

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SECTION 1. Subchapter D, Chapter 51, Occupations Code, is amended by adding Section 51.2032 to read as follows:

Sec. 51.2032. RULES REGARDING PODIATRY; PROVISION OF INFORMATION. (a) In this section, "advisory board" means the Podiatric Medical Examiners Advisory Board.

(b) The commission may not adopt a new rule relating to the scope of practice of, a health-related standard of care for, or the ethical practice of the profession of podiatry unless the rule has been proposed by the advisory board. The commission shall adopt rules prescribing the procedure by which the advisory board may propose rules described by this subsection.

(c) For each rule proposed under Subsection (b), the commission shall either adopt the rule as proposed or return the rule to the advisory board for revision. The commission retains authority for final adoption of all rules and is responsible for ensuring compliance with all laws regarding the rulemaking process.

(d) The commission shall adopt rules clearly specifying the manner in which the department and commission will solicit

SENATE VERSION (IE)

SECTION 1. Section 51.002, Occupations Code, is amended to read as follows:

Sec. 51.002. APPLICATION OF SUNSET ACT. The Texas Commission of Licensing and Regulation and the Texas Department of Licensing and Regulation are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission and the department are abolished September 1, 2021 [~~2019~~].

SECTION 2. Same as House version.

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

input from, and on request provide information to, the advisory board regarding:

- (1) continuing education requirements; and
- (2) the general investigative, enforcement, or disciplinary procedures of the department or commission.

SECTION 2. Section 202.001(a), Occupations Code, is amended by amending Subdivisions (1) and (2) and adding Subdivisions (1-a) and (1-b) to read as follows:

(1) "Advisory board" ["Board"] means the Podiatric Medical Examiners Advisory Board [Texas State Board of Podiatric Medical Examiners].

(1-a) "Commission" means the Texas Commission of Licensing and Regulation.

(1-b) "Department" means the Texas Department of Licensing and Regulation.

(2) "Executive director" means the executive director of the Texas Department of Licensing and Regulation [employee of the board who manages the board's day-to-day operations].

SECTION 3. Same as House version.

SECTION 3. The heading to Subchapter B, Chapter 202, Occupations Code, is amended to read as follows:

SUBCHAPTER B. ~~[TEXAS STATE BOARD OF]~~
PODIATRIC MEDICAL EXAMINERS ADVISORY BOARD

SECTION 4. Same as House version.

SECTION 4. Section 202.051(a), Occupations Code, is amended to read as follows:

(a) The ~~[Texas State Board of]~~ Podiatric Medical Examiners

SECTION 5. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

Advisory Board consists of nine members appointed by the governor as follows:

- (1) six members who are licensed in this state to practice podiatry and ~~[are reputable practicing podiatrists who have resided in this state and]~~ have been actively engaged in the practice of podiatry for the five years preceding appointment; and
- (2) three members who represent the public.

SECTION 5. Section 202.053, Occupations Code, is amended to read as follows:

Sec. 202.053. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the advisory board if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by or participates in the management of a business entity or other organization regulated by the department ~~[board]~~ or receiving funds from the department ~~[board]~~;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department ~~[board]~~ or receiving funds from the department ~~[board]~~; or
- (4) uses or receives a substantial amount of tangible goods, services, or funds from the department ~~[board]~~, other than ~~[compensation or]~~ reimbursement authorized by law for advisory board membership, attendance, or expenses.

SECTION 6. Sections 202.054(b) and (c), Occupations Code,

SECTION 6. Same as House version.

SECTION 7. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

are amended to read as follows:

(b) A person may not be a member of the advisory board [~~and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.)~~] if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a member of the advisory board [~~or act as the general counsel to the board~~] if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the advisory board.

SECTION 7. Section 202.055, Occupations Code, is amended to read as follows:

Sec. 202.055. TERMS; VACANCIES. (a) Members of the advisory board serve staggered six-year terms, with the term of three members expiring on February 1 of each odd-numbered year. At the expiration of the term of each member, the governor shall appoint a successor.

(b) If a vacancy occurs during a term, the governor shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

SECTION 8. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 8. Section 202.056, Occupations Code, is amended to read as follows:

Sec. 202.056. **GROUNDS FOR REMOVAL.** (a) It is a ground for removal from the advisory board that a member:

(1) does not have at the time of taking office the qualifications required by Section 202.051 or 202.053;

(2) does not maintain during service on the advisory board the qualifications required by Section 202.051 or 202.053;

(3) is ineligible for membership under Section 202.054;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled advisory board meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the advisory board.

(b) The validity of an action of the advisory board is not affected by the fact that the action is taken when a ground for removal of an advisory [a] board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the ~~[president of the board of the potential ground. The president shall then notify the]~~ governor and the attorney general that a potential ground for removal exists. ~~[If the potential ground for removal involves the president, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.]~~

SECTION 9. Section 202.057, Occupations Code, is amended to read as follows:

Sec. 202.057. COMPENSATION [~~PER DIEM~~];

SENATE VERSION (IE)

SECTION 9. Same as House version.

CONFERENCE

SECTION 10. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

REIMBURSEMENT OF EXPENSES. An advisory board member may not receive compensation but is entitled to ~~[(a) Each board member is entitled to a per diem as set by legislative appropriation for each day the member engages in the business of the board.~~

~~[(b) A member may receive]~~ reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to ~~[travel expenses, including expenses for meals, lodging, and transportation, as prescribed by]~~ the General Appropriations Act.

~~[(c) The secretary of the board is entitled to reimbursement for the secretary's necessary expenses incurred in the performance of services for the board.]~~

SECTION 10. Section 202.058, Occupations Code, is amended to read as follows:

Sec. 202.058. PRESIDING OFFICER ~~[OFFICERS]~~. ~~[(a)]~~ The governor shall appoint one ~~[designate a member]~~ of the advisory board members to serve as presiding officer ~~[the president]~~ of the advisory board at the pleasure of the governor. The presiding officer may vote on any matter before the advisory board ~~[to serve in that capacity at the pleasure of the governor].~~

~~[(b) At the first regular scheduled meeting of each biennium, the board shall elect from its members a vice president and secretary.]~~

SECTION 11. Section 202.059(a), Occupations Code, is amended to read as follows:

(a) The advisory board shall meet at the call of the presiding

SECTION 11. Same as House version.

