

BILL ANALYSIS

Senate Research Center

S.B. 1625
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1625 expands the whistleblower protections currently provided to nurses in Section 301.352, Occupations Code, to physician assistants (PAs). The bill establishes legal protections for PAs who refuse to engage in an act or omission relating to patient care, that would risk their medical license. It also seeks to protect PAs who inform a person they intend to refuse to engage in an act or omission that they believe constitutes grounds for reporting to the Texas Physician Assistant Board (PAB). A person who takes retaliatory action against a PA may be subject to adverse action by his governing board.

S.B. 1625 includes provisions that describe situations that would not fall under this bill, including if the act or omission that the PA refused to engage in does in fact become an act or omission that requires reporting to PAB. Furthermore, should the person take action against the PA for refusing to engage in a reportable act or omission, that person can withdraw their complaint and compensate the PA for lost wages and benefits. By withdrawing the complaint and providing compensation, the person would be exempted from the related licensure action taken by his governing board against him.

COMMITTEE SUBSTITUTE

The committee substitute included several PA-related provisions originally filed in the Texas Medical Board (TMB) Sunset bill. The new provisions are:

- Remove the requirement that applicants for PA licensure be of "good moral character," a standard that is unclear, subjective, and difficult to enforce.
- o The agency would continue to receive and review criminal history information to determine an applicant's eligibility for licensure according to requirements in Chapter 53, Occupations Code, and TMB's current rules.
- Allow TMB to establish biennial renewal for PA licensees.
- o TMB would determine when to start and how to implement biennial renewals. This provision would reduce staff time spent on renewals and allow TMB to streamline licensing and continuing education processes, without compromising board oversight of licensees.
- Authorize PAB to deny renewal applications from noncompliant applicants.
- o Under this provision, PAB would have the discretion to determine whether noncompliant applicants can safely perform their job or if their renewal application should be denied. Authority to deny renewals would help PAB better protect consumers from potentially unsafe practitioners and provide greater incentive for licensees to comply with board orders.
- Authorize the current practice of requiring all applicants to undergo fingerprint-based background checks.

- Require TMB staff to create a training manual for all PAB members that must include a discussion of the scope of, and limitations on, PAB's rulemaking authority.
- Authorize PAB, after hearing all evidence and arguments in an open meeting, to conduct deliberations relating to license applications and disciplinary actions in executive sessions.
- Under this provision, PAB would still be required to vote and announce its decisions in open session. Many other licensing boards already have this authority.
- Require at least one of the PAB members in an ISC to be a licensed PA.

S.B. 1625 amends current law relating to the Texas Physician Assistant Board and the licensing and regulation of physician assistants.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 157.0512, Occupations Code, by amending Subsections (e) and (f) and adding Subsection (f-1), as follows:

(e) Requires that a prescriptive authority agreement, at a minimum, describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that include, if the agreement is between a physician and an advanced practice registered nurse (APRN), periodic face-to-face meetings between the APRN, rather than the APRN or physician assistant (PA), and the physician at a location determined by the physician and the APRN, rather than the APRN or PA, and if the agreement is between a physician and a PA, periodic meetings between the PA and the physician. Makes nonsubstantive changes.

(f) Requires that certain periodic face-to-face meetings be documented and occur, if during the seven years preceding the date the agreement is executed the APRN, rather than the APRN or PA, for at least five years was in a practice that included the exercise of prescriptive authority with required physician supervision, for a certain amount of time.

(f-1) Requires that certain periodic meetings include the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals and discussion of patient care improvement; be documented; and take place at least once a month in a manner determined by the physician and the physician assistant.

SECTION 2. Amends Subchapter B, Chapter 204, Occupations Code, by adding Section 204.0585, as follows:

Sec. 204.0585. EXECUTIVE SESSION. Authorizes the Texas Physician Assistant Board (PAB), after hearing all evidence and arguments in an open meeting, to conduct deliberations relating to a license application or disciplinary action in an executive session. Requires PAB to vote and announce its decision in open session.

SECTION 3. Amends Section 204.059, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires that the training program provide a person who is appointed to and qualifies for office as a member of PAB with information regarding:

(1) the law governing PAB operations;

- (2) the programs, functions, rules, and budget of PAB, rather than this chapter (Physician Assistants) and PAB's programs, functions, rules, and budget. Redesignates existing Subdivision (1) as Subdivision (2);
 - (3) the scope of and limitations on the rulemaking authority of PAB;
 - (4) redesignates existing Subdivision (2) as Subdivision (4) and makes no further changes to this subdivision;
 - (5) the requirements of laws relating to certain matters, including disclosing conflicts of interest, and other laws applicable to members of PAB in performing their duties. Redesignates existing Subdivision (3) as Subdivision (5) and makes a nonsubstantive change; and
 - (6) redesignates existing Subdivision (4) as Subdivision (6) and makes no further changes to this subdivision.
- (d) Requires the executive director of the Texas Medical Board (executive director; TMB) to create a training manual that includes the information required by Subsection (b) and requires the executive director to distribute a copy of the training manual annually to each PAB member. Requires each PAB member, on receipt of the training manual, to sign and submit to the executive director a statement acknowledging receipt of the training manual.

