

BILL ANALYSIS

Senate Research Center

S.B. 304
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Health & Human Services
5/31/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of S.B. 304 is to enact the recommendations of the Sunset Advisory Commission (Sunset) regarding the Texas Board of Chiropractic Examiners (TBCE). TBCE regulates chiropractors in Texas. To achieve its mission of protecting the public, TBCE licenses chiropractors and registers chiropractic facilities, investigates complaints, and takes disciplinary action against individuals who violate TBCE's statute or rules.

TBCE is subject to abolishment under the Sunset Act on September 1, 2017, unless continued by the legislature. Overall, Sunset's recommendations aim to focus TBCE on high-risk enforcement activities instead of administrative regulation that does not add to public safety.

TBCE is governed by Chapter 201, Occupations Code.

This legislation addresses issues differently from current law by:

- Continuing TBCE for 12 years.
- Adding the word "diagnose" to the definition of the practice of chiropractic.
- Discontinuing the registration of chiropractic facilities.
- Requiring TBCE to develop an expert review process to ensure chiropractic expertise in its enforcement process.
- Repealing an unused peer review process originally intended to provide chiropractic expertise.
- Requiring TBCE to conduct fingerprint-based criminal background checks of all applicants and licensees.
- Requiring TBCE to maintain confidentiality of investigative reports, complaints, and other investigative information.
- Authorizing TBCE to check for disciplinary actions in other states and pursue any necessary enforcement action.
- Prohibiting TBCE from accepting anonymous complaints.
- Removing unnecessary qualifications required of applicants for licensure.
- Removing the limitation on the number of times an applicant can take TBCE's jurisprudence exam.
- Authorizing TBCE to providing biennial license renewal.

Removing the statutory limitation currently restricting TBCE's authority to lower fees. (Original Author's Sponsor's Statement of Intent)

S.B. 304 amends current law relating to the continuation and functions of the Texas Board of Chiropractic Examiners and authorizes a reduction in fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Chiropractic Examiners (TBCE) in SECTION 8 (Section 201.210, Occupations Code) and SECTION 17 (Section 201.353, Occupations Code) of this bill.

Rulemaking authority previously granted to TBCE is modified in SECTION 4 (Section 201.153, Occupations Code) and SECTION 11 (Section 201.307, Occupations Code) of this bill.

Rulemaking authority previously granted to TBCE is rescinded in SECTION 21 (Sections 201.252, 201.2545, and 201.312, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 201.002(b), Occupations Code, to provide that a person practices chiropractic under this chapter (Chiropractors) if the person, among certain other functions, uses objective or subjective means to diagnose, analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body.

SECTION 2. Amends Section 201.004, Occupations Code, to provide that, unless continued in existence as provided by Chapter 325 (Sunset Law), Government Code, the Texas Board of Chiropractic Examiners (TBCE) is abolished and this chapter expires September 1, 2029, rather than September 1, 2017.

SECTION 3. Amends Section 201.061, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires that the training program provide the person with information regarding:

- (1) makes a nonsubstantive change;
- (2) creates this subsection from existing text and makes a nonsubstantive change;
- (3) the scope of and limitations on TBCE's rulemaking authority;
- (4) the types of TBCE 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 TBCE regulates, including certain rules, interpretations, and enforcement actions.
- (5) redesignates existing Subdivision (2) as Subdivision (5) and makes no further changes to this subdivision;
- (6) redesignates existing Subdivision (3) as Subdivision (6) and includes the requirements of laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and other laws applicable to TBCE members in performing their duties; and
- (7) redesignates existing Subdivision (4) as Subdivision (7) and makes no further changes to this subdivision.

(d) Requires the executive director of TBCE (executive director) to create a training manual that includes the information required by Subsection (b) and distribute a copy of the training manual annually to each TBCE member. Requires each TBCE member, on receipt of the training manual, to sign and submit to the executive director a statement acknowledging receipt of the training manual.

SECTION 4. Amends Section 201.153(a), Occupations Code, to delete existing text prohibiting TBCE from setting a fee in an amount that is less than the amount of that fee on September 1, 1993.

SECTION 5. Amends the heading to Section 201.206, Occupations Code, to read as follows:

Sec. 201.206. CONFIDENTIALITY OF COMPLAINTS, INVESTIGATION FILES, AND OTHER INFORMATION.