SECTION 12. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~officer of the commission or the executive director [hold regular meetings at least twice a year and special meetings as necessary. The board shall hold the meetings at times and places the board considers most convenient for applicants for license examinations].~~

SECTION 12. Section 202.061, Occupations Code, is amended to read as follows:

Sec. 202.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the advisory board may not vote, deliberate, or be counted as a member in attendance at a meeting of the advisory board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter;

(2) ~~[and] the department's programs, functions, and rules with respect to this chapter[-and budget of the board];~~

(3) ~~[(2)] the results of the most recent formal audit of the department with respect to this chapter [board];~~

(4) the scope and limitations on the rulemaking authority of the advisory board;

SENATE VERSION (IE)

SECTION 13. Section 202.061, Occupations Code, is amended to read as follows:

Sec. 202.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the advisory board may not vote, deliberate, or be counted as a member in attendance at a meeting of the advisory board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter;

(2) ~~[and] the department's programs, functions, and rules with respect to this chapter[-and budget of the board];~~

(3) ~~[(2)] the results of the most recent formal audit of the department with respect to this chapter [board];~~

(4) the scope and limitations on the rulemaking authority of the advisory board;

() the types of rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business regulated under this chapter, including rules, interpretations, and enforcement actions that:

(A) regulate the scope of practice of persons in a profession or business regulated under this chapter;

(B) restrict advertising by persons in a profession or business regulated under this chapter;

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~(5) [(3)]~~ the requirements of:

~~(A)~~ laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

~~(B)~~ other laws applicable to members of the advisory board in performing the members' duties; and

~~(6) [(4)]~~ any applicable ethics policies adopted by the commission [board] or the Texas Ethics Commission.

~~(c)~~ The executive director shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each advisory board member. On receipt of the training manual, each advisory board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual. [A person appointed to the board may be entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.]

SECTION 13. Subchapter B, Chapter 202, Occupations Code, is amended by adding Section 202.062 to read as follows:

Sec. 202.062. DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the

SENATE VERSION (IE)

~~(C)~~ affect the price of goods or services provided by persons in a profession or business regulated under this chapter; and

~~(D)~~ restrict participation in a profession or business regulated under this chapter. [FA2(1)]

~~(5) [(3)]~~ the requirements of:

~~(A)~~ laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

~~(B)~~ other laws applicable to members of the advisory board in performing the members' duties; and

~~(6) [(4)]~~ any applicable ethics policies adopted by the commission [board] or the Texas Ethics Commission.

~~(c)~~ The executive director shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each advisory board member. On receipt of the training manual, each advisory board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual. [A person appointed to the board may be entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.]

SECTION 14. Same as House version.

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

administration of this chapter.

SECTION 14. The heading to Subchapter D, Chapter 202, Occupations Code, is amended to read as follows:
SUBCHAPTER D. ~~[BOARD]~~ POWERS AND DUTIES

SECTION 15. Same as House version.

SECTION 15. Subchapter D, Chapter 202, Occupations Code, is amended by adding Section 202.1515 to read as follows:

SECTION 16. Same as House version.

Sec. 202.1515. GENERAL POWERS AND DUTIES. (a) The executive director shall administer and enforce this chapter.

(b) The commission shall adopt rules necessary to administer and enforce this chapter.

SECTION 17. Same as House version.

SECTION 16. Section 202.153, Occupations Code, is amended to read as follows:

Sec. 202.153. FEES. ~~[(a)]~~ The commission ~~[board]~~ by rule shall establish fees in amounts reasonable and necessary to cover the cost of administering this chapter. ~~[The board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.~~

~~[(b) The board may not maintain unnecessary fund balances, and fee amounts shall be established in accordance with this requirement.]~~

SECTION 18. Same as House version.

SECTION 17. Section 202.160, Occupations Code, is amended to read as follows:

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

Sec. 202.160. INFORMATION PROVIDED TO LICENSE HOLDERS. At least once each biennium, the department ~~board~~ shall provide to license holders information on:

- (1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;
- (2) abusive and addictive behavior of certain persons who use prescription pain medications;
- (3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and
- (4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

SECTION 18. Section 202.161, Occupations Code, is amended to read as follows:

Sec. 202.161. POISON CONTROL CENTER INFORMATION. The department ~~board~~ shall provide to license holders information regarding the services provided by poison control centers.

SECTION 19. The heading to Subchapter E, Chapter 202, Occupations Code, is amended to read as follows:

SUBCHAPTER E. ~~[PUBLIC INTEREST INFORMATION AND]~~ COMPLAINT PROCEDURES

SECTION 20. Subchapter E, Chapter 202, Occupations Code, is amended by adding Section 202.2025 to read as follows:

SENATE VERSION (IE)

SECTION 19. Same as House version.

SECTION 20. Same as House version.

SECTION 21. Same as House version.

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

Sec. 202.2025. COMPLAINT PRIORITY. The executive director shall develop, implement, and enforce a written policy for determining the complaints filed under this chapter that will be given priority for investigation and resolution by the department.

SECTION 21. Subchapter E, Chapter 202, Occupations Code, is amended by adding Sections 202.2031 and 202.2032 to read as follows:

Sec. 202.2031. NOTIFICATION TO PARTIES REGARDING COMPLAINT. (a) The department shall notify a license holder who is the subject of a complaint filed with the department that a complaint has been filed and shall notify the license holder of the nature of the complaint.

(b) The department is not required to provide notice under this section if the notice would jeopardize an investigation.

Sec. 202.2032. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) In this section:

(1) "Anonymous complaint" means a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(2) "Insurance agent" means a person licensed under Chapter 4054, Insurance Code.

(3) "Insurer" means an insurance company or other entity authorized to engage in the business of insurance under Subtitle C, Title 6, Insurance Code.

(4) "Third-party administrator" means a person required to have a certificate of authority under Chapter 4151, Insurance Code.

(b) The department may not accept anonymous complaints.

(c) Notwithstanding any confidentiality requirements under

SENATE VERSION (IE)

SECTION 22. Same as House version.

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

Chapter 552, Government Code, or this chapter, a complaint filed with the department by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a license holder must include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint.

(d) Not later than the 15th day after the date the complaint is filed with the department, the department shall notify the license holder who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

SECTION 22. Sections 202.252(a), (b), (e), and (f), Occupations Code, are amended to read as follows:

(a) An application for a license under this chapter must be submitted in the manner and on a form prescribed by the executive director ~~[A person who desires to practice podiatry in this state shall apply in writing to the board for a license on a form prescribed by the board].~~

(b) The commission by rule shall establish the information and documentation required to be submitted as part of an application for a license under this chapter ~~[applicant shall submit any information reasonably required by the board]~~, including evidence satisfactory to the commission or department ~~[board]~~ that the applicant:

(1) is at least 21 years of age;

(2) ~~[is of good moral character;~~

~~[(3)]~~ has completed at least 90 semester hours of college courses acceptable at the time of completion for credit toward

SENATE VERSION (IE)

SECTION 23. Same as House version.

