. This Act takes effect September 1, 2013.