By: Vicki Smith H.B. No. 2669

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain chiropractic clinics; creating an offense and providing civil and criminal penalties.

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

SECTION 1. Subtitle C, Title 3, Occupations Code, is amended by adding Chapter 207 to read as follows:

CHAPTER 207. NON-DOCTOR-OF-CHIROPRACTIC-OWNED CHIROPRACTIC CLINICS

Sec. 207.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person or business seeking to be licensed under this chapter or seeking the renewal of a license under this chapter.

(2) "Board" means the Texas Board of Chiropractic Examiners.

(3) "Chiropractic care records" means records of patient treatment and care maintained by date of service. Chiropractic care records are the sole property of the patient and must be maintained and in the custody of the doctor of chiropractic providing the services for the period prescribed by the Texas Board of Chiropractic Examiners.

(4) "Commission" means the Texas Commission of Licensing and Regulation.

(5) "Commissioner" means the commissioner of licensing and regulation.

(6) "Contracted doctor of chiropractic" means any doctor of chiropractic as defined in Section 201.002(b) who holds a current active license to practice chiropractic and who has entered into a contractual agreement with a licensed chiropractic clinic owner to provide chiropractic care.

(7) "Controlling person" means:

(A) an officer or director of a corporation seeking a license under this chapter, a shareholder holding 10 percent or more of the voting stock of a corporation seeking to own or operate a non-doctor-of-chiropractic-owned chiropractic clinic, or a partner of a partnership seeking to own or operate a non-doctor-of-chiropractic-owned chiropractic clinic; or

(B) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a company that owns and operates a non-doctor-of-chiropractic-owned chiropractic clinic through the ownership of voting securities, by contract or otherwise.

(8) "Department" means the Texas Department of Licensing and Regulation.

(9) "Doctor of chiropractic" has the meaning assigned by Section 201.002(b).

(10) "Independent contractor" means a person other than a doctor of chiropractic who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job, not by the hour or on some other time-measured basis;

(B) is free to hire as many helpers as the person

desires and to determine what each helper will be paid; and

(C) is free to work for other contractors, or to send helpers to work for other contractors, while under contract to the hiring employer.

(11) "Licensee" means a person or entity licensed under this chapter who owns or operates a non-doctor-of-chiropractic-owned chiropractic clinic.

(12) "Non-doctor-of-chiropractic-owned chiropractic clinic" means a chiropractic facility licensed under this chapter and registered under Section 201.312.

(13) "Patient" means a person seeking and receiving chiropractic care or services.

(14) "Person" means an individual, association, corporation, organization, government or governmental subdivision or agency, business trust, estate trust, joint venture, partnership, or other legal entity.

(15) "Public company" means a corporation whose shares are listed on the New York Stock Exchange and that has total assets that exceed $1 billion.

Sec. 207.002. RULES; INTERAGENCY COOPERATION. (a) The commissioner shall adopt rules as necessary to administer this Act.

(b) Rules shall be adopted in compliance with Chapter 2001, Government Code.

(c) Each licensee is governed and controlled by this chapter and the rules adopted by the commissioner.

(d) Notwithstanding any other provision of this chapter, nothing in this chapter preempts the existing statutory or

rulemaking authority of any other state agency or entity to regulate non-doctor-of-chiropractic-owned chiropractic clinics in a manner that is consistent with the statutory authority of that state agency or entity.

(e) Each state agency that, in performing duties under other law, affects the regulation of non-doctor-of-chiropractic-owned chiropractic clinics shall cooperate with the department, the commissioner, and other state agencies as necessary to fully implement and enforce this chapter. In particular, the board, the Texas Department of Insurance, the division of workers' compensation of the Texas Department of Insurance, and the attorney general's office shall assist in the implementation of this chapter and shall provide information to the department on request.

Sec. 207.003. LICENSE REQUIRED; APPLICATION. (a) A non-doctor-of-chiropractic-owned clinic may not allow a licensed doctor of chiropractic to engage in or offer chiropractic services or chiropractic care in this state without holding a license issued under this chapter.

(b) Each non-doctor-of-chiropractic-owned clinic that desires an original or renewal non-doctor-of-chiropractic-owned chiropractic clinic license shall file with the department a written application accompanied by the application fee.