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

a bachelor's degree at an institution of higher education determined by the department to have acceptable standards [~~The University of Texas~~];

(3) [(4)] is a graduate of a reputable school of podiatry or chiropody; and

(4) [(5)] has successfully completed any other course of training reasonably required by commission [~~board~~] rule relating to the safe care and treatment of patients.

(e) All educational attainments or credits for evaluation under this chapter must be completed within the United States. The department [~~board~~] may not accept educational credits attained in a foreign country that are not approved by the department [~~acceptable to The University of Texas for credit toward a bachelor's degree~~].

(f) For purposes of this section, a podiatry or chiropody school is reputable if:

(1) the course of instruction consists of four terms of approximately eight months each, or the substantial equivalent; and

(2) the school is approved by the department [~~board~~].

SECTION 23. Subchapter F, Chapter 202, Occupations Code, is amended by adding Section 202.2525 to read as follows:
Sec. 202.2525. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE ISSUANCE. (a) The department shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the executive director, to the department or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

SENATE VERSION (IE)

CONFERENCE

SECTION 24. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(b) The department may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The department shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The department may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

SECTION 24. Section 202.253, Occupations Code, is amended to read as follows:

Sec. 202.253. GROUNDS FOR DENIAL OF LICENSE. (a) The commission may refuse to issue a license or certificate to a person who violates this chapter, a rule adopted under this chapter, or an order of the commission or executive director.

(a-1) The commission or department [board] may refuse to admit a person to an examination, and may refuse to issue a license to practice podiatry to a person, for:

(1) presenting [to the board] a license, certificate, or diploma that was illegally or fraudulently obtained or engaging in fraud or deception in passing the examination;

SENATE VERSION (IE)

CONFERENCE

SECTION 25. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

- (2) being convicted of:
 - (A) a felony;
 - (B) a crime that involves moral turpitude; or
 - (C) an offense under Section 202.606;
- (3) engaging in habits of intemperance or drug addiction that in the department's [~~board's~~] opinion would endanger the health, well-being, or welfare of patients;
- (4) engaging in grossly unprofessional or dishonorable conduct of a character that in the department's [~~board's~~] opinion is likely to deceive or defraud the public;
- (5) directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice;
- (6) using any advertising statement of a character tending to mislead or deceive the public;
- (7) advertising professional superiority or the performance of professional service in a superior manner;
- (8) purchasing, selling, bartering, or using or offering to purchase, sell, barter, or use a podiatry degree, license, certificate, diploma, or a transcript of a license, certificate, or diploma, in or incident to an application [~~to the board~~] for a license to practice podiatry;
- (9) altering, with fraudulent intent, a podiatry license, certificate, diploma, or a transcript of a podiatry license, certificate, or diploma;
- (10) using a podiatry license, certificate, or diploma, or a transcript of a podiatry license, certificate, or diploma, that has been fraudulently purchased, issued, counterfeited, or materially altered;
- (11) impersonating, or acting as proxy for, another person in a podiatry license examination;
- (12) impersonating a license holder, or permitting another

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

person to use the license holder's license to practice podiatry in this state, to treat or offer to treat, by any method, conditions and ailments of human feet;

(13) directly or indirectly employing a person whose license to practice podiatry has been suspended or associating in the practice of podiatry with a person whose license to practice podiatry has been suspended or who has been convicted of the unlawful practice of podiatry in this state or elsewhere;

(14) wilfully making in the application for a license to practice podiatry a material misrepresentation or material untrue statement;

(15) being unable to practice podiatry with reasonable skill and safety to a patient because of age, illness, drunkenness, or excessive use of drugs, narcotics, chemicals, or other substances or as a result of a mental or physical condition;

(16) failing to practice podiatry in an acceptable manner consistent with public health and welfare;

(17) being removed, suspended, or disciplined in another manner by the podiatrist's peers in a professional podiatry association or society, whether local, regional, state, or national in scope, or being disciplined by a licensed hospital or the medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if the commission or department ~~board~~ determines that the action was:

(A) based on unprofessional conduct or professional incompetence likely to harm the public; and

(B) appropriate and reasonably supported by evidence submitted to the association, society, hospital, or medical staff; or

(18) having repeated or recurring meritorious health care liability claims filed against the podiatrist that in the

SENATE VERSION (IE)

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

commission's or department's [board's] opinion are evidence of professional incompetence likely to injure the public.

(b) In enforcing Subsection ~~(a-1)(15)~~ [(a)(15)], the department [board], on probable cause, shall request the affected podiatrist to submit to a mental or physical examination by a physician designated by the department [board]. If the podiatrist refuses to submit to the examination, the commission or executive director [board] shall issue an order requiring the podiatrist to show cause why the podiatrist will not submit to the examination and shall schedule a hearing on the order not later than the 30th day after the date notice is served on the podiatrist. The podiatrist shall be notified by either personal service or certified mail with return receipt requested.

(c) At the hearing, the podiatrist and the podiatrist's attorney may present testimony and other evidence to show why the podiatrist should not be required to submit to the examination. After a complete hearing, the commission or executive director [board] shall issue an order either requiring the podiatrist to submit to the examination or withdrawing the request for examination.

SECTION 25. Sections 202.254(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) Except as provided by Section 202.261, each applicant for a license to practice podiatry in this state must pass an examination approved by the department [board]. ~~[Each applicant shall pay to the board an examination fee at least 15 days before the date of the scheduled examination.]~~

(b) The department shall recognize, prepare, administer, or arrange for the administration of an examination under this

SENATE VERSION (IE)

CONFERENCE

SECTION 26. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~chapter [board may adopt and enforce rules of procedure for administering this section. A public board member may not participate in any part of the examination process for applicants for a license issued by the board that requires knowledge of the practice of podiatry].~~

(c) The license examination must consist of a written and practical component. The department [board] shall determine the passing score for the examination using accepted criterion-referenced methods. The department [board] shall have the examination validated by an independent testing professional.

SECTION 26. Section 202.257, Occupations Code, is amended to read as follows:

Sec. 202.257. ISSUANCE OF LICENSE. The department [board] shall issue a license to each applicant who possesses the qualifications required for a license and passes the examination.

