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Chief Clerk of the House

FILED FEB 09 2005

By: _____

H.B. No. 972

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.002(a), Occupations Code, is amended to read as follows:

(a) In this section:

(1) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(2) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(3) "Incisive[~~, "incisive~~] or surgical procedure" includes making an incision into any tissue, cavity, or organ by any person or implement. The term does not include the use of a needle for the purpose of drawing blood for diagnostic testing.

(4) "Surgical procedure" includes a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

SECTION 2. Section 201.004, Occupations Code, is amended to read as follows:

Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of Chiropractic Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by

that chapter, the board is abolished and this chapter expires September 1, 2017 [~~2005~~].

SECTION 3. Sections 201.053(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~,~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person [~~An officer, employee, or paid consultant of a Texas trade association in the field of health care~~] may not be a member [~~or employee~~] of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care [~~who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule~~].

(d) A person may not be [~~serve as~~] a member of the board or

act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Sections 201.056(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office [~~appointment~~] the qualifications required by Sections 201.051 and 201.052(b);

(2) does not maintain during service on the board the qualifications required by Sections 201.051 and 201.052(b);

(3) is ineligible for membership under [~~violates a prohibition established by~~] Section 201.052 or 201.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved [~~unless the absence is excused~~] by a majority vote of the board.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the

next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Subchapter B, Chapter 201, Occupations Code, is amended by adding Section 201.061 to read as follows:

Sec. 201.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, 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. Section 201.101, Occupations Code, is amended to

read as follows:

Sec. 201.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [~~define~~] the policymaking [~~respective~~] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 7. Section 201.152(b), Occupations Code, is amended to read as follows:

(b) The board shall adopt rules for the enforcement of this chapter. The board shall issue all rules [~~opinions~~] based on a vote of a majority of the board at a regular or special meeting. The issuance of a disciplinary action or disciplinary order of the board is not limited by this subsection.

SECTION 8. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.1525 and 201.1526 to read as follows:

Sec. 201.1525. RULES CLARIFYING SCOPE OF PRACTICE OF CHIROPRACTIC. The board shall adopt rules clarifying what activities are included within the scope of the practice of chiropractic and what activities are outside of that scope. The rules:

(1) must clearly specify the procedures that chiropractors may perform and the equipment that may be used to treat patients; and

(2) may 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) 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, Government Code. This section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons. Methods may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

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

SECTION 9. Subchapter D, Chapter 201, Occupations Code, is amended by adding Section 201.1555 to read as follows:

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

(b) The board shall adopt rules to prevent fraud in the practice of chiropractic, including rules relating to:

(1) the filing of workers' compensation and insurance claims; and

(2) records required to be maintained in connection with the practice of chiropractic.

SECTION 10. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.163 and 201.164 to read as follows:

Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must 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) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must 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) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 11. Section 201.205(a), Occupations Code, is amended to read as follows:

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish between categories of complaints;

(2) 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;

(3) ensure that a complaint is not dismissed without appropriate consideration;

(4) [~~(3)~~] require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;

(5) [~~(4)~~] ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and

(6) [~~(5)~~] prescribe guidelines concerning the

categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

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

Sec. 201.207. INSPECTIONS. (a) The board, during reasonable business hours, may:

(1) conduct an on-site inspection of a chiropractic facility to investigate a complaint filed with the board; and

(2) examine and copy records of the chiropractic facility pertinent to the inspection or investigation.

(b) 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) In this section, "department" means the Texas Department of Insurance.

(b) This section applies only to information held by or for the department or the board that relates to a person who is licensed or otherwise regulated by the department or the board.

(c) The department and the board, on request or on the department or board's own initiative, may share confidential information or information to which access is otherwise restricted by law. The department and the board shall cooperate with and assist each other when either agency is conducting an investigation by providing information that is relevant to the investigation. 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. The provision of information by the board to the department or by the department to the board under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(d) The department and the board shall develop and maintain a system for tracking investigations conducted by each agency with the cooperation and assistance of the other agency, including information on all disciplinary actions taken.

(e) The department and the board shall collaborate on taking appropriate disciplinary actions to the extent practicable.

Sec. 201.209. INFORMATION ON STATUS OF CERTAIN INVESTIGATIONS. The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all investigations conducted by the board with the cooperation and assistance of the Texas Department of Insurance and the Texas Workers' Compensation Commission during the preceding fiscal year.

SECTION 13. Section 201.251, Occupations Code, is amended to read as follows:

Sec. 201.251. APPOINTMENT OF PEER REVIEW COMMITTEES; TERMS. (a) The board shall appoint local chiropractic peer review committees. 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.

(b) The board may seek input [~~shall appoint the members of~~

~~the peer review committee~~] from a [~~list of nominees submitted by the~~] local chiropractic association in selecting persons to appoint to a local [~~to conduct~~] peer review committee [~~procedures~~].

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

(c) The board shall establish requirements for peer review training programs that do not discriminate against any chiropractor. A peer review training program must include training in the investigation of complaints in accordance with this chapter and board rules.

(d) The board by rule shall adopt additional requirements for eligibility to serve on a chiropractic peer review committee, including a requirement that a member have:

(1) a clean disciplinary record; and

(2) an acceptable record regarding utilization review performed in accordance with Article 21.58A, Insurance Code.

SECTION 15. Section 201.253(a), Occupations Code, is amended to read as follows:

(a) The board shall appoint an executive chiropractic peer review committee to direct the activities of the local committees. The executive peer review committee consists of six volunteer members. 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. The executive peer review committee shall elect a presiding officer from its members.

SECTION 16. The heading to Section 201.254, Occupations

Code, is amended to read as follows:

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

SECTION 17. Subchapter F, Chapter 201, Occupations Code, is amended by adding Sections 201.2545 and 201.2546 to read as follows:

Sec. 201.2545. COMPLAINT INVESTIGATION BY PEER REVIEW COMMITTEE. (a) The board may refer to a local chiropractic peer review committee for investigation a complaint regarding whether chiropractic treatment or services provided by a chiropractor were provided according to the standard of care in the practice of chiropractic.

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

(c) The committee shall report to the board its findings regarding the complaint, including a statement of:

(1) the standard of care in the practice of chiropractic governing the chiropractic treatment or services provided by the chiropractor;

(2) whether the chiropractor met the standard of care in providing the treatment or services; and

(3) the clinical basis for the committee's finding under Subdivision (2).

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

hearing.

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

Sec. 201.2546. IMMUNITY; ELIGIBILITY TO PARTICIPATE IN COMMITTEE ACTIVITIES. (a) 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. The immunity granted by this subsection does not limit the operation of federal or state antitrust laws as applied to the conduct of a local or executive peer review committee that involves price fixing or any other unreasonable restraint of trade.

(b) A member of a peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by the member.

(c) 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. Section 201.255, Occupations Code, is amended to read as follows:

Sec. 201.255. REQUEST FOR INFORMATION; REPORT TO BOARD ON DISPUTES MEDIATED. (a) The board may request from a chiropractic peer review committee information pertaining to actions taken by the peer review committee.

(b) The executive chiropractic peer review committee shall

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. The report must include:

(1) the number of disputes referred to the committees;

(2) a categorization of the disputes referred to the committees and the number of complaints in each category; and

(3) the number of disputes resolved and the manner in which they were resolved.

SECTION 19. Subchapter F, Chapter 201, Occupations Code, is amended by adding Section 201.256 to read as follows:

Sec. 201.256. PUBLIC ACCESS TO INFORMATION REGARDING PEER REVIEW COMMITTEES. The board shall maintain on the board's Internet website information regarding local chiropractic peer review committees, including:

(1) the services committees provide; and

(2) the types of disputes committees mediate.

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

(a) An applicant for a license by examination must present satisfactory evidence to the board that the applicant:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has completed 90 [~~60~~] semester hours of college courses at a school other than a chiropractic school; and

(4) is either a graduate or a final semester student of a bona fide reputable chiropractic school.

(d) Notwithstanding Subsection (a)(3), 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 specified by that subsection to qualify for admission to a chiropractic school, the board may adopt the requirement of that organization if the board determines that requirement to be appropriate.

SECTION 21. Section 201.303(a), Occupations Code, is amended to read as follows:

(a) To comply with the requirements of Section 201.302 [~~201.302(a)(3)~~], the applicant must submit to the board a transcript of credits that certifies that the applicant has satisfactorily completed at least the number of [~~60 or more~~] semester hours of college credits required by that section at a college or university that issues credits accepted by The University of Texas at Austin for a bachelor of arts or bachelor of science degree.

SECTION 22. Section 201.305, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

SECTION 23. Section 201.307(b), Occupations Code, is amended to read as follows:

(b) The board by rule shall establish the number of times [~~and the conditions under which~~] an applicant may retake the [~~an~~] examination required by Section 201.304(a)(1) or (b), as applicable. An applicant must pass the examination required by Section 201.304(a)(2) within three attempts. The board by rule shall establish the conditions under which an applicant may retake an examination. The board may require an applicant to fulfill additional educational requirements.

SECTION 24. Sections 201.354(d) and (g), Occupations Code, are amended to read as follows:

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of 1-1/2 times the annual [~~required~~] renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~and an additional fee equal to one-half of the examination fee for the license~~]. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to the sum of two times the annual renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~all unpaid renewal fees and an additional fee equal to the examination fee for the license~~].

(g) A person may renew a license that has been expired for at least one year but not more than three years if:

(1) the board determines according to criteria adopted by board rule that the person has shown good cause for the failure to renew the license; and

(2) the person pays to the board:

(A) the annual [~~required~~] renewal fee set by the board under Section 201.153(a) for each year in which the license was expired;

(B) [~~and~~] an additional fee in an amount equal to the sum of:

(i) [~~(A)~~] the annual renewal [~~examination~~] fee set by the board under Section 201.153(a) [~~for the license~~], multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) [~~(B)~~] two times the annual renewal [~~examination~~] fee set by the board under Section 201.153(a); and

(C) the increase in the annual renewal fee required by Section 201.153(b) [~~for the license~~].

SECTION 25. Section 201.355(b), Occupations Code, is amended to read as follows:

(b) The person must pay to the board a fee that is equal to the normally required renewal [~~amount of the examination~~] fee for the license.

SECTION 26. The heading to Subchapter J, Chapter 201, Occupations Code, is amended to read as follows:

SUBCHAPTER J. PRACTICE BY LICENSE HOLDER [~~REQUIREMENTS REGARDING USE OF CHIROPRACTIC ASSISTANTS AND TECHNOLOGY~~]

SECTION 27. Subchapter J, Chapter 201, Occupations Code, is amended by adding Section 201.453 to read as follows:

Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND EXPERT REPORTS. (a) The Texas Department of Insurance shall

provide to the board any information received by the department regarding a settlement of a malpractice claim against a chiropractor.

(b) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a chiropractor who practices in this state shall 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. Section 201.502(a), Occupations Code, is amended to read as follows:

(a) The board may refuse to admit a person to examinations and may revoke or suspend a license or place a license holder on probation for a period determined by the board for:

(1) violating this chapter or a rule adopted under this chapter, including committing an act prohibited under Section 201.5025;

(2) engaging in deception or fraud in the practice of chiropractic;

(3) 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;

(4) presenting to the board an untrue statement or a document or testimony that was illegally used to pass the examination;

(5) being convicted of a crime involving moral turpitude or a felony;

(6) procuring or assisting in the procuring of an abortion;

(7) engaging in grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public;

(8) having a habit of intemperance or drug addiction or another habit that, in the opinion of the board, endangers the life of a patient;

(9) using an advertising statement that <u>is false or that</u> tends to mislead or deceive the public;

(10) directly or indirectly employing or associating with a person who, in the course of the person's employment, commits an act constituting the practice of chiropractic when the person is not licensed to practice chiropractic;

(11) advertising professional superiority, or advertising the performance of professional services in a superior manner<u>, if that advertising is not readily subject to verification</u>;

(12) purchasing, selling, bartering, using, or offering to purchase, sell, barter, or use a chiropractic degree, license, certificate, or diploma or transcript of a license, certificate, or diploma in or relating to an application to the board for a license to practice chiropractic;

(13) altering with fraudulent intent a chiropractic license, certificate, or diploma or transcript of a chiropractic license, certificate, or diploma;

(14) impersonating or acting as proxy for another in an examination required by this chapter for a chiropractic license;

(15) impersonating a licensed chiropractor;

(16) allowing one's chiropractic license to be used by another person to practice chiropractic;

(17) being proved insane by a person having authority to make that determination;

(18) failing to use proper diligence in the practice of chiropractic or using gross inefficiency in the practice of chiropractic;

(19) failing to clearly differentiate a chiropractic office or clinic from another business or enterprise;

(20) personally soliciting a patient or causing a patient to be solicited by the use of a case history of another patient of another chiropractor;

(21) using for the purpose of soliciting patients an accident report prepared by a peace officer in a manner prohibited by Section 38.12, Penal Code; or

(22) advertising using the term "physician" or "chiropractic physician" or any combination or derivation of the term "physician."

SECTION 29. Subchapter K, Chapter 201, Occupations Code, is amended by adding Sections 201.5025 and 201.5026 to read as follows:

Sec. 201.5025. PROHIBITED PRACTICES BY CHIROPRACTOR OR LICENSE APPLICANT. (a) A chiropractor or an applicant for a license to practice chiropractic commits a prohibited practice if that person:

(1) submits to the board a false or misleading

statement, document, or certificate in an application for a license;

(2) commits fraud or deception in taking or passing an examination;

(3) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 201.5026, or injure the public;

(4) engages in conduct that subverts or attempts to subvert an examination process required by this chapter for a chiropractic license;

(5) directly or indirectly employs a person whose license to practice chiropractic has been suspended, canceled, or revoked;

(6) associates in the practice of chiropractic with a person:

(A) whose license to practice chiropractic has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of chiropractic in this state or elsewhere; or

(7) directly or indirectly aids or abets the practice of chiropractic by a person that is not licensed to practice chiropractic by the board.

(b) For purposes of Subsection (a)(4), conduct that subverts or attempts to subvert the chiropractic licensing examination process includes, as prescribed by board rule, conduct that violates:

(1) the security of the examination materials;

(2) the standard of test administration; or

(3) the accreditation process.

Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 201.5025(a)(3), unprofessional or dishonorable conduct that is likely to deceive or defraud the public includes conduct in which a chiropractor:

(1) commits an act that violates any state or federal law if the act is connected with the chiropractor's practice of chiropractic;

(2) prescribes or administers a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is prescribed or administered;

(3) violates Section 311.0025, Health and Safety Code;

(4) fails to supervise adequately the activities of those acting under the supervision of the chiropractor; or

(5) delegates professional chiropractic responsibility or acts to a person if the delegating chiropractor knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation is not necessary for the enforcement of Subsection (a)(1). 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. The heading to Section 201.504, Occupations Code, is amended to read as follows:

Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS.

SECTION 31. Section 201.504, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Subject to Subsection (d), the board may 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) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 32. Subchapter K, Chapter 201, Occupations Code, is amended by adding Section 201.5065 to read as follows:

Sec. 201.5065. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a chiropractor's license on proof that the chiropractor has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal

Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the chiropractor's license.

SECTION 33. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.6015 to read as follows:

Sec. 201.6015. CEASE AND DESIST ORDER. (a) 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, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

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

SECTION 34. Section 201.604, Occupations Code, is amended to read as follows:

Sec. 201.604. GENERAL CRIMINAL PENALTY. A [~~Except as provided by Section 201.605, a~~] person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $500 or by confinement in the county jail for not more than 30 days.

SECTION 35. Subchapter M, Chapter 201, Occupations Code, is

amended by adding Section 201.606 to read as follows:

Sec. 201.606. CRIMINAL PENALTY: PROVIDING CHIROPRACTIC TREATMENT OR SERVICES WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this chapter, 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) An offense under this section is a state jail felony.

SECTION 36. Sections 201.053(c), 201.059, 201.162, and 201.254(c)-(e), Occupations Code, are repealed.

SECTION 37. The changes in law made by Section 201.053, 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 and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

SECTION 38. Not later than January 1, 2006, the Texas Board of Chiropractic Examiners shall 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. The changes in law made by this Act to Chapter 201, Occupations Code, relating to the investigation of a complaint apply only to a complaint filed with the Texas Board of Chiropractic Examiners on or after the effective date of this Act. A complaint filed with the board before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 40. (a) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the local chiropractic peer review committees under Section 201.251, Occupations Code, as amended by this Act. In appointing the initial members of each committee, the board shall appoint as near to one-third of the members as possible to terms expiring December 31, 2006, as near to one-third as possible to terms expiring December 31, 2007, and as near to one-third as possible to terms expiring December 31, 2008. 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) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the executive chiropractic peer review committee under Section 201.253, Occupations Code, as amended by this Act. In appointing the initial members of the committee, the board shall appoint two persons to terms expiring December 31, 2006, two to terms expiring December 31, 2007, and two to terms expiring December 31, 2008. 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. The changes in law made by this Act to Sections 201.302 and 201.303, Occupations Code, apply only to a person who enrolls in a chiropractic school on or after the effective date of this Act. A person who enrolled in a chiropractic school before that date is governed by the law in effect on the date of enrollment, and the former law is continued in effect for that purpose.

SECTION 43. The changes in law made by this Act to Sections 201.354 and 201.355, Occupations Code, apply only to the renewal of a license to practice chiropractic that expires on or after the effective date of this Act. A license that expires before that date is governed by the law in effect on the date the license expires,

1 and the former law is continued in effect for that purpose.

2 SECTION 44. This Act takes effect September 1, 2005.

HOUSE COMMITTEE REPORT

05 APR 27 AM 11: 11
HOUSE OF REPRESENTATIVES

1st Printing

By: Solomons, Hamric, Truitt, Dunnam H.B. No. 972

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.002(a), Occupations Code, is amended to read as follows:

(a) In this section:

(1) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(2) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(3) "Incisive[~~, "incisive~~] or surgical procedure" includes making an incision into any tissue, cavity, or organ by any person or implement. The term does not include the use of a needle for the purpose of drawing blood for diagnostic testing.

(4) "Surgical procedure" includes a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

SECTION 2. Section 201.004, Occupations Code, is amended to read as follows:

Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of Chiropractic Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by

that chapter, the board is abolished and this chapter expires September 1, 2017 [~~2005~~].

SECTION 3. Sections 201.053(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~,~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person [~~An officer, employee, or paid consultant of a Texas trade association in the field of health care~~] may not be a member [~~or employee~~] of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care [~~who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule~~].

(d) A person may not be [~~serve as~~] a member of the board or

act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Sections 201.056(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office [~~appointment~~] the qualifications required by Sections 201.051 and 201.052(b);

(2) does not maintain during service on the board the qualifications required by Sections 201.051 and 201.052(b);

(3) is ineligible for membership under [~~violates a prohibition established by~~] Section 201.052 or 201.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved [~~unless the absence is excused~~] by a majority vote of the board.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the

next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Subchapter B, Chapter 201, Occupations Code, is amended by adding Section 201.061 to read as follows:

Sec. 201.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, 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. Section 201.101, Occupations Code, is amended to

read as follows:

Sec. 201.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [~~define~~] the policymaking [~~respective~~] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 7. Section 201.152(b), Occupations Code, is amended to read as follows:

(b) The board shall adopt rules for the enforcement of this chapter. The board shall issue all rules [~~opinions~~] based on a vote of a majority of the board at a regular or special meeting. The issuance of a disciplinary action or disciplinary order of the board is not limited by this subsection.

SECTION 8. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.1525 and 201.1526 to read as follows:

Sec. 201.1525. RULES CLARIFYING SCOPE OF PRACTICE OF CHIROPRACTIC. The board shall adopt rules clarifying what activities are included within the scope of the practice of chiropractic and what activities are outside of that scope. The rules:

(1) must clearly specify the procedures that chiropractors may perform and the equipment that may be used to treat patients; and

(2) may 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) 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, Government Code. This section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons. Methods may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

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

SECTION 9. Subchapter D, Chapter 201, Occupations Code, is amended by adding Section 201.1555 to read as follows:

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

(b) The board shall adopt rules to prevent fraud in the practice of chiropractic, including rules relating to:

(1) the filing of workers' compensation and insurance claims; and

(2) records required to be maintained in connection with the practice of chiropractic.

SECTION 10. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.163 and 201.164 to read as follows:

Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must 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) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must 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) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 11. Section 201.205(a), Occupations Code, is amended to read as follows:

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish between categories of complaints;

(2) 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;

(3) ensure that a complaint is not dismissed without appropriate consideration;

(4) [~~(3)~~] require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;

(5) [~~(4)~~] ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and

(6) [~~(5)~~] prescribe guidelines concerning the

categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

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

Sec. 201.207. INSPECTIONS. (a) The board, during reasonable business hours, may:

(1) conduct an on-site inspection of a chiropractic facility to investigate a complaint filed with the board; and

(2) examine and copy records of the chiropractic facility pertinent to the inspection or investigation.

(b) 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) In this section, "department" means the Texas Department of Insurance.

(b) This section applies only to information held by or for the department or the board that relates to a person who is licensed or otherwise regulated by the department or the board.

(c) The department and the board, on request or on the department or board's own initiative, may share confidential information or information to which access is otherwise restricted by law. The department and the board shall cooperate with and assist each other when either agency is conducting an investigation by providing information that is relevant to the investigation. 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. The provision of information by the board to the department or by the department to the board under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(d) The department and the board shall develop and maintain a system for tracking investigations conducted by each agency with the cooperation and assistance of the other agency, including information on all disciplinary actions taken.

(e) The department and the board shall collaborate on taking appropriate disciplinary actions to the extent practicable.

Sec. 201.209. INFORMATION ON STATUS OF CERTAIN INVESTIGATIONS. The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all investigations conducted by the board with the cooperation and assistance of the Texas Department of Insurance and the Texas Workers' Compensation Commission during the preceding fiscal year.

SECTION 13. Section 201.251, Occupations Code, is amended to read as follows:

Sec. 201.251. APPOINTMENT OF PEER REVIEW COMMITTEES; TERMS. (a) The board shall appoint local chiropractic peer review committees. 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.

(b) The board may seek input [~~shall appoint the members of~~

~~the peer review committee~~] from a [~~list of nominees submitted by the~~] local chiropractic association in selecting persons to appoint to a local [~~to conduct~~] peer review committee [~~procedures~~].

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

(c) The board shall establish requirements for peer review training programs that do not discriminate against any chiropractor. A peer review training program must include training in the investigation of complaints in accordance with this chapter and board rules.

(d) The board by rule shall adopt additional requirements for eligibility to serve on a chiropractic peer review committee, including a requirement that a member have:

(1) a clean disciplinary record; and

(2) an acceptable record regarding utilization review performed in accordance with Article 21.58A, Insurance Code.

SECTION 15. Section 201.253(a), Occupations Code, is amended to read as follows:

(a) The board shall appoint an executive chiropractic peer review committee to direct the activities of the local committees. The executive peer review committee consists of six volunteer members. 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. The executive peer review committee shall elect a presiding officer from its members.

SECTION 16. The heading to Section 201.254, Occupations

Code, is amended to read as follows:

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

SECTION 17. Subchapter F, Chapter 201, Occupations Code, is amended by adding Sections 201.2545 and 201.2546 to read as follows:

Sec. 201.2545. COMPLAINT INVESTIGATION BY PEER REVIEW COMMITTEE. (a) The board may refer to a local chiropractic peer review committee for investigation a complaint regarding whether chiropractic treatment or services provided by a chiropractor were provided according to the standard of care in the practice of chiropractic.

