

By: Kolkhorst

S.B. No. 1574

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the electronic sharing of protected health information  
3 and certification of and enforcement actions against certain  
4 covered entities.

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

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

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

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

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

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

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

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

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

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

24 (b) In determining the amount of a penalty imposed under

1 other law in accordance with Section 181.202, a court or state  
2 agency shall consider the following factors:

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

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

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

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

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

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

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

17 Sec. 181.208. ENFORCEMENT AGAINST CERTAIN COVERED  
18 ENTITIES. Notwithstanding Sections 181.201 and 181.202, the  
19 attorney general may not bring an action for civil penalties under  
20 Section 181.201 and a licensing agency may not conduct a  
21 disciplinary proceeding under Section 181.202 against a covered  
22 entity that holds a certification described by Section 182.108 at  
23 the time of the violation unless the violation is a result of the  
24 covered entity's gross negligence or intentional conduct.

25 SECTION 4. Section 182.108, Health and Safety Code, is  
26 amended by adding Subsection (b-1) and amending Subsections (c) and  
27 (d) to read as follows:

1        (b-1) The executive commissioner by rule may develop and the  
2 commission may implement a system to offer to a covered entity that  
3 contracts with the commission incentives to obtain a certification  
4 under this section. This subsection does not apply to a covered  
5 entity that is also a health care provider as defined by Section  
6 74A.001, Civil Practice and Remedies Code.

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

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

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

14            (3) ensure the secure maintenance and disclosure of  
15 personally identifiable health information;

16            (4) include strategies and procedures for disclosing  
17 personally identifiable health information; ~~and~~

18            (5) support a level of system interoperability with  
19 existing health record databases in this state that is consistent  
20 with emerging standards; and

21            (6) ensure compliance with relevant industry  
22 standards relating to security of Internet websites and electronic  
23 information.

24        (d) The corporation shall establish a process by which a  
25 covered entity may apply for privacy, security, or privacy and  
26 security certification by the corporation for the ~~[of a]~~ covered  
27 entity's past compliance with standards adopted under Subsection

1 (b).

2 SECTION 5. Sections 182.108(h), (i), (j), (l), and (m),  
3 Health and Safety Code, as effective September 1, 2021, are amended  
4 to read as follows:

5 (h) In amending standards under Subsection (g), the  
6 commission shall seek the assistance of an [~~a private nonprofit~~]  
7 organization with relevant knowledge and experience in health care  
8 privacy and security certification [~~establishing statewide health~~  
9 ~~information exchange capabilities~~].

10 (i) Standards amended under Subsection (g) must be designed  
11 to:

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

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

17 (3) ensure the secure maintenance and disclosure of  
18 individually identifiable health information;

19 (4) include strategies and procedures for disclosing  
20 individually identifiable health information; [~~and~~]

21 (5) support a level of system interoperability with  
22 existing health record databases in this state that is consistent  
23 with emerging standards; and

24 (6) ensure compliance with relevant industry  
25 standards relating to security of Internet websites and electronic  
26 information.

27 (j) The commission shall designate an [~~a private nonprofit~~]

1 organization with relevant knowledge and experience in health care  
2 privacy and security certification [~~establishing statewide health~~  
3 ~~information exchange capabilities~~] to establish a process by which  
4 a covered entity may apply for privacy, security, or privacy and  
5 security certification by the designated [~~private nonprofit~~  
6 organization for the [~~of a~~] covered entity's past compliance with  
7 standards adopted under this section. If an [~~a private nonprofit~~  
8 organization with relevant knowledge and experience in health care  
9 privacy and security certification [~~establishing statewide health~~  
10 ~~information exchange capabilities~~] does not exist, the commission  
11 shall [~~either:~~

12 [~~(1)~~] establish the process described by this  
13 subsection[~~, or~~

14 [~~(2) designate another entity with relevant knowledge~~  
15 ~~to establish the process described by this subsection]~~.

16 (1) The commission shall ensure that any fee charged for the  
17 certification process described in Subsection (j) by the [~~private~~  
18 ~~nonprofit~~] organization [~~or entity~~] designated under that  
19 subsection, including a person acting on behalf of a designated  
20 organization [~~or entity~~], is reasonable. If the commission  
21 establishes the process as described by Subsection (j) [~~(j)(1)~~],  
22 the commission shall set a reasonable fee for the certification  
23 process.

24 (m) For good cause, the commission may revoke the  
25 designation or authority of an [~~a private nonprofit~~] organization  
26 [~~or entity~~] to establish the process or offer certifications under  
27 Subsection (j).

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

7           SECTION 7. This Act takes effect immediately if it receives  
8 a vote of two-thirds of all the members elected to each house, as  
9 provided by Section 39, Article III, Texas Constitution. If this  
10 Act does not receive the vote necessary for immediate effect, this  
11 Act takes effect September 1, 2017.