SECTION 27. Section 202.259(a), Occupations Code, is amended to read as follows:

(a) The commission [board] by rule may adopt a procedure for the issuance of a temporary license to an applicant other than an applicant for a provisional license under Section 202.260.

SECTION 28. Sections 202.260(a), (b), (c), and (d), Occupations Code, are amended to read as follows:

(a) On application, the department [board] shall grant a provisional license to practice podiatry to an applicant who:
(1) is licensed in good standing as a podiatrist in another state

SENATE VERSION (IE)

SECTION 27. Same as House version.

SECTION 28. Same as House version.

SECTION 29. Same as House version.

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

that has licensing requirements that are substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the department [~~board~~] relating to the practice of podiatry; and
(3) is sponsored by a person licensed under this chapter with whom the provisional license holder may practice under this section.

(b) The department [~~board~~] may excuse an applicant for a provisional license from the requirement of Subsection (a)(3) if the department [~~board~~] determines that compliance with that subdivision [~~subsection~~] constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the department [~~board~~] approves or denies the provisional license holder's application for a license. Except as provided by Subsection (e), the department [~~board~~] shall issue a license under this chapter to the holder of a provisional license under this section if:

(1) the provisional license holder passes the examination required by Section 202.254;

(2) the department [~~board~~] verifies that the provisional license holder has the academic and experience requirements for a license under this chapter; and

(3) the provisional license holder satisfies any other license requirements under this chapter.

(d) The department [~~board~~] shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The department [~~board~~] may extend that deadline to allow for the receipt of pending examination results.

SENATE VERSION (IE)

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 29. Sections 202.261(a) and (b), Occupations Code, are amended to read as follows:

(a) The department [~~board~~] may issue a license to practice podiatry without administering the examination under Section 202.254 to a podiatrist who:

(1) at the time of applying for a license has accepted an appointment or is serving as a full-time member of the faculty of an educational institution in this state offering an approved or accredited course of study or training leading to a degree in podiatry;

(2) is licensed to practice podiatry in another state that has licensing requirements substantially equivalent to those established by this state; and

(3) otherwise satisfies the requirements of Section 202.252.

(b) For purposes of Subsection (a)(1), a course of study, training, or education is considered to be approved or accredited if it is approved or accredited by the department [~~board~~] as constituting a reputable course of study, training, or education. In deciding whether to approve or accredit a course of study, training, or education, the department [~~board~~] shall consider whether the course is approved or accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association or its successor organization.

SECTION 30. Section 202.262, Occupations Code, is amended to read as follows:

Sec. 202.262. DISPLAY OF LICENSE. (a) A person licensed under this chapter must conspicuously display both the license and an unexpired [~~an annual~~] renewal certificate [~~for the current year of practice~~] at the location where the person practices.

SENATE VERSION (IE)

SECTION 30. Same as House version.

CONFERENCE

SECTION 31. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(b) The person shall exhibit the license and renewal certificate to a department [~~board~~] representative on the representative's official request for examination or inspection.

SECTION 31. Section 202.263, Occupations Code, is amended to read as follows:

Sec. 202.263. ISSUANCE OF DUPLICATE OR AMENDED LICENSE. (a) If a license issued by the department [~~board~~] is lost, destroyed, or stolen from the person to whom it was issued, the license holder shall report the fact to the department and [~~board in an affidavit. The affidavit must~~] include detailed information as to the loss, destruction, or theft, giving dates, place, and circumstances.

(b) A license holder may apply to the department [~~board~~] for an amended license because of a lawful change in the person's name or degree designation or for any other lawful and sufficient reason. The license holder must state the reasons that the issuance of an amended license is requested.

(c) The department [~~board~~] shall issue a duplicate or amended license on application by a license holder and payment of a fee set by the commission [~~board~~] for the duplicate or amended license. The department [~~board~~] may not issue a duplicate or amended license unless:

(1) the license holder submits sufficient evidence to prove the license has been lost, destroyed, or stolen or establishes the lawful reason that an amended license should be issued; and

(2) the department's [~~board's~~] records show a license had been issued and was in effect at the time of the loss, destruction, or theft or on the date of the request for an amended license.

(d) If an amended license is issued, the license holder shall return the original license to the department [~~board~~].

SENATE VERSION (IE)

SECTION 32. Same as House version.

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

SECTION 32. Subchapter G, Chapter 202, Occupations Code, is amended by adding Section 202.3015 to read as follows:

Sec. 202.3015. TERM AND RENEWAL. (a) A license issued under this chapter is valid for one or two years as determined by commission rule.

(b) The commission by rule shall establish the requirements for renewing a license and issuing a renewal certificate under this chapter, including payment of applicable fees.

SECTION 33. Subchapter G, Chapter 202, Occupations Code, is amended by adding Section 202.3025 to read as follows:

Sec. 202.3025. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 202.2525.

(b) The department may administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under:

- (1) Section 202.2525 for the initial issuance of the license; or
- (2) this section as part of a prior license renewal.

SECTION 33. Same as House version.

SECTION 34. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 34. Section 202.303, Occupations Code, is amended to read as follows:

Sec. 202.303. PRACTICE WITHOUT RENEWING LICENSE. A person who practices podiatry ~~with~~ ~~[without]~~ an ~~expired~~ ~~[annual]~~ renewal certificate ~~[for the current year]~~ is considered to be practicing without a license and is subject to all the penalties of the practice of podiatry without a license.

SECTION 35. Sections 202.304(a) and (b), Occupations Code, are amended to read as follows:

(a) Except as provided by Subsection (c), this section applies to a podiatrist whose license has been suspended or revoked, or whose most recently issued ~~[annual]~~ renewal certificate has expired, while the podiatrist has been:

(1) engaged in federal service or on active duty with:

(A) the United States Army;

(B) the United States Navy;

(C) the United States Marine Corps;

(D) the United States Coast Guard; or

(E) the United States Air Force;

(2) called into service or training of the United States; or

(3) in training or education under the supervision of the United States before induction into military service.

(b) A podiatrist subject to this section may renew the podiatrist's license without paying a renewal fee for the expired license or passing an examination if, not later than the first anniversary of the date of the termination of service, training, or education described by Subsection (a), other than by dishonorable discharge, the podiatrist furnishes to the department ~~[board]~~ an affidavit stating that the podiatrist has been so engaged and that the service, training, or education

SENATE VERSION (IE)

SECTION 35. Same as House version.

SECTION 36. Same as House version.

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

has terminated.