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

(c) The committee shall report to the board its findings regarding the complaint, including a statement of:

(1) the standard of care in the practice of chiropractic governing the chiropractic treatment or services provided by the chiropractor;

(2) whether the chiropractor met the standard of care in providing the treatment or services; and

(3) the clinical basis for the committee's finding under Subdivision (2).

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

hearing.

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

Sec. 201.2546. IMMUNITY; ELIGIBILITY TO PARTICIPATE IN COMMITTEE ACTIVITIES. (a) 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. The immunity granted by this subsection does not limit the operation of federal or state antitrust laws as applied to the conduct of a local or executive peer review committee that involves price fixing or any other unreasonable restraint of trade.

(b) A member of a peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by the member.

(c) 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. Section 201.255, Occupations Code, is amended to read as follows:

Sec. 201.255. REQUEST FOR INFORMATION; REPORT TO BOARD ON DISPUTES MEDIATED. (a) The board may request from a chiropractic peer review committee information pertaining to actions taken by the peer review committee.

(b) The executive chiropractic peer review committee shall

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. The report must include:

(1) the number of disputes referred to the committees;

(2) a categorization of the disputes referred to the committees and the number of complaints in each category; and

(3) the number of disputes resolved and the manner in which they were resolved.

SECTION 19. Subchapter F, Chapter 201, Occupations Code, is amended by adding Section 201.256 to read as follows:

Sec. 201.256. PUBLIC ACCESS TO INFORMATION REGARDING PEER REVIEW COMMITTEES. The board shall maintain on the board's Internet website information regarding local chiropractic peer review committees, including:

(1) the services committees provide; and

(2) the types of disputes committees mediate.

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

(a) An applicant for a license by examination must present satisfactory evidence to the board that the applicant:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has completed 90 [~~60~~] semester hours of college courses at a school other than a chiropractic school; and

(4) is either a graduate or a final semester student of a bona fide reputable chiropractic school.

(d) Notwithstanding Subsection (a)(3), 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 specified by that subsection to qualify for admission to a chiropractic school, the board may adopt the requirement of that organization if the board determines that requirement to be appropriate.

SECTION 21. Section 201.303(a), Occupations Code, is amended to read as follows:

(a) To comply with the requirements of Section 201.302 [~~201.302(a)(3)~~], the applicant must submit to the board a transcript of credits that certifies that the applicant has satisfactorily completed at least the number of [~~60 or more~~] semester hours of college credits required by that section at a college or university that issues credits accepted by The University of Texas at Austin for a bachelor of arts or bachelor of science degree.

SECTION 22. Section 201.305, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

SECTION 23. Section 201.307(b), Occupations Code, is amended to read as follows:

(b) The board by rule shall establish the number of times [~~and the conditions under which~~] an applicant may retake the [~~an~~] examination required by Section 201.304(a)(1) or (b), as applicable. An applicant must pass the examination required by Section 201.304(a)(2) within three attempts. The board by rule shall establish the conditions under which an applicant may retake an examination. The board may require an applicant to fulfill additional educational requirements.

SECTION 24. Sections 201.354(d) and (g), Occupations Code, are amended to read as follows:

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of 1-1/2 times the annual [~~required~~] renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~and an additional fee equal to one-half of the examination fee for the license~~]. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to the sum of two times the annual renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~all unpaid renewal fees and an additional fee equal to the examination fee for the license~~].

(g) A person may renew a license that has been expired for at least one year but not more than three years if:

(1) the board determines according to criteria adopted by board rule that the person has shown good cause for the failure to renew the license; and

(2) the person pays to the board:

(A) the annual [~~required~~] renewal fee set by the board under Section 201.153(a) for each year in which the license was expired;

(B) [~~and~~] an additional fee in an amount equal to the sum of:

(i) [~~(A)~~] the annual renewal [~~examination~~] fee set by the board under Section 201.153(a) [~~for the license~~], multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) [~~(B)~~] two times the annual renewal [~~examination~~] fee set by the board under Section 201.153(a); and

(C) the increase in the annual renewal fee required by Section 201.153(b) [~~for the license~~].

SECTION 25. Section 201.355(b), Occupations Code, is amended to read as follows:

(b) The person must pay to the board a fee that is equal to the normally required renewal [~~amount of the examination~~] fee for the license.

SECTION 26. The heading to Subchapter J, Chapter 201, Occupations Code, is amended to read as follows:

SUBCHAPTER J. PRACTICE BY LICENSE HOLDER [~~REQUIREMENTS REGARDING USE OF CHIROPRACTIC ASSISTANTS AND TECHNOLOGY~~]

SECTION 27. Subchapter J, Chapter 201, Occupations Code, is amended by adding Section 201.453 to read as follows:

Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND EXPERT REPORTS. (a) The Texas Department of Insurance shall

provide to the board any information received by the department regarding a settlement of a malpractice claim against a chiropractor.

(b) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a chiropractor who practices in this state shall 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. Section 201.502(a), Occupations Code, is amended to read as follows:

(a) The board may refuse to admit a person to examinations and may revoke or suspend a license or place a license holder on probation for a period determined by the board for:

(1) violating this chapter or a rule adopted under this chapter, including committing an act prohibited under Section 201.5025;

(2) engaging in deception or fraud in the practice of chiropractic;

(3) 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;

(4) presenting to the board an untrue statement or a document or testimony that was illegally used to pass the examination;

(5) being convicted of a crime involving moral turpitude or a felony;

(6) procuring or assisting in the procuring of an abortion;

(7) engaging in grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public;

(8) having a habit of intemperance or drug addiction or another habit that, in the opinion of the board, endangers the life of a patient;

(9) using an advertising statement that is false or that tends to mislead or deceive the public;

(10) directly or indirectly employing or associating with a person who, in the course of the person's employment, commits an act constituting the practice of chiropractic when the person is not licensed to practice chiropractic;

(11) advertising professional superiority, or advertising the performance of professional services in a superior manner, if that advertising is not readily subject to verification;

(12) purchasing, selling, bartering, using, or offering to purchase, sell, barter, or use a chiropractic degree, license, certificate, or diploma or transcript of a license, certificate, or diploma in or relating to an application to the board for a license to practice chiropractic;

(13) altering with fraudulent intent a chiropractic license, certificate, or diploma or transcript of a chiropractic license, certificate, or diploma;

(14) impersonating or acting as proxy for another in an examination required by this chapter for a chiropractic license;

(2) the standard of test administration; or

(3) the accreditation process.

Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 201.5025(a)(3), unprofessional or dishonorable conduct that is likely to deceive or defraud the public includes conduct in which a chiropractor:

(1) commits an act that violates any state or federal law if the act is connected with the chiropractor's practice of chiropractic;

(2) prescribes or administers a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is prescribed or administered;

(3) violates Section 311.0025, Health and Safety Code;

(4) fails to supervise adequately the activities of those acting under the supervision of the chiropractor; or

(5) delegates professional chiropractic responsibility or acts to a person if the delegating chiropractor knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation is not necessary for the enforcement of Subsection (a)(1). 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. The heading to Section 201.504, Occupations Code, is amended to read as follows:

Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS.

SECTION 31. Section 201.504, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Subject to Subsection (d), the board may 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) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 32. Subchapter K, Chapter 201, Occupations Code, is amended by adding Section 201.5065 to read as follows:

Sec. 201.5065. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a chiropractor's license on proof that the chiropractor has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal

Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the chiropractor's license.

SECTION 33. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.6015 to read as follows:

Sec. 201.6015. CEASE AND DESIST ORDER. (a) 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, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

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

SECTION 34. Section 201.604, Occupations Code, is amended to read as follows:

Sec. 201.604. GENERAL CRIMINAL PENALTY. A [~~Except as provided by Section 201.605, a~~] person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $500 or by confinement in the county jail for not more than 30 days.

SECTION 35. Subchapter M, Chapter 201, Occupations Code, is

amended by adding Section 201.606 to read as follows:

Sec. 201.606. CRIMINAL PENALTY: PROVIDING CHIROPRACTIC TREATMENT OR SERVICES WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this chapter, 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) An offense under this section is a state jail felony.

SECTION 36. Sections 201.053(c), 201.059, 201.162, and 201.254(c)-(e), Occupations Code, are repealed.

SECTION 37. The changes in law made by Section 201.053, 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 and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

SECTION 38. Not later than January 1, 2006, the Texas Board of Chiropractic Examiners shall 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. The changes in law made by this Act to Chapter 201, Occupations Code, relating to the investigation of a complaint apply only to a complaint filed with the Texas Board of Chiropractic Examiners on or after the effective date of this Act. A complaint filed with the board before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 40. (a) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the local chiropractic peer review committees under Section 201.251, Occupations Code, as amended by this Act. In appointing the initial members of each committee, the board shall appoint as near to one-third of the members as possible to terms expiring December 31, 2006, as near to one-third as possible to terms expiring December 31, 2007, and as near to one-third as possible to terms expiring December 31, 2008. 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) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the executive chiropractic peer review committee under Section 201.253, Occupations Code, as amended by this Act. In appointing the initial members of the committee, the board shall appoint two persons to terms expiring December 31, 2006, two to terms expiring December 31, 2007, and two to terms expiring December 31, 2008. 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. The changes in law made by this Act to Sections 201.302 and 201.303, Occupations Code, apply only to a person who enrolls in a chiropractic school on or after the effective date of this Act. A person who enrolled in a chiropractic school before that date is governed by the law in effect on the date of enrollment, and the former law is continued in effect for that purpose.

SECTION 43. The changes in law made by this Act to Sections 201.354 and 201.355, Occupations Code, apply only to the renewal of a license to practice chiropractic that expires on or after the effective date of this Act. A license that expires before that date is governed by the law in effect on the date the license expires,

and the former law is continued in effect for that purpose.

SECTION 44. This Act takes effect September 1, 2005.

COMMITTEE REPORT

The Honorable Tom Craddick
Speaker of the House of Representatives

4-20-05
(date)

Sir:

We, your COMMITTEE ON PUBLIC HEALTH

to whom was referred HB 972 have had the same under consideration and beg to report back with the recommendation that it

(✓) do pass, without amendment.
( ) do pass, with amendment(s).
( ) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

(✓) yes ( ) no A fiscal note was requested.

(✓) yes ( ) no A criminal justice policy impact statement was requested.

( ) yes (✓) no An equalized educational funding impact statement was requested.

( ) yes (✓) no An actuarial analysis was requested.

( ) yes (✓) no A water development policy impact statement was requested.

( ) yes (✓) no A tax equity note was requested.

( ) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor _____

Joint Sponsors: _____ / _____ / _____ / _____

Co-Sponsors: _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Delisi, Chair				✓
Laubenberg, Vice-chair	✓			
Coleman				✓
Dawson				✓
Jackson	✓			
McReynolds	✓			
Solis				✓
Truitt	✓			
Zedler	✓			

Total
5 aye
0 nay
0 present, not voting
4 absent

Dennis Delisi
CHAIR

BILL ANALYSIS

H.B. 972
By: Solomons
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Board of Chiropractic Examiners (Board) was created in 1949 by the 51st Legislature to regulate the chiropractic profession. The Board's mission is to protect the public's health, safety and economic welfare by ensuring that chiropractic professionals are qualified and competent, and adhere to established professional standards. To accomplish this mission, the Board licenses chiropractors, registers chiropractic facilities, and investigates and resolves complaints, taking disciplinary action when necessary to enforce the Board's statute and rules.

The Board is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the Legislature. As a result of its review of the Chiropractic Board, the Sunset Advisory Commission recommended continuation of the agency and several statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Chiropractic Examiners in SECTION 7, SECTION 8, SECTION 9, SECTION 11, SECTION 14, SECTION 17, SECTION 22, SECTION 23, SECTION 29, and SECTION 38 of this bill. In addition, under the general rulemaking authority already granted to the policymaking body, rules may be developed to implement other new provisions found in this bill.

ANALYSIS

The bill amends the Occupations Code relating to the administration and functions of the Texas Board of Chiropractic Examiners. The bill also incorporates several across-the-board recommendations of the Sunset Commission.

Continuation of the Board
The bill continues the Texas Board of Chiropractic Examiners until September 1, 2017.

Rulemaking Process to Clarify Scope of Practice
The bill requires the Board to adopt rules that clarify practices within and outside the scope of chiropractic practice, seeking stakeholder input early in the rulemaking process. The bill also conforms the Chiropractic Act with the Medical Practice Act by adding the Medical Act's definitions of controlled substance, dangerous drug and surgical procedure to the Chiropractic Act. The bill repeals the Board's Advisory Commission, established to advise the Board on new and experimental practices within the meaning of chiropractic. The bill also adds standard Sunset across-the-board language requiring the Board to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

Conflict of Interest and Board Member Provisions
The bill updates standard Sunset across-the-board language prohibiting Board members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association. The bill updates standard Sunset language requiring members of the Board to complete training before assuming their duties, and requiring the Board to separate its policymaking duties from the agency's management functions. The bill also updates standard Sunset language specifying the grounds for removing a Board member.

Complaint Investigations
The bill requires the Board to prioritize complaints according to the seriousness of a complaint and the length of time a complaint has been pending. The bill also authorizes the Board, in investigating complaints, to conduct inspections of facilities and records on an unannounced basis. The bill grants the Board's peer review committees the authority to assist the Board in investigating complaints that require a standard of care review, reporting to the Board any findings. The bill also establishes the length of terms for the local and executive peer review committees, training, and eligibility requirements. Members of the peer review committees are not liable for their actions as a member of the committee. The executive peer review committee must file an annual report on the disputes mediated by the local peer review committee, and the Board must maintain information on the types of services and mediation performed. The bill also requires the Board and the Texas Department of Insurance (TDI) to cooperate in the investigation of certain cases. The Board must include in its annual financial report information on investigations conducted by the Board with the cooperation and assistance of TDI and the Texas Workers' Compensation Commission during the previous fiscal year.

Enforcement Tools
The bill authorizes the Board to issue cease-and-desist orders against unlicensed activity, and to assess administrative penalties against persons who violate cease-and-desist orders. The bill also authorizes the Board to require refunds as part of the settlement conference process, limited to the amount a consumer paid to a chiropractor. The bill makes a number of conforming changes to align the Chiropractic Board's enforcement authority with that of the Medical Board under the Medical Practice Act. Specifically, it makes providing chiropractic treatment while intoxicated a state jail felony, and requires medical malpractice settlements and expert witness reports to be submitted to the Board. The bill also prohibits certain practices by chiropractors, such as fraudulent practices, unprofessional or dishonorable conduct, conduct that subverts the examination process, and employing or associating in practice with a person who has had their license suspended, canceled or revoked or aiding the practice of an unlicensed person. The bill also requires the suspension or revocation of a chiropractor's license for conviction of offenses such as felonies, misdemeanor assaults, sex crimes, violations of protective order against family, hate crimes, and drug offenses.

Licensing Process
The bill increases the number of undergraduate hours required to be licensed as a chiropractor from 60 to 90 credit hours of pre-chiropractic work. The bill also limits the number of retakes of the exam to three. The bill also changes the basis for the Board's late renewal penalties from the examination fee to the renewal fee. For licenses expired 90 days or less the renewal fee is 1½ times the annual renewal fee and for licenses expired more than 90 days but less than a year the renewal fee is two times the annual renewal fee. The bill requires the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

Administrative Process
The bill adds standard Sunset across-the-board language requiring the Board to make effective use of technology in its delivery of services and provision of information to the public.

Repealers
The bill contains four repealers. The first deletes archaic sunset across the board recommendations for Board qualifications. These qualifications are replaced by new language. The second repealer deletes the Board's Advisory Commission. The third repealer removes duplicative language about annual reports. The last repealer removes duplicative language about liability protections for members of the Board's Peer Review Committees.

EFFECTIVE DATE

September 1, 2005.

SUMMARY OF COMMITTEE ACTION

HB 972

April 13, 2005 2:00PM or upon final adjourn./recess

Considered in public hearing
Testimony taken in committee (See attached witness list.)
Left pending in committee

April 20, 2005 2:00PM or upon final adjourn./recess

Considered in public hearing
Reported favorably without amendment(s)

WITNESS LIST

HB 972
HOUSE COMMITTEE REPORT
Public Health Committee

April 13, 2005 - 2:00PM or upon final adjourn./recess

On: Harwell, Jessica (Texas Bd of Chiropractic Examiners)
Klein, Dr. Franz (Texas Chiropractic Association)
Leroux, Emilie (Sunset Commission)
Moss, James L. (Texas Board of Chiropractic Examiners)
Smith, Sandra (Texas Board of Chiropractic Examiners)

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 9, 2005

TO: Honorable Dianne White Delisi, Chair, House Committee on Public Health

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB972** by Solomons (Relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB972, As Introduced: a negative impact of ($65,600) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	($32,800)
2007	($32,800)
2008	($32,800)
2009	($32,800)
2010	($32,800)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1
2006	($27,200)	($5,600)
2007	($27,200)	($5,600)
2008	($27,200)	($5,600)
2009	($27,200)	($5,600)
2010	($27,200)	($5,600)

Fiscal Analysis

The bill would continue the Board of Chiropractic Examiners for 12 years, and would would authorize the agency's peer review committees to assist the board in reviewing standard of care complaints. The bill would also change the basis for the agency's late-renewal penalties from an examination fee to the standard renewal fee. It would provide that a person whose license has been expired for 90 days or less may renew the license by paying the required renewal fee plus a fee equal to half the amount of the agency's renewal fee. A license that has been expired for more than 90 days could be renewed by paying the required renewal fee plus a fee equal to the agency's renewal fee. A license that has been expired for at least one year but less than three years could be renewed by paying two times the agency's renewal fee for each year the license was expired, one time the agency's renewal fee and one time the required renewal fee.

5

The bill would take effect September 1, 2005.

Methodology

Based on an average of 56 billing and standard of care complaints reviewed by the Board of Chiropractic Examiners' peer review committees annually, or the average number of complaints the agency received from fiscal year 2001 to 2003, it is assumed that the agency would require $5,600 annually to reimburse peer review committee members at a reimbursement rate of $100 per complaint.

Changing the amount of the late renewal fee for licenses expired for 90 days or less would result in a loss of $21,600 a year based on 216 late renewals for fiscal year 2004. The late renewal fee would decrease from $487.50 to $387.50, resulting in a loss of $100 per late renewal ($100*216=$21,600). Changing the amount of the late renewal fee for licenses expired for more than 90 days but less than one year would result in a loss of $5,600 a year based on 28 late renewals for fiscal year 2004. The late renewal fee would decrease from $650 to $450, resulting in a loss of $200 per late renewal ($200*28=$5,600). Changing the amount of the late renewal fee for licenses expired for at least one year but no more than three years is not anticipated to have a fiscal impact. Changing the basis for the renewal of expired licenses by out-of-state practitioners is not anticipated to have a fiscal impact.

The Texas Department of Insurance indicates it could absorb any additional costs associated with the bill within its existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 453 Workers' Compensation Commission, 454 Department of Insurance, 508 Board of Chiropractic Examiners

LBB Staff: JOB, CL, MW, RB

6

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

79TH LEGISLATIVE REGULAR SESSION

March 8, 2005

TO: Honorable Dianne White Delisi, Chair, House Committee on Public Health

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB972** by Solomons (Relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.), **As Introduced**

The provision of the bill that is the subject of this analysis would amend the Occupations Code by creating the offense of providing chiropractic treatment or services while intoxicated. The offense would be punishable as a state jail felony.

A state jail felony is punishable by confinement in a state jail for any term of not more than two years or less than 180 days, or, in addition to confinement, a fine not to exceed $10,000.

The impact of this provision of the bill would depend on the number of persons caught and convicted of the offense; however, in the case of this bill, the increased workload and demand for resources would probably not be substantial.

Source Agencies:
LBB Staff: JOB, GG

7

The bill would take effect September 1, 2005.

Methodology

Based on an average of 56 billing and standard of care complaints reviewed by the Board of Chiropractic Examiners' peer review committees annually, or the average number of complaints the agency received from fiscal year 2001 to 2003, it is assumed that the agency would require $5,600 annually to reimburse peer review committee members at a reimbursement rate of $100 per complaint.

Changing the amount of the late renewal fee for licenses expired for 90 days or less would result in a loss of $21,600 a year based on 216 late renewals for fiscal year 2004. The late renewal fee would decrease from $487.50 to $387.50, resulting in a loss of $100 per late renewal ($100*216=$21,600). Changing the amount of the late renewal fee for licenses expired for more than 90 days but less than one year would result in a loss of $5,600 a year based on 28 late renewals for fiscal year 2004. The late renewal fee would decrease from $650 to $450, resulting in a loss of $200 per late renewal ($200*28=$5,600). Changing the amount of the late renewal fee for licenses expired for at least one year but no more than three years is not anticipated to have a fiscal impact. Changing the basis for the renewal of expired licenses by out-of-state practitioners is not anticipated to have a fiscal impact.

The Texas Department of Insurance indicates it could absorb any additional costs associated with the bill within its existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 453 Workers' Compensation Commission, 454 Department of Insurance, 508 Board of Chiropractic Examiners

LBB Staff: JOB, CL, MW, RB

8

LIST OF HOUSE AMENDMENTS CONSIDERED TODAY

HB972-Second Reading

AMENDMENT#	AUTHOR	DESCRIPTION	ACTION
1	Solomons	Amendment	Adopted

05 MAY -6 PM 1:13

HOUSE OF REPRESENTATIVES

ADOPTED

MAY 6 2005

Chief Clerk
House of Representatives

FLOOR AMENDMENT NO. 1 BY: Bert Solomon

Amend HB 972, page 11, replace lines 1-3 to read as follows: "~~the peer review committee~~] from [~~a list of nominees submitted by the local~~] state chiropractic associations in selecting persons to appoint to a local [~~to conduct~~] peer review committee [~~procedures~~].

F

2ND READING
ENGROSSMENT

By: Solomons, Hamric, Truitt, Dunnam

H.B. No. 972

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.002(a), Occupations Code, is amended to read as follows:

(a) In this section:

(1) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(2) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(3) "Incisive[~~, "incisive~~] or surgical procedure" includes making an incision into any tissue, cavity, or organ by any person or implement. The term does not include the use of a needle for the purpose of drawing blood for diagnostic testing.

(4) "Surgical procedure" includes a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

SECTION 2. Section 201.004, Occupations Code, is amended to read as follows:

Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of Chiropractic Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by

that chapter, the board is abolished and this chapter expires September 1, 2017 [~~2005~~].

SECTION 3. Sections 201.053(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~,~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person [~~An officer, employee, or paid consultant of a Texas trade association in the field of health care~~] may not be a member [~~or employee~~] of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care [~~who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule~~].

(d) A person may not be [~~serve as~~] a member of the board or

act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Sections 201.056(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office [~~appointment~~] the qualifications required by Sections 201.051 and 201.052(b);

(2) does not maintain during service on the board the qualifications required by Sections 201.051 and 201.052(b);

(3) is ineligible for membership under [~~violates a prohibition established by~~] Section 201.052 or 201.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved [~~unless the absence is excused~~] by a majority vote of the board.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the

next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Subchapter B, Chapter 201, Occupations Code, is amended by adding Section 201.061 to read as follows:

Sec. 201.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, 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. Section 201.101, Occupations Code, is amended to

read as follows:

Sec. 201.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [~~define~~] the policymaking [~~respective~~] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 7. Section 201.152(b), Occupations Code, is amended to read as follows:

(b) The board shall adopt rules for the enforcement of this chapter. The board shall issue all rules [~~opinions~~] based on a vote of a majority of the board at a regular or special meeting. The issuance of a disciplinary action or disciplinary order of the board is not limited by this subsection.