SECTION 6. Amends Section 201.206, Occupations Code, by amending Subsection (a) and adding Subsections (c-1) and (f), as follows:

(a) Provides that each complaint, adverse report, investigation file, and other investigation report and all other investigative information in the possession of or received or gathered by TBCE or TBCE's employees or agents relating to certain matters is privileged and confidential and is not subject to certain means of legal compulsion for release to anyone other than TBCE or an employee or agent of TBCE involved in any disciplinary action relating to a license holder. Deletes existing text providing that TBCE's investigation files are confidential, privileged, and not subject to certain means of legal compulsion for release other than to TBCE or an employee or agent of TBCE.

(c-1) Provides that TBCE's providing of information under Subsection (c) (relating to certain information release requirements by TBCE to a license holder on completion of an investigation and before a hearing) does not constitute a waiver of a privilege or confidentiality under this chapter or any other law.

(f) Requires TBCE to protect the identity of a complainant to the extent possible.

SECTION 7. Amends Subchapter E, Chapter 201, Occupations Code, by adding Section 201.2065, as follows:

Sec. 201.2065. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) Defines "anonymous complaint," "insurance agent," "insurer," and "third-party administrator."

(b) Prohibits TBCE from accepting anonymous complaints.

(c) Requires that a complaint filed with TBCE by certain individuals or entities against a license holder, notwithstanding any confidentiality requirements under Chapter 552 (Public Information), Government Code, or this chapter, include the name and address of the individual or entity filing the complaint.

(d) Requires TBCE, not later than the 15th day after the date the complaint is filed with TBCE, to notify the license holder who is the subject of the complaint of the name and address of the certain individual or entity who filed the complaint, unless the notice would jeopardize an investigation.

SECTION 8. Amends Subchapter E, Chapter 201, Occupations Code, by adding Section 201.210, as follows:

Sec. 201.210. EXPERT REVIEW PROCESS. (a) Requires TBCE, by rule, to develop an expert review process to assist TBCE with the investigation of complaints filed with TBCE that require additional chiropractic expertise.

(b) Requires TBCE 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.

(c) Requires that the rules adopted under this section address certain standards relating to the expert review process.

(d) Authorizes TBCE to contract with a qualified expert on the list created under this section to assist TBCE in the investigation of a complaint that requires additional chiropractic expertise.

SECTION 9. Amends Section 201.302(a), Occupations Code, as follows:

(a) Deletes existing text requiring an applicant for a license by examination to present satisfactory evidence to TBCE that the applicant, among certain other requirements, is of good moral character. Redesignates existing Subdivisions (3) and (4) as Subdivisions (2) and (3).

SECTION 10. Amends Section 201.303(d), Occupations Code, to provide that a bona fide reputable doctor of chiropractic degree program that satisfies Section 201.302(a)(3) (relating to requiring an applicant for a license by examination to present evidence that the applicant is either a graduate or final semester student), rather than Section 201.302(a)(4), is one that fulfills certain criteria.

SECTION 11. Amends Section 201.307(b), Occupations Code, to delete existing text requiring an applicant to pass the examination required by Section 201.304(a)(2) (relating to a certain examination that tests an applicant's knowledge of laws relating to chiropractic practice) within three attempts.

SECTION 12. Amends Subchapter G, Chapter 201, Occupations Code, by adding Sections 201.313 and 201.314, as follows:

Sec. 201.313. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE ISSUANCE. (a) Requires TBCE to require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by TBCE, to TBCE or to the Texas Department of Public Safety (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation.

(b) Prohibits TBCE from issuing a license to a person who does not comply with the requirement of Subsection (a).

(c) Requires TBCE to conduct a criminal history record information check of each applicant for a license using certain information.

(d) Authorizes TBCE to enter into an agreement with DPS to administer a required criminal history record information check and authorize DPS to collect from each applicant the costs incurred by DPS in conducting the criminal history record information check.

Sec. 201.314. SEARCH OF NATIONAL PRACTITIONER DATABASE. Requires TBCE to establish a process to search at least one national practitioner database to determine whether another state has taken any disciplinary action against an applicant or license holder before issuing an initial or renewal license under this chapter.

