

By: Solomons, Hamric, Truitt, Dunnam

H.B. No. 972

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the continuation and functions of the Texas Board of
3 Chiropractic Examiners; providing a criminal penalty.

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

5 SECTION 1. Section 201.002(a), Occupations Code, is amended
6 to read as follows:

7 (a) In this section:

8 (1) "Controlled substance" has the meaning assigned to
9 that term by Section 481.002, Health and Safety Code.

10 (2) "Dangerous drug" has the meaning assigned to that
11 term by Section 483.001, Health and Safety Code.

12 (3) "Incisive[~~, "incisive"~~ or surgical procedure"
13 includes making an incision into any tissue, cavity, or organ by any
14 person or implement. The term does not include the use of a needle
15 for the purpose of drawing blood for diagnostic testing.

16 (4) "Surgical procedure" includes a procedure
17 described in the surgery section of the common procedure coding
18 system as adopted by the Centers for Medicare and Medicaid Services
19 of the United States Department of Health and Human Services.

20 SECTION 2. Section 201.004, Occupations Code, is amended to
21 read as follows:

22 Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of
23 Chiropractic Examiners is subject to Chapter 325, Government Code
24 (Texas Sunset Act). Unless continued in existence as provided by

1 that chapter, the board is abolished and this chapter expires
2 September 1, 2017 [~~2005~~].

3 SECTION 3. Sections 201.053(a), (b), and (d), Occupations
4 Code, are amended to read as follows:

5 (a) In this section, "Texas trade association" means a
6 [~~nonprofit,~~] cooperative[~~7~~] and voluntarily joined statewide
7 association of business or professional competitors in this state
8 designed to assist its members and its industry or profession in
9 dealing with mutual business or professional problems and in
10 promoting their common interest.

11 (b) A person [~~An officer, employee, or paid consultant of a~~
12 ~~Texas trade association in the field of health care~~] may not be a
13 member [~~or employee~~] of the board and may not be a board employee
14 employed in a "bona fide executive, administrative, or professional
15 capacity," as that phrase is used for purposes of establishing an
16 exemption to the overtime provisions of the federal Fair Labor
17 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

18 (1) the person is an officer, employee, or paid
19 consultant of a Texas trade association in the field of health care;
20 or

21 (2) the person's spouse is an officer, manager, or paid
22 consultant of a Texas trade association in the field of health care
23 [~~who is exempt from the state's position classification plan or is~~
24 ~~compensated at or above the amount prescribed by the General~~
25 ~~Appropriations Act for step 1, salary group A17, of the position~~
26 ~~classification salary schedule].~~

27 (d) A person may not be [~~serve as~~] a member of the board or

1 act as the general counsel to the board if the person is required to
2 register as a lobbyist under Chapter 305, Government Code, because
3 of the person's activities for compensation on behalf of a
4 profession related to the operation of the board.

5 SECTION 4. Sections 201.056(a) and (c), Occupations Code,
6 are amended to read as follows:

7 (a) It is a ground for removal from the board that a member:

8 (1) does not have at the time of taking office
9 ~~[appointment]~~ the qualifications required by Sections 201.051 and
10 201.052(b);

11 (2) does not maintain during service on the board the
12 qualifications required by Sections 201.051 and 201.052(b);

13 (3) is ineligible for membership under ~~[violates a~~
14 ~~prohibition established by]~~ Section 201.052 or 201.053;

15 (4) cannot, because of illness or disability,
16 discharge the member's duties for a substantial part of the member's
17 term; or

18 (5) is absent from more than half of the regularly
19 scheduled board meetings that the member is eligible to attend
20 during a calendar year without an excuse approved ~~[unless the~~
21 ~~absence is excused]~~ by a majority vote of the board.

22 (c) If the executive director has knowledge that a potential
23 ground for removal exists, the executive director shall notify the
24 president of the board of the potential ground. The president shall
25 then notify the governor and the attorney general that a potential
26 ground for removal exists. If the potential ground for removal
27 involves the president, the executive director shall notify the

1 next highest ranking officer of the board, who shall then notify the
2 governor and the attorney general that a potential ground for
3 removal exists.

