

BILL ANALYSIS

S.B. 304
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Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Board of Chiropractic Examiners, which regulates chiropractors in Texas, is subject to the Texas Sunset Act and will be abolished on September 1, 2017, unless continued by the legislature. S.B. 304 seeks to continue the board with several statutory modifications.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Chiropractic Examiners in SECTION 8 of this bill.

ANALYSIS

S.B. 304 amends the Occupations Code to continue the Texas Board of Chiropractic Examiners until September 1, 2029, and to include diagnosing the biomechanical condition of the spine and musculoskeletal system of the human body among the acts that constitute the practice of chiropractic. The bill includes among the required contents of a training program that a person who is appointed to and qualifies for office as a member of the board must complete before the person may vote, deliberate, or be counted as a member in attendance at a board meeting information regarding the scope of and limitations on the board's rulemaking authority; the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates; and the requirements of other laws applicable to members of the board in performing their duties. The bill clarifies that such required contents regarding laws relating to conflicts of interest are laws relating to the disclosure of such conflicts. The bill requires the board's executive director to create a training manual that includes the information such a training program must include and to distribute a copy of the training manual annually to each board member and requires each member of the board, on receipt of the training manual, to sign and submit to the executive director a statement acknowledging receipt of the training manual. The bill applies these requirements to a board member appointed before, on, or after the bill's effective date. The bill requires a board member who completed the required training program before the bill's effective date to complete additional training only on the subjects added to the training program by the bill and prohibits that member from voting, deliberating, or being counted as a member in attendance at a meeting of the board held on or after December 1, 2017, until the member completes the additional training.

S.B. 304 removes the limitation on the board's authority to set a fee below a certain amount.

S.B. 304 prohibits the board from accepting anonymous complaints and requires a complaint

filed with the board by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a license holder to include the name and address of the agent, insurer, company, or administrator filing the complaint. The bill requires the board, not later than the 15th day after the date the complaint is filed with the board, to notify the license holder who is the subject of the complaint of the name and address of the agent, insurer, company, or administrator who filed the complaint, unless the notice would jeopardize an investigation.

S.B. 304 repeals statutory provisions requiring the board to appoint local chiropractic peer review committees and instead requires the board by rule to develop not later than March 1, 2018, an expert review process to assist the board with the investigation of complaints filed with the board that require additional chiropractic expertise. The bill requires the board to determine the type of complaints that require potential expert review, including standard of care complaints; create a list of qualified experts to review complaints that require additional chiropractic expertise; and establish a method for assigning an expert to a complaint that ensures unbiased assignments of complaints, maintains confidentiality of complaints, and avoids conflicts of interest related to complaints. The bill requires the rules adopted by the board to address certain specified matters and authorizes the board to contract with a qualified expert on the list created by the board to assist the board in the investigation of a complaint that requires additional chiropractic expertise.

S.B. 304 extends the privileged classification and confidentiality of the board's investigation files and the exemption of those files from any means of legal compulsion for release to anyone other than the board or a board employee or agent to all investigative information in the possession of or received or gathered by the board or the board's employees or agents relating to a license holder, an application for a license, or a criminal investigation or proceeding and specifies that the authorized disclosure of that information to a board employee or agent is restricted to an employee or agent involved in any disciplinary action relating to a license holder. The bill establishes that the board's provision of information in the board's possession that the board intends to offer into evidence in presenting its case in chief at the contested case hearing on the complaint to the license holder does not constitute a waiver of that privilege or confidentiality. The bill requires the board to protect the identity of a complainant to the extent possible.

S.B. 304 requires the board to require that an applicant for a license to practice chiropractic submit a complete and legible set of fingerprints to the board or to the Department of Public Safety (DPS) on a board-prescribed form for the purpose of obtaining criminal history record information from DPS and the FBI and prohibits the board from issuing a license to a person who does not comply with this requirement. The bill requires the board to conduct a criminal history record information check of each applicant for a license. The bill authorizes the board to enter into an agreement with DPS to administer the required criminal history record information check and to authorize DPS to collect from each applicant the costs incurred by DPS in conducting the criminal history record information check. The bill requires the board to establish a process to search, before issuing an initial or renewal license, at least one national practitioner database to determine whether another state has taken any disciplinary action against an applicant or license holder and requires the board to check such a database with respect to a license holder on receipt of a renewal application.

S.B. 304 requires an applicant renewing a license to practice chiropractic to submit a complete and legible set of fingerprints for purposes of performing the criminal history record information check and authorizes the board to administratively suspend or refuse to renew the license of a person who does not comply with this requirement. The bill exempts a license holder from that requirement if the license holder has previously submitted fingerprints as required for license issuance or as part of a prior license renewal. The bill requires the board to obtain not later than September 1, 2019, criminal history record information on each person who on the bill's effective date holds a license and did not undergo a criminal history record information check based on the license holder's fingerprints on the initial license application and authorizes the

board to suspend the license of such a license holder who does not provide the criminal history record information as required.

S.B. 304 removes the requirement that an applicant for a license by examination present to the board satisfactory evidence that the applicant is of good moral character. The bill removes the requirement that an applicant pass the license examination within three attempts. The bill removes the requirement that the registration of a chiropractor practicing in Texas with the board be renewed annually and instead makes a license to practice chiropractic valid for a term of one or two years as determined by board rule. The bill includes failing to submit fingerprints to the board or to DPS to enable the board to obtain an applicant's criminal history record information among the actions for which the board may refuse to admit a person to examinations and revoke or suspend a license or place a license holder on probation. The bill authorizes the board to refuse to admit a person to an examination and to revoke or to suspend a license or to place a license holder on probation for a period determined by the board because of the person's or license holder's violation of a state law other than state law relating to chiropractors, a rule of another licensing board in Texas, or a statute or rule of another state as determined through a search of the national practitioner database, if the violation constitutes a violation of Texas law or a board rule.

S.B. 304 repeals provisions requiring the board to adopt requirements for registering chiropractic facilities as necessary to protect the public health, safety, and welfare.

S.B. 304 repeals the following Occupations Code provisions:

- Subchapter F, Chapter 201
- Section 201.312

EFFECTIVE DATE

September 1, 2017.