

BILL ANALYSIS

Senate Research Center

H.B. 2824
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Engrossed

DIGEST

The Texas Department of Health (TDH) provides administrative services for 11 professional independent or semi-independent licensing and regulatory boards. These services include investigating complaints lodged against persons licensed by the board. Currently, no board has the authority to subpoena witnesses or documents or in any manner compel production of testimony or documentation to substantiate or disprove alleged violations by licensees. Consequently, it may be difficult to obtain needed information from third parties, such as banks, healthcare providers, and hospitals. H.B. 2824 authorizes each of these 11 boards to exercise subpoena authority relating to witnesses and documents, to administer oaths, and to seek enforcement power in Texas district courts.

PURPOSE

As proposed, H.B. 2824 authorizes subpoena authority for certain licensing agencies

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 50, Human Resources Code, by adding Section 50.0225, as follows:

Sec. 50.0225. SUBPOENAS. Authorizes the Texas State Board of Social Worker Examiners (board) to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state in an investigation of a complaint with the Texas Department of Health (department) and referred to the board. Authorizes a subpoena to be served personally or by certified mail. Authorizes the board, acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held if a person fails to comply with the subpoena. Requires the court to order a person to comply with the subpoena on finding that good cause exists for its issuance. Authorizes the court to punish a person failing to obey the court order. Authorizes the board to delegate the authority granted under Subsection (a) to the executive director or secretary-treasurer of the board. Requires the board to pay a reasonable fee for photocopies subpoenaed under this section, not to exceed the amount the board may charge for copies of its records. Provides that reimbursement of expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103 (Expenses of Witness or Deponent), Government Code. Sets forth provisions making certain information subpoenaed not subject to disclosure, however, the filing of formal charges and certain other relevant information are not confidential.

SECTION 2. Amends Article 4413(51), V.T.C.S. (Chapter 462, Acts of the 68th Legislature, Regular Session, 1983), by adding Section 8C, as follows:

Sec. 8C. SUBPOENAS. Authorizes the Council on Sex Offender Treatment (council) to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state in an investigation of a complaint filed with the council. Authorizes the subpoena to be served personally or by certified mail. Authorizes the council, acting through the attorney general, to file suite to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the council may be held if a person fails to comply with the subpoena. Requires the court to order a person to comply with

a subpoena on finding that good cause exists for its issuance. Authorizes the court to punish a person failing to comply with the subpoena. Authorizes the council to delegate the authority granted under Subsection (a) to the executive director of the council. Requires the council to pay a reasonable fee for photocopies subpoenaed under this section, not to exceed the amount the council is authorized to charge for copies of its records. Provides that the reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 20001.103, Government Code. Makes conforming changes.

SECTION 3. Amends Article 4512c-1, V.T.C.S. (The Licensed Marriage and Family Therapist Act), by amending Sections 11B and 11C and adding Section 11D, as follows:

Sec. 11B. SUBPOENAS. Authorizes the Texas State Board of Examiners of Marriage and Family Therapists (board, for purposes of this section) to issue a subpoena to compel the attendance of a relevant witness or production, for inspection or copying, of relevant evidence that is in this state in an investigation of a complaint filed with the board. Authorizes a subpoena to be served personally or by certified mail. Authorizes the board, acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing by the board may be held if a person fails to comply with the subpoena. Requires the court to order a person to comply with a subpoena on finding that good cause exists for its issuance. Authorizes the court to punish a person failing to obey the subpoena. Authorizes the board to delegate the authority granted under Subsection (a) to the executive director of the board. Requires the board to pay a reasonable fee for photocopies subpoenaed under this sectionS not to exceed the amount the board is authorized to charge for copies of its records. Provides that the reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code. Makes conforming changes.

Sec. 11C. INFORMAL PROCEEDINGS. Sets forth provisions regarding procedures adopted, by rule, involving cases contested or complied under Section 2001.054, Government Code. Makes conforming changes.

SECTION 4. Amends Chapter 498, Article 4512d, V.T.C.S. (Acts of the 62nd Legislature, Regular Session, 1971), by adding Sections 5A and 5B, as follows:

Sec. 5A. COMPLAINTS. Requires the Advisory Board of Athletic Trainers (board, for purposes of this section) to maintain a file on each written complaint filed with the board. Provides that the file must include specific information. Requires the board to provide the person filing the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution. Requires the board, at least quarterly until final disposition of the complaint, to notify the person who filed it and each person who is subject of the complaint of the status of the complaint, unless the notice would jeopardize an undercover operation. Makes conforming changes.