4 SECTION 5. Subchapter B, Chapter 201, Occupations Code, is
5 amended by adding Section 201.061 to read as follows:

6 Sec. 201.061. TRAINING. (a) A person who is appointed to
7 and qualifies for office as a member of the board may not vote,
8 deliberate, or be counted as a member in attendance at a meeting of
9 the board until the person completes a training program that
10 complies with this section.

11 (b) The training program must provide the person with
12 information regarding:

13 (1) this chapter and the board's programs, functions,
14 rules, and budget;

15 (2) the results of the most recent formal audit of the
16 board;

17 (3) the requirements of laws relating to open
18 meetings, public information, administrative procedure, and
19 conflicts of interest; and

20 (4) any applicable ethics policies adopted by the
21 board or the Texas Ethics Commission.

22 (c) A person appointed to the board is entitled to
23 reimbursement, as provided by the General Appropriations Act, for
24 the travel expenses incurred in attending the training program
25 regardless of whether the attendance at the program occurs before
26 or after the person qualifies for office.

27 SECTION 6. Section 201.101, Occupations Code, is amended to

1 read as follows:

2 Sec. 201.101. DIVISION OF RESPONSIBILITIES. The board
3 shall develop and implement policies that clearly separate [~~define~~]
4 the policymaking [~~respective~~] responsibilities of the board and the
5 management responsibilities of the executive director and the staff
6 of the board.

7 SECTION 7. Section 201.152(b), Occupations Code, is amended
8 to read as follows:

9 (b) The board shall adopt rules for the enforcement of this
10 chapter. The board shall issue all rules [~~opinions~~] based on a vote
11 of a majority of the board at a regular or special meeting. The
12 issuance of a disciplinary action or disciplinary order of the
13 board is not limited by this subsection.

14 SECTION 8. Subchapter D, Chapter 201, Occupations Code, is
15 amended by adding Sections 201.1525 and 201.1526 to read as
16 follows:

17 Sec. 201.1525. RULES CLARIFYING SCOPE OF PRACTICE OF
18 CHIROPRACTIC. The board shall adopt rules clarifying what
19 activities are included within the scope of the practice of
20 chiropractic and what activities are outside of that scope. The
21 rules:

22 (1) must clearly specify the procedures that
23 chiropractors may perform;

24 (2) must clearly specify any equipment and the use of
25 that equipment that is prohibited as ineffective or unsafe for the
26 treatment of patients; and

27 (3) may require a license holder to obtain additional

1 training or certification to perform certain procedures or use
2 certain equipment.

3 Sec. 201.1526. DEVELOPMENT OF PROPOSED RULES REGARDING
4 SCOPE OF PRACTICE OF CHIROPRACTIC. (a) This section applies to the
5 process by which the board develops proposed rules under Section
6 201.1525 before the proposed rules are published in the Texas
7 Register and before the board complies with the rulemaking
8 requirements of Chapter 2001, Government Code. This section does
9 not affect the duty of the board to comply with the rulemaking
10 requirements of that law.

11 (b) The board shall establish methods under which the board,
12 to the extent appropriate, will seek input early in the rule
13 development process from the public and from persons who will be
14 most affected by a proposed rule. Methods must include identifying
15 persons who will be most affected and soliciting, at a minimum, the
16 advice and opinions of those persons. Methods may include
17 negotiated rulemaking, informal conferences, advisory committees,
18 and any other appropriate method.

19 (c) A rule adopted by the board under Section 201.1525 may
20 not be challenged on the grounds that the board did not comply with
21 this section. If the board was unable to solicit a significant
22 amount of advice and opinion from the public or from affected
23 persons early in the rule development process, the board shall
24 state in writing the reasons why the board was unable to do so.

25 SECTION 9. Subchapter D, Chapter 201, Occupations Code, is
26 amended by adding Section 201.1555 to read as follows:

27 Sec. 201.1555. FRAUD. (a) The board shall strictly and

1 vigorously enforce the provisions of this chapter prohibiting
2 fraud.

