

BILL ANALYSIS

C.S.H.B. 3040
By: Burkett
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Medical Board, which licenses and regulates the state's physicians as well as certain other health professions to ensure that Texans receive safe and quality medical care, is subject to the Texas Sunset Act and will be abolished on September 1, 2017, unless continued by the legislature. C.S.H.B. 3040 seeks to continue the board with several statutory modifications.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Medical Board in SECTIONS 14, 16, and 18 of this bill.

ANALYSIS

C.S.H.B. 3040 amends the Occupations Code to postpone from September 1, 2017, to September 1, 2029, the date on which the Texas Medical Board is abolished and the Medical Practice Act, the Physician Assistant Licensing Act, the Medical Radiologic Technologist Certification Act, the Medical Physics Practice Act, the Licensed Perfusionists Act, and statutory provisions relating to the practice of acupuncture and to surgical assistants expire, unless continued in existence as provided by the Texas Sunset Act. The bill revises provisions relating to the training programs for persons who are appointed to and qualify for office as a member of the medical board, the Texas Physician Assistant Board, the Texas State Board of Acupuncture Examiners, the Texas Board of Medical Radiologic Technology, or the Texas Board of Respiratory Care, as applicable, and authorizes each such board to refuse to renew an applicable permit, license, or certificate if the permit holder, license holder, or certificate holder is in violation of an board order. The bill's provisions relating to a board member training program apply to a member of the applicable board appointed before, on, or after the bill's effective date. The bill requires a board member who, before the bill's effective date, completed the training program applicable to that board as it existed before the bill's effective date to complete additional training only on the subjects added to the training program and prohibits such a board member from voting, deliberating, or being counted as a member in attendance at a meeting of the applicable board held on or after December 1, 2017, until the member completes the additional training.

C.S.H.B. 3040 authorizes the medical board, acting through the attorney general, to file suit to enforce a subpoena issued by the board in a district court in Travis County or in a county in which a hearing conducted by the board may be held if a person failed to comply with a board-issued subpoena and requires the court, on finding that good cause exists for issuing the subpoena, to order the person to comply with the subpoena. The bill excepts the Texas medical jurisprudence examination from limitations on the number of authorized examination attempts.

The bill specifies that the elements of a physician's practice that the medical board may conduct inspections of as necessary to enforce regulations on the provision of anesthesia in an outpatient setting are a physician's equipment and office procedures. The bill authorizes the medical board to establish a risk-based inspection process in which the board conducts inspections based on the length of time since the equipment and outpatient setting were last inspected and the physician submitted to inspection. The bill requires the medical board to maintain a record of the outpatient settings in which physicians provide anesthesia and requires a physician who provides anesthesia in such a setting to inform the board of any other physician with whom the physician shares equipment used to administer anesthesia.

C.S.H.B. 3040 prohibits a physician or a physician assistant from prescribing opioids, benzodiazepines, barbiturates, or carisoprodol to a patient unless the physician or physician assistant has reviewed the patient's prescription history by accessing the prescription information submitted to the Texas State Board of Pharmacy as authorized under certain provisions of the Texas Controlled Substances Act. The bill excepts a physician or physician assistant from the review requirement if the patient has been diagnosed with cancer or the patient is receiving hospice care and the physician clearly notes in the prescription record that the patient was diagnosed with cancer or is receiving hospice care, as applicable. The bill makes failure by a physician or physician assistant to comply with these duties grounds for disciplinary action. These provisions apply only to a prescription issued on or after September 1, 2018.

C.S.H.B. 3040 requires the medical board and the physician assistant board to periodically check the prescribing information submitted to the Texas State Board of Pharmacy to determine whether a licensed physician or physician assistant, as applicable, is engaging in potentially harmful prescribing patterns or practices. The bill requires the medical board and the physician assistant board, as applicable, in coordination with the board of pharmacy, to determine the conduct that constitutes a potentially harmful prescribing pattern or practice and sets out items that must be considered by the medical board and the physician assistant board, as applicable, when making that determination. The bill authorizes the medical board and the physician assistant board to notify a physician or physician assistant, as applicable, that the respective board suspects may be engaging in potentially harmful prescribing patterns or practices of the potentially harmful prescribing pattern or practice and authorizes the boards to initiate a complaint against a physician or physician assistant, as applicable, based on information obtained during the periodic monitoring.