SECTION 8. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.1525 and 201.1526 to read as follows:

Sec. 201.1525. RULES CLARIFYING SCOPE OF PRACTICE OF CHIROPRACTIC. The board shall adopt rules clarifying what activities are included within the scope of the practice of chiropractic and what activities are outside of that scope. The rules:

(1) must clearly specify the procedures that chiropractors may perform and the equipment that may be used to treat patients; and

(2) may 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) 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, Government Code. This section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons. Methods may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

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

SECTION 9. Subchapter D, Chapter 201, Occupations Code, is amended by adding Section 201.1555 to read as follows:

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

(b) The board shall adopt rules to prevent fraud in the practice of chiropractic, including rules relating to:

(1) the filing of workers' compensation and insurance claims; and

(2) records required to be maintained in connection with the practice of chiropractic.

SECTION 10. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.163 and 201.164 to read as follows:

Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must 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) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must 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) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 11. Section 201.205(a), Occupations Code, is amended to read as follows:

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish between categories of complaints;

(2) 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;

(3) ensure that a complaint is not dismissed without appropriate consideration;

(4) [~~(3)~~] require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;

(5) [~~(4)~~] ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and

(6) [~~(5)~~] prescribe guidelines concerning the

categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

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

Sec. 201.207. INSPECTIONS. (a) The board, during reasonable business hours, may:

(1) conduct an on-site inspection of a chiropractic facility to investigate a complaint filed with the board; and

(2) examine and copy records of the chiropractic facility pertinent to the inspection or investigation.

(b) 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) In this section, "department" means the Texas Department of Insurance.

(b) This section applies only to information held by or for the department or the board that relates to a person who is licensed or otherwise regulated by the department or the board.

(c) The department and the board, on request or on the department or board's own initiative, may share confidential information or information to which access is otherwise restricted by law. The department and the board shall cooperate with and assist each other when either agency is conducting an investigation by providing information that is relevant to the investigation. 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. The provision of information by the board to the department or by the department to the board under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(d) The department and the board shall develop and maintain a system for tracking investigations conducted by each agency with the cooperation and assistance of the other agency, including information on all disciplinary actions taken.

(e) The department and the board shall collaborate on taking appropriate disciplinary actions to the extent practicable.

Sec. 201.209. INFORMATION ON STATUS OF CERTAIN INVESTIGATIONS. The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all investigations conducted by the board with the cooperation and assistance of the Texas Department of Insurance and the Texas Workers' Compensation Commission during the preceding fiscal year.

SECTION 13. Section 201.251, Occupations Code, is amended to read as follows:

Sec. 201.251. APPOINTMENT OF PEER REVIEW COMMITTEES; TERMS. (a) The board shall appoint local chiropractic peer review committees. 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.

(b) The board may seek input [~~shall appoint the members of~~

~~the peer review committee~~] from state [~~a list of nominees submitted by the local~~] chiropractic associations in selecting persons to appoint to a local [~~association to conduct~~] peer review committee [~~procedures~~].

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

(c) The board shall establish requirements for peer review training programs that do not discriminate against any chiropractor. A peer review training program must include training in the investigation of complaints in accordance with this chapter and board rules.

(d) The board by rule shall adopt additional requirements for eligibility to serve on a chiropractic peer review committee, including a requirement that a member have:

(1) a clean disciplinary record; and

(2) an acceptable record regarding utilization review performed in accordance with Article 21.58A, Insurance Code.

SECTION 15. Section 201.253(a), Occupations Code, is amended to read as follows:

(a) The board shall appoint an executive chiropractic peer review committee to direct the activities of the local committees. The executive peer review committee consists of six volunteer members. 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. The executive peer review committee shall elect a presiding officer from its members.

SECTION 16. The heading to Section 201.254, Occupations Code, is amended to read as follows:

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

SECTION 17. Subchapter F, Chapter 201, Occupations Code, is amended by adding Sections 201.2545 and 201.2546 to read as follows:

Sec. 201.2545. COMPLAINT INVESTIGATION BY PEER REVIEW COMMITTEE. (a) The board may refer to a local chiropractic peer review committee for investigation a complaint regarding whether chiropractic treatment or services provided by a chiropractor were provided according to the standard of care in the practice of chiropractic.

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

(c) The committee shall report to the board its findings regarding the complaint, including a statement of:

(1) the standard of care in the practice of chiropractic governing the chiropractic treatment or services provided by the chiropractor;

(2) whether the chiropractor met the standard of care in providing the treatment or services; and

(3) the clinical basis for the committee's finding under Subdivision (2).

(d) The board may request a member of the committee to

attend an informal conference or testify at a contested case hearing.

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

Sec. 201.2546. IMMUNITY; ELIGIBILITY TO PARTICIPATE IN COMMITTEE ACTIVITIES. (a) 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. The immunity granted by this subsection does not limit the operation of federal or state antitrust laws as applied to the conduct of a local or executive peer review committee that involves price fixing or any other unreasonable restraint of trade.

(b) A member of a peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by the member.

(c) 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. Section 201.255, Occupations Code, is amended to read as follows:

Sec. 201.255. REQUEST FOR INFORMATION; REPORT TO BOARD ON DISPUTES MEDIATED. (a) The board may request from a chiropractic peer review committee information pertaining to actions taken by the peer review committee.

(b) The executive chiropractic peer review committee shall 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. The report must include:

(1) the number of disputes referred to the committees;

(2) a categorization of the disputes referred to the committees and the number of complaints in each category; and

(3) the number of disputes resolved and the manner in which they were resolved.

SECTION 19. Subchapter F, Chapter 201, Occupations Code, is amended by adding Section 201.256 to read as follows:

Sec. 201.256. PUBLIC ACCESS TO INFORMATION REGARDING PEER REVIEW COMMITTEES. The board shall maintain on the board's Internet website information regarding local chiropractic peer review committees, including:

(1) the services committees provide; and

(2) the types of disputes committees mediate.

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

(a) An applicant for a license by examination must present satisfactory evidence to the board that the applicant:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has completed 90 [~~60~~] semester hours of college courses at a school other than a chiropractic school; and

(4) is either a graduate or a final semester student of

a bona fide reputable chiropractic school.

(d) Notwithstanding Subsection (a)(3), 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 specified by that subsection to qualify for admission to a chiropractic school, the board may adopt the requirement of that organization if the board determines that requirement to be appropriate.

SECTION 21. Section 201.303(a), Occupations Code, is amended to read as follows:

(a) To comply with the requirements of Section 201.302 [~~201.302(a)(3)~~], the applicant must submit to the board a transcript of credits that certifies that the applicant has satisfactorily completed at least the number of [~~60 or more~~] semester hours of college credits required by that section at a college or university that issues credits accepted by The University of Texas at Austin for a bachelor of arts or bachelor of science degree.

SECTION 22. Section 201.305, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

SECTION 23. Section 201.307(b), Occupations Code, is

amended to read as follows:

(b) The board by rule shall establish the number of times [~~and the conditions under which~~] an applicant may retake the [~~an~~] examination required by Section 201.304(a)(1) or (b), as applicable. An applicant must pass the examination required by Section 201.304(a)(2) within three attempts. The board by rule shall establish the conditions under which an applicant may retake an examination. The board may require an applicant to fulfill additional educational requirements.

SECTION 24. Sections 201.354(d) and (g), Occupations Code, are amended to read as follows:

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of 1-1/2 times the annual [~~required~~] renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~and an additional fee equal to one-half of the examination fee for the license~~]. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to the sum of two times the annual renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~all unpaid renewal fees and an additional fee equal to the examination fee for the license~~].

(g) A person may renew a license that has been expired for at least one year but not more than three years if:

(1) the board determines according to criteria adopted by board rule that the person has shown good cause for the failure

to renew the license; and

(2) the person pays to the board:

(A) the annual [~~required~~] renewal fee set by the board under Section 201.153(a) for each year in which the license was expired;

(B) [~~and~~] an additional fee in an amount equal to the sum of:

(i) [~~(A)~~] the annual renewal [~~examination~~] fee set by the board under Section 201.153(a) [~~for the license~~], multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) [~~(B)~~] two times the annual renewal [~~examination~~] fee set by the board under Section 201.153(a); and

(C) the increase in the annual renewal fee required by Section 201.153(b) [~~for the license~~].

SECTION 25. Section 201.355(b), Occupations Code, is amended to read as follows:

(b) The person must pay to the board a fee that is equal to the normally required renewal [~~amount of the examination~~] fee for the license.

SECTION 26. The heading to Subchapter J, Chapter 201, Occupations Code, is amended to read as follows:

SUBCHAPTER J. PRACTICE BY LICENSE HOLDER [~~REQUIREMENTS REGARDING USE OF CHIROPRACTIC ASSISTANTS AND TECHNOLOGY~~]

SECTION 27. Subchapter J, Chapter 201, Occupations Code, is amended by adding Section 201.453 to read as follows:

Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND

EXPERT REPORTS. (a) The Texas Department of Insurance shall provide to the board any information received by the department regarding a settlement of a malpractice claim against a chiropractor.

(b) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a chiropractor who practices in this state shall 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. Section 201.502(a), Occupations Code, is amended to read as follows:

(a) The board may refuse to admit a person to examinations and may revoke or suspend a license or place a license holder on probation for a period determined by the board for:

(1) violating this chapter or a rule adopted under this chapter, including committing an act prohibited under Section 201.5025;

(2) engaging in deception or fraud in the practice of chiropractic;

(3) 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;

(4) presenting to the board an untrue statement or a document or testimony that was illegally used to pass the examination;

(5) being convicted of a crime involving moral

turpitude or a felony;

(6) procuring or assisting in the procuring of an abortion;

(7) engaging in grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public;

(8) having a habit of intemperance or drug addiction or another habit that, in the opinion of the board, endangers the life of a patient;

(9) using an advertising statement that <u>is false or that</u> tends to mislead or deceive the public;

(10) directly or indirectly employing or associating with a person who, in the course of the person's employment, commits an act constituting the practice of chiropractic when the person is not licensed to practice chiropractic;

(11) advertising professional superiority, or advertising the performance of professional services in a superior manner<u>, if that advertising is not readily subject to verification</u>;

(12) purchasing, selling, bartering, using, or offering to purchase, sell, barter, or use a chiropractic degree, license, certificate, or diploma or transcript of a license, certificate, or diploma in or relating to an application to the board for a license to practice chiropractic;

(13) altering with fraudulent intent a chiropractic license, certificate, or diploma or transcript of a chiropractic license, certificate, or diploma;

(14) impersonating or acting as proxy for another in

an examination required by this chapter for a chiropractic license;

(15) impersonating a licensed chiropractor;

(16) allowing one's chiropractic license to be used by another person to practice chiropractic;

(17) being proved insane by a person having authority to make that determination;

(18) failing to use proper diligence in the practice of chiropractic or using gross inefficiency in the practice of chiropractic;

(19) failing to clearly differentiate a chiropractic office or clinic from another business or enterprise;

(20) personally soliciting a patient or causing a patient to be solicited by the use of a case history of another patient of another chiropractor;

(21) using for the purpose of soliciting patients an accident report prepared by a peace officer in a manner prohibited by Section 38.12, Penal Code; or

(22) advertising using the term "physician" or "chiropractic physician" or any combination or derivation of the term "physician."

SECTION 29. Subchapter K, Chapter 201, Occupations Code, is amended by adding Sections 201.5025 and 201.5026 to read as follows:

<u>Sec. 201.5025. PROHIBITED PRACTICES BY CHIROPRACTOR OR LICENSE APPLICANT. (a) A chiropractor or an applicant for a license to practice chiropractic commits a prohibited practice if that person:</u>

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) commits fraud or deception in taking or passing an examination;

(3) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 201.5026, or injure the public;

(4) engages in conduct that subverts or attempts to subvert an examination process required by this chapter for a chiropractic license;

(5) directly or indirectly employs a person whose license to practice chiropractic has been suspended, canceled, or revoked;

(6) associates in the practice of chiropractic with a person:

(A) whose license to practice chiropractic has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of chiropractic in this state or elsewhere; or

(7) directly or indirectly aids or abets the practice of chiropractic by a person that is not licensed to practice chiropractic by the board.

(b) For purposes of Subsection (a)(4), conduct that subverts or attempts to subvert the chiropractic licensing examination process includes, as prescribed by board rule, conduct that violates:

(1) the security of the examination materials;

(2) the standard of test administration; or

(3) the accreditation process.

Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 201.5025(a)(3), unprofessional or dishonorable conduct that is likely to deceive or defraud the public includes conduct in which a chiropractor:

(1) commits an act that violates any state or federal law if the act is connected with the chiropractor's practice of chiropractic;

(2) prescribes or administers a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is prescribed or administered;

(3) violates Section 311.0025, Health and Safety Code;

(4) fails to supervise adequately the activities of those acting under the supervision of the chiropractor; or

(5) delegates professional chiropractic responsibility or acts to a person if the delegating chiropractor knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation is not necessary for the enforcement of Subsection (a)(1). 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. The heading to Section 201.504, Occupations

Code, is amended to read as follows:

Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS.

SECTION 31. Section 201.504, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Subject to Subsection (d), the board may 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) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 32. Subchapter K, Chapter 201, Occupations Code, is amended by adding Section 201.5065 to read as follows:

Sec. 201.5065. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a chiropractor's license on proof that the chiropractor has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the chiropractor's license.

SECTION 33. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.6015 to read as follows:

Sec. 201.6015. CEASE AND DESIST ORDER. (a) 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, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

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

SECTION 34. Section 201.604, Occupations Code, is amended to read as follows:

Sec. 201.604. GENERAL CRIMINAL PENALTY. A [~~Except as provided by Section 201.605, a~~] person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $500 or by confinement in the county jail for not more than 30 days.

SECTION 35. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.606 to read as follows:

Sec. 201.606. CRIMINAL PENALTY: PROVIDING CHIROPRACTIC TREATMENT OR SERVICES WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this chapter, 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) An offense under this section is a state jail felony.

SECTION 36. Sections 201.053(c), 201.059, 201.162, and 201.254(c)-(e), Occupations Code, are repealed.

SECTION 37. The changes in law made by Section 201.053, 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 and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

SECTION 38. Not later than January 1, 2006, the Texas Board of Chiropractic Examiners shall 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. The changes in law made by this Act to Chapter 201, Occupations Code, relating to the investigation of a complaint apply only to a complaint filed with the Texas Board of Chiropractic Examiners on or after the effective date of this Act. A complaint filed with the board before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 40. (a) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the local chiropractic peer review committees under Section 201.251, Occupations Code, as amended by this Act. In appointing the initial members of each committee, the board shall appoint as near to one-third of the members as possible to terms expiring December 31, 2006, as near to one-third as possible to terms expiring December 31, 2007, and as near to one-third as possible to terms expiring December 31, 2008. 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) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the executive chiropractic peer review committee under Section 201.253, Occupations Code, as amended by this Act. In appointing the initial members of the committee, the board shall appoint two persons to terms expiring December 31, 2006, two to terms expiring December 31, 2007, and two to terms expiring December 31, 2008. 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. The changes in law made by this Act to Sections 201.302 and 201.303, Occupations Code, apply only to a person who enrolls in a chiropractic school on or after the effective date of this Act. A person who enrolled in a chiropractic school before that date is governed by the law in effect on the date of enrollment, and the former law is continued in effect for that purpose.

SECTION 43. The changes in law made by this Act to Sections 201.354 and 201.355, Occupations Code, apply only to the renewal of a license to practice chiropractic that expires on or after the effective date of this Act. A license that expires before that date

is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

SECTION 44. This Act takes effect September 1, 2005.

LIST OF HOUSE AMENDMENTS CONSIDERED TODAY

HB972-Third Reading

AMENDMENT#	AUTHOR	DESCRIPTION	ACTION
1	Hupp	Amendment	Adopted

05 MAY -9 AM 11:42

HOUSE OF REPRESENTATIVES

ADOPTED 3rd Reading

MAY 10 2005

Robert Haney
Chief Clerk
House of Representatives

FLOOR AMENDMENT NO. 1 BY: [illegible]

Amend HB 972, on page 5, lines 22 through 24 as follows and renumber as appropriate:

" (1) must clearly specify the procedures that chiropractors may perform ~~and the equipment that may be used to treat patients;~~ and

((INSERT A)) type

(2) must clearly specify any equipment and the use of that equipment ~~which~~ that is prohibited as ineffective or unsafe for the treatment of patients;" and

HOUSE ENGROSSMENT

By: Solomons, Hamric, Truitt, Dunnam H.B. No. 972

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.002(a), Occupations Code, is amended to read as follows:

(a) In this section:

(1) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(2) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(3) "Incisive[~~, "incisive~~] or surgical procedure" includes making an incision into any tissue, cavity, or organ by any person or implement. The term does not include the use of a needle for the purpose of drawing blood for diagnostic testing.

(4) "Surgical procedure" includes a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

SECTION 2. Section 201.004, Occupations Code, is amended to read as follows:

Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of Chiropractic Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by

that chapter, the board is abolished and this chapter expires September 1, 2017 [~~2005~~].

SECTION 3. Sections 201.053(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~,~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person [~~An officer, employee, or paid consultant of a Texas trade association in the field of health care~~] may not be a member [~~or employee~~] of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care [~~who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule~~].

(d) A person may not be [~~serve as~~] a member of the board or

act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Sections 201.056(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office [~~appointment~~] the qualifications required by Sections 201.051 and 201.052(b);

(2) does not maintain during service on the board the qualifications required by Sections 201.051 and 201.052(b);

(3) is ineligible for membership under [~~violates a prohibition established by~~] Section 201.052 or 201.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved [~~unless the absence is excused~~] by a majority vote of the board.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the

next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Subchapter B, Chapter 201, Occupations Code, is amended by adding Section 201.061 to read as follows:

Sec. 201.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, 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. Section 201.101, Occupations Code, is amended to

read as follows:

Sec. 201.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [~~define~~] the policymaking [~~respective~~] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 7. Section 201.152(b), Occupations Code, is amended to read as follows:

(b) The board shall adopt rules for the enforcement of this chapter. The board shall issue all rules [~~opinions~~] based on a vote of a majority of the board at a regular or special meeting. The issuance of a disciplinary action or disciplinary order of the board is not limited by this subsection.

SECTION 8. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.1525 and 201.1526 to read as follows:

Sec. 201.1525. RULES CLARIFYING SCOPE OF PRACTICE OF CHIROPRACTIC. The board shall adopt rules clarifying what activities are included within the scope of the practice of chiropractic and what activities are outside of that scope. The rules:

(1) must clearly specify the procedures that chiropractors may perform;

(2) must clearly specify any equipment and the use of that equipment that is prohibited as ineffective or unsafe for the treatment of patients; and

(3) may 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) 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, Government Code. This section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons. Methods may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

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

SECTION 9. Subchapter D, Chapter 201, Occupations Code, is amended by adding Section 201.1555 to read as follows:

Sec. 201.1555. FRAUD. (a) The board shall strictly and

vigorously enforce the provisions of this chapter prohibiting fraud.

(b) The board shall adopt rules to prevent fraud in the practice of chiropractic, including rules relating to:

(1) the filing of workers' compensation and insurance claims; and

(2) records required to be maintained in connection with the practice of chiropractic.

SECTION 10. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.163 and 201.164 to read as follows:

Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must 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) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must 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) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 11. Section 201.205(a), Occupations Code, is amended to read as follows:

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish between categories of complaints;

(2) 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;

(3) ensure that a complaint is not dismissed without appropriate consideration;

(4) [~~(3)~~] require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;

(5) [~~(4)~~] ensure that the person who filed the complaint has the opportunity to explain the allegations made in

the complaint; and

(6) [~~(5)~~] prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

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

Sec. 201.207. INSPECTIONS. (a) The board, during reasonable business hours, may:

(1) conduct an on-site inspection of a chiropractic facility to investigate a complaint filed with the board; and

(2) examine and copy records of the chiropractic facility pertinent to the inspection or investigation.

(b) 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) In this section, "department" means the Texas Department of Insurance.

(b) This section applies only to information held by or for the department or the board that relates to a person who is licensed or otherwise regulated by the department or the board.

(c) The department and the board, on request or on the department or board's own initiative, may share confidential information or information to which access is otherwise restricted by law. The department and the board shall cooperate with and assist each other when either agency is conducting an investigation

by providing information that is relevant to the investigation. 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. The provision of information by the board to the department or by the department to the board under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(d) The department and the board shall develop and maintain a system for tracking investigations conducted by each agency with the cooperation and assistance of the other agency, including information on all disciplinary actions taken.

(e) The department and the board shall collaborate on taking appropriate disciplinary actions to the extent practicable.

Sec. 201.209. INFORMATION ON STATUS OF CERTAIN INVESTIGATIONS. The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all investigations conducted by the board with the cooperation and assistance of the Texas Department of Insurance and the Texas Workers' Compensation Commission during the preceding fiscal year.

SECTION 13. Section 201.251, Occupations Code, is amended to read as follows:

Sec. 201.251. APPOINTMENT OF PEER REVIEW COMMITTEES; TERMS. (a) The board shall appoint local chiropractic peer review committees. 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.

(b) The board may seek input [~~shall appoint the members of the peer review committee~~] from state [~~a list of nominees submitted by the local~~] chiropractic associations in selecting persons to appoint to a local [~~association to conduct~~] peer review committee [~~procedures~~].

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

(c) The board shall establish requirements for peer review training programs that do not discriminate against any chiropractor. A peer review training program must include training in the investigation of complaints in accordance with this chapter and board rules.

(d) The board by rule shall adopt additional requirements for eligibility to serve on a chiropractic peer review committee, including a requirement that a member have:

(1) a clean disciplinary record; and

(2) an acceptable record regarding utilization review performed in accordance with Article 21.58A, Insurance Code.

SECTION 15. Section 201.253(a), Occupations Code, is amended to read as follows:

(a) The board shall appoint an executive chiropractic peer review committee to direct the activities of the local committees. The executive peer review committee consists of six volunteer members. 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. The executive peer review committee shall elect a presiding officer from its members.

SECTION 16. The heading to Section 201.254, Occupations Code, is amended to read as follows:

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

SECTION 17. Subchapter F, Chapter 201, Occupations Code, is amended by adding Sections 201.2545 and 201.2546 to read as follows:

Sec. 201.2545. COMPLAINT INVESTIGATION BY PEER REVIEW COMMITTEE. (a) The board may refer to a local chiropractic peer review committee for investigation a complaint regarding whether chiropractic treatment or services provided by a chiropractor were provided according to the standard of care in the practice of chiropractic.

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

(c) The committee shall report to the board its findings regarding the complaint, including a statement of:

(1) the standard of care in the practice of chiropractic governing the chiropractic treatment or services provided by the chiropractor;

(2) whether the chiropractor met the standard of care in providing the treatment or services; and

(3) the clinical basis for the committee's finding

under Subdivision (2).

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

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

Sec. 201.2546. IMMUNITY; ELIGIBILITY TO PARTICIPATE IN COMMITTEE ACTIVITIES. (a) 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. The immunity granted by this subsection does not limit the operation of federal or state antitrust laws as applied to the conduct of a local or executive peer review committee that involves price fixing or any other unreasonable restraint of trade.