(c) The department may require an applicant for a license to provide information and certifications necessary to determine that the applicant meets the licensing requirements of this chapter. The department may also require the applicant to provide information and certifications necessary to determine whether

individuals affiliated with the applicant are qualified to serve as controlling persons.

(d) An applicant, a licensee, a spouse of an applicant or licensee, a partner of an LLP, or any stockholder of a corporation is ineligible for a license for two years after the date of final department action on the denial or revocation of a license applied for or issued under this chapter. This restriction does not apply to a denial or revocation of a license if the basis of the action was:

(1) an inadvertent error or omission in the application if that error or omission is promptly corrected;

(2) the experience documented to the department was insufficient at the time of the previous application; or

(3) the department was unable to complete the criminal background investigation required under Section 207.004 because of insufficient information received from a local, state, or federal law enforcement agency.

(e) An applicant, a licensee, a spouse of an applicant or licensee, a partner of an LLP, or any stockholder of a corporation is ineligible for a license for one year after the date of final department action on the denial or revocation of a license applied for or issued under this chapter if:

(1) the basis of the denial or revocation was that one or more of the controlling persons affiliated with the applicant or licensee was determined by the department to be unsuitable; or

(2) that unsuitable controlling person has in fact ceased to be a controlling person of the applicant or licensee.

Sec. 207.004. LICENSE REQUIREMENTS. (a) To be qualified to serve as a controlling person of a licensee under this chapter, that person must be at least 18 years of age, be of good moral character, and have educational, managerial, or business experience relevant to:

(1) operation of a business entity offering chiropractic care; or

(2) service as a controlling person of a chiropractic care facility.

(b) For the purposes of this section, "good moral character" means a personal history of honesty, trustworthiness, fairness, a good reputation for fair dealing, and respect for the rights of others and for the laws of this state and nation.

(c) The department shall conduct a thorough background investigation of each individual applicant and of each controlling person of each applicant to determine whether that applicant or controlling person is qualified under this chapter. The department may deny an application for the issuance or renewal of a license if it finds that a controlling person is not qualified under this chapter. The investigation must include:

(1) the submission of fingerprints for processing through appropriate local, state, and federal law enforcement agencies; and

(2) examination by the department of police or other law enforcement records maintained by local, state, or federal law enforcement agencies.

(d) Department background investigations are governed by

this chapter and by Chapter 53 of this code and Section 411.122, Government Code. Conviction of a crime does not automatically disqualify a controlling person, require the revocation of a license, or require the denial of an application for a new or renewed license. The department shall consider criminal convictions as provided by Chapter 53 of this code and Section 411.122, Government Code.

(e) Each licensee shall maintain a registered agent for the service of process in this state.

(f) An applicant for an original or renewal license must demonstrate a net worth as follows:

(1) $50,000 if the applicant employs fewer than five assigned employees;

(2) $75,000 if the applicant employs at least five but not more than eight assigned employees; or

(3) $100,000 if the applicant employs more than eight assigned employees.

(g) For purposes of Subsection (f), "assigned employee" means a full-time employee whose normal work week is at least 25 hours per week and whose work is performed in this state. The term does not include an employee hired to support or supplement the client's workforce in special work situations, such as employee absences.

(h) The applicant shall demonstrate net worth to the department by providing the department with the applicant's financial statement or a copy of the applicant's most recent federal tax return. The net worth requirement may also be satisfied

through guarantees, letters of credit, or other security acceptable to the department. A guaranty is not acceptable to satisfy this subsection unless the applicant submits sufficient evidence to satisfy the department that the guarantor has adequate resources to satisfy the obligations of the guaranty.

(i) In calculating net worth, an applicant shall include adequate reserves for all taxes and insurance, including reserves for claims incurred but not paid and for claims incurred but not reported under plans of self-insurance for health benefits. The calculation of net worth by an applicant shall be made according to Section 448, Internal Revenue Code of 1986.

(j) A document submitted to establish net worth must reflect the net worth as of a date not earlier than six months before the date on which the application is submitted. A document submitted to establish net worth must be prepared or certified by an independent certified public accountant. Information supplied regarding net worth, including copies of federal tax returns, is proprietary and confidential and is exempt from disclosure to third parties, other than to other governmental agencies with a reasonable legitimate purpose for obtaining the information.