C.S.H.B. 3040 replaces the prohibition against the medical board issuing a remedial plan to resolve a complaint against a person licensed to practice medicine if the license holder had previously entered into a remedial plan with the medical board for the resolution of a different complaint with the prohibition against the medical board issuing such a remedial plan if the license holder has entered into a remedial plan with the medical board in the preceding five years. The bill requires the rules adopted by the medical board regarding procedures governing certain informal disciplinary proceedings to require that the panel conducting an informal proceeding regarding a complaint that includes an allegation that a physician licensed under the Medical Practice Act has violated the standard of care to consider whether the physician was practicing complementary and alternative medicine. The bill requires the medical board to adopt rules necessary to implement that consideration requirement not later than March 1, 2018. The bill requires the medical board to share each report prepared by an expert physician reviewer of the complaint and to redact any identifying information of an expert physician reviewer other than the reviewer's specialty before providing to the license holder the report prepared by the reviewer as part of the complaint notice, if applicable.

C.S.H.B. 3040 revises certain provisions relating to formal complaints to remove the requirement that a charge against a person licensed under the Medical Practice Act be in the form of a written affidavit and removes language limiting the written statements deemed formal complaints with regard to certain disciplinary proceedings to written statements made under oath.

C.S.H.B. 3040 requires the medical board to enter into a memorandum of understanding, which must be adopted by rule, with the governing board of the Texas Physician Health Program not later than January 1, 2018, to better coordinate services and operations of the program and sets out provisions relating to the memorandum. The bill authorizes the governing board, in addition to any fees paid to the board or money appropriated to the board for the program, to receive and accept a gift, grant, donation or other thing of value from any source for the program.

C.S.H.B. 3040 specifies that the pain management clinics the medical board may inspect as necessary to ensure compliance with certain regulations are certified clinics but authorizes the board to inspect a clinic or facility that is not certified to determine whether the clinic or facility is required to be certified. The bill requires the medical board by rule to establish the grounds for conducting such an inspection, including certain specified grounds. The bill establishes that for purposes of regulating persons affiliated with a pain management clinic inappropriate prescribing includes nontherapeutic prescribing or other conduct as specified by board rule.

C.S.H.B. 3040 provides for the adoption of the Interstate Medical Licensure Compact, the creation of the Interstate Medical Licensure Compact Commission, and sets out the contents of the compact, including provisions providing for withdrawal from the compact and the dissolution of the compact. The bill authorizes the medical board to adopt rules necessary to implement the compact and provides for the board's authority to collect fingerprints for an expedited medical license under the compact.

C.S.H.B. 3040 authorizes the physician assistant board to conduct deliberations relating to a license application or disciplinary action in an executive session after hearing all evidence and arguments in an open meeting but requires the board to vote and announce its decision in open session.

C.S.H.B. 3040 requires the physician assistant board, the acupuncture board, and the medical board to require an applicant for a license issued under the Physician Assistant Licensing Act, a license to practice acupuncture, or a surgical assistant license, as applicable, to submit a complete and legible set of fingerprints, on a form prescribed by the applicable board, to the board or to the Department of Public Safety (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation (FBI). The bill prohibits the physician assistant board, the acupuncture board, and the medical board from issuing the applicable license to a person who does not comply with that requirement and requires each such board to conduct a criminal history record information check of each applicable license applicant using the set of fingerprints and information made available to the board by DPS, the FBI, and any other criminal justice agency. The bill authorizes the physician assistant board, the acupuncture board and the medical board, respectively, to enter into an agreement with DPS to administer the required criminal history record information check and to authorize DPS to collect from each applicant the costs incurred by DPS in conducting the criminal history record information check.

C.S.H.B. 3040 requires an applicant for renewal of a license issued under the Physician Assistant Licensing Act, a license to practice acupuncture, or a surgical assistant license to submit a complete and legible set of fingerprints for purposes of performing the required criminal history record information check of license applicants and authorizes the physician assistant board, the acupuncture board, and the medical board to administratively suspend or refuse to renew the applicable license of a person who does not comply with that requirement. Such a license holder is expressly not required to submit fingerprints as required by the bill for the renewal of the license if the holder has previously submitted fingerprints for the initial issuance of the license or as part of a prior license renewal. The bill requires the physician assistant board, the acupuncture board, and the medical board to obtain criminal history record information on each person who, on the bill's effective date, holds such a license, as applicable, and who did not undergo a criminal history record information check based on the license holder's fingerprints on the initial

application for the license not later than September 1, 2019, and authorizes each such board to suspend the license of an applicable license holder who does not provide the criminal history record information as required by the board and the bill.

