

BILL ANALYSIS

Senate Research Center
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S.B. 404
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Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 404 is akin to H.B. 680 from the 82nd Legislature, 2011, which made certain due process reforms relating to complaints filed with the Texas Medical Board. S.B. 404 applies similar due process reforms to the Texas State Board of Pharmacy (TSBP). In particular, S.B. 404:

- Makes clear that TSBP is required to maintain a complainant's identity.
- Creates a seven-year statute of limitations period. TSBP may not consider a complaint involving a violation alleged to have occurred more than seven years before the date the complaint is received by TSBP.
- Allows TSBP to issue a remedial plan to resolve certain complaints.
- Permits a license holder to obtain a recording of an informal hearing regarding the license holder before TSBP.
- Requires the license holder, if an informal hearing is to take place, to be given notice of the time and place of the hearing at least 45 days before the date of the hearing. The notice must include a statement of the nature of the allegations against the license holder and the information TSBP intends to use at the hearing.
- Requires TSBP, if a contested case goes before the State Office of Administrative Hearings, to dispose of the contested case by issuing a final order based on the administrative law judge's findings of fact and conclusions of law. However, TSBP retains the authority to determine the appropriate action or sanction to be taken.

As proposed, S.B. 404 amends current law relating to complaints filed with the Texas State Board of Pharmacy and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas State Board of Pharmacy in SECTION 5 (Section 565.060, Occupations Code) and in SECTION 7 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 555.005, Occupations Code, to require the Texas State Board of Pharmacy (TSBP), for each complaint received by TSBP, to maintain certain information about parties to the complaint, including the complainant's identity and the disposition of the complaint.

SECTION 2. Amends Section 555.007, Occupations Code, by adding Subsection (d), to prohibit TSBP from considering or acting on a complaint involving a violation alleged to have occurred more than seven years before the date the complaint is received by TSBP.

SECTION 3. Amends Section 565.051, Occupations Code, as follows:

Sec. 565.051. DISCIPLINE AUTHORIZED. Authorizes TSBP, on determination that a ground for discipline exists under Subchapter A (Grounds for Discipline of Applicant or License Holder), or that a violation of this subtitle or a rule adopted under this subtitle has been committed by a license holder or applicant for a license or renewal of a license, to take certain actions, including to issue a remedial plan. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Section 565.056, Occupations Code, by amending Subsection (b) and adding Subsections (d) and (e), as follows:

(b) Requires that a rule adopted under this section:

- (1) provide the complainant, if applicable and permitted by law, and the license holder an opportunity to be heard;
- (2) require the presence of an attorney to advise TSBP or a TSBP employee; and
- (3) if an informal meeting will be held, require notice of the time and place of the informal meeting to be given to the license holder not later than the 45th day before the date the informal meeting is held.

(d) Requires that the notice required by Subsection (b)(3) be accompanied by a written statement of the nature of the allegations against the license holder and the information TSBP intends to use at the informal meeting. Authorizes the license holder, if TSBP does not provide the statement or information when the notice is provided, to use that failure as grounds for rescheduling the informal meeting. Requires the license holder to provide to TSBP the license holder's rebuttal not later than the 15th day before the date of the meeting in order for that information to be considered at the meeting.

(e) Requires TSBP, on request by a license holder under review, to make a recording of the informal meeting. Provides that the recording is a part of the investigative file and prohibits the recording from being released to a third party unless authorized under this subtitle. Authorizes TSBP to charge the license holder a fee to cover the cost of recording the meeting. Requires TSBP to provide a copy of the recording to the license holder on the license holder's request.

SECTION 5. Amends Subchapter B, Chapter 565, Occupations Code, by adding Section 565.060, as follows:

Sec. 565.060. REMEDIAL PLAN. (a) Authorizes TSBP to issue and establish the terms of a remedial plan to resolve the investigation of a complaint relating to this subtitle.

(b) Prohibits a remedial plan from containing a provision that:

- (1) revokes, suspends, limits, or restricts a person's license or other authorization to practice pharmacy; or
- (2) assesses an administrative penalty against a person.

(c) Prohibits a remedial plan from being imposed to resolve a complaint:

- (1) concerning a death, a hospitalization, or the commission of a felony;
or
- (2) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices pharmacy.

(d) Prohibits TSBP from issuing a remedial plan to resolve a complaint against a license holder if the license holder has entered into a remedial plan with TSBP in the preceding 24 months for the resolution of a different complaint relating to this subtitle.

(e) Requires TSBP, if a license holder complies with and successfully completes the terms of a remedial plan, to remove all records of the remedial plan from

TSBP's records on the second anniversary of the date the license holder successfully completes the remedial plan.

(f) Authorizes TSBP to assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

(g) Requires TSBP to adopt rules necessary to implement this section.

SECTION 6. Amends Section 565.061, Occupations Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Provides that, except as provided by this section and Chapter 564 (Program to Aid Impaired Pharmacists and Pharmacy Students; Pharmacy Peer Review), a disciplinary action taken by TSBP on the basis of a ground for discipline under Subchapter A (Grounds for Discipline of Applicant or License Holder), rather than under Section 565.060 (Applicant For or Holder Of License: Certain felony Drug Convictions [repealed]) or on the basis of a ground for discipline under Subchapter A, is governed by Chapter 2001 (Administrative Procedure), Government Code, and the rules of practice and procedure before TSBP.

(a-1) Requires TSBP, after receiving the administrative law judge's findings of fact and conclusions of law, to dispose of the contested case by issuing a final order based on the administrative law judge's findings of fact and conclusions of law.

(a-2) Prohibits TSBP, notwithstanding Section 2001.058(e) (relating to authorizing a state agency, under certain circumstances, to change a finding of fact or conclusion of law, or vacate or modify an order of an administrative judge), Government Code, from changing a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge. Authorizes TSBP to obtain judicial review of any finding of fact or conclusion of law issued by the administrative law judge as provided by Section 2001.058(f)(5) (relating to providing that an occupational licensing agency and any other party in a contested case, if a state agency authorizes an administrative law judge to render final decision in a contested case, is entitled to obtain judicial review of the final decision), Government Code. Provides that TSBP, for each case, has the sole authority and discretion to determine the appropriate action or sanction, and the administrative law judge is prohibited from making any recommendation regarding the appropriate action or sanction.

SECTION 7. (a) Makes application of Sections 555.005 and 565.056, Occupations Code, as amended by this Act, and Section 555.007(d), Occupations Code, as added by this Act, prospective.

(b) Requires TSBP to adopt rules under Section 565.060, Occupations Code, as added by this Act, not later than January 1, 2014.

(c) Makes application of Section 565.051, Occupations Code, as amended by this Act, and Section 565.060, Occupations Code, as added by this Act, prospective.

(d) Makes application of Section 565.061, Occupations Code, as amended by this Act, prospective.

SECTION 8. Effective date: September 1, 2013.