3 (b) The board shall adopt rules to prevent fraud in the
4 practice of chiropractic, including rules relating to:

5 (1) the filing of workers' compensation and insurance
6 claims; and

7 (2) records required to be maintained in connection
8 with the practice of chiropractic.

9 SECTION 10. Subchapter D, Chapter 201, Occupations Code, is
10 amended by adding Sections 201.163 and 201.164 to read as follows:

11 Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. The board
12 shall implement a policy requiring the board to use appropriate
13 technological solutions to improve the board's ability to perform
14 its functions. The policy must ensure that the public is able to
15 interact with the board on the Internet.

16 Sec. 201.164. NEGOTIATED RULEMAKING AND ALTERNATIVE
17 DISPUTE RESOLUTION POLICY. (a) The board shall develop and
18 implement a policy to encourage the use of:

19 (1) negotiated rulemaking procedures under Chapter
20 2008, Government Code, for the adoption of board rules; and

21 (2) appropriate alternative dispute resolution
22 procedures under Chapter 2009, Government Code, to assist in the
23 resolution of internal and external disputes under the board's
24 jurisdiction.

25 (b) The board's procedures relating to alternative dispute
26 resolution must conform, to the extent possible, to any model
27 guidelines issued by the State Office of Administrative Hearings

1 for the use of alternative dispute resolution by state agencies.

2 (c) The board shall designate a trained person to:

3 (1) coordinate the implementation of the policy
4 adopted under Subsection (a);

5 (2) serve as a resource for any training needed to
6 implement the procedures for negotiated rulemaking or alternative
7 dispute resolution; and

8 (3) collect data concerning the effectiveness of those
9 procedures, as implemented by the board.

10 SECTION 11. Section 201.205(a), Occupations Code, is
11 amended to read as follows:

12 (a) The board shall adopt rules concerning the
13 investigation of a complaint filed with the board. The rules
14 adopted under this section must:

15 (1) distinguish between categories of complaints;

16 (2) require the board to prioritize complaints for
17 purposes of determining the order in which they are investigated,
18 taking into account the seriousness of the allegations made in a
19 complaint and the length of time a complaint has been pending;

20 (3) ensure that a complaint is not dismissed without
21 appropriate consideration;

22 (4) [~~3~~] require that the board be advised of a
23 complaint that is dismissed and that a letter be sent to the person
24 who filed the complaint explaining the action taken on the
25 complaint;

26 (5) [~~4~~] ensure that the person who filed the
27 complaint has the opportunity to explain the allegations made in

1 the complaint; and

2 (6) [~~5~~] prescribe guidelines concerning the
3 categories of complaints that require the use of a private
4 investigator and the procedures for the board to obtain the
5 services of a private investigator.

6 SECTION 12. Subchapter E, Chapter 201, Occupations Code, is
7 amended by adding Sections 201.207, 201.208, and 201.209 to read as
8 follows:

9 Sec. 201.207. INSPECTIONS. (a) The board, during
10 reasonable business hours, may:

11 (1) conduct an on-site inspection of a chiropractic
12 facility to investigate a complaint filed with the board; and

13 (2) examine and copy records of the chiropractic
14 facility pertinent to the inspection or investigation.

15 (b) The board is not required to provide notice before
16 conducting an inspection under this section.

17 Sec. 201.208. COOPERATION WITH TEXAS DEPARTMENT OF
18 INSURANCE. (a) In this section, "department" means the Texas
19 Department of Insurance.

20 (b) This section applies only to information held by or for
21 the department or the board that relates to a person who is licensed
22 or otherwise regulated by the department or the board.

23 (c) The department and the board, on request or on the
24 department or board's own initiative, may share confidential
25 information or information to which access is otherwise restricted
26 by law. The department and the board shall cooperate with and
27 assist each other when either agency is conducting an investigation

1 by providing information that is relevant to the investigation.
2 Except as provided by this section, confidential information that
3 is shared under this section remains confidential under law, and
4 legal restrictions on access to the information remain in effect
5 unless the agency sharing the information approves use of the
6 information by the receiving agency for enforcement purposes. The
7 provision of information by the board to the department or by the
8 department to the board under this subsection does not constitute a
9 waiver of privilege or confidentiality as established by law.