SECTION 36. Section 202.305, Occupations Code, is amended to read as follows:

Sec. 202.305. CONTINUING EDUCATION. (a) The commission by rule shall establish the minimum number of hours of continuing education required for license renewal.

(a-1) The department [~~board~~] shall develop a mandatory continuing education program in accordance with commission rules. In developing its program, the department [~~board~~] shall:

(1) [~~establish by rule the minimum hours of continuing education required for license renewal;~~

[(2)] identify the key factors that lead to the competent performance of professional duties;

(2) [(3)] develop a process to evaluate and approve continuing education courses; and

(3) [(4)] develop a process to assess the participation and performance of license holders in continuing education courses to enable the department [~~board~~] to evaluate the overall effectiveness of the program.

(b) The department [~~board~~] may assess the continuing education needs of a license holder and require the license holder to attend continuing education courses specified by the department [~~board~~].

SECTION 37. The heading to Section 202.352, Occupations Code, is amended to read as follows:

Sec. 202.352. [~~BOARD~~] APPROVAL OF NAMES UNDER WHICH PODIATRIST MAY PRACTICE.

SECTION 37. Same as House version.

SECTION 38. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

SECTION 38. Sections 202.352(a) and (b), Occupations Code, are amended to read as follows:

(a) The commission [~~board~~] may adopt rules establishing standards or guidelines for the name, including a trade name or assumed name, under which a podiatrist may conduct a practice in this state. In its rules, the commission [~~board~~] may also establish procedures to review and make determinations approving or disapproving a specific name submitted to the department [~~board~~] by one or more podiatrists desiring to practice under a particular name.

(b) The authority granted to the commission and department [~~board~~] by this section includes any form of business organization under which a podiatrist conducts a practice, including:

- (1) a sole proprietorship;
- (2) an association;
- (3) a partnership;
- (4) a professional corporation;
- (5) a clinic;
- (6) a health maintenance organization; and
- (7) a group practice with a practitioner of another branch of the healing art.

SECTION 39. Sections 202.353(a), (c), (d), (e), (f), (g), (h), and (i), Occupations Code, are amended to read as follows:

(a) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a podiatrist who practices in this state shall furnish to the department [~~board~~] the information specified in Subsection (b) relating to:

SECTION 39. Same as House version.

SECTION 40. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

- (1) a notice of claim letter or a complaint filed against the insured in a court, if the notice of claim letter or the complaint seeks the recovery of damages based on the insured's conduct in providing or failing to provide medical or health care services; or
- (2) a settlement of a claim or other legal action made by the insurer on behalf of the insured.
- (c) If a podiatrist who practices in this state is not covered by professional liability insurance or is insured by an insurer who is not authorized to write professional liability insurance for podiatrists in this state, the affected podiatrist shall submit information to the department [~~board~~] relating to any malpractice action brought against that podiatrist. The podiatrist shall submit the information as required by rules adopted by the commission [~~board~~] under Subsections (d)-(f).
- (d) In consultation with the commissioner of insurance, the commission [~~board~~] shall adopt rules for reporting the information required under Subsections (a) and (b) and any additional information required by the department [~~board~~].
- (e) The department [~~board~~] shall consider other claim reports required under state or federal law in determining:
 - (1) any additional information to be reported;
 - (2) the form of the report; and
 - (3) reasonable reporting intervals.
- (f) The department [~~board~~] may require additional information, including:
 - (1) the date of a judgment, dismissal, or settlement of a malpractice action;
 - (2) whether an appeal has been taken and the identity of the party appealing; and
 - (3) the amount of any judgment or settlement.
- (g) An insurer, an agent or employee of the insurer, a

SENATE VERSION (IE)

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

commission [~~board~~] member, or an employee or representative of the department [~~board~~] is not liable or subject to a cause of action for an action taken as required under this section.

(h) A report or information submitted to the department [~~board~~] under this section or the fact that a report or information has been submitted may not be offered in evidence or in any manner used in the trial of an action brought against a podiatrist based on the podiatrist's conduct in providing or failing to provide medical or health care services.

(i) The department [~~board~~] shall review the information relating to a podiatrist against whom three or more malpractice claims have been reported during any five-year period in the same manner as if a complaint against that podiatrist had been made to the department [~~board~~] under Subchapter E.

SECTION 40. Subchapter H, Chapter 202, Occupations Code, is amended by adding Section 202.354 to read as follows:

Sec. 202.354. DUTIES RELATED TO CERTAIN PRESCRIPTIONS. (a) A podiatrist may not prescribe a drug listed in Subsection (b) to a patient unless the podiatrist has reviewed the patient's prescription history by accessing the prescription information submitted to the Texas State Board of Pharmacy as authorized by Section 481.076(a)(5), Health and Safety Code.

(b) Subsection (a) applies only to the prescribing of:

- (1) opioids;
- (2) benzodiazepines;

SENATE VERSION (IE)

CONFERENCE

SECTION 41. Subchapter H, Chapter 202, Occupations Code, is amended by adding Section 202.354 to read as follows: [Deleted by FA1(1)]

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

- (3) barbiturates; or
- (4) carisoprodol.

(c) Failure by a podiatrist to comply with the requirements of this section is grounds for disciplinary action under Subchapters F and G, Chapter 51.

SECTION 41. Sections 202.404(d) and (e), Occupations Code, are amended to read as follows:

(d) The privilege and confidentiality requirements under this subchapter do not apply in a criminal investigation of or criminal proceeding against a podiatrist in which the department [~~board~~] is participating or assisting by providing certain records obtained from the podiatrist. This subsection does not authorize the release of any confidential information to instigate or substantiate criminal charges against a patient.

(e) The department [~~board~~] shall protect the identity of a patient whose podiatric records are examined or provided under Subsection (c) or (d), other than a patient who:

- (1) is covered under Subsection (a)(1); or
- (2) has submitted written consent to the release of the patient's podiatric records as provided by Section 202.406.

SECTION 42. Section 202.452(a), Occupations Code, is amended to read as follows:

(a) Written or oral communications made to a podiatric peer review committee and the records and proceedings of a peer review committee may be disclosed to:

- (1) another podiatric peer review committee;
- (2) an appropriate state or federal agency;
- (3) a national accreditation body; or

SENATE VERSION (IE)

SECTION 42. Same as House version.

SECTION 43. Same as House version.

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(4) the department [board] or the state board of registration or licensing of podiatrists in another state.