Sec. 5B. SUBPOENAS. Authorizes the Advisory Board of Athletic Trainers (board, for purposes of this section) to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state in an investigation of a complaint filed with the board. Authorizes the subpoena to be served personally or by certified mail. Authorizes the board, acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held if a person fails to comply with the subpoena. Requires the court to order a person to comply with a subpoena on finding that good cause exists for its issuance. Authorizes the court to punish a person failing to obey the court order. Authorizes the board to delegate the authority granted under Subsection (a) to the secretary-treasurer or executive secretary of the board. Requires the board to pay a reasonable fee for photocopies subpoenaed under this section not to exceed the amount the board is authorized to charge for copies of its records. Provides that the reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code. Makes conforming changes.

SECTION 5. Amends Article 4512g, V.T.C.S. (The Licensed Professional Counselor Act) by amending Section 16D and by adding Section 16F, as follows:

Sec. 16D. SUBPOENAS. Authorizes the Texas State Board of Examiners of Professional

Counselors (board, for purposes of this section) to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state in an investigation of a complaint filed with the board. Authorizes a subpoena to be served personally or by certified mail. Authorizes the board, acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held if a person fails to comply with the subpoena. Requires the court to order a person to comply with a subpoena on finding that good cause exists for its issuance. Authorizes the court to punish a person failing to comply with the court order. Authorizes the board to delegate the authority granted under Subsection (a) to the board's executive secretary. Requires the board to pay a reasonable fee for photocopies subpoenaed under this section, not to exceed the amount the board is authorized to charge for copies of its records. Provides that the reimbursement of expenses of a witness whose attendance is compelled under this section is governed by Section 2001.03, Government Code. Makes conforming changes.

Sec. 16E. INFORMAL PROCEEDINGS. (a) Requires the board to adopt, by rule, procedures governing informal disposition of a contested case under Section 2001.056, Government Code, instead of Section 13(e), Article 6252-13a, V.T.C.S. (Administrative Procedure and Texas Register Act) and its subsequent amendments; and informal proceedings held in compliance with Section 2001.054, Government Code, instead of Section 18(c), Article 6252-13a, V.T.C.S. (Administrative Procedure and Texas Register Act) and its subsequent amendments. Makes no change.

Sec. 16F. Redesignated from existing Section 16E. Makes conforming changes.

SECTION 6. Amends Article 4512h, V.T.C.S. (Licensed Dietitian Act), by amending Sections 16C and 16D and by adding Section 16E, as follows:

Sec. 16C. SUBPOENAS. Authorizes the Texas State Board of Examiners of Dietitians (board, for purposes of this section) to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state in an investigation of a complaint filed with the board. Provides that a subpoena is authorized to be served personally or by certified mail. Authorizes the board, if a person fails to comply with a subpoena and acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board is authorized to be held. Requires the court to order a person to comply with the subpoena on finding of good cause for the subpoena's issuance. Authorizes the court to punish a person failing to comply with the subpoena. Authorizes the board to delegate the authority granted under Subsection (a) to the board's executive secretary. Requires the board to pay a reasonable fee for photocopies subpoenaed under this section, not to exceed the amount the board is authorized to charge for copies of its records. Provides that reimbursement of expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code. Makes conforming changes.

Sec. 16D. INFORMAL PROCEEDINGS. Requires the board to adopt, by rule, procedures governing informal disposition of a contested case under Section 2001.056, Government Code, instead of Section 13(e), Article 6252-13a, V.T.C.S. (Administrative Procedure and Texas Register Act) and its subsequent amendments; and informal proceedings held in compliance with Section 2001.054, Government Code, instead of Section 18(c), Article 6252-13a, V.T.C.S. (Administrative Procedure and Texas Register Act) and its subsequent amendments.

Sec. 14E. Redesignated from existing Section 16D.

SECTION 7. Amends Section 5(b), Article 4512j, V.T.C.S. (Chapter 381, Acts of the 68th Legislature, Regular Session, 1983), to require the State Board of Examiners for Speech-Language Pathology and Audiology to issue subpoenas, examine witnesses, and administer oaths under state law in connection with a hearing under Section 19 of this Act. Makes conforming changes.

SECTION 8. Amends Article 4512j, V.T.C.S. (Chapter 381, Acts of the 68th Legislature, Regular Session, 1983), by adding Section 24A, as follows:

Sec. 24A. SUBPOENAS. (a) Authorizes the State Board of Examiners for Speech-Language

Pathology and Audiology (board, for the purposes of this section), to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state in an investigation of a complaint filed with the board. Provides that a subpoena is authorized to be served personally or by certified mail. Authorizes the board, if a person fails to comply with a subpoena and acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board is authorized to be held. Requires the court to order a person to comply with the subpoena on finding that good cause exists for its issuance. Authorizes the court to punish a person failing to obey the court order. Authorizes the board to delegate the authority granted under Subsection (a) to the board's secretary-treasurer. Requires the board to pay a reasonable fee for photocopies subpoenaed under this section, not to exceed the amount the board is authorized to charge for copies of its records. Provides that the reimbursement of expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code. Makes conforming changes.

