

## **BILL ANALYSIS**

C.S.H.B. 2978  
By: Bonnen, Greg  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Neurodiagnostic technologists' scope of practice is not sufficiently defined in Texas. In clinical and surgical settings throughout the state, special tests are performed by neurodiagnostic technologists under the supervision of licensed physicians in order to diagnose potentially life-threatening neurological disorders. Interested parties contend that unqualified individuals performing these important medical tests present a serious risk to the welfare and safety of patients. C.S.H.B. 2978 seeks to address this issue.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes 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 SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 2978 amends the Occupations Code to prohibit a person from acting as or offering to act as a neurodiagnostic technologist unless the person holds a license issued by the Texas Medical Board under the bill's provisions. The bill prohibits a person without such a license, or whose license has been suspended or revoked, from using the word "neurodiagnostic" on a sign, name tag, or any form of advertising unless the person is expressly exempt from the licensing requirements; from using in connection with the person's practice any abbreviations or credentials indicating or implying that the person is a neurodiagnostic technologist; or from directly or by implication representing in any way that the person is a neurodiagnostic technologist. The bill establishes that a license is valid only with respect to the person named on the license and authorizes the license holder to engage in the neurodiagnostic procedure for which the license holder has a credential issued by a credentialing organization. The bill establishes that a license is not transferable or assignable. These bill provisions take effect September 1, 2016.

C.S.H.B. 2978 provides for fees, licensing application requirements, temporary licenses, license renewal, and continuing education requirements. The bill authorizes the board to administer or accept for licensing a credentialing organization examination as determined by rule. The bill adds temporary provisions, set to expire June 1, 2017, relating to an exemption from an examination requirement. The bill requires a license holder to include the license holder's license number in each advertisement and establishes that a person who advertises that the person is a neurodiagnostic technologist is presumed to be engaging in conduct regulated by the bill's provisions.

C.S.H.B. 2978 prohibits a license holder from engaging in a neurodiagnostic procedure for which the license holder does not hold the proper credential issued by a credentialing organization. The bill prohibits a license holder from interpreting neurodiagnostic data, providing clinical correlation of data, performing needle insertion electromyography in a clinical setting, or meeting with a patient except under the direct supervision of a physician. The bill provides for an investigation of a complaint by the board and sanctions imposed by the board, including an administrative penalty that is effective September 1, 2016. Effective September 1, 2016, the bill makes it a Class A misdemeanor for a person to violate the bill's provisions.

C.S.H.B. 2978 requires the board to administer and enforce the bill's provisions and to adopt any rules necessary to implement such provisions. The bill exempts from its provisions a physician licensed in Texas; a person performing a neurodiagnostic procedure for research if the results of the procedure are not used to diagnose or treat a patient, as a neurodiagnostic student under the direct supervision of a neurodiagnostic technologist or physician, or as an employee under the direct supervision of a physician as part of the employee's job training; and a faculty member of an accredited school or university with a neurodiagnostics, allied health, or health education program.

C.S.H.B. 2978 requires the board, not later than February 1, 2016, to adopt rules and forms necessary to implement the bill's provisions. The bill requires the board to issue a neurodiagnostic technologist license to an applicant who applies for a license not later than June 1, 2016, submits to the board the information required by rule, meets the bill's temporary requirements regarding an exemption from examination, and pays the application fee established by the board.

#### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2015.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2978 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

SECTION 1. Subtitle K, Title 3, Occupations Code, is amended by adding Chapter 606 to read as follows:

#### **CHAPTER 606. NEURODIAGNOSTIC TECHNOLOGISTS**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 606.001. DEFINITIONS.** In this chapter:

**(1) "Autonomic reflex testing" means a test used to measure how autonomic nerves work in controlling involuntary body functions, including blood pressure, heart rate, and sweating, in response to different maneuvers, such as deep breathing, blowing into a mouthpiece, sweating, and lying for several minutes on a table that is tilted to a**

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near standing position.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Credentialing organization" means a national accrediting organization that administers and awards neurodiagnostic technologist credentials, including the:

(A) ABRET Neurodiagnostic Credentialing and Accreditation (ABRET);

(B) American Association of Electrodiagnostic Technologists (AAET);

(C) American Board of Electrodiagnostic Medicine (ABEM); or

(D) Board of Registered Polysomnographic Technologists (BRPT).

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Direct supervision" means supervision by a responsible neurodiagnostic technologist or physician who is physically present and immediately available to provide assistance and direction while a neurodiagnostic procedure is being performed.

