

BILL ANALYSIS

Senate Research Center
79R18121 E

C.S.H.B. 972
By: Solomons (Nelson)
Government Organization
5/18/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Texas Board of Chiropractic Examiners was created in 1949 to protect the public's health, safety, and economic welfare by ensuring that chiropractors are qualified and competent. The board has three primary functions: licensing chiropractors, licensing chiropractic radiological technicians, and registering chiropractic facilities; setting standards for the profession; and enforcing the Chiropractic Act by investigating and resolving complaints. The board currently licenses about 4,700 chiropractors, with a staff of six employees and an annual budget of \$340,000.

The board is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the legislature. The sunset review found that the regulation of chiropractors is needed, but the board's process for defining scope of practice should be improved and its enforcement program strengthened.

C.S.H.B. 972 continues the Texas Board of Chiropractic Examiners until 2017 and addresses the recommendations of the sunset review.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Board of Chiropractic Examiners is modified in SECTION 7 (Section 201.152, Occupations Code), SECTION 11 (Section 201.205, Occupations Code), and SECTION 23 (Section 201.307, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Board of Chiropractic Examiners in SECTION 8 (Section 201.1525, Occupations Code), SECTION 9 (Section 201.1555, Occupations Code), SECTION 14 (Section 201.252, Occupations Code), SECTION 17 (Section 201.2545, Occupations Code), SECTION 22 (Section 201.305, Occupations Code), and SECTION 23 (Section 201.307, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 201.002(a), Occupations Code, to define "controlled substance," "dangerous drug," and "surgical procedure." Creates a subdivision from existing text and makes nonsubstantive changes.

SECTION 2. Amends Section 201.004, Occupations Code, to extend the sunset date for the Texas Board of Chiropractic Examiners (board) from September 1, 2003 to September 1, 2017.

SECTION 3. Amends Sections 201.053(a), (b), and (d), Occupations Code, as follows:

(a) Redefines "Texas trade association."

(b) Redefines which persons are prohibited from being members or employees of the board. Specifies that those persons are prohibited from being certain types of board employees, rather than just employees. Deletes the prohibition that certain persons may not be members or employees of the board who are exempt from the state's position classification plan or compensated at or above a certain amount.

(d) Makes a nonsubstantive change.

SECTION 4. Amends Sections 201.056(a) and (c), Occupations Code, as follows:

(a) Includes as grounds for removal from the board not having certain qualifications at the time of taking office, rather than at the time of appointment, and being ineligible for membership under Section 210.052 (Membership Eligibility) or 201.053 (Membership and Employee). Deletes as grounds for removal the violation of a prohibition established by Section 201.053. Makes a nonsubstantive change.

(c) Requires the executive director, if the executive director has knowledge that a potential ground for removal exists, to notify the president of the board, who, in turn, is required to notify the governor and the attorney general, rather than the executive director notifying the governor and attorney general directly. Requires the executive director, if the potential ground for removal involves the president, to notify the next highest ranking officer of the board who is then required to notify the governor and the attorney general.

SECTION 5. Amends Subchapter B, Chapter 201, Occupations Code, by adding Section 201.061, as follows:

Sec. 201.061. TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of the board from voting and performing certain other functions until the person completes a training program that complies with this section.

(b) Sets forth certain information that the training program must provide the person.

(c) Entitles a person appointed to the board to reimbursement for the travel expenses incurred in attending the training program, regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 6. Amends Section 201.101, Occupations Code, to require the board to develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board. Deletes the requirement that the board develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

SECTION 7. Amends Section 201.152(b), Occupations Code, by requiring the board to issue all rules, rather than opinions, based on a vote of a majority of the board.

SECTION 8. Amends Subchapter D, Chapter 201, Occupations Code, by adding Sections 201.1525 and 201.1526, as follows:

Sec. 201.1525. RULES CLARIFYING THE SCOPE OF PRACTICE OF CHIROPRACTIC. Requires the board to adopt rules clarifying what activities are included within the scope and practice of chiropractic and what activities are outside the scope. Requires the rules to clearly specify the procedures that chiropractors may perform and any equipment and the use of that equipment that is prohibited. Authorizes the rules to require a license holder to obtain additional training or certification to perform certain procedures or use certain equipment.