Sec. 207.005. FEES. (a) Each applicant for an original or renewal license shall pay to the department on the issuance of the license or license renewal a fee set by the commission by rule in an amount not to exceed $3,000.

(b) The commission is authorized to charge reasonable fees for license applications and renewals, investigations, inspections, and any other administrative or enforcement

responsibilities created under this chapter.

Sec. 207.006. WORKERS' COMPENSATION INSURANCE. A licensee may elect to obtain workers' compensation insurance coverage for its assigned employees through an insurance company as defined under Section 401.011, Labor Code, or through self-insurance as provided under Chapter 407, Labor Code.

Sec. 207.007. UNEMPLOYMENT TAXES; PAYROLL. A licensee is the employer of an assigned employee for purposes of Subtitle A, Title 4, Labor Code. In addition to any other reports required to be filed by law, a licensee shall report quarterly to the Texas Workforce Commission the name, address, telephone number, federal income tax identification number, and classification code as described in the Standard Industrial Classification Manual as published by the United States Office of Management and Budget of each client company on a form prescribed by the Texas Workforce Commission.

Sec. 207.008. POSTING OF LICENSES. (a) The commissioner by rule shall determine the form and content of:

(1) the licenses issued under this chapter; and

(2) notices required to be posted under this section.

(b) Each license issued under this chapter must be posted in a conspicuous place in the principal place of business in this state of the licensee. Each licensee shall display, in a place that is clear and unobstructed public view, a notice stating that the business operated at the location is licensed and regulated by the department and that any questions or complaints should be directed to the department.

(c) Each licensee issued a non-doctor-of-chiropratric-owned chiropractic clinic license under this chapter must provide a copy of that license to the board and to any and all contracting doctors of chiropractic upon receipt of the initial license and annually upon renewal.

Sec. 207.009. LICENSE NOT ASSIGNABLE; CHANGES OF NAME OR LOCATION. (a) A licensee may not conduct business under any name other than that specified in the license. A license issued under this chapter is not assignable. A licensee may not conduct business under any fictitious or assumed name without prior written authorization from the department. The department may not authorize the use of a name that is so similar to that of a public office or agency or to that of another licensee that the public may be confused or misled by its use. A licensee may not conduct business under more than one name unless it has obtained a separate license for each name.

(b) A licensee may change its licensed name at any time by notifying the department and paying a fee for each change of name. The commission by rule shall set the fee for a name change in an amount not to exceed $50. A licensee may change its name on renewal of the license without the payment of the name change fee.

(c) A licensee must notify the department in writing within 30 days of:

(1) any change in the location of its primary business office;

(2) the addition of more business offices; or

(3) a change in the location of business records

maintained by the licensee.

Sec. 207.010. PROHIBITED ACTS; CRIMINAL PENALTY. (a) A person may not:

(1) offer chiropractic services without holding a license under this Act as a non-doctor-of-chiropractic-owned chiropractic clinic;

(2) use the name or title "chiropractic clinic," "chiropractic offices," or any derivation of the term "chiropractic," or otherwise represent that the person is licensed under this chapter unless the person holds a license issued under this chapter;

(3) represent as its own the license of another location or represent that a facility is licensed if the person does not hold a license;

(4) give materially false or forged evidence to the department in connection with obtaining or renewing a license or in connection with disciplinary proceedings under this chapter; or

(5) use or attempt to use a license that has expired or been revoked.

(b) A person that violates Subsection (a) commits an offense. An offense under this subsection is a Class A misdemeanor.

(c) The commissioner may notify the attorney general of a violation, and the attorney general may apply to a district court in Travis County for permission to file suit in the nature of quo warranto or for injunctive relief, or both. The attorney general may not be required to post a bond for injunctive relief.

Sec. 207.011. DISCIPLINARY ACTIONS. (a) For purposes of

this section, "conviction" includes a plea of nolo contendere or a finding of guilt, regardless of adjudication.