(b) A member of a peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by the member.

(c) 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. Section 201.255, Occupations Code, is amended to read as follows:

Sec. 201.255. REQUEST FOR INFORMATION; REPORT TO BOARD ON DISPUTES MEDIATED. (a) The board may request from a chiropractic

peer review committee information pertaining to actions taken by the peer review committee.

(b) The executive chiropractic peer review committee shall 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. The report must include:

(1) the number of disputes referred to the committees;

(2) a categorization of the disputes referred to the committees and the number of complaints in each category; and

(3) the number of disputes resolved and the manner in which they were resolved.

SECTION 19. Subchapter F, Chapter 201, Occupations Code, is amended by adding Section 201.256 to read as follows:

Sec. 201.256. PUBLIC ACCESS TO INFORMATION REGARDING PEER REVIEW COMMITTEES. The board shall maintain on the board's Internet website information regarding local chiropractic peer review committees, including:

(1) the services committees provide; and

(2) the types of disputes committees mediate.

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

(a) An applicant for a license by examination must present satisfactory evidence to the board that the applicant:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has completed 90 [~~60~~] semester hours of college

courses at a school other than a chiropractic school; and

(4) is either a graduate or a final semester student of a bona fide reputable chiropractic school.

(d) Notwithstanding Subsection (a)(3), 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 specified by that subsection to qualify for admission to a chiropractic school, the board may adopt the requirement of that organization if the board determines that requirement to be appropriate.

SECTION 21. Section 201.303(a), Occupations Code, is amended to read as follows:

(a) To comply with the requirements of Section 201.302 [~~201.302(a)(3)~~], the applicant must submit to the board a transcript of credits that certifies that the applicant has satisfactorily completed at least the number of [~~60 or more~~] semester hours of college credits required by that section at a college or university that issues credits accepted by The University of Texas at Austin for a bachelor of arts or bachelor of science degree.

SECTION 22. Section 201.305, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et

amended by adding Section 201.453 to read as follows:

Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND EXPERT REPORTS. (a) The Texas Department of Insurance shall provide to the board any information received by the department regarding a settlement of a malpractice claim against a chiropractor.

(b) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a chiropractor who practices in this state shall 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. Section 201.502(a), Occupations Code, is amended to read as follows:

(a) The board may refuse to admit a person to examinations and may revoke or suspend a license or place a license holder on probation for a period determined by the board for:

(1) violating this chapter or a rule adopted under this chapter, including committing an act prohibited under Section 201.5025;

(2) engaging in deception or fraud in the practice of chiropractic;

(3) 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;

(4) presenting to the board an untrue statement or a document or testimony that was illegally used to pass the

examination;

(5) being convicted of a crime involving moral turpitude or a felony;

(6) procuring or assisting in the procuring of an abortion;

(7) engaging in grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public;

(8) having a habit of intemperance or drug addiction or another habit that, in the opinion of the board, endangers the life of a patient;

(9) using an advertising statement that <u>is false or that</u> tends to mislead or deceive the public;

(10) directly or indirectly employing or associating with a person who, in the course of the person's employment, commits an act constituting the practice of chiropractic when the person is not licensed to practice chiropractic;

(11) advertising professional superiority, or advertising the performance of professional services in a superior manner<u>, if that advertising is not readily subject to verification</u>;

(12) purchasing, selling, bartering, using, or offering to purchase, sell, barter, or use a chiropractic degree, license, certificate, or diploma or transcript of a license, certificate, or diploma in or relating to an application to the board for a license to practice chiropractic;

(13) altering with fraudulent intent a chiropractic license, certificate, or diploma or transcript of a chiropractic

license, certificate, or diploma;

(14) impersonating or acting as proxy for another in an examination required by this chapter for a chiropractic license;

(15) impersonating a licensed chiropractor;

(16) allowing one's chiropractic license to be used by another person to practice chiropractic;

(17) being proved insane by a person having authority to make that determination;

(18) failing to use proper diligence in the practice of chiropractic or using gross inefficiency in the practice of chiropractic;

(19) failing to clearly differentiate a chiropractic office or clinic from another business or enterprise;

(20) personally soliciting a patient or causing a patient to be solicited by the use of a case history of another patient of another chiropractor;

(21) using for the purpose of soliciting patients an accident report prepared by a peace officer in a manner prohibited by Section 38.12, Penal Code; or

(22) advertising using the term "physician" or "chiropractic physician" or any combination or derivation of the term "physician."

SECTION 29. Subchapter K, Chapter 201, Occupations Code, is amended by adding Sections 201.5025 and 201.5026 to read as follows:

<u>Sec. 201.5025. PROHIBITED PRACTICES BY CHIROPRACTOR OR LICENSE APPLICANT. (a) A chiropractor or an applicant for a</u>

license to practice chiropractic commits a prohibited practice if that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) commits fraud or deception in taking or passing an examination;

(3) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 201.5026, or injure the public;

(4) engages in conduct that subverts or attempts to subvert an examination process required by this chapter for a chiropractic license;

(5) directly or indirectly employs a person whose license to practice chiropractic has been suspended, canceled, or revoked;

(6) associates in the practice of chiropractic with a person:

(A) whose license to practice chiropractic has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of chiropractic in this state or elsewhere; or

(7) directly or indirectly aids or abets the practice of chiropractic by a person that is not licensed to practice chiropractic by the board.

(b) For purposes of Subsection (a)(4), conduct that subverts or attempts to subvert the chiropractic licensing

examination process includes, as prescribed by board rule, conduct that violates:

(1) the security of the examination materials;

(2) the standard of test administration; or

(3) the accreditation process.

Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 201.5025(a)(3), unprofessional or dishonorable conduct that is likely to deceive or defraud the public includes conduct in which a chiropractor:

(1) commits an act that violates any state or federal law if the act is connected with the chiropractor's practice of chiropractic;

(2) prescribes or administers a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is prescribed or administered;

(3) violates Section 311.0025, Health and Safety Code;

(4) fails to supervise adequately the activities of those acting under the supervision of the chiropractor; or

(5) delegates professional chiropractic responsibility or acts to a person if the delegating chiropractor knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation is not necessary for the enforcement of Subsection (a)(1). 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. The heading to Section 201.504, Occupations Code, is amended to read as follows:

Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS.

SECTION 31. Section 201.504, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Subject to Subsection (d), the board may 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) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 32. Subchapter K, Chapter 201, Occupations Code, is amended by adding Section 201.5065 to read as follows:

Sec. 201.5065. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a chiropractor's license on proof that the chiropractor has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the chiropractor's license.

SECTION 33. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.6015 to read as follows:

Sec. 201.6015. CEASE AND DESIST ORDER. (a) 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, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

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

SECTION 34. Section 201.604, Occupations Code, is amended to read as follows:

Sec. 201.604. GENERAL CRIMINAL PENALTY. A [~~Except as provided by Section 201.605, a~~] person commits an offense if the person violates this chapter. An offense under this section is a

misdemeanor punishable by a fine of not less than $50 or more than $500 or by confinement in the county jail for not more than 30 days.

SECTION 35. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.606 to read as follows:

Sec. 201.606. CRIMINAL PENALTY: PROVIDING CHIROPRACTIC TREATMENT OR SERVICES WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this chapter, 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) An offense under this section is a state jail felony.

SECTION 36. Sections 201.053(c), 201.059, 201.162, and 201.254(c)-(e), Occupations Code, are repealed.

SECTION 37. The changes in law made by Section 201.053, 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 and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

SECTION 38. Not later than January 1, 2006, the Texas Board of Chiropractic Examiners shall 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. The changes in law made by this Act to Chapter 201, Occupations Code, relating to the investigation of a complaint apply only to a complaint filed with the Texas Board of Chiropractic Examiners on or after the effective date of this Act. A complaint filed with the board before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 40. (a) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the local chiropractic peer review committees under Section 201.251, Occupations Code, as amended by this Act. In appointing the initial members of each committee, the board shall appoint as near to one-third of the members as possible to terms expiring December 31, 2006, as near to one-third as possible to terms expiring December 31, 2007, and as near to one-third as possible to terms expiring December 31, 2008. 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) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the executive chiropractic peer review committee under Section 201.253, Occupations Code, as amended by this Act. In appointing the initial members of the committee, the board shall appoint two persons to terms expiring December 31, 2006, two to terms expiring December 31, 2007, and two to terms expiring December 31, 2008. 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. The changes in law made by this Act to Sections 201.302 and 201.303, Occupations Code, apply only to a person who enrolls in a chiropractic school on or after the effective date of this Act. A person who enrolled in a chiropractic school before that date is governed by the law in effect on the date of enrollment, and the former law is continued in effect for that purpose.

SECTION 43. The changes in law made by this Act to Sections 201.354 and 201.355, Occupations Code, apply only to the renewal of

a license to practice chiropractic that expires on or after the effective date of this Act. A license that expires before that date is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

SECTION 44. This Act takes effect September 1, 2005.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 9, 2005

TO: Honorable Dianne White Delisi, Chair, House Committee on Public Health

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB972 by Solomons (Relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB972, As Introduced: a negative impact of ($65,600) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	($32,800)
2007	($32,800)
2008	($32,800)
2009	($32,800)
2010	($32,800)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1
2006	($27,200)	($5,600)
2007	($27,200)	($5,600)
2008	($27,200)	($5,600)
2009	($27,200)	($5,600)
2010	($27,200)	($5,600)

Fiscal Analysis

The bill would continue the Board of Chiropractic Examiners for 12 years, and would would authorize the agency's peer review committees to assist the board in reviewing standard of care complaints. The bill would also change the basis for the agency's late-renewal penalties from an examination fee to the standard renewal fee. It would provide that a person whose license has been expired for 90 days or less may renew the license by paying the required renewal fee plus a fee equal to half the amount of the agency's renewal fee. A license that has been expired for more than 90 days could be renewed by paying the required renewal fee plus a fee equal to the agency's renewal fee. A license that has been expired for at least one year but less than three years could be renewed by paying two times the agency's renewal fee for each year the license was expired, one time the agency's renewal fee and one time the required renewal fee.

The bill would take effect September 1, 2005.

Methodology

Based on an average of 56 billing and standard of care complaints reviewed by the Board of Chiropractic Examiners' peer review committees annually, or the average number of complaints the agency received from fiscal year 2001 to 2003, it is assumed that the agency would require $5,600 annually to reimburse peer review committee members at a reimbursement rate of $100 per complaint.

Changing the amount of the late renewal fee for licenses expired for 90 days or less would result in a loss of $21,600 a year based on 216 late renewals for fiscal year 2004. The late renewal fee would decrease from $487.50 to $387.50, resulting in a loss of $100 per late renewal ($100*216=$21,600). Changing the amount of the late renewal fee for licenses expired for more than 90 days but less than one year would result in a loss of $5,600 a year based on 28 late renewals for fiscal year 2004. The late renewal fee would decrease from $650 to $450, resulting in a loss of $200 per late renewal ($200*28=$5,600). Changing the amount of the late renewal fee for licenses expired for at least one year but no more than three years is not anticipated to have a fiscal impact. Changing the basis for the renewal of expired licenses by out-of-state practitioners is not anticipated to have a fiscal impact.

The Texas Department of Insurance indicates it could absorb any additional costs associated with the bill within its existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 453 Workers' Compensation Commission, 454 Department of Insurance, 508 Board of Chiropractic Examiners

LBB Staff: JOB, CL, MW, RB

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

79TH LEGISLATIVE REGULAR SESSION

March 8, 2005

TO: Honorable Dianne White Delisi, Chair, House Committee on Public Health

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB972 by Solomons (Relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.), **As Introduced**

The provision of the bill that is the subject of this analysis would amend the Occupations Code by creating the offense of providing chiropractic treatment or services while intoxicated. The offense would be punishable as a state jail felony.

A state jail felony is punishable by confinement in a state jail for any term of not more than two years or less than 180 days, or, in addition to confinement, a fine not to exceed $10,000.

The impact of this provision of the bill would depend on the number of persons caught and convicted of the offense; however, in the case of this bill, the increased workload and demand for resources would probably not be substantial.

Source Agencies:
LBB Staff: JOB, GG

By: Solomons, et al. (Senate Sponsor - Nelson) H.B. No. 972

(In the Senate - Received from the House May 11, 2005; May 13, 2005, read first time and referred to Committee on Government Organization; May 18, 2005, reported adversely, with favorable Committee Substitute by the following vote: Yeas 7, Nays 0; May 18, 2005, sent to printer.)

COMMITTEE SUBSTITUTE FOR H.B. No. 972 By: Nelson

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.002(a), Occupations Code, is amended to read as follows:

(a) In this section:

(1) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(2) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(3) "Incisive[~~, "incisive~~] or surgical procedure" includes making an incision into any tissue, cavity, or organ by any person or implement. The term does not include the use of a needle for the purpose of drawing blood for diagnostic testing.

(4) "Surgical procedure" includes a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

SECTION 2. Section 201.004, Occupations Code, is amended to read as follows:

Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of Chiropractic Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017 [~~2005~~].

SECTION 3. Sections 201.053(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~,~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person [~~An officer, employee, or paid consultant of a Texas trade association in the field of health care~~] may not be a member [~~or employee~~] of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care [~~who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule~~].

(d) A person may not be [~~serve as~~] a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Sections 201.056(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office [~~appointment~~] the qualifications required by Sections 201.051 and 201.052(b);

(2) does not maintain during service on the board the qualifications required by Sections 201.051 and 201.052(b);

(3) is ineligible for membership under [~~violates a prohibition established by~~] Section 201.052 or 201.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved [~~unless the absence is excused~~] by a majority vote of the board.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Subchapter B, Chapter 201, Occupations Code, is amended by adding Section 201.061 to read as follows:

Sec. 201.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, 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. Section 201.101, Occupations Code, is amended to read as follows:

Sec. 201.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [~~define~~] the policymaking [~~respective~~] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 7. Section 201.152(b), Occupations Code, is amended to read as follows:

(b) The board shall adopt rules for the enforcement of this chapter. The board shall issue all rules [~~opinions~~] based on a vote of a majority of the board at a regular or special meeting. The issuance of a disciplinary action or disciplinary order of the board is not limited by this subsection.

SECTION 8. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.1525 and 201.1526 to read as follows:

Sec. 201.1525. RULES CLARIFYING SCOPE OF PRACTICE OF CHIROPRACTIC. The board shall adopt rules clarifying what activities are included within the scope of the practice of

chiropractic and what activities are outside of that scope. The rules:

(1) must clearly specify the procedures that chiropractors may perform;

(2) must clearly specify any equipment and the use of that equipment that is prohibited; and

(3) may 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) 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, Government Code. This section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons. Methods may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

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

SECTION 9. Subchapter D, Chapter 201, Occupations Code, is amended by adding Section 201.1555 to read as follows:

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

(b) The board shall adopt rules to prevent fraud in the practice of chiropractic, including rules relating to:

(1) the filing of workers' compensation and insurance claims; and

(2) records required to be maintained in connection with the practice of chiropractic.

SECTION 10. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.163 and 201.164 to read as follows:

Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must 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) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must 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) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those

procedures, as implemented by the board.

SECTION 11. Section 201.205(a), Occupations Code, is amended to read as follows:

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish between categories of complaints;

(2) 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;

(3) ensure that a complaint is not dismissed without appropriate consideration;

(4) [~~(3)~~] require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;

(5) [~~(4)~~] ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and

(6) [~~(5)~~] prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

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

Sec. 201.207. INSPECTIONS. (a) The board, during reasonable business hours, may:

(1) conduct an on-site inspection of a chiropractic facility to investigate a complaint filed with the board; and

(2) examine and copy records of the chiropractic facility pertinent to the inspection or investigation.

(b) 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) In this section, "department" means the Texas Department of Insurance.

(b) This section applies only to information held by or for the department or the board that relates to a person who is licensed or otherwise regulated by the department or the board.

(c) The department and the board, on request or on the department or board's own initiative, may share confidential information or information to which access is otherwise restricted by law. The department and the board shall cooperate with and assist each other when either agency is conducting an investigation by providing information that is relevant to the investigation. 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. The provision of information by the board to the department or by the department to the board under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(d) The department and the board shall develop and maintain a system for tracking investigations conducted by each agency with the cooperation and assistance of the other agency, including information on all disciplinary actions taken.

(e) The department and the board shall collaborate on taking appropriate disciplinary actions to the extent practicable.

Sec. 201.209. INFORMATION ON STATUS OF CERTAIN INVESTIGATIONS. The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all investigations conducted by the board with the cooperation and assistance of the Texas Department of Insurance and the Texas Workers' Compensation Commission during the preceding fiscal year.

SECTION 13. Section 201.251, Occupations Code, is amended to read as follows:

Sec. 201.251. APPOINTMENT OF PEER REVIEW COMMITTEES; TERMS. (a) The board shall appoint local chiropractic peer review committees. 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.

(b) The board may seek input [~~shall appoint the members of the peer review committee~~] from state [~~a list of nominees submitted by the local~~] chiropractic associations in selecting persons to appoint to a local [~~association to conduct~~] peer review committee [~~procedures~~].

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

(c) The board shall establish requirements for peer review training programs that do not discriminate against any chiropractor. A peer review training program must include training in the investigation of complaints in accordance with this chapter and board rules.

(d) The board by rule shall adopt additional requirements for eligibility to serve on a chiropractic peer review committee, including a requirement that a member have:

(1) a clean disciplinary record; and

(2) an acceptable record regarding utilization review performed in accordance with Article 21.58A, Insurance Code.

SECTION 15. Section 201.253(a), Occupations Code, is amended to read as follows:

(a) The board shall appoint an executive chiropractic peer review committee to direct the activities of the local committees. The executive peer review committee consists of six volunteer members. 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. The executive peer review committee shall elect a presiding officer from its members.

SECTION 16. The heading to Section 201.254, Occupations Code, is amended to read as follows:

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

SECTION 17. Subchapter F, Chapter 201, Occupations Code, is amended by adding Sections 201.2545 and 201.2546 to read as follows:

Sec. 201.2545. COMPLAINT INVESTIGATION BY PEER REVIEW COMMITTEE. (a) The board may refer to a local chiropractic peer review committee for investigation a complaint regarding whether chiropractic treatment or services provided by a chiropractor were provided according to the standard of care in the practice of chiropractic.

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

(c) The committee shall report to the board its findings regarding the complaint, including a statement of:

(1) the standard of care in the practice of chiropractic governing the chiropractic treatment or services provided by the chiropractor;

(2) whether the chiropractor met the standard of care in providing the treatment or services; and

(3) the clinical basis for the committee's finding under Subdivision (2).

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

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

Sec. 201.2546. IMMUNITY; ELIGIBILITY TO PARTICIPATE IN COMMITTEE ACTIVITIES. (a) 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. The immunity granted by this subsection does not limit the operation of federal or state antitrust laws as applied to the conduct of a local or executive peer review committee that involves price fixing or any other unreasonable restraint of trade.

(b) A member of a peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by the member.

(c) 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. Section 201.255, Occupations Code, is amended to read as follows:

Sec. 201.255. REQUEST FOR INFORMATION; REPORT TO BOARD ON DISPUTES MEDIATED. (a) The board may request from a chiropractic peer review committee information pertaining to actions taken by the peer review committee.

(b) The executive chiropractic peer review committee shall 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. The report must include:

(1) the number of disputes referred to the committees;

(2) a categorization of the disputes referred to the committees and the number of complaints in each category; and

(3) the number of disputes resolved and the manner in which they were resolved.

SECTION 19. Subchapter F, Chapter 201, Occupations Code, is amended by adding Section 201.256 to read as follows:

Sec. 201.256. PUBLIC ACCESS TO INFORMATION REGARDING PEER REVIEW COMMITTEES. The board shall maintain on the board's Internet website information regarding local chiropractic peer review committees, including:

(1) the services committees provide; and

(2) the types of disputes committees mediate.

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

(a) An applicant for a license by examination must present satisfactory evidence to the board that the applicant:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has completed 90 [~~60~~] semester hours of college courses at a school other than a chiropractic school; and

(4) is either a graduate or a final semester student of a bona fide reputable chiropractic school.

(d) Notwithstanding Subsection (a)(3), 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 specified by that subsection to qualify for admission to a chiropractic school, the board may adopt the requirement of that organization if the board determines that requirement to be appropriate.

SECTION 21. Section 201.303(a), Occupations Code, is amended to read as follows:

(a) To comply with the requirements of Section 201.302 [~~201.302(a)(3)~~], the applicant must submit to the board a transcript of credits that certifies that the applicant has satisfactorily completed at least the number of [~~60 or more~~] semester hours of college credits required by that section at a college or university that issues credits accepted by The University of Texas at Austin for a bachelor of arts or bachelor of science degree.

SECTION 22. Section 201.305, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the

Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

SECTION 23. Section 201.307(b), Occupations Code, is amended to read as follows:

(b) The board by rule shall establish the number of times [~~and the conditions under which~~] an applicant may retake the [~~an~~] examination required by Section 201.304(a)(1) or (b), as applicable. An applicant must pass the examination required by Section 201.304(a)(2) within three attempts. The board by rule shall establish the conditions under which an applicant may retake an examination. The board may require an applicant to fulfill additional educational requirements.

SECTION 24. Sections 201.354(d) and (g), Occupations Code, are amended to read as follows:

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of 1-1/2 times the annual [~~required~~] renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~and an additional fee equal to one-half of the examination fee for the license~~]. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to the sum of two times the annual renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~all unpaid renewal fees and an additional fee equal to the examination fee for the license~~].

(g) A person may renew a license that has been expired for at least one year but not more than three years if:

(1) the board determines according to criteria adopted by board rule that the person has shown good cause for the failure to renew the license; and

(2) the person pays to the board:

(A) the annual [~~required~~] renewal fee set by the board under Section 201.153(a) for each year in which the license was expired;

(B) [~~and~~] an additional fee in an amount equal to the sum of:

(i) [~~(A)~~] the annual renewal [~~examination~~] fee set by the board under Section 201.153(a) [~~for the license~~], multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) [~~(B)~~] two times the annual renewal [~~examination~~] fee set by the board under Section 201.153(a); and

(C) the increase in the annual renewal fee required by Section 201.153(b) [~~for the license~~].

SECTION 25. Section 201.355(b), Occupations Code, is amended to read as follows:

(b) The person must pay to the board a fee that is equal to the normally required renewal [~~amount of the examination~~] fee for the license.

SECTION 26. The heading to Subchapter J, Chapter 201, Occupations Code, is amended to read as follows:

SUBCHAPTER J. PRACTICE BY LICENSE HOLDER [~~REQUIREMENTS REGARDING USE OF CHIROPRACTIC ASSISTANTS AND TECHNOLOGY~~]

SECTION 27. Subchapter J, Chapter 201, Occupations Code, is amended by adding Section 201.453 to read as follows:

Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND EXPERT REPORTS. (a) The Texas Department of Insurance shall provide to the board any information received by the department regarding a settlement of a malpractice claim against a chiropractor.