10 (d) The department and the board shall develop and maintain
11 a system for tracking investigations conducted by each agency with
12 the cooperation and assistance of the other agency, including
13 information on all disciplinary actions taken.

14 (e) The department and the board shall collaborate on taking
15 appropriate disciplinary actions to the extent practicable.

16 Sec. 201.209. INFORMATION ON STATUS OF CERTAIN
17 INVESTIGATIONS. The board shall include in the annual financial
18 report required by Section 2101.011, Government Code, information
19 on all investigations conducted by the board with the cooperation
20 and assistance of the Texas Department of Insurance and the Texas
21 Workers' Compensation Commission during the preceding fiscal year.

22 SECTION 13. Section 201.251, Occupations Code, is amended
23 to read as follows:

24 Sec. 201.251. APPOINTMENT OF PEER REVIEW COMMITTEES; TERMS.

25 (a) The board shall appoint local chiropractic peer review
26 committees. Members of a local chiropractic peer review committee
27 serve staggered terms of three years, with as near to one-third of

1 the members' terms as possible expiring December 31 of each year.

2 (b) The board may seek input [~~shall appoint the members of~~
3 ~~the peer review committee~~] from state [~~a list of nominees submitted~~
4 ~~by the local~~] chiropractic associations in selecting persons to
5 appoint to a local [~~association to conduct~~] peer review committee
6 [~~procedures~~].

7 SECTION 14. Section 201.252, Occupations Code, is amended
8 by amending Subsection (c) and adding Subsection (d) to read as
9 follows:

10 (c) The board shall establish requirements for peer review
11 training programs that do not discriminate against any
12 chiropractor. A peer review training program must include training
13 in the investigation of complaints in accordance with this chapter
14 and board rules.

15 (d) The board by rule shall adopt additional requirements
16 for eligibility to serve on a chiropractic peer review committee,
17 including a requirement that a member have:

- 18 (1) a clean disciplinary record; and
19 (2) an acceptable record regarding utilization review
20 performed in accordance with Article 21.58A, Insurance Code.

21 SECTION 15. Section 201.253(a), Occupations Code, is
22 amended to read as follows:

23 (a) The board shall appoint an executive chiropractic peer
24 review committee to direct the activities of the local committees.
25 The executive peer review committee consists of six volunteer
26 members. Members of the executive peer review committee serve
27 staggered terms of three years, with one-third of the members'

1 terms expiring December 31 of each year. The executive peer review
2 committee shall elect a presiding officer from its members.

3 SECTION 16. The heading to Section 201.254, Occupations
4 Code, is amended to read as follows:

5 Sec. 201.254. DUTIES OF PEER REVIEW COMMITTEE WITH REGARD
6 TO CERTAIN DISPUTES.

7 SECTION 17. Subchapter F, Chapter 201, Occupations Code, is
8 amended by adding Sections 201.2545 and 201.2546 to read as
9 follows:

10 Sec. 201.2545. COMPLAINT INVESTIGATION BY PEER REVIEW
11 COMMITTEE. (a) The board may refer to a local chiropractic peer
12 review committee for investigation a complaint regarding whether
13 chiropractic treatment or services provided by a chiropractor were
14 provided according to the standard of care in the practice of
15 chiropractic.

16 (b) In conducting an investigation of a referred complaint,
17 the committee shall review the records and other evidence obtained
18 by the staff of the board in the course of the staff's investigation
19 of the complaint.

20 (c) The committee shall report to the board its findings
21 regarding the complaint, including a statement of:

22 (1) the standard of care in the practice of
23 chiropractic governing the chiropractic treatment or services
24 provided by the chiropractor;

25 (2) whether the chiropractor met the standard of care
26 in providing the treatment or services; and

27 (3) the clinical basis for the committee's finding

1 under Subdivision (2).

2 (d) The board may request a member of the committee to
3 attend an informal conference or testify at a contested case
4 hearing.

5 (e) The board, with input from the executive chiropractic
6 peer review committee, shall adopt rules necessary to implement
7 this section.