(6) "Electroencephalography" means the recording and analysis of the ongoing electrical activity of the brain using a digital or analog instrument with a minimum of 16 channels and 21 electrodes and is used to assist in the diagnosis of epilepsy and other neurological symptoms.

(7) "Electromyography" means the recording and analysis of electrical activity generated by a needle insertion into a muscle.

(8) "Evoked potentials" means the recording of electrical activity from the brain, spinal nerves, or sensory receptors that occurs in direct response to auditory, visual, or electrical stimulation using surface electrodes and computer equipment to average the electrical potentials generated.

(9) "Executive director" means the executive director of the department.

(10) "General supervision" means supervision by a responsible physician who is readily available to communicate with a person performing a neurodiagnostic procedure.

(11) "Intraoperative monitoring" means the use of a neurophysiological monitoring technique during surgery that ensures the

near standing position.

(2) "Board" means the Texas Medical Board.

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(8) "Intraoperative monitoring" means the use of a neurophysiological monitoring technique during surgery that ensures the

safety of a patient by:

(A) providing information to the surgeon that relates to the integrity of the central and peripheral nervous systems; and

(B) using real-time electrographic information or stimulus evoked recordings of auditory, visual, somatosensory, or motor pathways via surface or subdermal needle electrodes.

(12) "License holder" means a person who holds a license as a neurodiagnostic technologist under this chapter.

(13) "Long-term monitoring" means the prolonged recording, by video recording or digital analysis, of the ongoing electrical activity of the brain to evaluate and diagnose epilepsy and other intermittent or infrequent neurological disturbances.

(14) "Nerve conduction study" means a recording obtained from electrical stimulation of peripheral nerves using surface electrodes and standard equipment with oscilloscopes for waveform analysis to evaluate and diagnose a disorder of the peripheral nervous system.

(15) "Neurodiagnostic student" means a person who is enrolled in a neurodiagnostics program.

(16) "Neurodiagnostic technologist" means a person who holds a license issued under this chapter to:

(A) use specialized equipment to record and analyze physiological data and electrical activity from the central and peripheral nervous systems; and

(B) perform one or more of the following neurodiagnostic procedures under the direct or general supervision of a physician:

(i) electroencephalography;

(ii) evoked potentials;

(iii) continuous electroencephalography monitoring;

(iv) intraoperative neuromonitoring;

(v) long-term monitoring;

(vi) nerve conduction studies;

(vii) polysomnography; or

(viii) autonomic reflex testing.

(17) "Polysomnography" means the recording of the biophysiological changes that occur during sleep by monitoring the ongoing electrical activity of the brain, eye movements, muscle activity, heart rhythm, and respiratory effort to diagnose and treat sleep disorders.

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Sec. 606.002. EXEMPTIONS.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Sec. 606.051. GENERAL POWERS AND DUTIES; RULES. (a) The department shall administer and enforce this chapter.

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

(c) In its rules under this section, the commission shall list the specific offenses for which a conviction would constitute grounds for the commission to take action under Chapter 53.

Sec. 606.052. FEES. (a) The commission by rule shall establish reasonable and necessary fees in amounts sufficient to cover the costs of administering and enforcing this chapter.

(b) The commission may increase the fee for the issuance or renewal of a license as necessary to cover the costs of enforcing this chapter in an amount not to exceed \$1,000.

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 606.101. LICENSE REQUIRED.

Sec. 606.102. LICENSING APPLICATION. (a) An applicant for a license must:

(1) apply to the department on a form prescribed by the executive director and under rules adopted by the commission;

(2) submit with the application a nonrefundable application fee in an amount set by the commission; and

(3) pass a credentialing organization examination administered or accepted by the department.

(b) The commission by rule shall specify the information that must be included on an application submitted to the department. The rules must require:

(1) each application to include the name and address of the applicant; and

(2) each applicant for a license by examination to present satisfactory evidence to the commission that the applicant is:

(A) at least 18 years of age; and

(B) of good moral character.

Sec. 606.103. EXAMINATIONS

Sec. 606.002. EXEMPTIONS.

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(b) The board by rule shall specify the information that must be included on an application submitted to the board. The rules must require:

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Sec. 606.103. EXAMINATIONS

ADMINISTERED OR ACCEPTED BY DEPARTMENT. The department may administer or accept for licensing a credentialing organization examination as determined by rule.

Sec. 606.1031. REDUCED LICENSE REQUIREMENTS. (a) A person who applies for a license under this chapter not later than June 1, 2016, is exempt from the examination required under this chapter if the person presents satisfactory evidence to the department that the person:

(1) holds unexpired credentials issued by a credentialing organization; or

(2) actively performs neurodiagnostic procedures.