(b) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a chiropractor who practices in this state shall 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. Section 201.502(a), Occupations Code, is amended to read as follows:

(a) The board may refuse to admit a person to examinations

and may revoke or suspend a license or place a license holder on probation for a period determined by the board for:

(1) violating this chapter or a rule adopted under this chapter, including committing an act prohibited under Section 201.5025;

(2) engaging in deception or fraud in the practice of chiropractic;

(3) 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;

(4) presenting to the board an untrue statement or a document or testimony that was illegally used to pass the examination;

(5) being convicted of a crime involving moral turpitude or a felony;

(6) procuring or assisting in the procuring of an abortion;

(7) engaging in grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public;

(8) having a habit of intemperance or drug addiction or another habit that, in the opinion of the board, endangers the life of a patient;

(9) using an advertising statement that is false or that tends to mislead or deceive the public;

(10) directly or indirectly employing or associating with a person who, in the course of the person's employment, commits an act constituting the practice of chiropractic when the person is not licensed to practice chiropractic;

(11) advertising professional superiority, or advertising the performance of professional services in a superior manner, if that advertising is not readily subject to verification;

(12) purchasing, selling, bartering, using, or offering to purchase, sell, barter, or use a chiropractic degree, license, certificate, or diploma or transcript of a license, certificate, or diploma in or relating to an application to the board for a license to practice chiropractic;

(13) altering with fraudulent intent a chiropractic license, certificate, or diploma or transcript of a chiropractic license, certificate, or diploma;

(14) impersonating or acting as proxy for another in an examination required by this chapter for a chiropractic license;

(15) impersonating a licensed chiropractor;

(16) allowing one's chiropractic license to be used by another person to practice chiropractic;

(17) being proved insane by a person having authority to make that determination;

(18) failing to use proper diligence in the practice of chiropractic or using gross inefficiency in the practice of chiropractic;

(19) failing to clearly differentiate a chiropractic office or clinic from another business or enterprise;

(20) personally soliciting a patient or causing a patient to be solicited by the use of a case history of another patient of another chiropractor;

(21) using for the purpose of soliciting patients an accident report prepared by a peace officer in a manner prohibited by Section 38.12, Penal Code; or

(22) advertising using the term "physician" or "chiropractic physician" or any combination or derivation of the term "physician."

SECTION 29. Subchapter K, Chapter 201, Occupations Code, is amended by adding Sections 201.5025 and 201.5026 to read as follows:

Sec. 201.5025. PROHIBITED PRACTICES BY CHIROPRACTOR OR LICENSE APPLICANT. (a) A chiropractor or an applicant for a license to practice chiropractic commits a prohibited practice if that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) commits fraud or deception in taking or passing an examination;

(3) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 201.5026, or injure the public;

(4) engages in conduct that subverts or attempts to subvert an examination process required by this chapter for a chiropractic license;

(5) directly or indirectly employs a person whose license to practice chiropractic has been suspended, canceled, or revoked;

(6) associates in the practice of chiropractic with a person:

(A) whose license to practice chiropractic has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of chiropractic in this state or elsewhere; or

(7) directly or indirectly aids or abets the practice of chiropractic by a person that is not licensed to practice chiropractic by the board.

(b) For purposes of Subsection (a)(4), conduct that subverts or attempts to subvert the chiropractic licensing examination process includes, as prescribed by board rule, conduct that violates:

(1) the security of the examination materials;

(2) the standard of test administration; or

(3) the accreditation process.

Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 201.5025(a)(3), unprofessional or dishonorable conduct that is likely to deceive or defraud the public includes conduct in which a chiropractor:

(1) commits an act that violates any state or federal law if the act is connected with the chiropractor's practice of chiropractic;

(2) prescribes or administers a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is prescribed or administered;

(3) violates Section 311.0025, Health and Safety Code;

(4) fails to supervise adequately the activities of those acting under the supervision of the chiropractor; or

(5) delegates professional chiropractic responsibility or acts to a person if the delegating chiropractor knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation is not necessary for the enforcement of Subsection (a)(1). 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. The heading to Section 201.504, Occupations Code, is amended to read as follows:

Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS.

SECTION 31. Section 201.504, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Subject to Subsection (d), the board may 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) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 32. Subchapter K, Chapter 201, Occupations Code, is amended by adding Section 201.5065 to read as follows:

Sec. 201.5065. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a chiropractor's license on proof that the chiropractor has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the chiropractor's license.

SECTION 33. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.6015 to read as follows:

Sec. 201.6015. CEASE AND DESIST ORDER. (a) 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, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

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

SECTION 34. Section 201.604, Occupations Code, is amended to read as follows:

Sec. 201.604. GENERAL CRIMINAL PENALTY. A [~~Except as provided by Section 201.605, a~~] person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $500 or by confinement in the county jail for not more than 30 days.

SECTION 35. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.606 to read as follows:

Sec. 201.606. CRIMINAL PENALTY: PROVIDING CHIROPRACTIC TREATMENT OR SERVICES WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this chapter, 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) An offense under this section is a state jail felony.

SECTION 36. Sections 201.053(c), 201.059, 201.162, and 201.254(c)-(e), Occupations Code, are repealed.

SECTION 37. The changes in law made by Section 201.053, 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 and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

SECTION 38. Not later than January 1, 2006, the Texas Board of Chiropractic Examiners shall 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. The changes in law made by this Act to Chapter 201, Occupations Code, relating to the investigation of a complaint

apply only to a complaint filed with the Texas Board of Chiropractic Examiners on or after the effective date of this Act. A complaint filed with the board before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 40. (a) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the local chiropractic peer review committees under Section 201.251, Occupations Code, as amended by this Act. In appointing the initial members of each committee, the board shall appoint as near to one-third of the members as possible to terms expiring December 31, 2006, as near to one-third as possible to terms expiring December 31, 2007, and as near to one-third as possible to terms expiring December 31, 2008. 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) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the executive chiropractic peer review committee under Section 201.253, Occupations Code, as amended by this Act. In appointing the initial members of the committee, the board shall appoint two persons to terms expiring December 31, 2006, two to terms expiring December 31, 2007, and two to terms expiring December 31, 2008. 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. The changes in law made by this Act to Sections 201.302 and 201.303, Occupations Code, apply only to a person who enrolls in a chiropractic school on or after the effective date of this Act. A person who enrolled in a chiropractic school before that date is governed by the law in effect on the date of enrollment, and the former law is continued in effect for that purpose.

SECTION 43. The changes in law made by this Act to Sections 201.354 and 201.355, Occupations Code, apply only to the renewal of a license to practice chiropractic that expires on or after the effective date of this Act. A license that expires before that date is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

SECTION 44. This Act takes effect September 1, 2005.

* * * * *

FAVORABLY AS SUBSTITUTED
SENATE COMMITTEE REPORT ON

SB SCR SJR SR (HB) HCR HJR 972

By Solomons / Nelson
(Author/Senate Sponsor)

5-18-05
(date)

We, your Committee on GOVERNMENT ORGANIZATION, to which was referred the attached measure, have on 5/16/05 (date of hearing), had the same under consideration and I am instructed to report it back with the recommendation (s) that it:

(✓) do pass as substituted, and be printed
(✓) the caption remained the same as original measure
( ) the caption changed with adoption of the substitute

( ) do pass as substituted, and be ordered not printed

(✓) and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. (✓) yes ( ) no

A revised fiscal note was requested. (✓) yes ( ) no

An actuarial analysis was requested. ( ) yes (✓) no

Considered by subcommittee. ( ) yes (✓) no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Ellis, Chair	✓			
Senator Eltife, Vice-Chair	✓			
Senator Gallegos	✓			
Senator Harris	✓			
Senator Jackson	✓			
Senator Nelson	✓			
Senator Whitmire	✓			
TOTAL VOTES	7	0	0	0

COMMITTEE ACTION

(S260) Considered in public hearing
(S270) Testimony taken

Vanessa McMahan
COMMITTEE CLERK

Rodney Ellis
CHAIR

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute
Retain one copy of this form for Committee files

WITNESS LIST

HB 972

SENATE COMMITTEE REPORT

Government Organization

May 16, 2005 - 9:00AM

FOR: Klein, Dr. Franz President (Texas Chiropractic Association), Austin, TX

Registering, but not testifying:

On: Leroux, Emilie Policy Analyst (Sunset Commission), Austin, TX

Smith, Sandra Executive Director (Texas Board of Chiropractic Examiners), Austin, TX

BILL ANALYSIS

Senate Research Center

H.B. 972
By: Solomons et al. (Nelson)
Government Organization
5/14/2005
Engrossed

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.

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 as ineffective or unsafe for the treatment of patients. 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.

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.

(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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 17, 2005

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB972** by Solomons (Relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB972, Committee Report 2nd House, Substituted: a negative impact of ($65,600) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	($32,800)
2007	($32,800)
2008	($32,800)
2009	($32,800)
2010	($32,800)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1
2006	($27,200)	($5,600)
2007	($27,200)	($5,600)
2008	($27,200)	($5,600)
2009	($27,200)	($5,600)
2010	($27,200)	($5,600)

Fiscal Analysis

The bill would continue the Board of Chiropractic Examiners for 12 years, and would would authorize the agency's peer review committees to assist the board in reviewing standard of care complaints. The bill would also change the basis for the agency's late-renewal penalties from an examination fee to the standard renewal fee. It would provide that a person whose license has been expired for 90 days or less may renew the license by paying the required renewal fee plus a fee equal to half the amount of the agency's renewal fee. A license that has been expired for more than 90 days could be renewed by paying the required renewal fee plus a fee equal to the agency's renewal fee. A license that has been expired for at least one year but less than three years could be renewed by paying two times the agency's renewal fee for each year the license was expired, one time the agency's renewal fee and one time the required renewal fee.

The bill would take effect September 1, 2005.

Methodology

Based on an average of 56 billing and standard of care complaints reviewed by the Board of Chiropractic Examiners' peer review committees annually, or the average number of complaints the agency received from fiscal year 2001 to 2003, it is assumed that the agency would require $5,600 annually to reimburse peer review committee members at a reimbursement rate of $100 per complaint.

Changing the amount of the late renewal fee for licenses expired for 90 days or less would result in a loss of $21,600 a year based on 216 late renewals for fiscal year 2004. The late renewal fee would decrease from $487.50 to $387.50, resulting in a loss of $100 per late renewal ($100*216=$21,600). Changing the amount of the late renewal fee for licenses expired for more than 90 days but less than one year would result in a loss of $5,600 a year based on 28 late renewals for fiscal year 2004. The late renewal fee would decrease from $650 to $450, resulting in a loss of $200 per late renewal ($200*28=$5,600). Changing the amount of the late renewal fee for licenses expired for at least one year but no more than three years is not anticipated to have a fiscal impact. Changing the basis for the renewal of expired licenses by out-of-state practitioners is not anticipated to have a fiscal impact.

The Texas Department of Insurance indicates it could absorb any additional costs associated with the bill within its existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 453 Workers' Compensation Commission, 454 Department of Insurance, 508 Board of Chiropractic Examiners

LBB Staff: JOB, LB, CL, MW, RB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 16, 2005

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB972** by Solomons (Relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB972, As Engrossed: a negative impact of ($65,600) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	($32,800)
2007	($32,800)
2008	($32,800)
2009	($32,800)
2010	($32,800)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1
2006	($27,200)	($5,600)
2007	($27,200)	($5,600)
2008	($27,200)	($5,600)
2009	($27,200)	($5,600)
2010	($27,200)	($5,600)

Fiscal Analysis

The bill would continue the Board of Chiropractic Examiners for 12 years, and would would authorize the agency's peer review committees to assist the board in reviewing standard of care complaints. The bill would also change the basis for the agency's late-renewal penalties from an examination fee to the standard renewal fee. It would provide that a person whose license has been expired for 90 days or less may renew the license by paying the required renewal fee plus a fee equal to half the amount of the agency's renewal fee. A license that has been expired for more than 90 days could be renewed by paying the required renewal fee plus a fee equal to the agency's renewal fee. A license that has been expired for at least one year but less than three years could be renewed by paying two times the agency's renewal fee for each year the license was expired, one time the agency's renewal fee and one time the required renewal fee.

The bill would take effect September 1, 2005.

Methodology

Based on an average of 56 billing and standard of care complaints reviewed by the Board of Chiropractic Examiners' peer review committees annually, or the average number of complaints the agency received from fiscal year 2001 to 2003, it is assumed that the agency would require $5,600 annually to reimburse peer review committee members at a reimbursement rate of $100 per complaint.

Changing the amount of the late renewal fee for licenses expired for 90 days or less would result in a loss of $21,600 a year based on 216 late renewals for fiscal year 2004. The late renewal fee would decrease from $487.50 to $387.50, resulting in a loss of $100 per late renewal ($100*216=$21,600). Changing the amount of the late renewal fee for licenses expired for more than 90 days but less than one year would result in a loss of $5,600 a year based on 28 late renewals for fiscal year 2004. The late renewal fee would decrease from $650 to $450, resulting in a loss of $200 per late renewal ($200*28=$5,600). Changing the amount of the late renewal fee for licenses expired for at least one year but no more than three years is not anticipated to have a fiscal impact. Changing the basis for the renewal of expired licenses by out-of-state practitioners is not anticipated to have a fiscal impact.

The Texas Department of Insurance indicates it could absorb any additional costs associated with the bill within its existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 453 Workers' Compensation Commission, 454 Department of Insurance, 508 Board of Chiropractic Examiners

LBB Staff: JOB, LB, CL, MW, RB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 9, 2005

TO: Honorable Dianne White Delisi, Chair, House Committee on Public Health

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB972** by Solomons (Relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB972, As Introduced: a negative impact of ($65,600) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	($32,800)
2007	($32,800)
2008	($32,800)
2009	($32,800)
2010	($32,800)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1
2006	($27,200)	($5,600)
2007	($27,200)	($5,600)
2008	($27,200)	($5,600)
2009	($27,200)	($5,600)
2010	($27,200)	($5,600)

Fiscal Analysis

The bill would continue the Board of Chiropractic Examiners for 12 years, and would would authorize the agency's peer review committees to assist the board in reviewing standard of care complaints. The bill would also change the basis for the agency's late-renewal penalties from an examination fee to the standard renewal fee. It would provide that a person whose license has been expired for 90 days or less may renew the license by paying the required renewal fee plus a fee equal to half the amount of the agency's renewal fee. A license that has been expired for more than 90 days could be renewed by paying the required renewal fee plus a fee equal to the agency's renewal fee. A license that has been expired for at least one year but less than three years could be renewed by paying two times the agency's renewal fee for each year the license was expired, one time the agency's renewal fee and one time the required renewal fee.

The bill would take effect September 1, 2005.

Methodology

Based on an average of 56 billing and standard of care complaints reviewed by the Board of Chiropractic Examiners' peer review committees annually, or the average number of complaints the agency received from fiscal year 2001 to 2003, it is assumed that the agency would require $5,600 annually to reimburse peer review committee members at a reimbursement rate of $100 per complaint.

Changing the amount of the late renewal fee for licenses expired for 90 days or less would result in a loss of $21,600 a year based on 216 late renewals for fiscal year 2004. The late renewal fee would decrease from $487.50 to $387.50, resulting in a loss of $100 per late renewal ($100*216=$21,600). Changing the amount of the late renewal fee for licenses expired for more than 90 days but less than one year would result in a loss of $5,600 a year based on 28 late renewals for fiscal year 2004. The late renewal fee would decrease from $650 to $450, resulting in a loss of $200 per late renewal ($200*28=$5,600). Changing the amount of the late renewal fee for licenses expired for at least one year but no more than three years is not anticipated to have a fiscal impact. Changing the basis for the renewal of expired licenses by out-of-state practitioners is not anticipated to have a fiscal impact.

The Texas Department of Insurance indicates it could absorb any additional costs associated with the bill within its existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 453 Workers' Compensation Commission, 454 Department of Insurance, 508 Board of Chiropractic Examiners

LBB Staff: JOB, CL, MW, RB

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

79TH LEGISLATIVE REGULAR SESSION

March 8, 2005

TO: Honorable Dianne White Delisi, Chair, House Committee on Public Health

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB972** by Solomons (Relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.), **As Introduced**

The provision of the bill that is the subject of this analysis would amend the Occupations Code by creating the offense of providing chiropractic treatment or services while intoxicated. The offense would be punishable as a state jail felony.

A state jail felony is punishable by confinement in a state jail for any term of not more than two years or less than 180 days, or, in addition to confinement, a fine not to exceed $10,000.

The impact of this provision of the bill would depend on the number of persons caught and convicted of the offense; however, in the case of this bill, the increased workload and demand for resources would probably not be substantial.

Source Agencies:

LBB Staff: JOB, GG

REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that HB 972 (Bill No.), by Solomons / Nelson (Author/Sponsor),

was heard by the Committee on Gov. Org. on 5/16, 2005,

and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

Vanessa McMahan
(Clerk of the reporting committee)

IMPORTANT: A COPY OF THIS FORM MUST BE ATTACHED TO A **COMMITTEE PRINTED VERSION** OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.

Paper clip the original to the bill; retain pink copy for committee files; deliver yellow copy to bill author/sponsor.

ADOPTED

MAY 25 2005

Secretary of the Senate

By: Nelson H.B. No. 972

Substitute the following for H.B. No. 972:

By: Nelson C.S. H.B. No. 972

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.002(a), Occupations Code, is amended to read as follows:

(a) In this section:

(1) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(2) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(3) "Incisive[~~, "incisive~~] or surgical procedure" includes making an incision into any tissue, cavity, or organ by any person or implement. The term does not include the use of a needle for the purpose of drawing blood for diagnostic testing.

(4) "Surgical procedure" includes a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

SECTION 2. Section 201.004, Occupations Code, is amended to read as follows:

Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of Chiropractic Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by

that chapter, the board is abolished and this chapter expires September 1, 2017 [~~2005~~].

SECTION 3. Sections 201.053(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~,~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person [~~An officer, employee, or paid consultant of a Texas trade association in the field of health care~~] may not be a member [~~or employee~~] of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care [~~who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule~~].

(d) A person may not be [~~serve as~~] a member of the board or

act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Sections 201.056(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office [~~appointment~~] the qualifications required by Sections 201.051 and 201.052(b);

(2) does not maintain during service on the board the qualifications required by Sections 201.051 and 201.052(b);

(3) is ineligible for membership under [~~violates a prohibition established by~~] Section 201.052 or 201.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved [~~unless the absence is excused~~] by a majority vote of the board.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the

next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Subchapter B, Chapter 201, Occupations Code, is amended by adding Section 201.061 to read as follows:

Sec. 201.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, 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. Section 201.101, Occupations Code, is amended to

read as follows:

Sec. 201.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [~~define~~] the policymaking [~~respective~~] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 7. Section 201.152(b), Occupations Code, is amended to read as follows:

(b) The board shall adopt rules for the enforcement of this chapter. The board shall issue all rules [~~opinions~~] based on a vote of a majority of the board at a regular or special meeting. The issuance of a disciplinary action or disciplinary order of the board is not limited by this subsection.

SECTION 8. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.1525 and 201.1526 to read as follows:

Sec. 201.1525. RULES CLARIFYING SCOPE OF PRACTICE OF CHIROPRACTIC. The board shall adopt rules clarifying what activities are included within the scope of the practice of chiropractic and what activities are outside of that scope. The rules:

(1) must clearly specify the procedures that chiropractors may perform;

(2) must clearly specify any equipment and the use of that equipment that is prohibited; and

(3) may 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) 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, Government Code. This section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons. Methods may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

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

SECTION 9. Subchapter D, Chapter 201, Occupations Code, is amended by adding Section 201.1555 to read as follows:

Sec. 201.1555. FRAUD. (a) The board shall strictly and vigorously enforce the provisions of this chapter prohibiting

fraud.

(b) The board shall adopt rules to prevent fraud in the practice of chiropractic, including rules relating to:

(1) the filing of workers' compensation and insurance claims; and

(2) records required to be maintained in connection with the practice of chiropractic.

SECTION 10. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.163 and 201.164 to read as follows:

Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must 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) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must 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) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 11. Section 201.205(a), Occupations Code, is amended to read as follows:

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish between categories of complaints;

(2) 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;

(3) ensure that a complaint is not dismissed without appropriate consideration;

(4) [~~(3)~~] require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;

(5) [~~(4)~~] ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and

(6) [~~(5)~~] prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

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

Sec. 201.207. INSPECTIONS. (a) The board, during reasonable business hours, may:

(1) conduct an on-site inspection of a chiropractic facility to investigate a complaint filed with the board; and

(2) examine and copy records of the chiropractic facility pertinent to the inspection or investigation.

(b) 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) In this section, "department" means the Texas Department of Insurance.

(b) This section applies only to information held by or for the department or the board that relates to a person who is licensed or otherwise regulated by the department or the board.

(c) The department and the board, on request or on the department or board's own initiative, may share confidential information or information to which access is otherwise restricted by law. The department and the board shall cooperate with and assist each other when either agency is conducting an investigation by providing information that is relevant to the investigation.

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. The provision of information by the board to the department or by the department to the board under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(d) The department and the board shall develop and maintain a system for tracking investigations conducted by each agency with the cooperation and assistance of the other agency, including information on all disciplinary actions taken.

(e) The department and the board shall collaborate on taking appropriate disciplinary actions to the extent practicable.

Sec. 201.209. INFORMATION ON STATUS OF CERTAIN INVESTIGATIONS. The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all investigations conducted by the board with the cooperation and assistance of the Texas Department of Insurance and the Texas Workers' Compensation Commission during the preceding fiscal year.

SECTION 13. Section 201.251, Occupations Code, is amended to read as follows:

Sec. 201.251. APPOINTMENT OF PEER REVIEW COMMITTEES; TERMS. (a) The board shall appoint local chiropractic peer review committees. 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.

(b) The board may seek input [~~shall appoint the members of the peer review committee~~] from state [~~a list of nominees submitted by the local~~] chiropractic associations in selecting persons to appoint to a local [~~association to conduct~~] peer review committee [~~procedures~~].

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

(c) The board shall establish requirements for peer review training programs that do not discriminate against any chiropractor. A peer review training program must include training in the investigation of complaints in accordance with this chapter and board rules.

(d) The board by rule shall adopt additional requirements for eligibility to serve on a chiropractic peer review committee, including a requirement that a member have:

(1) a clean disciplinary record; and

(2) an acceptable record regarding utilization review performed in accordance with Article 21.58A, Insurance Code.

SECTION 15. Section 201.253(a), Occupations Code, is amended to read as follows:

(a) The board shall appoint an executive chiropractic peer review committee to direct the activities of the local committees. The executive peer review committee consists of six volunteer members. 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. The executive peer review

committee shall elect a presiding officer from its members.

SECTION 16. The heading to Section 201.254, Occupations Code, is amended to read as follows:

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

SECTION 17. Subchapter F, Chapter 201, Occupations Code, is amended by adding Sections 201.2545 and 201.2546 to read as follows:

Sec. 201.2545. COMPLAINT INVESTIGATION BY PEER REVIEW COMMITTEE. (a) The board may refer to a local chiropractic peer review committee for investigation a complaint regarding whether chiropractic treatment or services provided by a chiropractor were provided according to the standard of care in the practice of chiropractic.

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

(c) The committee shall report to the board its findings regarding the complaint, including a statement of:

(1) the standard of care in the practice of chiropractic governing the chiropractic treatment or services provided by the chiropractor;

(2) whether the chiropractor met the standard of care in providing the treatment or services; and

(3) the clinical basis for the committee's finding under Subdivision (2).

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

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

Sec. 201.2546. IMMUNITY; ELIGIBILITY TO PARTICIPATE IN COMMITTEE ACTIVITIES. (a) 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. The immunity granted by this subsection does not limit the operation of federal or state antitrust laws as applied to the conduct of a local or executive peer review committee that involves price fixing or any other unreasonable restraint of trade.