8 Sec. 201.2546. IMMUNITY; ELIGIBILITY TO PARTICIPATE IN
9 COMMITTEE ACTIVITIES. (a) In the absence of fraud, conspiracy, or
10 malice, a member of a peer review committee is not liable in a civil
11 action for a finding, evaluation, recommendation, or other action
12 made or taken by the member as a member of the committee or by the
13 committee. The immunity granted by this subsection does not limit
14 the operation of federal or state antitrust laws as applied to the
15 conduct of a local or executive peer review committee that involves
16 price fixing or any other unreasonable restraint of trade.

17 (b) A member of a peer review committee may not participate
18 in committee deliberations or other activities involving
19 chiropractic services or treatment rendered or performed by the
20 member.

21 (c) Except for the express immunity provided by Subsection
22 (a), this section does not deprive any person of a right or remedy,
23 legal or equitable.

24 SECTION 18. Section 201.255, Occupations Code, is amended
25 to read as follows:

26 Sec. 201.255. REQUEST FOR INFORMATION; REPORT TO BOARD ON
27 DISPUTES MEDIATED. (a) The board may request from a chiropractic

1 peer review committee information pertaining to actions taken by
2 the peer review committee.

3 (b) The executive chiropractic peer review committee shall
4 file annually with the board a report on the disputes mediated by
5 the local chiropractic peer review committees under Section 201.254
6 during the preceding calendar year. The report must include:

7 (1) the number of disputes referred to the committees;

8 (2) a categorization of the disputes referred to the
9 committees and the number of complaints in each category; and

10 (3) the number of disputes resolved and the manner in
11 which they were resolved.

12 SECTION 19. Subchapter F, Chapter 201, Occupations Code, is
13 amended by adding Section 201.256 to read as follows:

14 Sec. 201.256. PUBLIC ACCESS TO INFORMATION REGARDING PEER
15 REVIEW COMMITTEES. The board shall maintain on the board's
16 Internet website information regarding local chiropractic peer
17 review committees, including:

18 (1) the services committees provide; and

19 (2) the types of disputes committees mediate.

20 SECTION 20. Section 201.302, Occupations Code, is amended
21 by amending Subsection (a) and adding Subsection (d) to read as
22 follows:

23 (a) An applicant for a license by examination must present
24 satisfactory evidence to the board that the applicant:

25 (1) is at least 18 years of age;

26 (2) is of good moral character;

27 (3) has completed 90 [~~60~~] semester hours of college

1 courses at a school other than a chiropractic school; and

2 (4) is either a graduate or a final semester student of
3 a bona fide reputable chiropractic school.

4 (d) Notwithstanding Subsection (a)(3), if the Council on
5 Chiropractic Education or another national chiropractic education
6 accreditation organization recognized by the board requires a
7 number of semester hours of college courses at a school other than a
8 chiropractic school that is greater or less than the number of hours
9 specified by that subsection to qualify for admission to a
10 chiropractic school, the board may adopt the requirement of that
11 organization if the board determines that requirement to be
12 appropriate.

13 SECTION 21. Section 201.303(a), Occupations Code, is
14 amended to read as follows:

15 (a) To comply with the requirements of Section 201.302
16 [~~201.302(a)(3)~~], the applicant must submit to the board a
17 transcript of credits that certifies that the applicant has
18 satisfactorily completed at least the number of [~~60 or more~~]
19 semester hours of college credits required by that section at a
20 college or university that issues credits accepted by The
21 University of Texas at Austin for a bachelor of arts or bachelor of
22 science degree.

23 SECTION 22. Section 201.305, Occupations Code, is amended
24 by adding Subsection (d) to read as follows:

25 (d) The board by rule shall ensure that the examination is
26 administered to applicants with disabilities in compliance with the
27 Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et

1 seq.).

2 SECTION 23. Section 201.307(b), Occupations Code, is
3 amended to read as follows:

4 (b) The board by rule shall establish the number of times
5 ~~[and the conditions under which]~~ an applicant may retake the [an]
6 examination required by Section 201.304(a)(1) or (b), as
7 applicable. An applicant must pass the examination required by
8 Section 201.304(a)(2) within three attempts. The board by rule
9 shall establish the conditions under which an applicant may retake
10 an examination. The board may require an applicant to fulfill
11 additional educational requirements.