(b) Disciplinary action may be taken against a licensee by the department on any of the following grounds:

(1) the conviction of a licensee or any controlling person of a licensee of bribery, fraud, or intentional or material misrepresentation in obtaining, attempting to obtain, or renewing a license;

(2) the conviction of a licensee or any controlling person of a licensee of a crime that relates to the operation of a non-doctor-of-chiropractic-owned chiropractic clinic or the ability of the licensee or any controlling person of a licensee to operate a non-doctor-of-chiropractic-owned chiropractic clinic;

(3) the conviction of a licensee or any controlling person of a licensee of a crime that relates to the classification, misclassification, or underreporting of employees under Subtitle A, Title 5, Labor Code;

(4) the conviction of a licensee or any controlling person of a licensee of a crime that relates to the establishment or maintenance of a self-insurance program, whether health insurance, workers' compensation insurance, or other insurance;

(5) the conviction of a licensee or any controlling person of a licensee of a crime that relates to fraud, deceit, or misconduct in the operation of a staff leasing service;

(6) engaging in services of a non-doctor-of-chiropractic-owned chiropractic clinic without a license;

(7) transferring or attempting to transfer a license issued under this chapter;

(8) violating this chapter or any order or rule issued by the department or commissioner under this chapter;

(9) failing to notify the department, in writing, of the felony conviction of any controlling person not later than the 30th day after the date on which that conviction is final;

(10) failing to cooperate with an investigation, examination, or audit of the licensee's records conducted by the licensee's insurance company or the insurance company's designee, as allowed by the insurance contract or as authorized by law by the board;

(11) failing to notify the department and the board not later than the 30th day after the effective date of the change of any change in ownership, principal business address, or the address of accounts and records;

(12) failing to correct any tax filings or payment deficiencies within a reasonable time as determined by the commissioner;

(13) refusing, after reasonable notice, to meet reasonable health and safety requirements within the licensee's control and made known to the licensee by a federal or state agency;

(14) a delinquency in the payment of any taxes or debts owed to the State of Texas other than those subject to a legitimate dispute;

(15) knowingly making a material misrepresentation to an insurance company, or to the department or other governmental

agency; or

(16) failing to maintain the net worth requirements required under Section 207.004.

(c) On a finding that a licensee has violated one or more provisions of Subsection (b), the department may:

(1) deny an application for a license;

(2) revoke, restrict, or refuse to renew a license;

(3) impose an administrative penalty in an amount not less than $1,000 per violation, but not more than $50,000;

(4) issue a reprimand; or

(5) place the licensee on probation for the period and subject to conditions that the department specifies.

(d) On revocation of a license, the licensee shall immediately return the revoked license to the department and notify all employees, all patients, and the board that the clinic may no longer provide chiropractic care and services.

(e) Disciplinary action may be taken, a denial of an application for a new or renewal license or a revocation of a license may be done, or a determination that a controlling person is unqualified may be made by the department only subject to Chapter 2001, Government Code, with notice to, and an opportunity for a hearing by, the affected applicant, licensee, or controlling person.

(f) If a license is revoked or renewal is denied, the affected licensee may request a reinstatement hearing after a minimum of one year. The department may reinstate or renew the license only if the cause of the nonrenewal or revocation has been

corrected.

Sec. 207.012. FEES USED FOR ADMINISTRATION. All fees collected by the department under this chapter shall be used to implement this chapter.

Sec. 207.013. EFFECT OF OTHER LAW. This chapter does not exempt any assigned employee of a licensee from any other license requirements imposed under local, state, or federal law.

SECTION 2. A person is not required to hold a license under this Act to operate a non-doctor-of-chiropractic-owned chiropractic clinic until January 1, 2008.

SECTION 3. This Act takes effect September 1, 2007.

H.B. No. 2669 By TRUITT

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of certain chiropractic clinics; creating an offense and providing civil and criminal penalties.

MAR 06 2007 Filed with the Chief Clerk

MAR 13 2007 Read first time and referred to Committee on Public Health

_____ 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)

_____ Engrossed

_____ Sent to Senate

_____
CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

_____ Received from the House

_____ Read and referred to Committee on _____

_____ 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 passed to third reading by (unanimous consent)
(a viva voce vote)
(_____ yeas, _____ nays)

_____ Senate and Constitutional 3 Day Rules suspended by a vote of _____ yeas, _____ nays

_____ Read third time, _____, and passed by a (viva voce vote)
(_____ yeas, _____ nays)

_____ Returned to the House

_____
SECRETARY OF THE SENATE

OTHER SENATE ACTION:

_____ Returned from the Senate (as substituted)
(with amendments)

_____ House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ 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)