(b) A member of a peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by the member.

(c) 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. Section 201.255, Occupations Code, is amended to read as follows:

Sec. 201.255. REQUEST FOR INFORMATION; REPORT TO BOARD ON DISPUTES MEDIATED. (a) The board may request from a chiropractic peer review committee information pertaining to actions taken by

the peer review committee.

(b) The executive chiropractic peer review committee shall 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. The report must include:

(1) the number of disputes referred to the committees;

(2) a categorization of the disputes referred to the committees and the number of complaints in each category; and

(3) the number of disputes resolved and the manner in which they were resolved.

SECTION 19. Subchapter F, Chapter 201, Occupations Code, is amended by adding Section 201.256 to read as follows:

Sec. 201.256. PUBLIC ACCESS TO INFORMATION REGARDING PEER REVIEW COMMITTEES. The board shall maintain on the board's Internet website information regarding local chiropractic peer review committees, including:

(1) the services committees provide; and

(2) the types of disputes committees mediate.

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

(a) An applicant for a license by examination must present satisfactory evidence to the board that the applicant:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has completed 90 [~~60~~] semester hours of college courses at a school other than a chiropractic school; and

(4) is either a graduate or a final semester student of a bona fide reputable chiropractic school.

(d) Notwithstanding Subsection (a)(3), 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 specified by that subsection to qualify for admission to a chiropractic school, the board may adopt the requirement of that organization if the board determines that requirement to be appropriate.

SECTION 21. Section 201.303(a), Occupations Code, is amended to read as follows:

(a) To comply with the requirements of Section 201.302 [~~201.302(a)(3)~~], the applicant must submit to the board a transcript of credits that certifies that the applicant has satisfactorily completed at least the number of [~~60 or more~~] semester hours of college credits required by that section at a college or university that issues credits accepted by The University of Texas at Austin for a bachelor of arts or bachelor of science degree.

SECTION 22. Section 201.305, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

SECTION 23. Section 201.307(b), Occupations Code, is amended to read as follows:

(b) The board by rule shall establish the number of times [~~and the conditions under which~~] an applicant may retake the [~~an~~] examination required by Section 201.304(a)(1) or (b), as applicable. An applicant must pass the examination required by Section 201.304(a)(2) within three attempts. The board by rule shall establish the conditions under which an applicant may retake an examination. The board may require an applicant to fulfill additional educational requirements.

SECTION 24. Sections 201.354(d) and (g), Occupations Code, are amended to read as follows:

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of 1-1/2 times the annual [~~required~~] renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~and an additional fee equal to one-half of the examination fee for the license~~]. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to the sum of two times the annual renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~all unpaid renewal fees and an additional fee equal to the examination fee for the license~~].

(g) A person may renew a license that has been expired for at least one year but not more than three years if:

(1) the board determines according to criteria adopted

by board rule that the person has shown good cause for the failure to renew the license; and

(2) the person pays to the board:

(A) the annual [~~required~~] renewal fee set by the board under Section 201.153(a) for each year in which the license was expired;

(B) [~~and~~] an additional fee in an amount equal to the sum of:

(i) [~~(A)~~] the annual renewal [~~examination~~] fee set by the board under Section 201.153(a) [~~for the license~~], multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) [~~(B)~~] two times the annual renewal [~~examination~~] fee set by the board under Section 201.153(a); and

(C) the increase in the annual renewal fee required by Section 201.153(b) [~~for the license~~].

SECTION 25. Section 201.355(b), Occupations Code, is amended to read as follows:

(b) The person must pay to the board a fee that is equal to the normally required renewal [~~amount of the examination~~] fee for the license.

SECTION 26. The heading to Subchapter J, Chapter 201, Occupations Code, is amended to read as follows:

SUBCHAPTER J. PRACTICE BY LICENSE HOLDER [~~REQUIREMENTS REGARDING USE OF CHIROPRACTIC ASSISTANTS AND TECHNOLOGY~~]

SECTION 27. Subchapter J, Chapter 201, Occupations Code, is amended by adding Section 201.453 to read as follows:

Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND EXPERT REPORTS. (a) The Texas Department of Insurance shall provide to the board any information received by the department regarding a settlement of a malpractice claim against a chiropractor.

(b) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a chiropractor who practices in this state shall 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. Section 201.502(a), Occupations Code, is amended to read as follows:

(a) The board may refuse to admit a person to examinations and may revoke or suspend a license or place a license holder on probation for a period determined by the board for:

(1) violating this chapter or a rule adopted under this chapter, including committing an act prohibited under Section 201.5025;

(2) engaging in deception or fraud in the practice of chiropractic;

(3) 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;

(4) presenting to the board an untrue statement or a document or testimony that was illegally used to pass the examination;

(5) being convicted of a crime involving moral turpitude or a felony;

(6) procuring or assisting in the procuring of an abortion;

(7) engaging in grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public;

(8) having a habit of intemperance or drug addiction or another habit that, in the opinion of the board, endangers the life of a patient;

(9) using an advertising statement that <u>is false or that</u> tends to mislead or deceive the public;

(10) directly or indirectly employing or associating with a person who, in the course of the person's employment, commits an act constituting the practice of chiropractic when the person is not licensed to practice chiropractic;

(11) advertising professional superiority, or advertising the performance of professional services in a superior manner<u>, if that advertising is not readily subject to verification</u>;

(12) purchasing, selling, bartering, using, or offering to purchase, sell, barter, or use a chiropractic degree, license, certificate, or diploma or transcript of a license, certificate, or diploma in or relating to an application to the board for a license to practice chiropractic;

(13) altering with fraudulent intent a chiropractic license, certificate, or diploma or transcript of a chiropractic license, certificate, or diploma;

(14) impersonating or acting as proxy for another in an examination required by this chapter for a chiropractic license;

(15) impersonating a licensed chiropractor;

(16) allowing one's chiropractic license to be used by another person to practice chiropractic;

(17) being proved insane by a person having authority to make that determination;

(18) failing to use proper diligence in the practice of chiropractic or using gross inefficiency in the practice of chiropractic;

(19) failing to clearly differentiate a chiropractic office or clinic from another business or enterprise;

(20) personally soliciting a patient or causing a patient to be solicited by the use of a case history of another patient of another chiropractor;

(21) using for the purpose of soliciting patients an accident report prepared by a peace officer in a manner prohibited by Section 38.12, Penal Code; or

(22) advertising using the term "physician" or "chiropractic physician" or any combination or derivation of the term "physician."

SECTION 29. Subchapter K, Chapter 201, Occupations Code, is amended by adding Sections 201.5025 and 201.5026 to read as follows:

<u>Sec. 201.5025. PROHIBITED PRACTICES BY CHIROPRACTOR OR LICENSE APPLICANT. (a) A chiropractor or an applicant for a license to practice chiropractic commits a prohibited practice if</u>

that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) commits fraud or deception in taking or passing an examination;

(3) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 201.5026, or injure the public;

(4) engages in conduct that subverts or attempts to subvert an examination process required by this chapter for a chiropractic license;

(5) directly or indirectly employs a person whose license to practice chiropractic has been suspended, canceled, or revoked;

(6) associates in the practice of chiropractic with a person:

(A) whose license to practice chiropractic has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of chiropractic in this state or elsewhere; or

(7) directly or indirectly aids or abets the practice of chiropractic by a person that is not licensed to practice chiropractic by the board.

(b) For purposes of Subsection (a)(4), conduct that subverts or attempts to subvert the chiropractic licensing examination process includes, as prescribed by board rule, conduct

that violates:

(1) the security of the examination materials;

(2) the standard of test administration; or

(3) the accreditation process.

Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 201.5025(a)(3), unprofessional or dishonorable conduct that is likely to deceive or defraud the public includes conduct in which a chiropractor:

(1) commits an act that violates any state or federal law if the act is connected with the chiropractor's practice of chiropractic;

(2) prescribes or administers a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is prescribed or administered;

(3) violates Section 311.0025, Health and Safety Code;

(4) fails to supervise adequately the activities of those acting under the supervision of the chiropractor; or

(5) delegates professional chiropractic responsibility or acts to a person if the delegating chiropractor knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation is not necessary for the enforcement of Subsection (a)(1). 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. The heading to Section 201.504, Occupations Code, is amended to read as follows:

Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS.

SECTION 31. Section 201.504, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Subject to Subsection (d), the board may 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) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 32. Subchapter K, Chapter 201, Occupations Code, is amended by adding Section 201.5065 to read as follows:

Sec. 201.5065. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a chiropractor's license on proof that the chiropractor has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal

Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the chiropractor's license.

SECTION 33. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.6015 to read as follows:

Sec. 201.6015. CEASE AND DESIST ORDER. (a) 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, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

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

SECTION 34. Section 201.604, Occupations Code, is amended to read as follows:

Sec. 201.604. GENERAL CRIMINAL PENALTY. A [~~Except as provided by Section 201.605, a~~] person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than

$500 or by confinement in the county jail for not more than 30 days.

SECTION 35. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.606 to read as follows:

Sec. 201.606. CRIMINAL PENALTY: PROVIDING CHIROPRACTIC TREATMENT OR SERVICES WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this chapter, 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) An offense under this section is a state jail felony.

SECTION 36. Sections 201.053(c), 201.059, 201.162, and 201.254(c)-(e), Occupations Code, are repealed.

SECTION 37. The changes in law made by Section 201.053, 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 and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

SECTION 38. Not later than January 1, 2006, the Texas Board of Chiropractic Examiners shall 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. The changes in law made by this Act to Chapter 201, Occupations Code, relating to the investigation of a complaint apply only to a complaint filed with the Texas Board of Chiropractic Examiners on or after the effective date of this Act. A complaint filed with the board before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 40. (a) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the local chiropractic peer review committees under Section 201.251, Occupations Code, as amended by this Act. In appointing the initial members of each committee, the board shall appoint as near to one-third of the members as possible to terms expiring December 31, 2006, as near to one-third as possible to terms expiring December 31, 2007, and as near to one-third as possible to terms expiring December 31, 2008. 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.

1 effective date of this Act. A license that expires before that date
2 is governed by the law in effect on the date the license expires,
3 and the former law is continued in effect for that purpose.
4 SECTION 44. This Act takes effect September 1, 2005.

SECTION 41. (a) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the executive chiropractic peer review committee under Section 201.253, Occupations Code, as amended by this Act. In appointing the initial members of the committee, the board shall appoint two persons to terms expiring December 31, 2006, two to terms expiring December 31, 2007, and two to terms expiring December 31, 2008. 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. The changes in law made by this Act to Sections 201.302 and 201.303, Occupations Code, apply only to a person who enrolls in a chiropractic school on or after the effective date of this Act. A person who enrolled in a chiropractic school before that date is governed by the law in effect on the date of enrollment, and the former law is continued in effect for that purpose.

SECTION 43. The changes in law made by this Act to Sections 201.354 and 201.355, Occupations Code, apply only to the renewal of a license to practice chiropractic that expires on or after the

SENATE AMENDMENTS

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HOUSE OF REPRESENTATIVES

By: Solomons, Hamric, Truitt, Dunnam H.B. No. 972

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.002(a), Occupations Code, is amended to read as follows:

(a) In this section:

(1) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(2) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(3) "Incisive[~~, "incisive~~] or surgical procedure" includes making an incision into any tissue, cavity, or organ by any person or implement. The term does not include the use of a needle for the purpose of drawing blood for diagnostic testing.

(4) "Surgical procedure" includes a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

SECTION 2. Section 201.004, Occupations Code, is amended to read as follows:

Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of Chiropractic Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by

next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Subchapter B, Chapter 201, Occupations Code, is amended by adding Section 201.061 to read as follows:

Sec. 201.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, 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. Section 201.101, Occupations Code, is amended to

read as follows:

Sec. 201.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [~~define~~] the policymaking [~~respective~~] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 7. Section 201.152(b), Occupations Code, is amended to read as follows:

(b) The board shall adopt rules for the enforcement of this chapter. The board shall issue all rules [~~opinions~~] based on a vote of a majority of the board at a regular or special meeting. The issuance of a disciplinary action or disciplinary order of the board is not limited by this subsection.

SECTION 8. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.1525 and 201.1526 to read as follows:

Sec. 201.1525. RULES CLARIFYING SCOPE OF PRACTICE OF CHIROPRACTIC. The board shall adopt rules clarifying what activities are included within the scope of the practice of chiropractic and what activities are outside of that scope. The rules:

(1) must clearly specify the procedures that chiropractors may perform;

(2) must clearly specify any equipment and the use of that equipment that is prohibited as ineffective or unsafe for the treatment of patients; and

(3) may 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) 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, Government Code. This section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons. Methods may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

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

SECTION 9. Subchapter D, Chapter 201, Occupations Code, is amended by adding Section 201.1555 to read as follows:

Sec. 201.1555. FRAUD. (a) The board shall strictly and

vigorously enforce the provisions of this chapter prohibiting fraud.

(b) The board shall adopt rules to prevent fraud in the practice of chiropractic, including rules relating to:

(1) the filing of workers' compensation and insurance claims; and

(2) records required to be maintained in connection with the practice of chiropractic.

SECTION 10. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.163 and 201.164 to read as follows:

Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must 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) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must 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) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 11. Section 201.205(a), Occupations Code, is amended to read as follows:

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish between categories of complaints;

(2) 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;

(3) ensure that a complaint is not dismissed without appropriate consideration;

(4) [~~(3)~~] require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;

(5) [~~(4)~~] ensure that the person who filed the complaint has the opportunity to explain the allegations made in

the complaint; and

(6) [~~(5)~~] prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

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

Sec. 201.207. INSPECTIONS. (a) The board, during reasonable business hours, may:

(1) conduct an on-site inspection of a chiropractic facility to investigate a complaint filed with the board; and

(2) examine and copy records of the chiropractic facility pertinent to the inspection or investigation.

(b) 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) In this section, "department" means the Texas Department of Insurance.

(b) This section applies only to information held by or for the department or the board that relates to a person who is licensed or otherwise regulated by the department or the board.

(c) The department and the board, on request or on the department or board's own initiative, may share confidential information or information to which access is otherwise restricted by law. The department and the board shall cooperate with and assist each other when either agency is conducting an investigation

by providing information that is relevant to the investigation. 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. The provision of information by the board to the department or by the department to the board under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(d) The department and the board shall develop and maintain a system for tracking investigations conducted by each agency with the cooperation and assistance of the other agency, including information on all disciplinary actions taken.

(e) The department and the board shall collaborate on taking appropriate disciplinary actions to the extent practicable.

Sec. 201.209. INFORMATION ON STATUS OF CERTAIN INVESTIGATIONS. The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all investigations conducted by the board with the cooperation and assistance of the Texas Department of Insurance and the Texas Workers' Compensation Commission during the preceding fiscal year.

SECTION 13. Section 201.251, Occupations Code, is amended to read as follows:

Sec. 201.251. APPOINTMENT OF PEER REVIEW COMMITTEES; TERMS. (a) The board shall appoint local chiropractic peer review committees. 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.

(b) The board may seek input [~~shall appoint the members of the peer review committee~~] from state [~~a list of nominees submitted by the local~~] chiropractic associations in selecting persons to appoint to a local [~~association to conduct~~] peer review committee [~~procedures~~].

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

(c) The board shall establish requirements for peer review training programs that do not discriminate against any chiropractor. A peer review training program must include training in the investigation of complaints in accordance with this chapter and board rules.

(d) The board by rule shall adopt additional requirements for eligibility to serve on a chiropractic peer review committee, including a requirement that a member have:

(1) a clean disciplinary record; and

(2) an acceptable record regarding utilization review performed in accordance with Article 21.58A, Insurance Code.

SECTION 15. Section 201.253(a), Occupations Code, is amended to read as follows:

(a) The board shall appoint an executive chiropractic peer review committee to direct the activities of the local committees. The executive peer review committee consists of six volunteer members. 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. The executive peer review committee shall elect a presiding officer from its members.

SECTION 16. The heading to Section 201.254, Occupations Code, is amended to read as follows:

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

SECTION 17. Subchapter F, Chapter 201, Occupations Code, is amended by adding Sections 201.2545 and 201.2546 to read as follows:

Sec. 201.2545. COMPLAINT INVESTIGATION BY PEER REVIEW COMMITTEE. (a) The board may refer to a local chiropractic peer review committee for investigation a complaint regarding whether chiropractic treatment or services provided by a chiropractor were provided according to the standard of care in the practice of chiropractic.

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

(c) The committee shall report to the board its findings regarding the complaint, including a statement of:

(1) the standard of care in the practice of chiropractic governing the chiropractic treatment or services provided by the chiropractor;

(2) whether the chiropractor met the standard of care in providing the treatment or services; and

(3) the clinical basis for the committee's finding

under Subdivision (2).

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

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

Sec. 201.2546. IMMUNITY; ELIGIBILITY TO PARTICIPATE IN COMMITTEE ACTIVITIES. (a) 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. The immunity granted by this subsection does not limit the operation of federal or state antitrust laws as applied to the conduct of a local or executive peer review committee that involves price fixing or any other unreasonable restraint of trade.

(b) A member of a peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by the member.

(c) 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. Section 201.255, Occupations Code, is amended to read as follows:

Sec. 201.255. REQUEST FOR INFORMATION; REPORT TO BOARD ON DISPUTES MEDIATED. (a) The board may request from a chiropractic

peer review committee information pertaining to actions taken by the peer review committee.

(b) The executive chiropractic peer review committee shall 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. The report must include:

(1) the number of disputes referred to the committees;

(2) a categorization of the disputes referred to the committees and the number of complaints in each category; and

(3) the number of disputes resolved and the manner in which they were resolved.

SECTION 19. Subchapter F, Chapter 201, Occupations Code, is amended by adding Section 201.256 to read as follows:

Sec. 201.256. PUBLIC ACCESS TO INFORMATION REGARDING PEER REVIEW COMMITTEES. The board shall maintain on the board's Internet website information regarding local chiropractic peer review committees, including:

(1) the services committees provide; and

(2) the types of disputes committees mediate.

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

(a) An applicant for a license by examination must present satisfactory evidence to the board that the applicant:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has completed 90 [~~60~~] semester hours of college

courses at a school other than a chiropractic school; and

(4) is either a graduate or a final semester student of a bona fide reputable chiropractic school.

(d) Notwithstanding Subsection (a)(3), 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 specified by that subsection to qualify for admission to a chiropractic school, the board may adopt the requirement of that organization if the board determines that requirement to be appropriate.

SECTION 21. Section 201.303(a), Occupations Code, is amended to read as follows:

(a) To comply with the requirements of Section 201.302 [~~201.302(a)(3)~~], the applicant must submit to the board a transcript of credits that certifies that the applicant has satisfactorily completed at least the number of [~~60 or more~~] semester hours of college credits required by that section at a college or university that issues credits accepted by The University of Texas at Austin for a bachelor of arts or bachelor of science degree.

SECTION 22. Section 201.305, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et

seq.).

SECTION 23. Section 201.307(b), Occupations Code, is amended to read as follows:

(b) The board by rule shall establish the number of times [~~and the conditions under which~~] an applicant may retake the [~~an~~] examination required by Section 201.304(a)(1) or (b), as applicable. An applicant must pass the examination required by Section 201.304(a)(2) within three attempts. The board by rule shall establish the conditions under which an applicant may retake an examination. The board may require an applicant to fulfill additional educational requirements.

SECTION 24. Sections 201.354(d) and (g), Occupations Code, are amended to read as follows:

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of 1-1/2 times the annual [~~required~~] renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~and an additional fee equal to one-half of the examination fee for the license~~]. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to the sum of two times the annual renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~all unpaid renewal fees and an additional fee equal to the examination fee for the license~~].

(g) A person may renew a license that has been expired for at least one year but not more than three years if:

(1) the board determines according to criteria adopted by board rule that the person has shown good cause for the failure to renew the license; and

(2) the person pays to the board:

(A) the annual [~~required~~] renewal fee set by the board under Section 201.153(a) for each year in which the license was expired;

(B) [~~and~~] an additional fee in an amount equal to the sum of:

(i) [~~(A)~~] the annual renewal [~~examination~~] fee set by the board under Section 201.153(a) [~~for the license~~], multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) [~~(B)~~] two times the annual renewal [~~examination~~] fee set by the board under Section 201.153(a); and

(C) the increase in the annual renewal fee required by Section 201.153(b) [~~for the license~~].

SECTION 25. Section 201.355(b), Occupations Code, is amended to read as follows:

(b) The person must pay to the board a fee that is equal to the normally required renewal [~~amount of the examination~~] fee for the license.

SECTION 26. The heading to Subchapter J, Chapter 201, Occupations Code, is amended to read as follows:

SUBCHAPTER J. PRACTICE BY LICENSE HOLDER [~~REQUIREMENTS REGARDING USE OF CHIROPRACTIC ASSISTANTS AND TECHNOLOGY~~]

SECTION 27. Subchapter J, Chapter 201, Occupations Code, is

amended by adding Section 201.453 to read as follows:

Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND EXPERT REPORTS. (a) The Texas Department of Insurance shall provide to the board any information received by the department regarding a settlement of a malpractice claim against a chiropractor.

(b) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a chiropractor who practices in this state shall 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. Section 201.502(a), Occupations Code, is amended to read as follows:

(a) The board may refuse to admit a person to examinations and may revoke or suspend a license or place a license holder on probation for a period determined by the board for:

(1) violating this chapter or a rule adopted under this chapter, including committing an act prohibited under Section 201.5025;

(2) engaging in deception or fraud in the practice of chiropractic;

(3) 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;

(4) presenting to the board an untrue statement or a document or testimony that was illegally used to pass the

examination;

(5) being convicted of a crime involving moral turpitude or a felony;

(6) procuring or assisting in the procuring of an abortion;

(7) engaging in grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public;

(8) having a habit of intemperance or drug addiction or another habit that, in the opinion of the board, endangers the life of a patient;

(9) using an advertising statement that is false or that tends to mislead or deceive the public;

(10) directly or indirectly employing or associating with a person who, in the course of the person's employment, commits an act constituting the practice of chiropractic when the person is not licensed to practice chiropractic;

(11) advertising professional superiority, or advertising the performance of professional services in a superior manner, if that advertising is not readily subject to verification;

(12) purchasing, selling, bartering, using, or offering to purchase, sell, barter, or use a chiropractic degree, license, certificate, or diploma or transcript of a license, certificate, or diploma in or relating to an application to the board for a license to practice chiropractic;

(13) altering with fraudulent intent a chiropractic license, certificate, or diploma or transcript of a chiropractic

license, certificate, or diploma;

(14) impersonating or acting as proxy for another in an examination required by this chapter for a chiropractic license;

(15) impersonating a licensed chiropractor;

(16) allowing one's chiropractic license to be used by another person to practice chiropractic;

(17) being proved insane by a person having authority to make that determination;

(18) failing to use proper diligence in the practice of chiropractic or using gross inefficiency in the practice of chiropractic;

(19) failing to clearly differentiate a chiropractic office or clinic from another business or enterprise;

(20) personally soliciting a patient or causing a patient to be solicited by the use of a case history of another patient of another chiropractor;

(21) using for the purpose of soliciting patients an accident report prepared by a peace officer in a manner prohibited by Section 38.12, Penal Code; or

(22) advertising using the term "physician" or "chiropractic physician" or any combination or derivation of the term "physician."