C.S.H.B. 3040 removes the requirement that an applicant for a license as a surgical assistant or a license issued under the Physician Assistant Licensing Act be of good moral character to be eligible for the license and makes a license issued under the Physician Assistant Licensing Act valid for a term of one or two years, as determined by physician assistant board rule. The bill requires at least one of the panelists at an informal meeting of the physician assistant board to consider a contested licensure case to be a licensed physician assistant. The bill authorizes the medical board to provide by rule for the biennial renewal of a license to practice acupuncture as an alternative to annual license renewal.

C.S.H.B. 3040 requires the Texas Board of Medical Radiological Technology by rule to establish the education and training required for a person to obtain a radiologist assistant certificate and requires the Texas Medical Board to approve those rules not later than January 1, 2018. The bill authorizes the holder of such a certificate to perform radiologic procedures only under the supervision of a certified or board-eligible radiologist and prohibits the certificate holder from interpreting images, making diagnoses, or prescribing any medication or therapy. The bill authorizes the Texas Board of Medical Radiological Technology to issue a temporary radiologist assistant certificate to a person that authorizes the person to perform applicable radiologic procedures for a period capped at one year.

C.S.H.B. 3040 includes as a required condition for consideration for a hardship exemption from the mandatory training for certain persons who intentionally use radiologic technology the condition that the applicant for the exemption is located in a county with a population of less than 50,000. The bill removes the requirement that the application submitted for a perfusionist license be a sworn application.

C.S.H.B. 3040 limits the applicability of certain requirements for rules adopted by specified boards regulating the manner in which certain licensees may order, instruct, or direct another authorized person in the performance of a radiologic procedure to rules adopted by the State Board of Dental Examiners.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3040 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 151.004, Occupations Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 152.010, Occupations Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. The heading to Section 153.007, Occupations Code, is amended.	SECTION 3. Same as introduced version.

SECTION 4. Section 153.007, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) If a person fails to comply with a subpoena issued under this section, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by the board may be held.

SECTION 5. Section 153.058(a), Occupations Code, is amended.

SECTION 6. Section 155.056, Occupations Code, is amended.

SECTION 7. Subchapter A, Chapter 156, Occupations Code, is amended.

SECTION 8. Section 162.106, Occupations Code, is amended.

SECTION 9. Chapter 162, Occupations Code, is amended.

SECTION 10. Section 164.0015(d), Occupations Code, is amended.

SECTION 11. Section 164.003, Occupations Code, is amended.

SECTION 12. Sections 164.005(a) and (c), Occupations Code, are amended.

SECTION 13. Subchapter A, Chapter 164, Occupations Code, is amended.

SECTION 14. Chapter 167, Occupations Code, is amended by adding Sections 167.012 and 167.013 to read as follows:

Sec. 167.012. MEMORANDUM OF UNDERSTANDING WITH BOARD. The governing board and the board shall enter into a memorandum of understanding to better coordinate services and operations of the program. The memorandum of understanding must be adopted by rule and:

(1) establish performance measures for the program, including the number of participants who successfully complete the program;

SECTION 4. Section 153.007, Occupations Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) If a person fails to comply with a subpoena issued under this section, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by the board may be held.

(f) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

SECTION 14. Chapter 167, Occupations Code, is amended by adding Sections 167.012 and 167.013 to read as follows:

Sec. 167.012. MEMORANDUM OF UNDERSTANDING WITH BOARD. The governing board and the board shall enter into a memorandum of understanding to better coordinate services and operations of the program. The memorandum of understanding must be adopted by rule and:

(1) establish performance measures for the program, including the number of participants who successfully complete the program;

(2) include a list of services the board will provide for the program; and
(3) require that an internal audit of the program be conducted at least once every three years to ensure the program is properly documenting and referring all noncompliance to the board.

Sec. 167.013. GIFTS, GRANTS, AND DONATIONS. In addition to any fees paid to the board or money appropriated to the board for the program, the board may receive and accept a gift, grant, donation, or other thing of value from any source, including the United States or a private source, for the program.

No equivalent provision.

SECTION 15. Section 168.052, Occupations Code, is amended.

SECTION 16. Section 168.201, Occupations Code, is amended.

SECTION 17. Subtitle B, Title 3, Occupations Code, is amended by adding Chapter 170 to read as follows:

CHAPTER 170. INTERSTATE MEDICAL LICENSURE COMPACT

Sec. 170.001. INTERSTATE MEDICAL LICENSURE COMPACT.

Sec. 170.002. RULES.