SECTION 43. Section 202.453, Occupations Code, is amended to read as follows:

Sec. 202.453. INFORMATION PROVIDED TO AFFECTED PODIATRIST. A podiatric peer review committee that takes action that could result in censure or suspension, restriction, limitation, or revocation of a license by the commission or executive director [board] or a denial of a podiatrist's membership or privileges in a health care entity shall provide the affected podiatrist a written copy of the committee's recommendation and a copy of the final decision, including a statement of the basis for the decision.

SECTION 44. Section 202.455(f), Occupations Code, is amended to read as follows:

(f) The disclosure of documents or information under a subpoena issued by the department [board] does not constitute a waiver of the confidentiality privilege associated with a podiatric peer review committee proceeding.

SECTION 45. Section 202.456(b), Occupations Code, is amended to read as follows:

(b) A person, including a health care entity or podiatric peer review committee, that participates in podiatric peer review activity or furnishes records, information, or assistance to a podiatric peer review committee or to the department [board] is immune from civil liability arising from those acts if the

SENATE VERSION (IE)

SECTION 44. Same as House version.

SECTION 45. Same as House version.

SECTION 46. Same as House version.

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

person acted in good faith and without malice.

SECTION 46. The heading to Section 202.501, Occupations Code, is amended to read as follows:
Sec. 202.501. ~~[BOARD]~~ DISCIPLINARY POWERS;
ADMINISTRATIVE PROCEDURE.

SECTION 47. Same as House version.

SECTION 47. Sections 202.501(a) and (d), Occupations Code, are amended to read as follows:

SECTION 48. Same as House version.

(a) The commission or executive director ~~[board]~~ shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the commission under this chapter ~~[board]~~.

(d) A person whose license to practice podiatry has been revoked or suspended by order of the commission or executive director ~~[board]~~ may appeal the action to a district court in Travis County. The ~~[board's]~~ decision of the commission or the executive director may not be enjoined or stayed except on application to the district court after notice to the department ~~[board]~~.

SECTION 48. Section 202.502, Occupations Code, is amended to read as follows:

SECTION 49. Same as House version.

Sec. 202.502. REVOCATION AND SUSPENSION OF LICENSE FOR DRUG-RELATED FELONY CONVICTION. (a) The commission or executive director ~~[board]~~ shall suspend a person's license after an administrative hearing conducted in accordance with Chapter 2001,

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

Government Code, in which the commission or executive director [~~board~~] determines that the license holder has been convicted of a felony under Chapter 481 or 483, Health and Safety Code, or Section 485.033, Health and Safety Code.

(b) On the person's final conviction, the commission or executive director [~~board~~] shall revoke the person's license.

(c) The department [~~board~~] may not reinstate or reissue a license to a person whose license is suspended or revoked under this section except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissuance of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

SECTION 49. The heading to Section 202.503, Occupations Code, is amended to read as follows:

Sec. 202.503. PROBATION[~~; HEARING~~].

SECTION 50. Section 202.503(a), Occupations Code, is amended to read as follows:

(a) The commission or executive director [~~board, on majority vote,~~] may probate an order revoking [~~or suspending~~] a podiatrist's license conditioned on the podiatrist conforming to any order or rule the commission [~~board~~] adopts as the condition of probation. The commission or executive director [~~board~~], at the time of probation, shall set the term of the probationary period.

SECTION 51. Section 202.504, Occupations Code, is

SENATE VERSION (IE)

SECTION 50. Same as House version.

SECTION 51. Same as House version.

SECTION 52. Same as House version.

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

amended to read as follows:

Sec. 202.504. REISSUANCE OF LICENSE. (a) On application, the department [~~board~~] may reissue a license to practice podiatry to a person whose license has been revoked or suspended.

(b) A person whose license has been revoked may not apply for a reissued license before the first anniversary of the date of the revocation. The person shall apply for the license in the manner and form required by the department [~~board~~].

SECTION 52. Section 202.505, Occupations Code, is amended to read as follows:

Sec. 202.505. REEXAMINATION IF LICENSE SUSPENDED OR REVOKED. The department [~~board~~] may refuse to reinstate a license or to issue a new license until a podiatrist has passed the regular license examination if the commission or executive director [~~board~~] suspended or revoked the license for:

- (1) failure to satisfy continuing education requirements under Section 202.305; or
- (2) nonpayment of the [~~annual~~] license renewal fee.

SECTION 53. Subchapter K, Chapter 202, Occupations Code, is amended by adding Section 202.5071 to read as follows:

Sec. 202.5071. SUBPOENA AUTHORITY. The department may issue a subpoena as provided by Section 51.3512.

SECTION 54. Section 202.5085, Occupations Code, is

SECTION 53. Same as House version.

SECTION 54. Same as House version.

SECTION 55. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

amended to read as follows:

Sec. 202.5085. REFUND. (a) Subject to Subsection (b), the commission or executive director [~~board~~] may order a person licensed under this chapter to pay a refund to a consumer as provided in an agreed settlement, default order, or commission order [~~agreement resulting from an informal settlement conference~~] instead of or in addition to imposing an administrative penalty against the person [~~under this chapter~~]. (b) The amount of a refund ordered [~~as provided in an agreement resulting from an informal settlement conference~~] may not exceed the amount the consumer paid to the person for a service regulated by this chapter. The commission or executive director [~~board~~] may not require payment of other damages or estimate harm in a refund order.

SECTION 55. Section 202.509, Occupations Code, is amended to read as follows:

Sec. 202.509. CONFIDENTIALITY AND DISCLOSURE OF INVESTIGATIVE INFORMATION. (a) Except as provided by Subsections (b), (d), and (f) of this section, Section 202.2031, and Section 202.2032, a [A] complaint, report, investigation file, or other investigative information in the possession of or received or gathered by the department [~~board~~] or an employee or agent of the department [~~board~~] that relates to a license holder, a license application, or a criminal investigation or proceeding is privileged, confidential, and not subject to discovery, subpoena, or any other legal method of compelling release.

(b) Subject to any other privilege or restriction established by law, not later than the 30th day after the date the department [~~board~~] receives a written request from a license holder, or the

SECTION 56. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

license holder's attorney, who is the subject of a formal complaint, the department [~~board~~] shall provide the license holder with access to all information in the department's [~~board's~~] possession that the department [~~board~~] intends to offer into evidence at the contested case hearing on the complaint. The department [~~board~~] may provide access to the information to the license holder after the 30th day after the date the department [~~board~~] receives a request only on a showing of good cause.