SECTION 29. Subchapter K, Chapter 201, Occupations Code, is amended by adding Sections 201.5025 and 201.5026 to read as follows:

<u>Sec. 201.5025. PROHIBITED PRACTICES BY CHIROPRACTOR OR LICENSE APPLICANT. (a) A chiropractor or an applicant for a</u>

license to practice chiropractic commits a prohibited practice if that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) commits fraud or deception in taking or passing an examination;

(3) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 201.5026, or injure the public;

(4) engages in conduct that subverts or attempts to subvert an examination process required by this chapter for a chiropractic license;

(5) directly or indirectly employs a person whose license to practice chiropractic has been suspended, canceled, or revoked;

(6) associates in the practice of chiropractic with a person:

(A) whose license to practice chiropractic has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of chiropractic in this state or elsewhere; or

(7) directly or indirectly aids or abets the practice of chiropractic by a person that is not licensed to practice chiropractic by the board.

(b) For purposes of Subsection (a)(4), conduct that subverts or attempts to subvert the chiropractic licensing

examination process includes, as prescribed by board rule, conduct that violates:

(1) the security of the examination materials;

(2) the standard of test administration; or

(3) the accreditation process.

Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 201.5025(a)(3), unprofessional or dishonorable conduct that is likely to deceive or defraud the public includes conduct in which a chiropractor:

(1) commits an act that violates any state or federal law if the act is connected with the chiropractor's practice of chiropractic;

(2) prescribes or administers a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is prescribed or administered;

(3) violates Section 311.0025, Health and Safety Code;

(4) fails to supervise adequately the activities of those acting under the supervision of the chiropractor; or

(5) delegates professional chiropractic responsibility or acts to a person if the delegating chiropractor knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation is not necessary for the enforcement of Subsection (a)(1). 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. The heading to Section 201.504, Occupations Code, is amended to read as follows:

Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS.

SECTION 31. Section 201.504, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Subject to Subsection (d), the board may 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) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 32. Subchapter K, Chapter 201, Occupations Code, is amended by adding Section 201.5065 to read as follows:

Sec. 201.5065. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a chiropractor's license on proof that the chiropractor has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the chiropractor's license.

SECTION 33. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.6015 to read as follows:

Sec. 201.6015. CEASE AND DESIST ORDER. (a) 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, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

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

SECTION 34. Section 201.604, Occupations Code, is amended to read as follows:

Sec. 201.604. GENERAL CRIMINAL PENALTY. A [~~Except as provided by Section 201.605, a~~] person commits an offense if the person violates this chapter. An offense under this section is a

misdemeanor punishable by a fine of not less than $50 or more than $500 or by confinement in the county jail for not more than 30 days.

SECTION 35. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.606 to read as follows:

Sec. 201.606. CRIMINAL PENALTY: PROVIDING CHIROPRACTIC TREATMENT OR SERVICES WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this chapter, 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) An offense under this section is a state jail felony.

SECTION 36. Sections 201.053(c), 201.059, 201.162, and 201.254(c)-(e), Occupations Code, are repealed.

SECTION 37. The changes in law made by Section 201.053, 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 and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

SECTION 38. Not later than January 1, 2006, the Texas Board of Chiropractic Examiners shall 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. The changes in law made by this Act to Chapter 201, Occupations Code, relating to the investigation of a complaint apply only to a complaint filed with the Texas Board of Chiropractic Examiners on or after the effective date of this Act. A complaint filed with the board before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 40. (a) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the local chiropractic peer review committees under Section 201.251, Occupations Code, as amended by this Act. In appointing the initial members of each committee, the board shall appoint as near to one-third of the members as possible to terms expiring December 31, 2006, as near to one-third as possible to terms expiring December 31, 2007, and as near to one-third as possible to terms expiring December 31, 2008. 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) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the executive chiropractic peer review committee under Section 201.253, Occupations Code, as amended by this Act. In appointing the initial members of the committee, the board shall appoint two persons to terms expiring December 31, 2006, two to terms expiring December 31, 2007, and two to terms expiring December 31, 2008. 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. The changes in law made by this Act to Sections 201.302 and 201.303, Occupations Code, apply only to a person who enrolls in a chiropractic school on or after the effective date of this Act. A person who enrolled in a chiropractic school before that date is governed by the law in effect on the date of enrollment, and the former law is continued in effect for that purpose.

SECTION 43. The changes in law made by this Act to Sections 201.354 and 201.355, Occupations Code, apply only to the renewal of

a license to practice chiropractic that expires on or after the effective date of this Act. A license that expires before that date is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

SECTION 44. This Act takes effect September 1, 2005.

ADOPTED

MAY 25 2005

Secretary of the Senate

By: Nelson H.B. No. 972

Substitute the following for H.B. No. 972:

By: Nelson C.S. H.B. No. 972

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.002(a), Occupations Code, is amended to read as follows:

(a) In this section:

(1) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(2) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(3) "Incisive[~~, "incisive~~] or surgical procedure" includes making an incision into any tissue, cavity, or organ by any person or implement. The term does not include the use of a needle for the purpose of drawing blood for diagnostic testing.

(4) "Surgical procedure" includes a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

SECTION 2. Section 201.004, Occupations Code, is amended to read as follows:

Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of Chiropractic Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by

that chapter, the board is abolished and this chapter expires September 1, 2017 [~~2005~~].

SECTION 3. Sections 201.053(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~,~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person [~~An officer, employee, or paid consultant of a Texas trade association in the field of health care~~] may not be a member [~~or employee~~] of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care [~~who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule~~].

(d) A person may not be [~~serve as~~] a member of the board or

act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Sections 201.056(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office [~~appointment~~] the qualifications required by Sections 201.051 and 201.052(b);

(2) does not maintain during service on the board the qualifications required by Sections 201.051 and 201.052(b);

(3) is ineligible for membership under [~~violates a prohibition established by~~] Section 201.052 or 201.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved [~~unless the absence is excused~~] by a majority vote of the board.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the

next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Subchapter B, Chapter 201, Occupations Code, is amended by adding Section 201.061 to read as follows:

Sec. 201.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, 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. Section 201.101, Occupations Code, is amended to

read as follows:

Sec. 201.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [~~define~~] the policymaking [~~respective~~] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 7. Section 201.152(b), Occupations Code, is amended to read as follows:

(b) The board shall adopt rules for the enforcement of this chapter. The board shall issue all rules [~~opinions~~] based on a vote of a majority of the board at a regular or special meeting. The issuance of a disciplinary action or disciplinary order of the board is not limited by this subsection.

SECTION 8. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.1525 and 201.1526 to read as follows:

Sec. 201.1525. RULES CLARIFYING SCOPE OF PRACTICE OF CHIROPRACTIC. The board shall adopt rules clarifying what activities are included within the scope of the practice of chiropractic and what activities are outside of that scope. The rules:

(1) must clearly specify the procedures that chiropractors may perform;

(2) must clearly specify any equipment and the use of that equipment that is prohibited; and

(3) may 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) 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, Government Code. This section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons. Methods may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

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

SECTION 9. Subchapter D, Chapter 201, Occupations Code, is amended by adding Section 201.1555 to read as follows:

Sec. 201.1555. FRAUD. (a) The board shall strictly and vigorously enforce the provisions of this chapter prohibiting

fraud.

(b) The board shall adopt rules to prevent fraud in the practice of chiropractic, including rules relating to:

(1) the filing of workers' compensation and insurance claims; and

(2) records required to be maintained in connection with the practice of chiropractic.

SECTION 10. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.163 and 201.164 to read as follows:

Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must 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) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must 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) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 11. Section 201.205(a), Occupations Code, is amended to read as follows:

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish between categories of complaints;

(2) 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;

(3) ensure that a complaint is not dismissed without appropriate consideration;

(4) [~~(3)~~] require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;

(5) [~~(4)~~] ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and

(6) [~~(5)~~] prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

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

Sec. 201.207. INSPECTIONS. (a) The board, during reasonable business hours, may:

(1) conduct an on-site inspection of a chiropractic facility to investigate a complaint filed with the board; and

(2) examine and copy records of the chiropractic facility pertinent to the inspection or investigation.

(b) 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) In this section, "department" means the Texas Department of Insurance.

(b) This section applies only to information held by or for the department or the board that relates to a person who is licensed or otherwise regulated by the department or the board.

(c) The department and the board, on request or on the department or board's own initiative, may share confidential information or information to which access is otherwise restricted by law. The department and the board shall cooperate with and assist each other when either agency is conducting an investigation by providing information that is relevant to the investigation.

the peer review committee.

(b) The executive chiropractic peer review committee shall 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. The report must include:

(1) the number of disputes referred to the committees;

(2) a categorization of the disputes referred to the committees and the number of complaints in each category; and

(3) the number of disputes resolved and the manner in which they were resolved.

SECTION 19. Subchapter F, Chapter 201, Occupations Code, is amended by adding Section 201.256 to read as follows:

Sec. 201.256. PUBLIC ACCESS TO INFORMATION REGARDING PEER REVIEW COMMITTEES. The board shall maintain on the board's Internet website information regarding local chiropractic peer review committees, including:

(1) the services committees provide; and

(2) the types of disputes committees mediate.

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

(a) An applicant for a license by examination must present satisfactory evidence to the board that the applicant:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has completed 90 [~~60~~] semester hours of college courses at a school other than a chiropractic school; and

(4) is either a graduate or a final semester student of a bona fide reputable chiropractic school.

(d) Notwithstanding Subsection (a)(3), 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 specified by that subsection to qualify for admission to a chiropractic school, the board may adopt the requirement of that organization if the board determines that requirement to be appropriate.

SECTION 21. Section 201.303(a), Occupations Code, is amended to read as follows:

(a) To comply with the requirements of Section 201.302 [~~201.302(a)(3)~~], the applicant must submit to the board a transcript of credits that certifies that the applicant has satisfactorily completed at least the number of [~~60 or more~~] semester hours of college credits required by that section at a college or university that issues credits accepted by The University of Texas at Austin for a bachelor of arts or bachelor of science degree.

SECTION 22. Section 201.305, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

SECTION 23. Section 201.307(b), Occupations Code, is amended to read as follows:

(b) The board by rule shall establish the number of times [~~and the conditions under which~~] an applicant may retake the [~~an~~] examination required by Section 201.304(a)(1) or (b), as applicable. An applicant must pass the examination required by Section 201.304(a)(2) within three attempts. The board by rule shall establish the conditions under which an applicant may retake an examination. The board may require an applicant to fulfill additional educational requirements.

SECTION 24. Sections 201.354(d) and (g), Occupations Code, are amended to read as follows:

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of 1-1/2 times the annual [~~required~~] renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~and an additional fee equal to one-half of the examination fee for the license~~]. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to the sum of two times the annual renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~all unpaid renewal fees and an additional fee equal to the examination fee for the license~~].

(g) A person may renew a license that has been expired for at least one year but not more than three years if:

(1) the board determines according to criteria adopted

by board rule that the person has shown good cause for the failure to renew the license; and

(2) the person pays to the board:

(A) the annual [~~required~~] renewal fee set by the board under Section 201.153(a) for each year in which the license was expired;

(B) [~~and~~] an additional fee in an amount equal to the sum of:

(i) [~~(A)~~] the annual renewal [~~examination~~] fee set by the board under Section 201.153(a) [~~for the license~~], multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) [~~(B)~~] two times the annual renewal [~~examination~~] fee set by the board under Section 201.153(a); and

(C) the increase in the annual renewal fee required by Section 201.153(b) [~~for the license~~].

SECTION 25. Section 201.355(b), Occupations Code, is amended to read as follows:

(b) The person must pay to the board a fee that is equal to the normally required renewal [~~amount of the examination~~] fee for the license.

SECTION 26. The heading to Subchapter J, Chapter 201, Occupations Code, is amended to read as follows:

SUBCHAPTER J. PRACTICE BY LICENSE HOLDER [~~REQUIREMENTS REGARDING USE OF CHIROPRACTIC ASSISTANTS AND TECHNOLOGY~~]

SECTION 27. Subchapter J, Chapter 201, Occupations Code, is amended by adding Section 201.453 to read as follows:

Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND EXPERT REPORTS. (a) The Texas Department of Insurance shall provide to the board any information received by the department regarding a settlement of a malpractice claim against a chiropractor.

(b) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a chiropractor who practices in this state shall 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. Section 201.502(a), Occupations Code, is amended to read as follows:

(a) The board may refuse to admit a person to examinations and may revoke or suspend a license or place a license holder on probation for a period determined by the board for:

(1) violating this chapter or a rule adopted under this chapter, including committing an act prohibited under Section 201.5025;

(2) engaging in deception or fraud in the practice of chiropractic;

(3) 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;

(4) presenting to the board an untrue statement or a document or testimony that was illegally used to pass the examination;

(5) being convicted of a crime involving moral turpitude or a felony;

(6) procuring or assisting in the procuring of an abortion;

(7) engaging in grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public;

(8) having a habit of intemperance or drug addiction or another habit that, in the opinion of the board, endangers the life of a patient;

(9) using an advertising statement that <u>is false or that</u> tends to mislead or deceive the public;

(10) directly or indirectly employing or associating with a person who, in the course of the person's employment, commits an act constituting the practice of chiropractic when the person is not licensed to practice chiropractic;

(11) advertising professional superiority, or advertising the performance of professional services in a superior manner<u>, if that advertising is not readily subject to verification</u>;

(12) purchasing, selling, bartering, using, or offering to purchase, sell, barter, or use a chiropractic degree, license, certificate, or diploma or transcript of a license, certificate, or diploma in or relating to an application to the board for a license to practice chiropractic;

(13) altering with fraudulent intent a chiropractic license, certificate, or diploma or transcript of a chiropractic license, certificate, or diploma;

(14) impersonating or acting as proxy for another in an examination required by this chapter for a chiropractic license;

(15) impersonating a licensed chiropractor;

(16) allowing one's chiropractic license to be used by another person to practice chiropractic;

(17) being proved insane by a person having authority to make that determination;

(18) failing to use proper diligence in the practice of chiropractic or using gross inefficiency in the practice of chiropractic;

(19) failing to clearly differentiate a chiropractic office or clinic from another business or enterprise;

(20) personally soliciting a patient or causing a patient to be solicited by the use of a case history of another patient of another chiropractor;

(21) using for the purpose of soliciting patients an accident report prepared by a peace officer in a manner prohibited by Section 38.12, Penal Code; or

(22) advertising using the term "physician" or "chiropractic physician" or any combination or derivation of the term "physician."

SECTION 29. Subchapter K, Chapter 201, Occupations Code, is amended by adding Sections 201.5025 and 201.5026 to read as follows:

Sec. 201.5025. PROHIBITED PRACTICES BY CHIROPRACTOR OR LICENSE APPLICANT. (a) A chiropractor or an applicant for a license to practice chiropractic commits a prohibited practice if

that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) commits fraud or deception in taking or passing an examination;

(3) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 201.5026, or injure the public;

(4) engages in conduct that subverts or attempts to subvert an examination process required by this chapter for a chiropractic license;

(5) directly or indirectly employs a person whose license to practice chiropractic has been suspended, canceled, or revoked;

(6) associates in the practice of chiropractic with a person:

(A) whose license to practice chiropractic has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of chiropractic in this state or elsewhere; or

(7) directly or indirectly aids or abets the practice of chiropractic by a person that is not licensed to practice chiropractic by the board.

(b) For purposes of Subsection (a)(4), conduct that subverts or attempts to subvert the chiropractic licensing examination process includes, as prescribed by board rule, conduct

that violates:

(1) the security of the examination materials;

(2) the standard of test administration; or

(3) the accreditation process.

Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 201.5025(a)(3), unprofessional or dishonorable conduct that is likely to deceive or defraud the public includes conduct in which a chiropractor:

(1) commits an act that violates any state or federal law if the act is connected with the chiropractor's practice of chiropractic;

(2) prescribes or administers a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is prescribed or administered;

(3) violates Section 311.0025, Health and Safety Code;

(4) fails to supervise adequately the activities of those acting under the supervision of the chiropractor; or

(5) delegates professional chiropractic responsibility or acts to a person if the delegating chiropractor knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation is not necessary for the enforcement of Subsection (a)(1). 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. The heading to Section 201.504, Occupations Code, is amended to read as follows:

Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS.

SECTION 31. Section 201.504, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Subject to Subsection (d), the board may 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) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 32. Subchapter K, Chapter 201, Occupations Code, is amended by adding Section 201.5065 to read as follows:

Sec. 201.5065. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a chiropractor's license on proof that the chiropractor has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal

Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the chiropractor's license.

SECTION 33. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.6015 to read as follows:

Sec. 201.6015. CEASE AND DESIST ORDER. (a) 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, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

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

SECTION 34. Section 201.604, Occupations Code, is amended to read as follows:

Sec. 201.604. GENERAL CRIMINAL PENALTY. A [~~Except as provided by Section 201.605, a~~] person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than

$500 or by confinement in the county jail for not more than 30 days.

SECTION 35. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.606 to read as follows:

Sec. 201.606. CRIMINAL PENALTY: PROVIDING CHIROPRACTIC TREATMENT OR SERVICES WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this chapter, 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) An offense under this section is a state jail felony.

SECTION 36. Sections 201.053(c), 201.059, 201.162, and 201.254(c)-(e), Occupations Code, are repealed.

SECTION 37. The changes in law made by Section 201.053, 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 and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

SECTION 38. Not later than January 1, 2006, the Texas Board of Chiropractic Examiners shall 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. The changes in law made by this Act to Chapter 201, Occupations Code, relating to the investigation of a complaint apply only to a complaint filed with the Texas Board of Chiropractic Examiners on or after the effective date of this Act. A complaint filed with the board before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 40. (a) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the local chiropractic peer review committees under Section 201.251, Occupations Code, as amended by this Act. In appointing the initial members of each committee, the board shall appoint as near to one-third of the members as possible to terms expiring December 31, 2006, as near to one-third as possible to terms expiring December 31, 2007, and as near to one-third as possible to terms expiring December 31, 2008. 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) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the executive chiropractic peer review committee under Section 201.253, Occupations Code, as amended by this Act. In appointing the initial members of the committee, the board shall appoint two persons to terms expiring December 31, 2006, two to terms expiring December 31, 2007, and two to terms expiring December 31, 2008. 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. The changes in law made by this Act to Sections 201.302 and 201.303, Occupations Code, apply only to a person who enrolls in a chiropractic school on or after the effective date of this Act. A person who enrolled in a chiropractic school before that date is governed by the law in effect on the date of enrollment, and the former law is continued in effect for that purpose.

SECTION 43. The changes in law made by this Act to Sections 201.354 and 201.355, Occupations Code, apply only to the renewal of a license to practice chiropractic that expires on or after the

effective date of this Act. A license that expires before that date is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

SECTION 44. This Act takes effect September 1, 2005.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 17, 2005

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB972** by Solomons (Relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB972, Committee Report 2nd House, Substituted: a negative impact of ($65,600) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	($32,800)
2007	($32,800)
2008	($32,800)
2009	($32,800)
2010	($32,800)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1
2006	($27,200)	($5,600)
2007	($27,200)	($5,600)
2008	($27,200)	($5,600)
2009	($27,200)	($5,600)
2010	($27,200)	($5,600)

Fiscal Analysis

The bill would continue the Board of Chiropractic Examiners for 12 years, and would would authorize the agency's peer review committees to assist the board in reviewing standard of care complaints. The bill would also change the basis for the agency's late-renewal penalties from an examination fee to the standard renewal fee. It would provide that a person whose license has been expired for 90 days or less may renew the license by paying the required renewal fee plus a fee equal to half the amount of the agency's renewal fee. A license that has been expired for more than 90 days could be renewed by paying the required renewal fee plus a fee equal to the agency's renewal fee. A license that has been expired for at least one year but less than three years could be renewed by paying two times the agency's renewal fee for each year the license was expired, one time the agency's renewal fee and one time the required renewal fee.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 16, 2005

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB972** by Solomons (Relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB972, As Engrossed: a negative impact of ($65,600) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	($32,800)
2007	($32,800)
2008	($32,800)
2009	($32,800)
2010	($32,800)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1
2006	($27,200)	($5,600)
2007	($27,200)	($5,600)
2008	($27,200)	($5,600)
2009	($27,200)	($5,600)
2010	($27,200)	($5,600)

Fiscal Analysis

The bill would continue the Board of Chiropractic Examiners for 12 years, and would would authorize the agency's peer review committees to assist the board in reviewing standard of care complaints. The bill would also change the basis for the agency's late-renewal penalties from an examination fee to the standard renewal fee. It would provide that a person whose license has been expired for 90 days or less may renew the license by paying the required renewal fee plus a fee equal to half the amount of the agency's renewal fee. A license that has been expired for more than 90 days could be renewed by paying the required renewal fee plus a fee equal to the agency's renewal fee. A license that has been expired for at least one year but less than three years could be renewed by paying two times the agency's renewal fee for each year the license was expired, one time the agency's renewal fee and one time the required renewal fee.

The bill would take effect September 1, 2005.

Methodology

Based on an average of 56 billing and standard of care complaints reviewed by the Board of Chiropractic Examiners' peer review committees annually, or the average number of complaints the agency received from fiscal year 2001 to 2003, it is assumed that the agency would require $5,600 annually to reimburse peer review committee members at a reimbursement rate of $100 per complaint.

Changing the amount of the late renewal fee for licenses expired for 90 days or less would result in a loss of $21,600 a year based on 216 late renewals for fiscal year 2004. The late renewal fee would decrease from $487.50 to $387.50, resulting in a loss of $100 per late renewal ($100*216=$21,600). Changing the amount of the late renewal fee for licenses expired for more than 90 days but less than one year would result in a loss of $5,600 a year based on 28 late renewals for fiscal year 2004. The late renewal fee would decrease from $650 to $450, resulting in a loss of $200 per late renewal ($200*28=$5,600). Changing the amount of the late renewal fee for licenses expired for at least one year but no more than three years is not anticipated to have a fiscal impact. Changing the basis for the renewal of expired licenses by out-of-state practitioners is not anticipated to have a fiscal impact.

The Texas Department of Insurance indicates it could absorb any additional costs associated with the bill within its existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 453 Workers' Compensation Commission, 454 Department of Insurance, 508 Board of Chiropractic Examiners

LBB Staff: JOB, LB, CL, MW, RB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 9, 2005

TO: Honorable Dianne White Delisi, Chair, House Committee on Public Health

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB972** by Solomons (Relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB972, As Introduced: a negative impact of ($65,600) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	($32,800)
2007	($32,800)
2008	($32,800)
2009	($32,800)
2010	($32,800)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/(Cost) from *GENERAL REVENUE FUND* 1
2006	($27,200)	($5,600)
2007	($27,200)	($5,600)
2008	($27,200)	($5,600)
2009	($27,200)	($5,600)
2010	($27,200)	($5,600)

Fiscal Analysis

The bill would continue the Board of Chiropractic Examiners for 12 years, and would would authorize the agency's peer review committees to assist the board in reviewing standard of care complaints. The bill would also change the basis for the agency's late-renewal penalties from an examination fee to the standard renewal fee. It would provide that a person whose license has been expired for 90 days or less may renew the license by paying the required renewal fee plus a fee equal to half the amount of the agency's renewal fee. A license that has been expired for more than 90 days could be renewed by paying the required renewal fee plus a fee equal to the agency's renewal fee. A license that has been expired for at least one year but less than three years could be renewed by paying two times the agency's renewal fee for each year the license was expired, one time the agency's renewal fee and one time the required renewal fee.