SECTION 9. Amends Article 4512n, V.T.C.S. (Texas Medical Physics Practice Act), by adding Sections 11A and 11B, as follows:

Sec. 11A. COMPLAINTS. Requires the Texas Board of Licensure for Professional Medical Physicists in the Texas Department of Health (board, for purposes of this section) to maintain a file on each written complaint filed with the board. Provides that the file is required to include certain information. Requires the board to provide to the person filing the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution. Requires the board, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is subject of the complaint of the complaint status unless this notice would jeopardize an undercover investigation. Makes conforming changes.

Sec. 11B. SUBPOENAS. Authorizes the Texas Board of Licensure for Professional Medical Physicists in the Texas Department of Health (board, for the purposes of this section), to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state in an investigation of a complaint filed with the board. Provides that a subpoena is authorized to be served personally or by certified mail. Authorizes the board, if a person fails to comply with a subpoena and acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board is authorized to be held. Requires the court to order a person to comply with the subpoena on finding that good cause exists for its issuance. Authorizes the court to punish a person failing to obey the court order. Authorizes the board to delegate the authority granted under Subsection (a) to the board's executive secretary. Requires the board to pay a reasonable fee for photocopies subpoenaed under this section not to exceed the amount the board is authorized to charge for copies of its records. Provides that the reimbursement of expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code. Makes conforming changes.

SECTION 10. Amends Article 4529e, V.T.C.S. (Licensed Perfusionists Act) by adding Section 19A, as follows:

Sec. 19A. SUBPOENAS. Authorizes the Texas State Board of Examiners of Perfusionists (board, for the purposes of this section), to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state in an investigation of a complaint filed with the board. Provides that a subpoena is authorized to be served personally or by certified mail. Authorizes the board, if a person fails to comply with a subpoena and acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board is authorized to be held. Requires the court to order a person to comply with the subpoena on finding that good cause exists for its issuance. Authorizes the court to punish a person failing to obey the court order. Authorizes the board to delegate the authority granted under Subsection (a) to the board's executive secretary. Requires the board to pay a reasonable fee for photocopies subpoenaed under this section not to exceed the amount the board is authorized to charge for copies of its records. Provides that the reimbursement of expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code. Makes conforming changes.

SECTION 11. Amends Section 1.04(c), Article 4566-1.04, V.T.C.S. (Chapter 366, Acts of the 61st Legislature, Regular Session, 1969), to require the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, with the assistance of the Texas Department of Health, to issue subpoenas, examine witnesses, and administer oaths under state law in connection with a hearing under Section 1.11 (Disciplinary Actions) of this Act. Makes conforming changes.

SECTION 12. Amends Article 4566-1.01 et seq., V.T.C.S. (Chapter 366, Acts of the 61st Legislature, Regular Session, 1969), by adding Section 1.12C, as follows:

1.12C. SUBPOENAS. Authorizes the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee, for the purposes of this section), to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state in an investigation of a complaint filed with the committee. Provides that a subpoena is authorized to be served personally or by certified mail. Authorizes the committee, if a person fails to comply with a subpoena and acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the committee is authorized to be held. Requires the court to order a person to comply with the subpoena on finding that good cause exists for its issuance. Authorizes the court to punish a person failing to obey the court order. Authorizes the committee to delegate the authority granted under Subsection (a) to the committee's vice-president. Requires the committee to pay a reasonable fee for photocopies subpoenaed under this section not to exceed the amount the committee is authorized to charge for copies of its records. Provides that the reimbursement of expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code. Makes conforming changes.

SECTION 13. Amends Section 5(d), Article 8920, V.T.C.S. (Orthotics and Prosthetics Act), to authorize the Texas Board of Orthotics and Prosthetics to issue subpoenas in connection with a hearing under Section 33 (Disciplinary Provisions) of this Act. Makes conforming changes.

SECTION 14. Amends Article 8920, V.T.C.S. (Orthotics and Prosthetics Act), by adding Section 6A, as follows:

Sec. 6A. SUBPOENAS. Authorizes the Texas Board of Orthotics and Prosthetics (board, for the purposes of this section), to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state in an investigation of a complaint filed with the board. Provides that a subpoena is authorized to be served personally or by certified mail. Authorizes the board, if a person fails to comply with a subpoena and acting through the attorney general, to file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board is authorized to be held. Requires the court to order a person to comply with the subpoena on finding that good cause exists for its issuance. Authorizes the court to punish a person failing to obey the court order. Authorizes the board to delegate the authority granted under Subsection (a) to the board's executive director. Requires the board to pay a reasonable fee for photocopies subpoenaed under this section not to exceed the amount the board is authorized to charge for copies of its records. Provides that the reimbursement of expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code. Makes conforming changes.

SECTION 15. Amends Section 241.051, Health and Safety Code, to set forth procedures for handling all information received by the department concerning an investigation and actions involving a civil or administrative penalty.

SECTION 16. Makes application of this Act prospective.

SECTION 17. Emergency clause.

Effective date: upon passage.