SECTION 13. Amends the heading to Subchapter H, Chapter 201, Occupations Code, to read as follows:

SUBCHAPTER H. REGISTRATION AND LICENSE RENEWAL

SECTION 14. Amends Section 201.351, Occupations Code, as follows:

Sec. 201.351. New heading: REGISTRATION. Prohibits a chiropractor from practicing chiropractic in this state unless the chiropractor registers with TBCE, rather than annually registers with TBCE not later than January 1 of each year.

SECTION 15. Amends the heading to Section 201.352, Occupations Code, to read as follows:

Sec. 201.352. APPLICATION FOR REGISTRATION.

SECTION 16. Amends Section 201.352, Occupations Code, by amending Subsections (a) and (d) and adding Subsection (c-1), as follows:

(a) Requires a person required to register to file, rather than file annually, with TBCE a written application for registration and to pay, with the application, a registration fee to TBCE, rather than pay an annual registration fee to TBCE.

(c-1) Requires TBCE, on receipt of a renewal application, to check the national practitioner database with respect to the license holder as provided by Section 201.314.

(d) Requires TBCE, if TBCE determines that the applicant is licensed to practice chiropractic in this state, to issue a registration receipt, rather than an annual registration receipt, certifying that the applicant has completed certain tasks.

SECTION 17. Amends Section 201.353, Occupations Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides that a license under this chapter is valid for a term of two or more years as determined by TBCE rule.

(a-1) Redesignates text of existing Subsection (a) as Subsection (a-1). Makes no further changes to this subsection.

SECTION 18. Amends Sections 201.354(c), (d), (f), and (g), Occupations Code, as follows:

(c) Provides that the renewal fee, rather than the annual renewal fee, applies to each person licensed by TBCE, even if the person is not practicing chiropractic in this state.

(d) Makes conforming changes.

(f) Provides that a person who practices chiropractic without a renewal receipt for the current year, rather than an annual renewal receipt for the current year, practices chiropractic without a license.

(g) Makes conforming changes.

SECTION 19. Amends Subchapter H, Chapter 201, Occupations Code, by adding Section 201.3545, as follows:

Sec. 201.3545. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) Requires an applicant renewing a license issued under this chapter to submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 201.313.

(b) Authorizes TBCE to administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) Provides that a license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under certain sections of this code.

SECTION 20. Amends Section 201.502, Occupations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes TBCE to refuse to admit a person to examinations and to revoke or suspend a license or place a license holder on probation for a period determined by TBCE for, among certain other violations, failing to submit fingerprints to TBCE or DPS to enable TBCE to obtain criminal history record information as required by Section 201.313. Makes a nonsubstantive change.

(c) Authorizes TBCE to refuse to admit a person to an examination and to revoke or suspend a license or place a license holder on probation for a period determined by TBCE because of the person's or license holder's violation of a law of this state, other than this chapter, or a rule of another licensing board in this state, or of a statute or rule of another state as determined through a search conducted as provided by Section 201.314, if the violation constitutes a violation of the laws of this state or a TBCE rule.

SECTION 21. Repealers: Subchapter F (Peer Review Committees), Chapter 201 (Chiropractors), and Section 201.312 (Registration of Facilities), Occupations Code.

SECTION 22. (a) Requires TBCE, not later than March 1, 2018, to adopt rules to establish the expert review process as required by Section 201.210, Occupations Code, as added by this Act.

(b) Requires TBCE, not later than September 1, 2019, to obtain criminal history record information on each person who on the effective date of this Act holds a license issued under Chapter 201, Occupations Code, and did not undergo a criminal history record information check based on the license holder's fingerprints on the initial application for the license. Authorizes TBCE to suspend the license of a license holder who does not provide the criminal history record information as required by TBCE and this subsection.

SECTION 23. (a) Provides that, except as provided by Subsection (b) of this section, Section 201.061 (Training), Occupations Code, as amended by this Act, applies to a member of TBCE appointed before, on, or after the effective date of this Act.

(b) Requires a member of TBCE who, before the effective date of this Act, completed the training program required by Section 201.061, Occupations Code, as that law existed before the effective date of this Act, to complete additional training only on subjects added by this Act to the training program as required by Section 201.061, Occupations Code, as amended by this Act. Prohibits a TBCE member described by this subsection from voting, deliberating, or being counted as a member in attendance at a TBCE meeting held on or after December 1, 2017, until the member completes the additional training.

SECTION 24. Effective date: September 1, 2017.