(b) Satisfactory evidence under Subsection (a)(2) must be in the form of a signed letter submitted by the employer or supervising physician of the applicant.

(c) A person who qualifies under this section for an exemption from the requirement to take the examination required under this chapter must comply with all other requirements under this chapter for issuance of a license.

(d) This section expires June 1, 2017.

Sec. 606.104. TEMPORARY LICENSES. (a) The commission may adopt rules and set fees relating to granting temporary licenses.

(b) A temporary license under this chapter expires on the second anniversary of the date the temporary license is issued or the date the applicant presents satisfactory evidence to the department that the applicant has passed the examination required under this chapter, whichever date occurs first.

(c) The commission by rule may extend the expiration date of a temporary license by not more than an additional 12 months.

SUBCHAPTER D. LICENSE RENEWAL

Sec. 606.151. LICENSE RENEWAL. (a) A license is valid for two years from the date of issuance and may be renewed biennially.

(b) The commission by rule may adopt a system under which licenses expire on various dates during the year.

(c) A person may renew an unexpired license by paying the required renewal fee to the department before the license expiration date.

(d) To renew a license under this chapter, a

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person must submit proof satisfactory to the department that the person has:

- (1) maintained the appropriate credentials issued by a credentialing organization; and
- (2) complied with the continuing education requirements prescribed by the commission.

Sec. 606.152. CONTINUING EDUCATION. (a) The commission shall establish for the renewal of a license or temporary license uniform continuing education requirements of not less than 24 continuing education hours for each renewal period.

(b) The commission shall adopt a procedure to assess a license holder's participation in continuing education programs.

#### SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

Sec. 606.201. ADVERTISING.

#### SUBCHAPTER F. PROHIBITED PRACTICES AND ENFORCEMENT PROVISIONS

Sec. 606.251. PROHIBITED PRACTICES.

(a) A license holder may not engage in a neurodiagnostic procedure for which the license holder does not hold the proper credential issued by a credentialing organization.

(b) A license holder may not:

(1) interpret neurodiagnostic data, including making a determination of normal or abnormal findings and identifying the presence, absence, type, severity, or likelihood of an illness, injury, or other condition;

(2) provide clinical correlation of data, including making statements about the meaning of test results based on a person's symptoms, medical history, physical examination, or other clinical test results; or

(3) perform needle insertion electromyography in a clinical setting.

Sec. 606.252. INVESTIGATION OF COMPLAINTS. (a) The department shall investigate any complaint alleging that a violation of this chapter or a rule or order adopted under this chapter has occurred.

(b) A complaint must be filed in a manner prescribed by the department.

Sec. 606.253. SANCTIONS. The commission may impose sanctions as

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(4) meet with a patient except under the direct supervision of a physician.

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(b) A complaint must be filed in a manner prescribed by the board.

Sec. 606.253. SANCTIONS. The board may impose sanctions under this chapter in

provided by Sections 51.352 and 51.353.

SUBCHAPTER G. PENALTIES

Sec. 606.301. ADMINISTRATIVE PENALTY. The commission or executive director may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a license under this chapter, if the person violates this chapter or a rule or order adopted under this chapter.

Sec. 606.302. CRIMINAL PENALTY.

SECTION 2. Not later than February 1, 2016, the Texas Commission of Licensing and Regulation, the Texas Department of Licensing and Regulation, and the executive director of the Texas Department of Licensing and Regulation, as appropriate, shall adopt rules and forms necessary to implement Chapter 606, Occupations Code, as added by this Act.

SECTION 3. The Texas Department of Licensing and Regulation shall issue a neurodiagnostic technologist license under Chapter 606, Occupations Code, as added by this Act, to an applicant who:

- (1) applies for a license under this section not later than June 1, 2016;
- (2) submits to the department the information required by rule;
- (3) meets the requirements of Section 606.1031, Occupations Code, as added by this Act; and
- (4) pays the application fee established by the commission.

SECTION 4. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2015.

(b) Section 606.101 and Subchapter G, Chapter 606, Occupations Code, as added by this Act, take effect September 1, 2016.

the same manner as provided by Chapter 164 for imposition of sanctions against a physician.

SUBCHAPTER G. PENALTIES

Sec. 606.301. ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person under this chapter in the same manner as provided by Subchapter A, Chapter 165, against a physician, regardless of whether the person holds a license under this chapter, if the person violates this chapter or a rule or order adopted under this chapter.

Sec. 606.302. CRIMINAL PENALTY.

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SECTION 4. Same as introduced version.