

By: Goldman

H.B. No. 2850

A BILL TO BE ENTITLED

AN ACT

relating to the confidentiality of complaints and investigations in certain occupational licensing programs of the Texas Department of Licensing and Regulation.

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

SECTION 1. Subchapter E, Chapter 51, Occupations Code, is amended by adding Section 51.254 to read as follows:

Sec. 51.254. CONFIDENTIALITY OF COMPLAINT AND DISCIPLINARY INFORMATION. (a) In this section, unless the context requires otherwise:

(1) "Disciplinary action" includes, with respect to any person subject to regulation by the department or the commission:

(A) enforcement activity, prosecution, discipline, or penalization; and

(B) any related complaint, investigation, or resolution of a complaint or investigation.

(2) "Patient" includes:

(A) a patient;

(B) a client; and

(C) an authorized representative of a patient or client.

(b) This section applies only to the following professions:

(1) athletic trainers regulated under Chapter 451;

1           (2) behavior analysts regulated under Chapter 506;  
2           (3) dietitians regulated under Chapter 701;  
3           (4) dyslexia practitioners and dyslexia therapists  
4 regulated under Chapter 403;  
5           (5) hearing instrument fitters and dispensers  
6 regulated under Chapter 402;  
7           (6) massage therapists regulated under Chapter 455;  
8           (7) midwives regulated under Chapter 203;  
9           (8) orthotists and prosthetists regulated under  
10 Chapter 605;  
11           (9) podiatrists regulated under Chapter 202; and  
12           (10) speech-language pathologists and audiologists  
13 regulated under Chapter 401.

14       (c) Except as otherwise provided by this section, a  
15 complaint and investigation concerning a person to whom this  
16 section applies and all information and materials subpoenaed or  
17 compiled by the department in connection with the complaint and  
18 investigation are confidential and not subject to:

19           (1) disclosure under Chapter 552, Government Code; or  
20           (2) disclosure, discovery, subpoena, or other means of  
21 legal compulsion for their release to any person.

22       (d) A complaint or investigation subject to this section and  
23 all information and materials subpoenaed or compiled by the  
24 department in connection with the complaint and investigation may  
25 be disclosed to:

26           (1) persons involved with the department in a  
27 disciplinary action;

1           (2) a respondent or the respondent's authorized  
2 representative;

3           (3) a governmental agency, if:

4                   (A) the disclosure is required or permitted by  
5 law; and

6                   (B) the agency obtaining the disclosure protects  
7 the identity of any patient whose records are examined;

8           (4) a professional licensing, credentialing, or  
9 disciplinary entity in another jurisdiction;

10           (5) a peer assistance program approved by the  
11 commission under Chapter 467, Health and Safety Code, including a  
12 properly established peer assistance program in another  
13 jurisdiction;

14           (6) a peer review committee reviewing a license  
15 holder's application for privileges or the license holder's  
16 qualifications related to retaining the privileges;

17           (7) a law enforcement agency; and

18           (8) a person engaged in bona fide research, if all  
19 individual-identifying information has been deleted.

20           (e) Notwithstanding any other provision of this section, if  
21 a department investigation would be jeopardized by the release or  
22 disclosure, the department may temporarily withhold or otherwise  
23 refrain from releasing or disclosing to any person any information  
24 or materials that the department would otherwise be required to  
25 release or disclose.

26           (f) The department may not be compelled to release or  
27 disclose complaint and investigation information or materials to a

1 person listed in Subsection (d) if the department has not issued a  
2 notice of alleged violation related to the information or  
3 materials.

4 (g) The department may release or disclose complaint and  
5 investigation information or materials in accordance with  
6 Subsection (d) at any stage of a disciplinary action.

7 (h) The department shall protect the identity of any patient  
8 whose records are examined in connection with a disciplinary action  
9 against a license holder, other than a patient who:

10 (1) initiates the disciplinary action;

11 (2) is a witness in the disciplinary action; or

12 (3) has submitted a written consent to release the  
13 records.

14 (i) Notices of alleged violation issued by the department  
15 against respondents, disciplinary proceedings of the department,  
16 commission, or executive director, and final disciplinary actions,  
17 including warnings and reprimands, by the department, commission,  
18 or executive director are not confidential and are subject to  
19 disclosure in accordance with Chapter 552, Government Code.

20 SECTION 2. Section 202.2032(c), Occupations Code, is  
21 amended to read as follows:

22 (c) Notwithstanding any confidentiality requirements under  
23 Chapter 552, Government Code, Chapter 51, or this chapter, a  
24 complaint filed with the department by an insurance agent, insurer,  
25 pharmaceutical company, or third-party administrator against a  
26 license holder must include the name and address of the insurance  
27 agent, insurer, pharmaceutical company, or third-party

1 administrator filing the complaint.

2 SECTION 3. Section 202.404(e), Occupations Code, is amended  
3 to read as follows:

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

7 (1) is covered under Subsection (a)(1); or

8 (2) has submitted written consent to the release of  
9 the patient's podiatric records as provided by Section 202.406.

10 SECTION 4. Section 202.509(g), Occupations Code, is amended  
11 to read as follows:

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

16 SECTION 5. The following provisions of the Occupations Code  
17 are repealed:

18 (1) Section 202.404(d);

19 (2) Sections 202.509(a), (b), (c), (d), and (h);

20 (3) Section 401.2535;

21 (4) Section 402.154;

22 (5) Section 451.110;

23 (6) Section 506.202;

24 (7) Subchapter E, Chapter 605; and

25 (8) Subchapter E, Chapter 701.

26 SECTION 6. The changes in law made by this Act apply to a  
27 disciplinary action initiated before the effective date of this Act

1 that has not resulted in a final order issued on or before the  
2 effective date of this Act and to a disciplinary action initiated on  
3 or after the effective date of this Act.

4       SECTION 7. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2019.