

By: Kolkhorst

S.B. No. 1937

A BILL TO BE ENTITLED

1 AN ACT
2 relating to civil penalties levied and disciplinary proceedings
3 conducted against certain covered entities.

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

5 SECTION 1. Section 181.201(d), Health and Safety Code, is
6 amended to read as follows:

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

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

11 (2) the covered entity's compliance history;

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

15 (4) ~~whether the covered entity was certified at the~~
16 ~~time of the violation as described by Section 182.108,~~

17 ~~[(5)]~~ the amount necessary to deter a future
18 violation; and

19 (5) ~~[(6)]~~ the covered entity's efforts to correct the
20 violation.

21 SECTION 2. Section 181.205(b), Health and Safety Code, is
22 amended to read as follows:

23 (b) In determining the amount of a penalty imposed under
24 other law in accordance with Section 181.202, a court or state

1 agency shall consider the following factors:

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

4 (2) the covered entity's compliance history;

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

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

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

12 (5) ~~(6)~~ the covered entity's efforts to correct the
13 violation.

14 SECTION 3. Subchapter E, Chapter 181, Health and Safety
15 Code, is amended by adding Section 181.208 to read as follows:

16 Sec. 181.208. ENFORCEMENT AGAINST CERTAIN COVERED
17 ENTITIES. Notwithstanding Sections 181.201 and 181.202, the
18 attorney general may not bring an action for civil penalties under
19 Section 181.201 and a licensing agency may not conduct a
20 disciplinary proceeding under Section 181.202 against a covered
21 entity if the covered entity was certified as described by Section
22 182.108 at the time of a violation of this chapter unless the
23 violation occurred due to the covered entity's gross negligence or
24 intentional conduct.

25 SECTION 4. Section 182.108, Health and Safety Code, is
26 amended by adding Subsection (f) to read as follows:

27 (f) A court or state agency that enforces a rule adopted

1 under this section shall consider the covered entity's
2 certification as described by this section at the time of a
3 violation as a mitigating factor.

4 SECTION 5. The changes in law made by this Act apply only to
5 a violation that occurs on or after the effective date of this Act.
6 A violation that occurs before the effective date of this Act is
7 governed by the law applicable to the violation immediately before
8 the effective date of this Act, and that law is continued in effect
9 for that purpose.

10 SECTION 6. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2015.