12 SECTION 24. Sections 201.354(d) and (g), Occupations Code,
13 are amended to read as follows:

14 (d) A person whose license has been expired for 90 days or
15 less may renew the license by paying to the board a renewal fee that
16 is equal to the sum of 1-1/2 times the annual [required] renewal fee
17 set by the board under Section 201.153(a) and the increase in that
18 fee required by Section 201.153(b) [and an additional fee equal to
19 ~~one-half of the examination fee for the license]~~. If a person's
20 license has been expired for more than 90 days but less than one
21 year, the person may renew the license by paying to the board a
22 renewal fee that is equal to the sum of two times the annual renewal
23 fee set by the board under Section 201.153(a) and the increase in
24 that fee required by Section 201.153(b) [all unpaid renewal fees
25 ~~and an additional fee equal to the examination fee for the license]~~.

26 (g) A person may renew a license that has been expired for at
27 least one year but not more than three years if:

1 (1) the board determines according to criteria adopted
2 by board rule that the person has shown good cause for the failure
3 to renew the license; and

4 (2) the person pays to the board:

5 (A) the annual [~~required~~] renewal fee set by the
6 board under Section 201.153(a) for each year in which the license
7 was expired;

8 (B) [~~and~~] an additional fee in an amount equal to
9 the sum of:

10 (i) [~~(A)~~] the annual renewal [~~examination~~]
11 fee set by the board under Section 201.153(a) [~~for the license~~],
12 multiplied by the number of years the license was expired, prorated
13 for fractional years; and

14 (ii) [~~(B)~~] two times the annual renewal
15 [~~examination~~] fee set by the board under Section 201.153(a); and

16 (C) the increase in the annual renewal fee
17 required by Section 201.153(b) [~~for the license~~].

18 SECTION 25. Section 201.355(b), Occupations Code, is
19 amended to read as follows:

20 (b) The person must pay to the board a fee that is equal to
21 the normally required renewal [~~amount of the examination~~] fee for
22 the license.

23 SECTION 26. The heading to Subchapter J, Chapter 201,
24 Occupations Code, is amended to read as follows:

25 SUBCHAPTER J. PRACTICE BY LICENSE HOLDER [~~REQUIREMENTS REGARDING~~
26 ~~USE OF CHIROPRACTIC ASSISTANTS AND TECHNOLOGY~~]

27 SECTION 27. Subchapter J, Chapter 201, Occupations Code, is

1 amended by adding Section 201.453 to read as follows:

2 Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND
3 EXPERT REPORTS. (a) The Texas Department of Insurance shall
4 provide to the board any information received by the department
5 regarding a settlement of a malpractice claim against a
6 chiropractor.

7 (b) An insurer who delivers or issues for delivery in this
8 state professional liability insurance coverage to a chiropractor
9 who practices in this state shall provide to the board a copy of any
10 expert report served under Section 74.351, Civil Practice and
11 Remedies Code, in a malpractice action against the chiropractor.

12 SECTION 28. Section 201.502(a), Occupations Code, is
13 amended to read as follows:

14 (a) The board may refuse to admit a person to examinations
15 and may revoke or suspend a license or place a license holder on
16 probation for a period determined by the board for:

17 (1) violating this chapter or a rule adopted under
18 this chapter, including committing an act prohibited under Section
19 201.5025;

20 (2) engaging in deception or fraud in the practice of
21 chiropractic;

22 (3) presenting to the board or using a license,
23 certificate, or diploma or a transcript of a license, certificate,
24 or diploma that was illegally or fraudulently obtained,
25 counterfeited, or materially altered;

26 (4) presenting to the board an untrue statement or a
27 document or testimony that was illegally used to pass the

1 examination;

2 (5) being convicted of a crime involving moral
3 turpitude or a felony;

4 (6) procuring or assisting in the procuring of an
5 abortion;

6 (7) engaging in grossly unprofessional conduct or
7 dishonorable conduct of a character likely to deceive or defraud
8 the public;