Sec. 201.1526. DEVELOPMENT OF PROPOSED RULES REGARDING SCOPE OF PRACTICE OF CHIROPRACTIC. (a) Provides that this section applies to the process by which the board develops proposed rules under Section 201.1525 before the proposed rules are published in the Texas Register and before the board complies with the rulemaking requirements of Chapter 2001 (Administrative Procedure), Government Code. Provides that this section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) Requires the board to establish methods under which the board will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Sets forth which methods the board is required to include, and which methods the board is authorized to include.

(c) Prohibits a rule adopted by the board under Section 201.1525 from being challenged on the grounds that the board did not comply with this section. Requires the board, if it was unable to solicit a significant amount of advice and opinion from the public or from affected persons early in the rule development process, to state in writing the reasons why the board was unable to do so.

SECTION 9. Amends Subchapter D, Chapter 201, Occupations Code, by adding Section 201.1555, as follows:

Sec. 201.1555. FRAUD. (a) Requires the board to strictly and vigorously enforce the provisions of this chapter prohibiting fraud.

(b) Requires the board to adopt rules to prevent fraud in the practice of chiropractic, including rules relating to the filing of workers' compensation and insurance claims and records required to be maintained in connection with the practice of chiropractic.

SECTION 10. Amends Subchapter D, Chapter 201, Occupations Code, by adding Sections 201.163 and 201.164, as follows:

Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. Requires the board to implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the board on the Internet.

Sec. 201.164. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires the board to develop and implement a policy to encourage the use of negotiated rulemaking procedures for the adoption of board rules and appropriate alternative dispute resolution procedures to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) Requires the board's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires the board to designate a trained person to coordinate the implementation of the policy under Subsection (a), serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 11. Amends Section 201.205(a), Occupations Code, to require the board to adopt rules concerning the investigation of a complaint which require the board to prioritize complaints for purposes of determining the order in which they are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending. Redesignates existing Subdivisions (2)-(5) as Subdivisions (3)-(6).

SECTION 12. Amends Subchapter E, Chapter 201, Occupations Code, by adding Sections 201.207, 201.208, and 201.209, as follows:

Sec. 201.207. INSPECTIONS. (a) Authorizes the board, during reasonable business hours, to conduct an on-site inspection of the chiropractic facility to investigate a complaint filed with the board and to examine and copy records of the chiropractic facility pertinent to the inspection or investigation.

(b) Provides that the board is not required to provide notice before conducting an inspection under this section.

Sec. 201.208. COOPERATION WITH TEXAS DEPARTMENT OF INSURANCE. (a) Defines "department."

(b) Provides that this section applies only to information held by or for the Texas Department of Insurance (TDI) or the board that relates to a person who is licensed or otherwise regulated by TDI or the board.

(c) Authorizes TDI and the board, on request or on TDI's or the board's own initiative, to share confidential information or information to which access is otherwise restricted by law. Requires TDI and the board to cooperate with and assist each other when either agency is conducting an investigation by providing information that is relevant to the investigation. Provides that, except as provided by this section, confidential information that is shared under this section remains confidential under law and legal restrictions on access to the information remain in effect unless the agency sharing the information approves use of the information by the receiving agency for enforcement purposes. Provides that the provision of information by the board to TDI or by TDI to the board under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(d) Requires TDI and the board to develop and maintain a system for tracking investigations conducted by each agency with the cooperation and assistance of the other agency.

(e) Requires TDI and the board to collaborate on taking appropriate disciplinary actions to the extent practicable.

Sec. 201.209. INFORMATION ON STATUS OF CERTAIN INVESTIGATIONS. Requires the board to include in its annual financial report information on all investigations conducted by the board with the cooperation and assistance of TDI and the Texas Workers' Compensation Commission during the preceding fiscal year.

SECTION 13. Amends Section 201.251, Occupations Code, as follows:

Sec. 201.251. New title: APPOINTMENT OF PEER REVIEW COMMITTEES; TERMS. (a) Provides that members of a local chiropractic peer review committee serve staggered terms of three years, with as near to one-third of the members' terms as possible expiring December 31 of each year. Creates this subsection from existing text.

(b) Authorizes the board to seek input from state chiropractic associations in selecting persons to appoint to a local peer review committee, rather than requiring the board to appoint the members of the peer review committee. Deletes existing text requiring the board to appoint peer review committee members from a list of nominees submitted by the local chiropractic association to conduct peer review procedures. Creates this subsection from existing text.