(c) The department [~~board~~] is not required under Subsection (b) to provide access to the department's [~~board's~~] investigative reports or memoranda, release the identity of a complainant who will not testify at the hearing, or release information that is an attorney's work product or protected by the attorney-client privilege or another privilege recognized by the Texas Rules of Civil Procedure or Texas Rules of Evidence. [~~The furnishing of information under Subsection (b) does not constitute a waiver of any privilege or confidentiality provision under law.~~]

(d) Investigative information in the department's [~~board's~~] possession that relates to a disciplinary action regarding a license holder may be disclosed to:

(1) a licensing agency regulating the practice of podiatry in another state or country in which the license holder is also licensed or has applied for a license; [~~or~~]

(2) a peer review committee reviewing a license holder's application for privileges or the license holder's qualifications with regard to retaining the privileges;

(3) a person involved with the department in a disciplinary action against the license holder;

(4) a peer assistance program approved by the commission under Chapter 467, Health and Safety Code;

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(5) a law enforcement agency; and

(6) a person engaged in bona fide research, provided all individual-identifying information has been deleted.

(e) The department [~~board~~] shall report to the appropriate law enforcement agency information obtained by the department [~~board~~] in the course of an investigation that indicates that a crime may have been committed. The department [~~board~~] shall cooperate and assist a law enforcement agency conducting a criminal investigation of a license holder by providing relevant information to the agency. Information provided to a law enforcement agency by the department [~~board~~] is confidential and may not be disclosed except as necessary to conduct the investigation.

(f) The department [~~board~~] shall provide information to a health care entity on the written request of the entity concerning:

(1) a complaint filed against a license holder that was resolved after an investigation by the department [~~board~~] or resolved by an agreed settlement; and

(2) the basis for and status of an active investigation concerning a license holder.

(g) The department's disclosure of information under Subsection (b), (d), or (f) of this section, Section 202.2031, or Section 202.2032 does not constitute a waiver of privilege or confidentiality under this chapter or any other law.

(h) The department shall protect the identity of a complainant to the extent possible.

SECTION 56. The heading to Subchapter M, Chapter 202, Occupations Code, is amended to read as follows:

SUBCHAPTER M. [~~OTHER~~] PENALTIES AND

SECTION 57. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

ENFORCEMENT PROVISIONS

SECTION 57. Subchapter M, Chapter 202, Occupations Code, is amended by adding Section 202.6011 to read as follows:

Sec. 202.6011. PENALTY SCHEDULE. The commission by rule shall develop a standardized penalty schedule, including recommended penalty amounts for each category of punishable conduct listed in the schedule, based on the criteria listed in Section 51.302(b).

SECTION 58. Section 202.602, Occupations Code, is amended to read as follows:

Sec. 202.602. MONITORING AND INSPECTION OF LICENSE HOLDER. (a) The commission [~~board~~] by rule shall develop a system to monitor a podiatrist's compliance with this chapter. The system must include:

(1) procedures for determining whether a podiatrist is in compliance with an order issued by the commission or executive director [~~board~~]; and

(2) a method of identifying and monitoring each podiatrist who represents a risk to the public.

(b) The department [~~board~~], during reasonable business hours, may enter the business premises of a person regulated by the department under this chapter [~~board~~] without notice to:

(1) investigate a complaint filed with the department [~~board~~];
or

(2) determine compliance with an order of the commission or executive director issued under this chapter [~~board~~].

SECTION 58. Same as House version.

SECTION 59. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 59. Subchapter M, Chapter 202, Occupations Code, is amended by adding Section 202.6025 to read as follows:

Sec. 202.6025. MONITORING HARMFUL PRESCRIBING PATTERNS. (a) The department shall periodically check the prescribing information submitted to the Texas State Board of Pharmacy as authorized by Section 481.076(a)(1), Health and Safety Code, to determine whether a podiatrist licensed under this chapter is engaging in potentially harmful prescribing patterns or practices.

(b) The department, in coordination with the advisory board and the Texas State Board of Pharmacy, shall determine, subject to approval by the commission, the conduct that constitutes a potentially harmful prescribing pattern or practice for purposes of Subsection (a). In determining the conduct that constitutes a potentially harmful prescribing pattern or practice, the department shall consider:

(1) the number of times a podiatrist prescribes a drug listed in Section 202.354(b); and

(2) for prescriptions described by Subdivision (1), patterns of prescribing combinations of those drugs and other dangerous combinations of drugs identified by the department in coordination with the advisory board.

(c) If the department suspects that a podiatrist licensed under this chapter may be engaging in potentially harmful prescribing patterns or practices, the department may notify the podiatrist of the potentially harmful prescribing pattern or practice.

(d) The department may initiate a complaint against a podiatrist based on information obtained under this section.

SENATE VERSION (IE)

SECTION 60. Subchapter M, Chapter 202, Occupations Code, is amended by adding Section 202.6025 to read as follows: [Deleted by FA1(2)]

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

SECTION 60. Section 202.603, Occupations Code, is amended to read as follows:

Sec. 202.603. PROSECUTION OF VIOLATION. The department [~~board~~] shall take action to ensure the prosecution of each person who violates this chapter and may incur reasonably necessary related expenses.

SECTION 61. Section 202.604, Occupations Code, is amended to read as follows:

Sec. 202.604. CIVIL PENALTY: USE OF TRADE NAME; INJUNCTION. (a) A person who violates Section 202.352 or a rule adopted or a determination made by the commission [~~board~~] under that section is subject to a civil penalty of not less than \$50 or more than \$500 for each day of violation.

(b) If it appears that a person has violated or is violating Section 202.352 or a rule adopted or determination made by the commission [~~board~~] under that section, the department [~~board~~] may institute a civil action in district court for:

- (1) injunctive relief to restrain the person from continuing the violation;
- (2) the assessment and recovery of a civil penalty under Subsection (a); or
- (3) both injunctive relief and the civil penalty.

(c) At the request of the department [~~board~~], the attorney general shall institute and conduct the action in the name of the state.

SECTION 62. Section 481.352, Health and Safety Code, is

SECTION 61. Same as House version.

SECTION 62. Same as House version.

SECTION 63. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

amended to read as follows:

Sec. 481.352. MEMBERS. The work group is composed of:

- (1) the executive director of the board or the executive director's designee, who serves as chair of the work group;
- (2) the commissioner of state health services or the commissioner's designee;
- (3) the executive director of the Texas Medical Board or the executive director's designee;
- (4) the executive director of the Texas Board of Nursing or the executive director's designee;
- (5) the executive director of the Texas Physician Assistant Board or the executive director's designee;
- (6) the executive director of the State Board of Dental Examiners or the executive director's designee;
- (7) the executive director of the Texas Optometry Board or the executive director's designee;
- (8) the executive director of the Texas Department of Licensing and Regulation [~~State Board of Podiatric Medical Examiners~~] or the executive director's designee;
- (9) the executive director of the State Board of Veterinary Medical Examiners or the executive director's designee; and
- (10) a medical examiner appointed by the board.

