By: Jane Nelson S.B. No. 401

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.

S.B. No. 401 By Jane 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.

FEB 09 2005 Filed with the Secretary of the Senate

FEB 15 2005 Read and referred to Committee on GOVERNMENT ORGANIZATION

_____ Reported favorably _____

_____ Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

_____ Ordered not printed

_____ Laid before the Senate

_____ Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent / ____ yeas, ____ nays

_____ Read second time, _____, and ordered engrossed by: { unanimous consent / a viva voce vote / ____ yeas, ____ nays

_____ Senate and Constitutional 3 Day Rule suspended by a vote of ____ yeas, ____ nays.

_____ Read third time, _____, and passed by: { A viva voce vote / ____ yeas, ____ nays

_____
SECRETARY OF THE SENATE

OTHER ACTION:

_____ Engrossed

_____ Sent to House

Engrossing Clerk _____

_____ Received from the Senate

_____ Read first time and referred to Committee on _____

_____ Reported ____favorably (as amended) (as substituted)

_____ Sent to Committee on (Calendars) (Local & Consent Calendars)

_____ Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of ____ yeas, ____ nays, ____ present, not voting)

_____ Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of ____ yeas, ____ nays, ____ present, not voting.

_____ Read third time (amended); finally passed (failed to pass) by a (non-record vote) (record vote of ____ yeas, ____ nays, ____ present, not voting)

_____ Returned to Senate.

_____
CHIEF CLERK OF THE HOUSE

_____ Returned from House without amendment.

_____ Returned from House with ____ amendments.

_____ Concurred in House amendments by a viva voce vote ____ yeas, ____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____

_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____ , Chairman;

_____ , _____ , _____ .

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
{ _____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
{ _____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
{ _____ yeas, _____ nays