

## **BILL ANALYSIS**

H.B. 972  
By: Solomons  
Public Health  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Texas Board of Chiropractic Examiners (Board) was created in 1949 by the 51st Legislature to regulate the chiropractic profession. The Board's mission is to protect the public's health, safety and economic welfare by ensuring that chiropractic professionals are qualified and competent, and adhere to established professional standards. To accomplish this mission, the Board licenses chiropractors, registers chiropractic facilities, and investigates and resolves complaints, taking disciplinary action when necessary to enforce the Board's statute and rules.

The Board is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the Legislature. As a result of its review of the Chiropractic Board, the Sunset Advisory Commission recommended continuation of the agency and several statutory modifications that are contained in this legislation.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Chiropractic Examiners in SECTION 7, SECTION 8, SECTION 9, SECTION 11, SECTION 14, SECTION 17, SECTION 22, SECTION 23, SECTION 29, and SECTION 38 of this bill. In addition, under the general rulemaking authority already granted to the policymaking body, rules may be developed to implement other new provisions found in this bill.

### **ANALYSIS**

The bill amends the Occupations Code relating to the administration and functions of the Texas Board of Chiropractic Examiners. The bill also incorporates several across-the-board recommendations of the Sunset Commission.

#### ***Continuation of the Board***

The bill continues the Texas Board of Chiropractic Examiners until September 1, 2017.

#### ***Rulemaking Process to Clarify Scope of Practice***

The bill requires the Board to adopt rules that clarify practices within and outside the scope of chiropractic practice, seeking stakeholder input early in the rulemaking process. The bill also conforms the Chiropractic Act with the Medical Practice Act by adding the Medical Act's definitions of controlled substance, dangerous drug and surgical procedure to the Chiropractic Act. The bill repeals the Board's Advisory Commission, established to advise the Board on new and experimental practices within the meaning of chiropractic. The bill also adds standard Sunset across-the-board language requiring the Board to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

#### ***Conflict of Interest and Board Member Provisions***

The bill updates standard Sunset across-the-board language prohibiting Board members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association. The bill updates standard Sunset language requiring members of the Board to complete training before assuming their duties, and requiring the Board to separate its policymaking duties from the agency's management functions. The bill also updates standard Sunset language specifying the grounds for removing a Board member.

### ***Complaint Investigations***

The bill requires the Board to prioritize complaints according to the seriousness of a complaint and the length of time a complaint has been pending. The bill also authorizes the Board, in investigating complaints, to conduct inspections of facilities and records on an unannounced basis. The bill grants the Board's peer review committees the authority to assist the Board in investigating complaints that require a standard of care review, reporting to the Board any findings. The bill also establishes the length of terms for the local and executive peer review committees, training, and eligibility requirements. Members of the peer review committees are not liable for their actions as a member of the committee. The executive peer review committee must file an annual report on the disputes mediated by the local peer review committee, and the Board must maintain information on the types of services and mediation performed. The bill also requires the Board and the Texas Department of Insurance (TDI) to cooperate in the investigation of certain cases. The Board must include in its annual financial report information on investigations conducted by the Board with the cooperation and assistance of TDI and the Texas Workers' Compensation Commission during the previous fiscal year.

### ***Enforcement Tools***

The bill authorizes the Board to issue cease-and-desist orders against unlicensed activity, and to assess administrative penalties against persons who violate cease-and-desist orders. The bill also authorizes the Board to require refunds as part of the settlement conference process, limited to the amount a consumer paid to a chiropractor. The bill makes a number of conforming changes to align the Chiropractic Board's enforcement authority with that of the Medical Board under the Medical Practice Act. Specifically, it makes providing chiropractic treatment while intoxicated a state jail felony, and requires medical malpractice settlements and expert witness reports to be submitted to the Board. The bill also prohibits certain practices by chiropractors, such as fraudulent practices, unprofessional or dishonorable conduct, conduct that subverts the examination process, and employing or associating in practice with a person who has had their license suspended, canceled or revoked or aiding the practice of an unlicensed person. The bill also requires the suspension or revocation of a chiropractor's license for conviction of offenses such as felonies, misdemeanor assaults, sex crimes, violations of protective order against family, hate crimes, and drug offenses.

### ***Licensing Process***

The bill increases the number of undergraduate hours required to be licensed as a chiropractor from 60 to 90 credit hours of pre-chiropractic work. The bill also limits the number of retakes of the exam to three. The bill also changes the basis for the Board's late renewal penalties from the examination fee to the renewal fee. For licenses expired 90 days or less the renewal fee is 1½ times the annual renewal fee and for licenses expired more than 90 days but less than a year the renewal fee is two times the annual renewal fee. The bill requires the Board to adopt rules to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

### ***Administrative Process***

The bill adds standard Sunset across-the-board language requiring the Board to make effective use of technology in its delivery of services and provision of information to the public.

### ***Repealers***

The bill contains four repealers. The first deletes archaic sunset across the board recommendations for Board qualifications. These qualifications are replaced by new language. The second repealer deletes the Board's Advisory Commission. The third repealer removes duplicative language about annual reports. The last repealer removes duplicative language about liability protections for members of the Board's Peer Review Committees.

### **EFFECTIVE DATE**

September 1, 2005.