

By: Huffines

S.B. No. 844

A BILL TO BE ENTITLED

AN ACT

relating to the active supervision of occupational licensing  
authorities by the attorney general.

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

SECTION 1. Title 1, Occupations Code, is amended by adding  
Chapter 2 to read as follows:

CHAPTER 2. ACTIVE SUPERVISION OF OCCUPATIONAL LICENSING

AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2.001. DEFINITIONS. In this chapter:

(1) "Certificate" means a voluntary, nontransferable  
recognition issued by a private organization or licensing authority  
authorizing an individual, after meeting the established personal  
qualifications of the organization or authority, to use the term  
"certified" in describing the individual's occupation.

(2) "License" means a nontransferable authorization  
issued by a licensing authority authorizing an individual, after  
meeting the established personal qualifications, to engage in a  
particular occupation.

(3) "Licensing authority" means a department,  
commission, board, office, or other agency of the state that issues  
a license, specialty occupational license for medical  
reimbursement, registration, certificate, permit, or other  
authorization related to an occupation.

1           (4) "Personal qualifications" means criteria related  
2 to an individual's personal background, credentials, and  
3 characteristics that are required to obtain a certificate,  
4 specialty occupational license for medical reimbursement, or  
5 license, including:

6                   (A) educational attainment;

7                   (B) passage of an examination;

8                   (C) work experience;

9                   (D) character; and

10                  (E) criminal history.

11           (5) "Registration" means a nontransferable  
12 recognition issued by a licensing authority authorizing an  
13 individual who provides notice to the authority of the individual's  
14 name and address and of the nature of the service offered before  
15 engaging in a particular occupation to use the term "registered" in  
16 describing the individual's occupation.

17           (6) "Specialty occupational license for medical  
18 reimbursement" means a voluntary, nontransferable, and  
19 nonexclusive authorization to perform a medical service that is:

20                   (A) required for an individual to be eligible to  
21 receive payment or reimbursement from a governmental agency or  
22 other entity for providing medical services; and

23                   (B) issued by a licensing authority to an  
24 individual who meets the established personal qualifications.

25           Sec. 2.002. TYPES OF REGULATION. In determining the least  
26 restrictive regulation for purposes of this chapter, the following  
27 list represents regulations from least restrictive to most

restrictive:

- (1) market competition;
- (2) ratings or reviews from consumers or third parties;
- (3) private certification;
- (4) existence of a specific private cause of action to remedy a consumer harm;
- (5) a law prohibiting deceptive trade practices;
- (6) a restriction on the process of providing a specific good or service to a consumer;
- (7) inspection requirements;
- (8) a requirement that an individual obtain a bond or insurance;
- (9) a statute, rule, or policy requiring registration with a licensing authority;
- (10) a statute, rule, or policy requiring certification by a licensing authority;
- (11) a specialty occupational license for medical reimbursement; and
- (12) a statute, rule, or policy requiring licensing by a licensing authority.

Sec. 2.003. POLICY. It is the policy of this state:

- (1) to recognize the fundamental right of an individual to pursue an occupation;
- (2) to increase economic opportunities, promote competition, and encourage innovation in this state;
- (3) when necessary to displace market competition, to

1 use the least restrictive means of regulation necessary to protect  
2 consumers from existing, significant, and substantiated harms that  
3 threaten public health and safety; and

4 (4) to enforce occupational regulations against an  
5 individual only to the extent the individual sells or provides  
6 goods or services that are explicitly included in the law that  
7 defines the occupation's scope of practice.

8 SUBCHAPTER B. ATTORNEY GENERAL SUPERVISION

9 Sec. 2.051. ACTIVE SUPERVISION BY ATTORNEY GENERAL. (a) To  
10 ensure that a statute is construed to comply with, and a rule or  
11 policy of a licensing authority complies with, the policy described  
12 by Section 2.003, the attorney general shall actively supervise  
13 each licensing authority.