(2) include a list of services the board will provide for the program; and
(3) require that an internal audit of the program be conducted at least once every three years to ensure the program is properly documenting and referring all noncompliance to the board.

Sec. 167.013. GIFTS, GRANTS, AND DONATIONS. In addition to any fees paid to the board or money appropriated to the board for the program, the governing board may receive and accept a gift, grant, donation, or other thing of value from any source, including the United States or a private source, for the program.

SECTION 15. Subchapter A, Chapter 168, Occupations Code, is amended by adding Section 168.003 to read as follows:

Sec. 168.003. LEGISLATIVE FINDING. The legislature finds that deaths resulting from the use of opioids and other controlled substances constitute a public health crisis and that there is a compelling state interest in the board closely regulating the prescribing of opioids and other controlled substances by physicians and their delegates. Accordingly, the legislature finds that inspections and investigations conducted by the board, including the board's use of subpoenas for immediate production, inspection, and copying of medical and billing records, are necessary to adequately regulate the prescribing of opioids and other controlled substances in order to protect the public health and welfare.

SECTION 16. Same as introduced version.

SECTION 17. Same as introduced version.

SECTION 18. Subtitle B, Title 3, Occupations Code, is amended by adding Chapter 170 to read as follows:

CHAPTER 170. INTERSTATE MEDICAL LICENSURE COMPACT

Sec. 170.001. INTERSTATE MEDICAL LICENSURE COMPACT.

Sec. 170.002. RULES.

Sec. 170.003. COLLECTION OF FINGERPRINTS FOR EXPEDITED LICENSE; DISSEMINATION OF INFORMATION. (a) The board may require an applicant for an expedited license under the Interstate Medical Licensure Compact to submit a set of fingerprints to the board for the purpose of performing a criminal history record information check to qualify the applicant for the expedited license.
(b) The board may not disseminate information obtained from a criminal history record information check described by Subsection (a) except as authorized by law.

SECTION 18. Subchapter B, Chapter 204, Occupations Code, is amended.

SECTION 19. Section 204.059, Occupations Code, is amended.

SECTION 20. Subchapter D, Chapter 204, Occupations Code, is amended.

SECTION 21. Section 204.153(a), Occupations Code, is amended.

SECTION 22. Section 204.156, Occupations Code, is amended.

SECTION 23. Subchapter D, Chapter 204, Occupations Code, is amended.

SECTION 24. Subchapter D, Chapter 204, Occupations Code, is amended.

SECTION 25. Subchapter E, Chapter 204, Occupations Code, is amended.

SECTION 26. Subchapter G, Chapter 204, Occupations Code, is amended.

SECTION 27. Section 204.313(a), Occupations Code, is amended.

SECTION 28. Section 205.057, Occupations Code, is amended.

SECTION 29. Subchapter E, Chapter 205, Occupations Code, is amended.

SECTION 30. The heading to Section 205.251, Occupations Code, is amended.

SECTION 19. Same as introduced version.

SECTION 20. Same as introduced version.

SECTION 21. Same as introduced version.

SECTION 22. Same as introduced version.

SECTION 23. Same as introduced version.

SECTION 24. Same as introduced version.

SECTION 25. Same as introduced version.

SECTION 26. Same as introduced version.

SECTION 27. Same as introduced version.

SECTION 28. Same as introduced version.

SECTION 29. Same as introduced version.

SECTION 30. Same as introduced version.

SECTION 31. Same as introduced version.

SECTION 31. Section 205.251(a), Occupations Code, is amended.

SECTION 32. Subchapter F, Chapter 205, Occupations Code, is amended.

SECTION 33. Subchapter F, Chapter 205, Occupations Code, is amended.

SECTION 34. Subchapter E, Chapter 206, Occupations Code, is amended.

SECTION 35. Section 206.203(a), Occupations Code, is amended.

SECTION 36. Subchapter E, Chapter 206, Occupations Code, is amended.

SECTION 37. Subchapter E, Chapter 206, Occupations Code, is amended.

SECTION 38. Section 601.002, Occupations Code, is amended.

SECTION 39. Section 601.030, Occupations Code, is amended.

SECTION 40. Sections 601.102(b) and (c), Occupations Code, are amended.

SECTION 41. Subchapter C, Chapter 601, Occupations Code, is amended.

SECTION 42. Subchapter C, Chapter 601, Occupations Code, is amended.

SECTION 43. Section 601.155, Occupations Code, is amended.

SECTION 44. Section 601.156, Occupations Code, is amended.