SECTION 4. Amends Subchapter D, Chapter 204, Occupations Code, by adding Section 204.1525, as follows:

Sec. 204.1525. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) Requires PAB to require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by PAB, to PAB or to the Texas Department of Public Safety (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation.

- (b) Prohibits PAB from issuing a license to a person who does not comply with the requirement of Subsection (a).
- (c) Requires PAB to conduct a criminal history record information check (background check) of each applicant for a license using certain information.
- (d) Authorizes PAB to enter into an agreement with DPS to administer a required background check and to authorize DPS to collect from each applicant the costs incurred by DPS in conducting the background check.

SECTION 5. Amends Section 204.153(a), Occupations Code, as follows:

- (a) Requires an applicant, to be eligible for a license under this chapter, to meet any other requirement established by PAB rule. Deletes existing Subdivision (4) requiring an applicant, to be eligible for a license under this chapter, to be of good moral character. Redesignates existing Subdivisions (5) and (6) as Subdivisions (4) and (5).

SECTION 6. Amends Section 204.156, Occupations Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

- (a) Provides that a license issued under this chapter is valid for a term of two or more years, as determined by PAB rule.
- (a-1) Redesignates text of existing Subsection (a) as Subsection (a-1) and makes no further changes to this subsection.

SECTION 7. Amends Subchapter D, Chapter 204, Occupations Code, by adding Section 204.1561, as follows:

Sec. 204.1561. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL. (a) Requires an applicant for renewal of a license issued under this chapter to submit a complete and legible set of fingerprints for purposes of performing a background check of the applicant as provided by Section 204.1525.

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

(c) Provides that a license holder is not required to submit fingerprints for the renewal of the license if the holder has previously submitted fingerprints under Section 204.1525 for the initial issuance of the license or under this section as part of a prior renewal of a license.

SECTION 8. Amends Subchapter D, Chapter 204, Occupations Code, by adding Section 204.158, as follows:

Sec. 204.158. REFUSAL FOR VIOLATION OF BOARD ORDER. Authorizes PAB to refuse to renew a license issued under this chapter if the license holder is in violation of a PAB order.

SECTION 9. Amends Subchapter E, Chapter 204, Occupations Code, by adding Section 204.210, as follows:

Sec. 204.210. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT.

(a) Prohibits a person from suspending, terminating, or otherwise disciplining, discriminating against, or retaliating against a PA who refuses to engage in an act or omission as provided by Subsection (b) or a person who advises a PA of the PA's rights under this section.

(b) Authorizes a PA to refuse to engage in an act or omission relating to patient care that would constitute grounds for reporting the PA to PAB under Section 204.208 (Duty to Report; Medical Peer Review) or that violates this chapter or a rule adopted under this chapter if the PA notifies the person at the time of the refusal of certain reasons for refusing.

(c) Provides that an act by a person under Subsection (a) does not constitute a violation of this section if a medical peer review committee determines:

(1) that the act or omission the PA refused to engage in was not:

(A) conduct reportable to PAB under Section 204.208; or

(B) a violation of this chapter or a rule adopted under this chapter; or

(2) that:

(A) the act or omission in which the PA refused to engage was conduct reportable to PAB or a violation of this chapter or a rule adopted under this chapter; and

(B) the person:

(i) rescinds any disciplinary or discriminatory action taken against the PA;

(ii) compensates the PA for any lost wages; and

- (iii) restores to the PA any lost benefits.
- (d) Prohibits a PA's rights under this section from being nullified by a contract.
- (e) Authorizes an appropriate licensing agency to take action against a person who violates this section.

SECTION 10. Amends Section 204.313(a), Occupations Code, to require that at least one of the panelists appointed in a certain meeting be a licensed PA.

SECTION 11. Makes application of Section 157.0512, Occupations Code, as amended by this Act, prospective.

SECTION 12. (a) Provides that, except as provided by Subsection (b) of this section, Section 204.059, Occupations Code, as amended by this Act, applies to a member of PAB appointed before, on, or after the effective date of this Act.

(b) Provides that a member of PAB who, before the effective date of this Act, completed the training program required by Section 204.059 (Training), Occupations Code, as that 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 204.059, Occupations Code. Prohibits a PAB member described by this subsection from voting, deliberating, or being counted as a member in attendance at a PAB meeting held on or after December 1, 2017, until the member completes the additional training.

SECTION 13. Requires PAB, not later than September 1, 2019, to obtain criminal history record information on each person who, on the effective date of this Act, holds a license issued under Chapter 204, Occupations Code, and did not undergo a background check based on the license holder's fingerprints on the initial application for the license. Authorizes PAB to suspend the license of a license holder who does not provide the criminal history record information as required by PAB and this section.

SECTION 14. Makes application of Section 204.210, Occupations Code, as added by this Act, prospective.

SECTION 15. Effective date: September 1, 2017.