14 (b) In actively supervising a licensing authority, the  
15 attorney general shall:

16 (1) participate in the development of the authority's  
17 rules and policies to ensure the rules and policies benefit  
18 consumers and do not serve the private interests of individuals  
19 regulated by the authority;

20 (2) review the proposed rules, policies, and  
21 enforcement actions of the authority; and

22 (3) take action under Section 2.052 with regard to  
23 each proposed rule, policy, and action.

24 (c) In fulfilling the duties under this section, the  
25 attorney general shall study issues relevant to the attorney  
26 general's duties under this chapter, including issues related to  
27 antitrust litigation and methods for regulating occupations using

1 the least restrictive regulations possible.

2 Sec. 2.052. SUBMISSION TO ATTORNEY GENERAL; ACTION BY  
3 ATTORNEY GENERAL REQUIRED. (a) A licensing authority must submit  
4 any proposed rule, policy, or enforcement action to the attorney  
5 general for review before the rule, policy, or action is adopted or  
6 implemented.

7 (b) The attorney general shall approve a rule, policy, or  
8 enforcement action submitted under Subsection (a) if the attorney  
9 general determines the rule, policy, or action complies with the  
10 policy described by Section 2.003. The attorney general shall  
11 reject any rule, policy, or action that does not comply with the  
12 policy described by Section 2.003.

13 (c) A proposed rule, policy, or enforcement action of a  
14 licensing authority may not be finally adopted or implemented  
15 unless the rule, policy, or action is explicitly approved by the  
16 attorney general under Subsection (b). The attorney general's  
17 failure to respond to a rule, policy, or action that is submitted to  
18 the attorney general does not constitute approval of the rule,  
19 policy, or action.

20 (d) A licensing authority may not finally adopt or implement  
21 any rule, policy, or enforcement action that has been rejected by  
22 the attorney general under Subsection (b).

23 Sec. 2.053. COMPLAINTS. (a) The attorney general shall  
24 investigate a complaint submitted to the attorney general that  
25 alleges a licensing authority's rule, policy, or enforcement action  
26 is not in compliance with the policy described by Section 2.003.

27 (b) Not later than the 90th day after the date a complaint is

1 received, the attorney general shall:

2 (1) investigate the complaint;

3 (2) identify actions necessary to resolve the  
4 complaint and, if appropriate, direct the licensing authority  
5 subject to the complaint to take those actions; and

6 (3) notify the complainant of the outcome of the  
7 investigation and the disposition of the complaint.

8 (c) Chapter 2001, Government Code, does not apply to the  
9 disposition of a complaint under this section.

10 Sec. 2.054. REVIEW OF ACTION. The governor, the lieutenant  
11 governor, or a member of the legislature may request that the  
12 attorney general review:

13 (1) a rule, policy, or enforcement action of a  
14 licensing authority for compliance with the policy described by  
15 Section 2.003; or

16 (2) a prior action of the attorney general under this  
17 chapter.

18 Sec. 2.055. ESTABLISHMENT OF DIVISION. The attorney  
19 general may establish a division to actively supervise licensing  
20 authorities as provided by this chapter and employ staff to carry  
21 out the duties of this chapter, including employing one or more  
22 attorneys who do not provide general counsel to any licensing  
23 authority or exercise control over an authority other than the  
24 supervision required by this chapter.

25 SECTION 2. Not later than December 1, 2018, the attorney  
26 general shall:

27 (1) review all rules, policies, and enforcement

1 actions of a licensing authority, as defined by Section 2.001,  
2 Occupations Code, as added by this Act, that are in effect or  
3 ongoing on the effective date of this Act; and

4 (2) provide a notice to each licensing authority that:

5 (A) identifies each rule, policy, or action of  
6 the authority that is not in compliance with the policy described by  
7 Section 2.003, Occupations Code, as added by this Act; and

8 (B) directs the authority to amend the rule or  
9 policy or terminate the action, as applicable, to comply with the  
10 policy described by Section 2.003, Occupations Code, as added by  
11 this Act.

12 SECTION 3. This Act takes effect September 1, 2017.