SECTION 14. Amends Section 201.252, Occupations Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requires a peer review training program to include training in the investigation of complaints in accordance with this chapter and board rules.

(d) Requires the board, by rule, to adopt additional requirements for eligibility to serve on the chiropractic peer review committee, including certain requirements.

SECTION 15. Amends Section 201.253(a), Occupations Code, to provide that members of the executive peer review committee serve staggered terms of three years, with one-third of the members' terms expiring December 31 of each year.

SECTION 16. Amends the heading to Section 201.254, Occupations Code, to read as follows:

Sec. 201.254. DUTIES OF PEER REVIEW COMMITTEE WITH REGARD TO CERTAIN DISPUTES.

SECTION 17. Amends Subchapter F, Chapter 201, Occupations Code, by adding Sections 201.2545 and 201.2546, as follows:

Sec. 201.2545. COMPLAINT INVESTIGATION BY PEER REVIEW COMMITTEE.

(a) Authorizes the board to refer to a local chiropractic peer review committee for investigation a complaint regarding whether chiropractic treatment or services provided by the chiropractor were provided according to the standard of care in the practice of chiropractic.

(b) Requires the committee, in conducting an investigation of a referred complaint, to review the records and other evidence obtained by the staff of the board in the course of the staffs' investigation of the complaint.

(c) Requires the committee to report to the board its findings regarding the complaint, including a statement of certain information.

(d) Authorizes the board to request a member of the committee to attend an informal conference or testify at a contested case hearing.

(e) Requires the board, with input from the executive chiropractic peer review committee, to adopt rules necessary to implement this section.

Sec. 201.2546. IMMUNITY; ELIGIBILITY TO PARTICIPATE IN COMMITTEE ACTIVITIES. (a) Provides that, in the absence of fraud, conspiracy, or malice, a member of a peer review committee is not liable in a civil action for a finding, evaluation, recommendation, or other action made or taken by the member as a member of the committee or by the committee. Provides that the immunity granted by this subsection does not limit the operation of federal or state antitrust laws as applied to certain conduct of a local or executive peer review committee.

(b) Prohibits a member of a peer review committee from participating in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by the member.

(c) Provides that except for the express immunity provided by Subsection (a), this section does not deprive any person of a right or remedy, legal or equitable.

SECTION 18. Amends Section 201.255, Occupations Code, as follows:

Sec. 201.255. New title: REQUEST FOR INFORMATION; REPORT TO BOARD ON DISPUTES MEDIATED. Requires the executive chiropractic peer review committee to file annually with the board a report on the disputes mediated by the local chiropractic peer review committees under Section 201.254 during the preceding calendar year. Sets forth the information the report must include.

SECTION 19. Amends Subchapter F, Chapter 201, Occupations Code, by adding Section 201.256, as follows:

Sec. 201.256. PUBLIC ACCESS TO INFORMATION REGARDING PEER REVIEW COMMITTEES. Requires the board to maintain on its Internet website certain information regarding local chiropractic peer review committees.

SECTION 20. Amends Section 201.302, Occupations Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires an applicant for a license (to practice chiropractic) to present satisfactory evidence to the board that the applicant has completed 90, rather than 60, semester hours of college courses at a school other than a chiropractic school.

(d) Authorizes the board, if the Council on Chiropractic Education or another national chiropractic education accreditation organization recognized by the board requires a number of semester hours of college courses at a school other than a chiropractic school that is greater or less than the number of hours required by Subsection (a) to qualify for admission to a chiropractic school, to adopt the requirement of that organization if the board determines that requirement to be appropriate.

SECTION 21. Amends Section 201.303(a), Occupations Code, to require the applicant, to comply with the requirements of Section 201.302, rather than 201.302(a)(3), to submit to the board a transcript of credits that certifies that the applicant has satisfactorily completed at least the number of semester hours of college credits required by that section, rather than 60 or more hours, at a college or university.

SECTION 22. Amends Section 201.305, Occupations Code, by adding Subsection (d), to require the board, by rule, to ensure that the examination [for a chiropractic license] is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990.