The bill would take effect September 1, 2005.

Methodology

Based on an average of 56 billing and standard of care complaints reviewed by the Board of Chiropractic Examiners' peer review committees annually, or the average number of complaints the agency received from fiscal year 2001 to 2003, it is assumed that the agency would require $5,600 annually to reimburse peer review committee members at a reimbursement rate of $100 per complaint.

Changing the amount of the late renewal fee for licenses expired for 90 days or less would result in a loss of $21,600 a year based on 216 late renewals for fiscal year 2004. The late renewal fee would decrease from $487.50 to $387.50, resulting in a loss of $100 per late renewal ($100*216=$21,600). Changing the amount of the late renewal fee for licenses expired for more than 90 days but less than one year would result in a loss of $5,600 a year based on 28 late renewals for fiscal year 2004. The late renewal fee would decrease from $650 to $450, resulting in a loss of $200 per late renewal ($200*28=$5,600). Changing the amount of the late renewal fee for licenses expired for at least one year but no more than three years is not anticipated to have a fiscal impact. Changing the basis for the renewal of expired licenses by out-of-state practitioners is not anticipated to have a fiscal impact.

The Texas Department of Insurance indicates it could absorb any additional costs associated with the bill within its existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 116 Sunset Advisory Commission, 453 Workers' Compensation Commission, 454 Department of Insurance, 508 Board of Chiropractic Examiners

LBB Staff: JOB, CL, MW, RB

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

79TH LEGISLATIVE REGULAR SESSION

March 8, 2005

TO: Honorable Dianne White Delisi, Chair, House Committee on Public Health

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB972** by Solomons (Relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.), **As Introduced**

The provision of the bill that is the subject of this analysis would amend the Occupations Code by creating the offense of providing chiropractic treatment or services while intoxicated. The offense would be punishable as a state jail felony.

A state jail felony is punishable by confinement in a state jail for any term of not more than two years or less than 180 days, or, in addition to confinement, a fine not to exceed $10,000.

The impact of this provision of the bill would depend on the number of persons caught and convicted of the offense; however, in the case of this bill, the increased workload and demand for resources would probably not be substantial.

Source Agencies:
LBB Staff: JOB, GG

F

ENROLLED

H.B. No. 972

AN ACT

relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.002(a), Occupations Code, is amended to read as follows:

(a) In this section:

(1) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(2) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(3) "Incisive[~~, "incisive~~] or surgical procedure" includes making an incision into any tissue, cavity, or organ by any person or implement. The term does not include the use of a needle for the purpose of drawing blood for diagnostic testing.

(4) "Surgical procedure" includes a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

SECTION 2. Section 201.004, Occupations Code, is amended to read as follows:

Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of Chiropractic Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by

that chapter, the board is abolished and this chapter expires September 1, 2017 [~~2005~~].

SECTION 3. Sections 201.053(a), (b), and (d), Occupations Code, are amended to read as follows:

(a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~,~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person [~~An officer, employee, or paid consultant of a Texas trade association in the field of health care~~] may not be a member [~~or employee~~] of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care [~~who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule~~].

(d) A person may not be [~~serve as~~] a member of the board or

act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Sections 201.056(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office [~~appointment~~] the qualifications required by Sections 201.051 and 201.052(b);

(2) does not maintain during service on the board the qualifications required by Sections 201.051 and 201.052(b);

(3) is ineligible for membership under [~~violates a prohibition established by~~] Section 201.052 or 201.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved [~~unless the absence is excused~~] by a majority vote of the board.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the

next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Subchapter B, Chapter 201, Occupations Code, is amended by adding Section 201.061 to read as follows:

Sec. 201.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and the board's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the board;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, 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. Section 201.101, Occupations Code, is amended to

read as follows:

Sec. 201.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate [~~define~~] the policymaking [~~respective~~] responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 7. Section 201.152(b), Occupations Code, is amended to read as follows:

(b) The board shall adopt rules for the enforcement of this chapter. The board shall issue all rules [~~opinions~~] based on a vote of a majority of the board at a regular or special meeting. The issuance of a disciplinary action or disciplinary order of the board is not limited by this subsection.

SECTION 8. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.1525 and 201.1526 to read as follows:

Sec. 201.1525. RULES CLARIFYING SCOPE OF PRACTICE OF CHIROPRACTIC. The board shall adopt rules clarifying what activities are included within the scope of the practice of chiropractic and what activities are outside of that scope. The rules:

(1) must clearly specify the procedures that chiropractors may perform;

(2) must clearly specify any equipment and the use of that equipment that is prohibited; and

(3) may 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) 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, Government Code. This section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons. Methods may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

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

SECTION 9. Subchapter D, Chapter 201, Occupations Code, is amended by adding Section 201.1555 to read as follows:

Sec. 201.1555. FRAUD. (a) The board shall strictly and vigorously enforce the provisions of this chapter prohibiting

fraud.

(b) The board shall adopt rules to prevent fraud in the practice of chiropractic, including rules relating to:

(1) the filing of workers' compensation and insurance claims; and

(2) records required to be maintained in connection with the practice of chiropractic.

SECTION 10. Subchapter D, Chapter 201, Occupations Code, is amended by adding Sections 201.163 and 201.164 to read as follows:

Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must 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) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must 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) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 11. Section 201.205(a), Occupations Code, is amended to read as follows:

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish between categories of complaints;

(2) 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;

(3) ensure that a complaint is not dismissed without appropriate consideration;

(4) [~~(3)~~] require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;

(5) [~~(4)~~] ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and

(6) [~~(5)~~] prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

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

Sec. 201.207. INSPECTIONS. (a) The board, during reasonable business hours, may:

(1) conduct an on-site inspection of a chiropractic facility to investigate a complaint filed with the board; and

(2) examine and copy records of the chiropractic facility pertinent to the inspection or investigation.

(b) 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) In this section, "department" means the Texas Department of Insurance.

(b) This section applies only to information held by or for the department or the board that relates to a person who is licensed or otherwise regulated by the department or the board.

(c) The department and the board, on request or on the department or board's own initiative, may share confidential information or information to which access is otherwise restricted by law. The department and the board shall cooperate with and assist each other when either agency is conducting an investigation by providing information that is relevant to the investigation.

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. The provision of information by the board to the department or by the department to the board under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(d) The department and the board shall develop and maintain a system for tracking investigations conducted by each agency with the cooperation and assistance of the other agency, including information on all disciplinary actions taken.

(e) The department and the board shall collaborate on taking appropriate disciplinary actions to the extent practicable.

Sec. 201.209. INFORMATION ON STATUS OF CERTAIN INVESTIGATIONS. The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all investigations conducted by the board with the cooperation and assistance of the Texas Department of Insurance and the Texas Workers' Compensation Commission during the preceding fiscal year.

SECTION 13. Section 201.251, Occupations Code, is amended to read as follows:

Sec. 201.251. APPOINTMENT OF PEER REVIEW COMMITTEES; TERMS. (a) The board shall appoint local chiropractic peer review committees. 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.

(b) The board may seek input [~~shall appoint the members of the peer review committee~~] from state [~~a list of nominees submitted by the local~~] chiropractic associations in selecting persons to appoint to a local [~~association to conduct~~] peer review committee [~~procedures~~].

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

(c) The board shall establish requirements for peer review training programs that do not discriminate against any chiropractor. A peer review training program must include training in the investigation of complaints in accordance with this chapter and board rules.

(d) The board by rule shall adopt additional requirements for eligibility to serve on a chiropractic peer review committee, including a requirement that a member have:

(1) a clean disciplinary record; and

(2) an acceptable record regarding utilization review performed in accordance with Article 21.58A, Insurance Code.

SECTION 15. Section 201.253(a), Occupations Code, is amended to read as follows:

(a) The board shall appoint an executive chiropractic peer review committee to direct the activities of the local committees. The executive peer review committee consists of six volunteer members. 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. The executive peer review

committee shall elect a presiding officer from its members.

SECTION 16. The heading to Section 201.254, Occupations Code, is amended to read as follows:

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

SECTION 17. Subchapter F, Chapter 201, Occupations Code, is amended by adding Sections 201.2545 and 201.2546 to read as follows:

Sec. 201.2545. COMPLAINT INVESTIGATION BY PEER REVIEW COMMITTEE. (a) The board may refer to a local chiropractic peer review committee for investigation a complaint regarding whether chiropractic treatment or services provided by a chiropractor were provided according to the standard of care in the practice of chiropractic.

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

(c) The committee shall report to the board its findings regarding the complaint, including a statement of:

(1) the standard of care in the practice of chiropractic governing the chiropractic treatment or services provided by the chiropractor;

(2) whether the chiropractor met the standard of care in providing the treatment or services; and

(3) the clinical basis for the committee's finding under Subdivision (2).

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

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

Sec. 201.2546. IMMUNITY; ELIGIBILITY TO PARTICIPATE IN COMMITTEE ACTIVITIES. (a) 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. The immunity granted by this subsection does not limit the operation of federal or state antitrust laws as applied to the conduct of a local or executive peer review committee that involves price fixing or any other unreasonable restraint of trade.

(b) A member of a peer review committee may not participate in committee deliberations or other activities involving chiropractic services or treatment rendered or performed by the member.

(c) 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. Section 201.255, Occupations Code, is amended to read as follows:

Sec. 201.255. REQUEST FOR INFORMATION; REPORT TO BOARD ON DISPUTES MEDIATED. (a) The board may request from a chiropractic peer review committee information pertaining to actions taken by

the peer review committee.

(b) The executive chiropractic peer review committee shall 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. The report must include:

(1) the number of disputes referred to the committees;

(2) a categorization of the disputes referred to the committees and the number of complaints in each category; and

(3) the number of disputes resolved and the manner in which they were resolved.

SECTION 19. Subchapter F, Chapter 201, Occupations Code, is amended by adding Section 201.256 to read as follows:

Sec. 201.256. PUBLIC ACCESS TO INFORMATION REGARDING PEER REVIEW COMMITTEES. The board shall maintain on the board's Internet website information regarding local chiropractic peer review committees, including:

(1) the services committees provide; and

(2) the types of disputes committees mediate.

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

(a) An applicant for a license by examination must present satisfactory evidence to the board that the applicant:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) has completed 90 [~~60~~] semester hours of college courses at a school other than a chiropractic school; and

(4) is either a graduate or a final semester student of a bona fide reputable chiropractic school.

(d) Notwithstanding Subsection (a)(3), 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 specified by that subsection to qualify for admission to a chiropractic school, the board may adopt the requirement of that organization if the board determines that requirement to be appropriate.

SECTION 21. Section 201.303(a), Occupations Code, is amended to read as follows:

(a) To comply with the requirements of Section 201.302 [~~201.302(a)(3)~~], the applicant must submit to the board a transcript of credits that certifies that the applicant has satisfactorily completed at least the number of [~~60 or more~~] semester hours of college credits required by that section at a college or university that issues credits accepted by The University of Texas at Austin for a bachelor of arts or bachelor of science degree.

SECTION 22. Section 201.305, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

SECTION 23. Section 201.307(b), Occupations Code, is amended to read as follows:

(b) The board by rule shall establish the number of times [~~and the conditions under which~~] an applicant may retake the [~~an~~] examination required by Section 201.304(a)(1) or (b), as applicable. An applicant must pass the examination required by Section 201.304(a)(2) within three attempts. The board by rule shall establish the conditions under which an applicant may retake an examination. The board may require an applicant to fulfill additional educational requirements.

SECTION 24. Sections 201.354(d) and (g), Occupations Code, are amended to read as follows:

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of 1-1/2 times the annual [~~required~~] renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~and an additional fee equal to one-half of the examination fee for the license~~]. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to the sum of two times the annual renewal fee set by the board under Section 201.153(a) and the increase in that fee required by Section 201.153(b) [~~all unpaid renewal fees and an additional fee equal to the examination fee for the license~~].

(g) A person may renew a license that has been expired for at least one year but not more than three years if:

(1) the board determines according to criteria adopted

by board rule that the person has shown good cause for the failure to renew the license; and

(2) the person pays to the board:

(A) the annual [~~required~~] renewal fee set by the board under Section 201.153(a) for each year in which the license was expired;

(B) [~~and~~] an additional fee in an amount equal to the sum of:

(i) [~~(A)~~] the annual renewal [~~examination~~] fee set by the board under Section 201.153(a) [~~for the license~~], multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) [~~(B)~~] two times the annual renewal [~~examination~~] fee set by the board under Section 201.153(a); and

(C) the increase in the annual renewal fee required by Section 201.153(b) [~~for the license~~].

SECTION 25. Section 201.355(b), Occupations Code, is amended to read as follows:

(b) The person must pay to the board a fee that is equal to the normally required renewal [~~amount of the examination~~] fee for the license.

SECTION 26. The heading to Subchapter J, Chapter 201, Occupations Code, is amended to read as follows:

SUBCHAPTER J. PRACTICE BY LICENSE HOLDER [~~REQUIREMENTS REGARDING USE OF CHIROPRACTIC ASSISTANTS AND TECHNOLOGY~~]

SECTION 27. Subchapter J, Chapter 201, Occupations Code, is amended by adding Section 201.453 to read as follows:

Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND EXPERT REPORTS. (a) The Texas Department of Insurance shall provide to the board any information received by the department regarding a settlement of a malpractice claim against a chiropractor.

(b) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a chiropractor who practices in this state shall 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. Section 201.502(a), Occupations Code, is amended to read as follows:

(a) The board may refuse to admit a person to examinations and may revoke or suspend a license or place a license holder on probation for a period determined by the board for:

(1) violating this chapter or a rule adopted under this chapter, including committing an act prohibited under Section 201.5025;

(2) engaging in deception or fraud in the practice of chiropractic;

(3) 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;

(4) presenting to the board an untrue statement or a document or testimony that was illegally used to pass the examination;

(5) being convicted of a crime involving moral turpitude or a felony;

(6) procuring or assisting in the procuring of an abortion;

(7) engaging in grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public;

(8) having a habit of intemperance or drug addiction or another habit that, in the opinion of the board, endangers the life of a patient;

(9) using an advertising statement that <u>is false or that</u> tends to mislead or deceive the public;

(10) directly or indirectly employing or associating with a person who, in the course of the person's employment, commits an act constituting the practice of chiropractic when the person is not licensed to practice chiropractic;

(11) advertising professional superiority, or advertising the performance of professional services in a superior manner<u>, if that advertising is not readily subject to verification</u>;

(12) purchasing, selling, bartering, using, or offering to purchase, sell, barter, or use a chiropractic degree, license, certificate, or diploma or transcript of a license, certificate, or diploma in or relating to an application to the board for a license to practice chiropractic;

(13) altering with fraudulent intent a chiropractic license, certificate, or diploma or transcript of a chiropractic license, certificate, or diploma;

(14) impersonating or acting as proxy for another in an examination required by this chapter for a chiropractic license;

(15) impersonating a licensed chiropractor;

(16) allowing one's chiropractic license to be used by another person to practice chiropractic;

(17) being proved insane by a person having authority to make that determination;

(18) failing to use proper diligence in the practice of chiropractic or using gross inefficiency in the practice of chiropractic;

(19) failing to clearly differentiate a chiropractic office or clinic from another business or enterprise;

(20) personally soliciting a patient or causing a patient to be solicited by the use of a case history of another patient of another chiropractor;

(21) using for the purpose of soliciting patients an accident report prepared by a peace officer in a manner prohibited by Section 38.12, Penal Code; or

(22) advertising using the term "physician" or "chiropractic physician" or any combination or derivation of the term "physician."

SECTION 29. Subchapter K, Chapter 201, Occupations Code, is amended by adding Sections 201.5025 and 201.5026 to read as follows:

<u>Sec. 201.5025. PROHIBITED PRACTICES BY CHIROPRACTOR OR LICENSE APPLICANT. (a) A chiropractor or an applicant for a license to practice chiropractic commits a prohibited practice if</u>

that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) commits fraud or deception in taking or passing an examination;

(3) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 201.5026, or injure the public;

(4) engages in conduct that subverts or attempts to subvert an examination process required by this chapter for a chiropractic license;

(5) directly or indirectly employs a person whose license to practice chiropractic has been suspended, canceled, or revoked;

(6) associates in the practice of chiropractic with a person:

(A) whose license to practice chiropractic has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of chiropractic in this state or elsewhere; or

(7) directly or indirectly aids or abets the practice of chiropractic by a person that is not licensed to practice chiropractic by the board.

(b) For purposes of Subsection (a)(4), conduct that subverts or attempts to subvert the chiropractic licensing examination process includes, as prescribed by board rule, conduct

that violates:

(1) the security of the examination materials;

(2) the standard of test administration; or

(3) the accreditation process.

Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 201.5025(a)(3), unprofessional or dishonorable conduct that is likely to deceive or defraud the public includes conduct in which a chiropractor:

(1) commits an act that violates any state or federal law if the act is connected with the chiropractor's practice of chiropractic;

(2) prescribes or administers a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is prescribed or administered;

(3) violates Section 311.0025, Health and Safety Code;

(4) fails to supervise adequately the activities of those acting under the supervision of the chiropractor; or

(5) delegates professional chiropractic responsibility or acts to a person if the delegating chiropractor knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation is not necessary for the enforcement of Subsection (a)(1). 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. The heading to Section 201.504, Occupations Code, is amended to read as follows:

Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS.

SECTION 31. Section 201.504, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Subject to Subsection (d), the board may 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) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 32. Subchapter K, Chapter 201, Occupations Code, is amended by adding Section 201.5065 to read as follows:

Sec. 201.5065. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a chiropractor's license on proof that the chiropractor has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal

Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the chiropractor's license.

SECTION 33. Subchapter M, Chapter 201, Occupations Code, is amended by adding Section 201.6015 to read as follows:

Sec. 201.6015. CEASE AND DESIST ORDER. (a) 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, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

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

SECTION 34. Section 201.604, Occupations Code, is amended to read as follows:

Sec. 201.604. GENERAL CRIMINAL PENALTY. A [~~Except as provided by Section 201.605, a~~] person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than

added by this Act, and Sections 201.205 and 201.252, Occupations Code, as amended by this Act.

SECTION 39. The changes in law made by this Act to Chapter 201, Occupations Code, relating to the investigation of a complaint apply only to a complaint filed with the Texas Board of Chiropractic Examiners on or after the effective date of this Act. A complaint filed with the board before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 40. (a) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the local chiropractic peer review committees under Section 201.251, Occupations Code, as amended by this Act. In appointing the initial members of each committee, the board shall appoint as near to one-third of the members as possible to terms expiring December 31, 2006, as near to one-third as possible to terms expiring December 31, 2007, and as near to one-third as possible to terms expiring December 31, 2008. 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) 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) On or before January 1, 2006, the Texas Board of Chiropractic Examiners shall appoint the members of the executive chiropractic peer review committee under Section 201.253, Occupations Code, as amended by this Act. In appointing the initial members of the committee, the board shall appoint two persons to terms expiring December 31, 2006, two to terms expiring December 31, 2007, and two to terms expiring December 31, 2008. 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. The changes in law made by this Act to Sections 201.302 and 201.303, Occupations Code, apply only to a person who enrolls in a chiropractic school on or after the effective date of this Act. A person who enrolled in a chiropractic school before that date is governed by the law in effect on the date of enrollment, and the former law is continued in effect for that purpose.

SECTION 43. The changes in law made by this Act to Sections 201.354 and 201.355, Occupations Code, apply only to the renewal of a license to practice chiropractic that expires on or after the

effective date of this Act. A license that expires before that date is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

SECTION 44. This Act takes effect September 1, 2005.

H.B. No. 972

President of the Senate

Speaker of the House

I certify that H.B. No. 972 was passed by the House on May 10, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 972 on May 27, 2005, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 972 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

President of the Senate

Speaker of the House

I certify that H.B. No. 972 (1) was passed by the House on May 10 (2), 2005, by a non-record vote;

and that the House concurred in Senate amendments to H.B. No. 972 on May 27 (3), 2005, by a non-record vote.

Chief Clerk of the House

**** Preparation: CT47

I certify that H.B. No. 972 (1) was passed by the Senate, with amendments, on May 25 (2), 2005, by the following vote: Yeas 31 (3), Nays 0 (4).

Secretary of the Senate

APPROVED:

Date

Governor

**** Preparation: CT32

for chief clerk use only
Bill or Resolution Number: HB 972

JOINT AUTHOR AUTHORIZATION

As primary author of HB 972 I hereby authorize the following joint author(s):
(bill or resolution #)

Rep. Peggy Hamric
printed name of joint author #1

signature of joint author #1

4-11-05

Rep. Vicki Truitt
printed name of joint author #2

signature of joint author #2

11 April 05

Rep. Jim Dunnam
printed name of joint author #3

signature of joint author #3

4-11-05

printed name of joint author #4

signature of joint author #4

signature of primary author

4/5/2005
date

H.B. No. 972 By [illegible]

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Texas Board of Chiropractic Examiners; providing a criminal penalty.

FEB 09 2005 Filed with the Chief Clerk

FEB 17 2005 Read first time and referred to Committee on Public Health

APR 20 2005 Reported ____ favorably ([redacted])
([redacted])

APR 28 2005 Sent to Committee on (Calendars)
([redacted])

MAY 09 2005 Read second time ([redacted]t.) (amended); passed to third reading ([redacted]) by a (non-record vote)
([redacted] of _____ [redacted]; _____ [redacted], _____ [redacted])

_____ Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of _____ yeas, _____ nays, _____ present, not voting

MAY 10 2005 Read third time (amended); finally passed ([redacted]) by a (non-record vote)
([redacted] _____ [redacted], _____ [redacted])

_____ Engrossed

MAY 11 2005 Sent to Senate

Robert Haney
CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

MAY 11 2005 Received from the House

MAY 13 2005 Read and referred to Committee on GOVERNMENT ORGANIZATION

_____ Reported favorably _____

MAY 18 2005 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

_____ Ordered not printed

MAY 25 2005 Laid before the Senate

_____ Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)
(_____ yeas, _____ nays)

MAY 25 2005 Read second time, _____, and passed to third reading by (~~unanimous consent~~)
(a viva voce vote)
(~~_____ yeas, _____ nays~~)

MAY 25 2005 Senate and Constitutional 3 Day Rules suspended by a vote of 31 yeas, 0 nays

MAY 25 2005 Read third time, _____, and passed by a (~~viva voce vote~~)
(31 yeas, 0 nays)

MAY 25 2005 Returned to the House

Patsy Spaw
SECRETARY OF THE SENATE

OTHER SENATE ACTION:

MAY 25 2005 Returned from the Senate (as substituted)
[redacted])

~~MAY 27 2005~~ House concurred in Senate amendments by a (non-record vote)
([redacted] _____ [redacted], _____ [redacted]; _____ [redacted])

_____ House refused to concur in Senate amendments and requested the appointment of a conference committee by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House conferees appointed: _____, Chair; _____,

_____, _____, _____

_____ Senate granted House request. Senate conferees appointed: _____, Chair;

_____, _____, _____, _____

_____ Conference committee report adopted (rejected) by the House by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Conference committee report adopted (rejected) by the Senate by a (viva voce vote) (record vote of _____ yeas, _____ nays)

05 APR 27 AM 11: 11
HOUSE OF REPRESENTATIVES

05 MAY 26 AM 10: 14
HOUSE OF REPRESENTATIVES