SECTION 63. The following provisions of the Occupations Code are repealed:

- (1) Section 202.002;
- (2) Section 202.052;
- (3) Sections 202.059(b) and (c);
- (4) Section 202.060;
- (5) Subchapter C, Chapter 202;
- (6) Section 202.151;

SECTION 64. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

- (7) Section 202.152;
- (8) Section 202.1525;
- (9) Section 202.154;
- (10) Section 202.1545;
- (11) Section 202.155;
- (12) Section 202.156;
- (13) Section 202.157;
- (14) Section 202.158;
- (15) Section 202.162;
- (16) Section 202.163;
- (17) Section 202.201;
- (18) Section 202.202;
- (19) Section 202.203;
- (20) Section 202.204;
- (21) Section 202.205;
- (22) Sections 202.252(c) and (d);
- (23) Section 202.254(e);
- (24) Section 202.255;
- (25) Section 202.264;
- (26) Section 202.301;
- (27) Section 202.302;
- (28) Section 202.501(b);
- (29) Sections 202.503(b), (c), (d), and (e);
- (30) Section 202.507;
- (31) Section 202.508;
- (32) Section 202.510;
- (33) Subchapter L, Chapter 202;
- (34) Section 202.601; and
- (35) Section 202.6015.

SECTION 64. (a) In this section:

SECTION 65. Same as House version.

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

- (1) "Commission" means the Texas Commission of Licensing and Regulation.
- (2) "Department" means the Texas Department of Licensing and Regulation.
- (3) "Former board" means the Texas State Board of Podiatric Medical Examiners.
- (b) On September 1, 2017:
 - (1) all functions and activities performed by the former board immediately before that date are transferred to the department;
 - (2) all rules, fees, policies, procedures, decisions, and forms adopted by the former board are continued in effect as rules, fees, policies, procedures, decisions, and forms of the commission or the department, as applicable, and remain in effect until amended or replaced by the commission or department;
 - (3) a complaint, investigation, contested case, or other proceeding before the former board that is pending on September 1, 2017, is transferred without change in status to the department or the commission, as appropriate;
 - (4) all money, contracts, leases, property, and obligations of the former board are transferred to the department;
 - (5) all property in the custody of the former board is transferred to the department; and
 - (6) the unexpended and unobligated balance of any money appropriated by the legislature for the former board is transferred to the department.
- (c) The former board shall provide the department with access to any systems or information necessary for the department to accept the program transferred under this Act, including:
 - (1) licensing, revenue, and expenditure systems;
 - (2) rights to service contracts and licensing agreements;

SENATE VERSION (IE)

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

- (3) use of online renewal and new application systems; and
- (4) review and resolution of pending judgments and outstanding expenditures.
- (d) Unless the context indicates otherwise, a reference to the former board in a law or administrative rule means the commission or the department, as applicable.
- (e) A license or certificate issued by the former board is continued in effect as a license or certificate of the department.
- (f) On September 1, 2017, all full-time equivalent employee positions at the former board that primarily concern the administration or enforcement of Chapter 202, Occupations Code, become positions at the department. The department shall post the positions for hiring and, when filling the positions, shall give first consideration to, but is not required to hire, an applicant who, as of August 31, 2017, was an employee at the former board primarily involved in administering or enforcing Chapter 202, Occupations Code.

SECTION 65. (a) On September 1, 2017, the terms of the members serving on the Texas State Board of Podiatric Medical Examiners expire, and the Texas State Board of Podiatric Medical Examiners is abolished.

(b) Not later than December 1, 2017, the governor shall appoint members to the Podiatric Medical Examiners Advisory Board in accordance with Section 202.051, Occupations Code, as amended by this Act. A member whose term expired under Subsection (a) of this section is eligible for reappointment to the advisory board.

(c) The members whose terms expire under Subsection (a) of this section shall continue to provide advice to the Texas

SENATE VERSION (IE)

SECTION 66. Same as House version.

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

Department of Licensing and Regulation until a majority of the members of the advisory board are appointed under Subsection (b) of this section and qualified.

SECTION 66. Section 202.061, Occupations Code, as amended by this Act, applies only to a member of the Podiatric Medical Examiners Advisory Board appointed on or after the effective date of this Act.

SECTION 67. (a) As soon as possible after the effective date of this Act, the Texas Commission of Licensing and Regulation shall adopt the rules necessary to implement Section 202.252, Occupations Code, as amended by this Act.
(b) Not later than September 1, 2019, the Texas Department of Licensing and Regulation shall obtain criminal history record information on each person who, on the effective date of this Act, holds a license issued under Chapter 202, Occupations Code, and did not undergo a criminal history record information check based on the license holder's fingerprints on initial application for the license. The department may suspend the license of a license holder who does not provide the criminal history record information as required by the department and this subsection.

SECTION 68. Section 202.354, Occupations Code, as added by this Act, applies only to a prescription issued on or after September 1, 2018. A prescription issued before September 1, 2018, is governed by the law in effect on the date the prescription is issued, and the former law is continued in

SENATE VERSION (IE)

SECTION 67. Same as House version.

SECTION 68. Same as House version.

SECTION 69. Section 202.354, Occupations Code, as added by this Act, applies only to a prescription issued on or after September 1, 2018. A prescription issued before September 1, 2018, is governed by the law in effect on the date the prescription is issued, and the former law is continued in

CONFERENCE

House Bill 3078
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

effect for that purpose.

SECTION 69. The changes in law made by this Act do not affect the validity of a disciplinary action or other proceeding that was initiated before the effective date of this Act and that is pending before a court or other governmental entity on the effective date of this Act.

SECTION 70. (a) A violation of a law that is repealed by this Act is governed by the law in effect when the violation was committed, and the former law is continued in effect for that purpose.

(b) For purposes of this section, a violation was committed before the effective date of this Act if any element of the violation occurred before that date.

SECTION 71. This Act takes effect September 1, 2017.

SENATE VERSION (IE)

effect for that purpose. [Deleted by FA1(3)]

SECTION 70. Same as House version.

SECTION 71. Same as House version.

SECTION 72. Same as House version.

CONFERENCE