SECTION 23. Amends Section 201.307(b), Occupations Code, to require the board, by rule, to establish the number of times an applicant may retake the examination required by Section 201.304(a)(1) (certain portions of the examination given by the National Board of Chiropractic Examiners) or (b) (an additional examination prepared by the board), as applicable. Requires an applicant to pass the examination required by Section 201.304(a)(2) (an examination prepared by the board that tests the applicant's knowledge of state laws relating to chiropractic) within three attempts. Makes nonsubstantive changes.

SECTION 24. Amends Sections 201.354(d) and (g), Occupations Code, as follows:

(d) Sets forth new methods of calculating the renewal fee for persons whose [chiropractic] licenses have been expired for 90 days or less, and for persons whose licenses have been expired for more than 90 days but less than one year.

(g) Sets forth new methods of calculating the renewal fee for persons whose licenses have been expired for at least one year but not more than three years.

SECTION 25. Amends Section 201.355(b), Occupations Code, to require a person [previously licensed in this state who moved to another state and continued to practice under certain conditions] to pay to the board a [renewal] fee that is equal to the normally required renewal fee for the license, rather than the amount of examination fee.

SECTION 26. Amends the heading to Subchapter J, Chapter 201, Occupations Code, to read as follows:

SUBCHAPTER J. PRACTICE BY LICENSE HOLDER

SECTION 27. Amends Subchapter J, Chapter 201, Occupations Code, by adding Section 201.453, as follows:

Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND EXPERT REPORTS. (a) Requires TDI to provide to the board any information received by TDI regarding a settlement of a malpractice claim against a chiropractor.

(b) Requires an insurer who delivers or issues for delivery in this state professional liability insurance coverage to a chiropractor who practices in this state to provide to the board a copy of any expert report served under Section 74.351, Civil Practice and Remedies Code, in a malpractice action against the chiropractor.

SECTION 28. Amends Section 201.502(a), Occupations Code, to authorize the board to refuse to admit a person to examinations or to take certain disciplinary action against a license holder

for violating this chapter or a rule adopted under this chapter, including committing an act prohibited under Section 201.5025, for presenting to the board or using a license, certificate, or diploma or a transcript of a license certificate or diploma that was illegally or fraudulently obtained, counterfeited, or materially altered, for using an advertising statement that is false or that tends to mislead or deceive the public, and for advertising professional superiority or advertising the performance of professional services in a superior manner, if that advertising is not readily subject to verification.

SECTION 29. Amends Subchapter K, Chapter 201, Occupations Code, by adding Sections 201.5025 and 201.5026, as follows:

Sec. 201.5025. **PROHIBITED PRACTICES BY CHIROPRACTOR OR LICENSE APPLICANT.** (a) Sets forth behavior constituting prohibited practice by a chiropractor or an applicant for a chiropractic license.

(b) Gives examples of prohibited conduct that subverts or attempts to subvert an examination process required by this chapter for a chiropractic license.

Sec. 201.5026. **UNPROFESSIONAL OR DISHONORABLE CONDUCT.** (a) Sets forth examples of unprofessional or dishonorable conduct that is likely to deceive or defraud the public.

(b) Provides that a complaint, indictment, or conviction of a violation is not necessary to enforce the prohibition on committing an act connected with chiropractic practice that violates any state or federal law. Provides that proof of the commission of the act while in the practice of chiropractic or under the guise of the practice of chiropractic is sufficient for the board's action.

SECTION 30. Amends the heading to Section 201.504, Occupations Code, to read as follows:

Sec. 201.504. **INFORMAL PROCEEDINGS; REFUNDS.**

SECTION 31. Amends Section 201.504, Occupations Code, by adding Subsections (c) and (d), as follows:

(c) Authorizes the board, subject to Subsection (d), to order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(d) Prohibits the amount of a refund ordered as provided in an agreement resulting from an informal settlement conference from exceeding the amount the consumer paid to the license holder for a service regulated by this chapter. Prohibits the board from requiring payment of other damages or estimating harm in a refund order.

SECTION 32. Amends Subchapter K, Chapter 201, Occupations Code, by adding Section 201.5065, as follows:

Sec. 201.5065. **REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES.** (a) Requires the board to suspend a chiropractor's license on proof that the chiropractor has been initially convicted of certain offenses or subject to an initial finding by the trier of fact of guilt of certain felonies.

(b) Requires the board to revoke the chiropractor's license on final conviction for an offense described by Subsection (a).