SECTION 45. Section 601.203(b), Occupations Code, is amended.

No equivalent provision. (*But see SECTION 51 below.*)

SECTION 32. Same as introduced version.

SECTION 33. Same as introduced version.

SECTION 34. Same as introduced version.

SECTION 35. Same as introduced version.

SECTION 36. Same as introduced version.

SECTION 37. Same as introduced version.

SECTION 38. Same as introduced version.

SECTION 39. Same as introduced version.

SECTION 40. Same as introduced version.

SECTION 41. Same as introduced version.

SECTION 42. Same as introduced version.

SECTION 43. Same as introduced version.

SECTION 44. Same as introduced version.

SECTION 45. Same as introduced version.

SECTION 46. Same as introduced version.

SECTION 47. Sections 601.252(c) and (d), Occupations Code, are amended to read as follows:

(c) Rules adopted under this section by the State Board of Dental Examiners must:

(1) require an authorized person who performs radiologic procedures under the delegation of a dentist, other than a registered nurse, to register with the dental

~~board [agency that licenses the practitioner under whom the person performs radiologic procedures];~~

(2) establish reasonable and necessary fees to cover the administrative costs incurred by the dental board [agency] in administering a registration program created under this subsection;

(3) establish grounds for the suspension, revocation, or nonrenewal of a registration issued under this subsection; and

(4) establish standards, in addition to those required by this chapter, for training and supervising the operators of the equipment.

(d) In adopting rules under Subsection (c), the State Board of Dental Examiners [~~an agency~~] may take into account whether the radiologic procedure will be performed by a registered nurse.

SECTION 46. Subchapter E, Chapter 602, Occupations Code, is amended.

SECTION 47. Section 603.252(a), Occupations Code, is amended.

SECTION 48. Subchapter G, Chapter 603, Occupations Code, is amended.

SECTION 49. Section 604.030, Occupations Code, is amended.

SECTION 50. Subchapter D, Chapter 604, Occupations Code, is amended.

SECTION 51. Sections 601.252(c) and (d), Occupations Code, are repealed.

SECTION 52. (a) Except as provided by Subsection (b) of this section, Sections 152.010, 204.059, 205.057, 601.030, and 604.030, Occupations Code, as amended by this Act, apply to a member of the applicable board appointed before, on, or after the effective date of this Act.

(b) A member of a board who, before the effective date of this Act, completed the training program required by Section 152.010, 204.059, 205.057, 601.030, or 604.030, Occupations Code, as the applicable law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the training program required by Section 152.010, 204.059, 205.057,

SECTION 48. Same as introduced version.

SECTION 49. Same as introduced version.

SECTION 50. Same as introduced version.

SECTION 51. Same as introduced version.

SECTION 52. Same as introduced version.

No equivalent provision. (*But see SECTION 47 above.*)

SECTION 53. Same as introduced version.

601.030, or 604.030, Occupations Code, as applicable. A board member described by this subsection may not vote, deliberate, or be counted as a member in attendance at a meeting of the applicable board held on or after December 1, 2017, until the member completes the additional training.

SECTION 53. Sections 162.301 and 204.210, Occupations Code, as added by this Act, apply 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 immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 54. Not later than March 1, 2018, the Texas Medical Board shall adopt rules necessary to implement Section 164.003(b), Occupations Code, as amended by this Act.

SECTION 55. Not later than January 1, 2018, the Texas Medical Board and the governing board of the Texas Physician Health Program by rule shall adopt the memorandum of understanding required by Section 167.012, Occupations Code, as added by this Act.

SECTION 56. Not later than September 1, 2019, the Texas Physician Assistant Board, the Texas State Board of Acupuncture Examiners, and the Texas Medical Board shall obtain criminal history record information on each person who, on the effective date of this Act, holds a license issued under Chapter 204, 205, or 206, Occupations Code, as applicable, and did not undergo a criminal history record information check based on the license holder's fingerprints on the initial application for the license. A board may suspend the license of a license holder who does not provide the criminal history record information as required by the board and this section.

SECTION 57. Not later than January 1, 2018, the Texas Medical Board shall approve the rules required by Section 601.1021, Occupations Code, as added by this Act.

SECTION 54. Same as introduced version.

SECTION 55. Same as introduced version.

SECTION 56. Same as introduced version.

SECTION 57. Same as introduced version.

SECTION 58. Same as introduced version.

SECTION 58. This Act takes effect
September 1, 2017.

SECTION 59. Same as introduced version.