

SUBJECT: Providing penalties for certain health professionals

COMMITTEE: Public Health — favorable, without amendment

VOTE: 5 ayes — Laubenberg, Dawson, Taylor, Truitt, Zedler  
0 nays  
4 absent — Capelo, Coleman, McReynolds, Naishtat

SENATE VOTE: On final passage, March 13 — voice vote

WITNESSES: None

BACKGROUND: The Professional Licensing and Certification Division of the Texas Department of Health (TDH) consists of 20 separate regulatory programs. They evaluate credentials, give examinations, monitor continuing education, conduct complaint investigations, carry out disciplinary action, and otherwise regulate a variety of health professions in the state.

DIGEST: SB 161 would amend various sections of the Occupations Code and V.T.C.A., ch. 9, art. 4413(51). It would allow for emergency suspension of licenses from the following health professionals if their continued practice constituted a continuing and imminent threat to the public welfare: midwives, opticians, contact lens dispensers, speech-language pathologists and audiologists, fitters and dispensers of hearing instruments, athletic trainers, massage therapists, marriage and family therapists, medical radiologic technologists, medical physicists, perfusionists, orthotists and prosthetists, dieticians, and sex offender treatment providers.

The bill would establish administrative penalties for certain violations by speech-language pathologists and audiologists, professional counselors, perfusionists, orthotists and prosthetists, dieticians, code enforcement officers, sanitarians, and sex offender treatment providers. It would allow civil penalties for violations by fitters and dispensers of hearing instruments, medical physicists, and perfusionists, and would attach class A misdemeanor criminal penalties (up to one year in jail and/or a maximum fine of \$4,000) to

certain violations by social workers, orthotists and prosthetists, and medical physicists. Criminal penalties for medical physicists are currently class B misdemeanors (up to 180 days in jail and/or a maximum fine of \$2,000).

The bill would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

SB 162 would implement an across-the-board recommendation by the Sunset Advisory Commission relating to a full range of penalties or sanctions for licensing boards. TDH last underwent a full sunset review in 1998, but each licensing body was not individually reviewed, so standard recommendations were not implemented for all regulatory health boards and commissions.

TDH needs the authority that this bill would provide to better protect the health and safety of the general public and those who receive services from the health professionals included in it. TDH should be able to act swiftly and effectively when a health professional poses an imminent threat to the public, and this bill would equip it to do so. The professional integrity of law abiding health professionals also would be better protected if TDH could penalize offenders quickly and clear the health professions of the few practitioners who take advantage of or harm their patients and clients.

This bill contains the same statutory changes as those in SB 791 by Nelson, which passed last session. That bill, however, also would have repealed certain protections that generally make confidential all information concerning professional licensing complaints and investigations. SB 162 does not contain this provision, which the governor cited as the reason why he vetoed SB 791 last session.

**OPPONENTS  
SAY:**

No apparent opposition.

**NOTES:**

In explaining why he vetoed SB 791 in 2001, Gov. Perry said that it would have “repealed provisions enacted during the 76th Legislature which made certain information gathered by the Texas Department of Health under subpoena or compiled in connection with a complaint and investigation

confidential. Information gathered by a regulatory agency through a subpoena should retain some degree of confidentiality.”