SECTION 33. Amends Subchapter M, Chapter 201, Occupations Code, by adding Section 201.6015, as follows:

Sec. 201.6015. **CEASE AND DESIST ORDER.** (a) Authorizes the board, if it appears to the board that a person is engaging in an act or practice that constitutes the practice of

chiropractic without a license or registration under this chapter, after notice and opportunity for hearing, to issue a cease and desist order prohibiting the person from engaging in that activity.

(b) Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter L.

SECTION 34. Amends Section 201.604, Occupations Code, to remove the exception as provided by Section 201.605 (Criminal Penalty: Practice Without License) to the rule that a person commits an offense if the person violates this chapter.

SECTION 35. Amends Subchapter M, Chapter 201, Occupations Code, by adding Section 201.606, as follows:

Sec. 201.606. CRIMINAL PENALTY: PROVIDING CHIROPRACTIC TREATMENT OR SERVICES WHILE INTOXICATED. (a) Defines "intoxicated."

(b) Provides that a person licensed or regulated under this chapter commits an offense if the person provides chiropractic treatment or services to a patient while intoxicated and, by reason of that conduct, places the patient at a substantial and unjustifiable risk of harm.

(c) Provides that an offense under this section is a state jail felony.

SECTION 36. Repealer: Sections 201.053(c) (Membership and Employee Restrictions), 201.059 (Advisory Committee), 201.162 (Annual Report), and 201.254(c)-(e) (Duties of Peer Review Committee), Occupations Code.

SECTION 37. Provides that the changes in law made by Section 201.052, Occupations Code, as amended by this Act, and Section 201.061, Occupations Code, as added by this Act, regarding the prohibitions on or qualifications of members of the Texas Board of Chiropractic Examiners do not affect the entitlement of a member serving on the board immediately before September 1, 2005, to continue to serve as function as a member of the board for the remainder of the member's term. Provides that the changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

SECTION 38. Requires the Texas Board of Chiropractic Examiners, not later than January 1, 2006, to adopt the rules required by Sections 201.1525, 201.1555, and 201.2545, Occupations Code, as added by this Act, and Sections 201.205 and 201.252, Occupations Code, as amended by this Act.

SECTION 39. Makes the changes in law made by this Act to Chapter 201, Occupations Code, relating to the investigation of a complaint prospective.

SECTION 40. (a) Provides that the terms of the members of the local chiropractic peer review committees appointed under Section 201.251, Occupations Code, serving on December 31, 2005, expire on that date.

(b) Requires the Texas Board of Chiropractic Examiners, on or before January 1, 2006, to appoint the members of the local chiropractic peer review committees under Section 201.251, Occupations Code, as amended by this Act. Requires the board to appoint as near to one-third of the members as possible to terms expiring on December 31, 2006, as near to one-third of the members as possible to terms expiring on December 31, 2007, and as near to one-third of the members as possible to terms expiring on December 31, 2008. Provides that this Act does not prohibit a person who is a member of a local chiropractic peer review committee before January 1, 2006, from being appointed as a member of the committee to serve a term beginning on or after January 1, 2006, if the person has the qualifications required for the position under Section 201.252, Occupations Code, as amended by this Act.

SECTION 41. (a) Provides that the terms of the members of the executive chiropractic peer review committee appointed under Section 201.253, Occupations Code, serving on December 31, 2005, expire on that date.

(b) Requires the Texas Board of Chiropractic Examiners, on or before January 1, 2006, to appoint the members of the executive chiropractic peer review committee under Section 201.253, Occupations Code, as amended by this Act. Requires the board to appoint two persons to terms expiring on December 31, 2006, two persons to terms expiring on December 31, 2007, and two persons to terms expiring on December 31, 2008. Provides that this Act does not prohibit a person who is a member of the executive chiropractic peer review committee before January 1, 2006, from being appointed as a member of the committee to serve a term beginning on or after January 1, 2006, if the person has the qualifications required for the position under Section 201.253, Occupations Code, as amended by this Act.

SECTION 42. Makes application of the changes in law made by this Act to Sections 201.302 and 201.303, Occupations Code, prospective.

SECTION 43. Makes application of the changes in law made by this Act to Sections 201.354 and 201.355, Occupations Code, prospective.

SECTION 44. Effective date: September 1, 2005.

SUMMARY OF COMMITTEE CHANGES