

## **BILL ANALYSIS**

Senate Research Center

S.B. 211  
By: Carona  
Health & Human Services  
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Enrolled

### **DIGEST AND PURPOSE**

Currently, Chapter 201, Occupations Code, does not provide specific guidelines regarding the public's access to files for open investigations of licensed chiropractors. A license holder is therefore able, either solely or through the license holder's attorney, to request and receive for review the information obtained about the license holder's case while an investigation of the license holder is underway. In addition, Section 201.355(a), Occupations Code, allows the Texas Board of Chiropractic Examiners (TBCE) to renew without reexamination the license of a license holder whose license in this state has expired, but who has moved to another state, is currently licensed in the other state, and has been in practice in that other state for the two years prior to the application; current Texas law does not extend similar privileges to a license holder who has moved to a foreign country.

S.B. 211 would limit public access to certain TBCE records even for certain legal actions during the course of a license holder investigation. S.B. 211 would not prevent the public from obtaining such records once an investigation has been completed. S.B. 211 further extends the ability to renew an expired license without reexamination to a license holder whose license has expired, but who has moved to another country, is currently licensed in the other country, has been in practice in that other country for the two years prior to the application and is in good standing there. S.B. 211 will repeal Section 201.303(b), Occupations Code, which requires a person to complete certain courses with a grade of 75 percent or better in order to apply for a license to practice chiropractic.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter E, Chapter 201, Occupations Code, by adding Section 201.206, as follows:

Sec. 201.206. CONFIDENTIALITY OF INVESTIGATION FILES. (a) Specifies the confidentiality and privileged nature of the Texas Board of Chiropractic Examiners' (TBCE) investigation files. Exempts such files from legal compulsion for release other than to certain individuals.

(b) Requires TBCE, to share information in investigation files, on request, with another state or federal regulatory agency or with a local, state, or federal law enforcement agency regardless of whether the investigation has been completed. Provides that TBCE is not required to disclose under this subsection information that is an attorney-client communication, an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) Requires TBCE, on the completion of the investigation and before a hearing under Section 201.505, to provide to the license holder, subject to any other privilege or restriction set forth by rule, statute, or legal precedent, access to all information in TBCE's possession that TBCE intends to offer into evidence in

presenting its case in chief at the contested case hearing on the complaint.  
Provides that TBCE is not required to provide certain information.

(d) Authorizes TBCE to:

- (1) disclose a complaint to the affected license holder; and
- (2) provide to a complainant the license holder's response to the complaint, if providing the response is considered by the board to be necessary to investigate the complaint.

(e) Provides that this section does not prohibit TBCE or another party in a disciplinary action from offering into evidence in a contested case under Chapter 2001, Government Code, a record, document, or other information obtained or created during an investigation.

**SECTION 2. Amends Section 201.312, Occupations Code, as follows:**

Sec. 201.312. New heading: REGISTRATION OF FACILITIES. (a) Requires TBCE, by rule to adopt requirements for registering chiropractic facilities as necessary to protect the public health, safety, and welfare.

(b) Requires the rules adopted under this section to meet certain requirements.

(c) Requires the standards adopted under Subsection (b)(2) to be consistent with industry standards for the practice of chiropractic.

(d) Requires the owner of the facility, when registering a chiropractic facility, to:

- (1) file with TBCE a written application for registration; and
- (2) pay, with the application, a registration fee in an amount set by the board not to exceed \$75.

(e) Authorizes TBCE to issue a certificate of registration only to a chiropractic facility that complies with the requirements of this section.

(f) Requires a certificate of registration under this section to be renewed annually. Requires the certificate holder to apply to TBCE and pay an annual fee equal to the amount of the registration fee under Subsection (d)(2), to renew the certificate.

(g) Provides that a person licensed to practice chiropractic in this state is subject to disciplinary action under this chapter if the person practices chiropractic in a chiropractic facility that the person knows is not registered under this section.

(h) Provides that an owner of a chiropractic facility who violates this section or a rule adopted under this section is subject to disciplinary action by TBCE in the same manner as a license holder who violates this chapter or a rule adopted under this chapter.

**SECTION 3. Amends Section 201.355, Occupations Code, by amending Subsection (a) and adding Subsection (c), as follows:**

(a) Authorizes TBCE to renew without reexamination an expired license of a person who was licensed in this state, moved to another state or foreign country, and is currently licensed in good standing and has been in practice in the other state or foreign country for the two years preceding application.

(c) Provides that, for purposes of this section, a person is currently licensed if the person is licensed by another chiropractic licensing board recognized by TBCE. Requires TBCE to adopt requirements for recognizing another chiropractic licensing board that:

- (1) has licensing requirements substantially equivalent to the requirements of this chapter; and
- (2) maintains professional standards considered by the board to be equivalent to the standards under this chapter.

SECTION 4. Amends Subchapter E, Chapter 351, Occupations Code, by adding Section 351.2045, as follows:

Sec. 351.2045. CONFIDENTIALITY OF INVESTIGATION FILES. (a) Provides that TBCE's investigation files are confidential, privileged, and not subject to discovery, subpoena, or any other means of legal compulsion for release other than to TBCE or an employee or agent of TBCE.

(b) Requires TBCE to share information in investigation files, on request, with another state or federal regulatory agency or with a local, state, or federal law enforcement agency regardless of whether the investigation has been completed. Provides that TBCE is not required to disclose under this subsection information that is an attorney-client communication, an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) Requires TBCE, on the completion of the investigation and before a hearing under Section 351.503, to provide to the license holder, subject to any other privilege or restriction set forth by rule, statute, or legal precedent, access to all information in TBCE's possession that TBCE intends to offer into evidence in presenting its case in chief at the contested case hearing on the complaint. Provides that TBCE is not required to provide:

- (1) a board investigative report or memorandum;
- (2) the identity of a nontestifying complainant; or
- (3) attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(d) Authorizes TBCE to:

- (1) disclose a complaint to the affected license holder; and
- (2) provide to a complainant the license holder's response to the complaint, if providing the response is considered by the board to be necessary to investigate the complaint.

(e) Provides that this section does not prohibit TBCE or another party in a disciplinary action from offering into evidence in a contested case under Chapter 2001, Government Code, a record, document, or other information obtained or created during an investigation.

SECTION 5. Repealer: Section 201.303 (b), Occupations Code (Educational Requirements - requiring completion of certain courses with a grade of 75 percent or better).

SECTION 6. Requires TBCE, not later than January 1, 2004, to adopt rules under Section 201.503, Occupations Code, specifying the maximum amount of sanctions that may be assessed against a chiropractor for violating Subsection (g), Section 201.312, Occupations Code, as added by this Act.

SECTION 7. (a) Effective date: September 1, 2003.

(b),(c), and (d) Makes application of Section 201.206, Section 201.355 (a), and Section 351.2045, Occupations Code, as added by this Act, prospective.