9 (8) having a habit of intemperance or drug addiction
10 or another habit that, in the opinion of the board, endangers the
11 life of a patient;

12 (9) using an advertising statement that is false or
13 that tends to mislead or deceive the public;

14 (10) directly or indirectly employing or associating
15 with a person who, in the course of the person's employment, commits
16 an act constituting the practice of chiropractic when the person is
17 not licensed to practice chiropractic;

18 (11) advertising professional superiority, or
19 advertising the performance of professional services in a superior
20 manner, if that advertising is not readily subject to verification;

21 (12) purchasing, selling, bartering, using, or
22 offering to purchase, sell, barter, or use a chiropractic degree,
23 license, certificate, or diploma or transcript of a license,
24 certificate, or diploma in or relating to an application to the
25 board for a license to practice chiropractic;

26 (13) altering with fraudulent intent a chiropractic
27 license, certificate, or diploma or transcript of a chiropractic

1 license, certificate, or diploma;

2 (14) impersonating or acting as proxy for another in
3 an examination required by this chapter for a chiropractic license;

4 (15) impersonating a licensed chiropractor;

5 (16) allowing one's chiropractic license to be used by
6 another person to practice chiropractic;

7 (17) being proved insane by a person having authority
8 to make that determination;

9 (18) failing to use proper diligence in the practice
10 of chiropractic or using gross inefficiency in the practice of
11 chiropractic;

12 (19) failing to clearly differentiate a chiropractic
13 office or clinic from another business or enterprise;

14 (20) personally soliciting a patient or causing a
15 patient to be solicited by the use of a case history of another
16 patient of another chiropractor;

17 (21) using for the purpose of soliciting patients an
18 accident report prepared by a peace officer in a manner prohibited
19 by Section 38.12, Penal Code; or

20 (22) advertising using the term "physician" or
21 "chiropractic physician" or any combination or derivation of the
22 term "physician."

23 SECTION 29. Subchapter K, Chapter 201, Occupations Code, is
24 amended by adding Sections 201.5025 and 201.5026 to read as
25 follows:

26 Sec. 201.5025. PROHIBITED PRACTICES BY CHIROPRACTOR OR
27 LICENSE APPLICANT. (a) A chiropractor or an applicant for a

1 license to practice chiropractic commits a prohibited practice if
2 that person:

3 (1) submits to the board a false or misleading
4 statement, document, or certificate in an application for a
5 license;

6 (2) commits fraud or deception in taking or passing an
7 examination;

8 (3) commits unprofessional or dishonorable conduct
9 that is likely to deceive or defraud the public, as provided by
10 Section 201.5026, or injure the public;

11 (4) engages in conduct that subverts or attempts to
12 subvert an examination process required by this chapter for a
13 chiropractic license;

14 (5) directly or indirectly employs a person whose
15 license to practice chiropractic has been suspended, canceled, or
16 revoked;

17 (6) associates in the practice of chiropractic with a
18 person:

19 (A) whose license to practice chiropractic has
20 been suspended, canceled, or revoked; or

21 (B) who has been convicted of the unlawful
22 practice of chiropractic in this state or elsewhere; or

23 (7) directly or indirectly aids or abets the practice
24 of chiropractic by a person that is not licensed to practice
25 chiropractic by the board.

26 (b) For purposes of Subsection (a)(4), conduct that
27 subverts or attempts to subvert the chiropractic licensing

1 examination process includes, as prescribed by board rule, conduct
2 that violates:

- 3 (1) the security of the examination materials;
4 (2) the standard of test administration; or
5 (3) the accreditation process.

6 Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a)
7 For purposes of Section 201.5025(a)(3), unprofessional or
8 dishonorable conduct that is likely to deceive or defraud the
9 public includes conduct in which a chiropractor:

10 (1) commits an act that violates any state or federal
11 law if the act is connected with the chiropractor's practice of
12 chiropractic;

13 (2) prescribes or administers a treatment that is
14 nontherapeutic in nature or nontherapeutic in the manner the
15 treatment is prescribed or administered;

16 (3) violates Section 311.0025, Health and Safety Code;

17 (4) fails to supervise adequately the activities of
18 those acting under the supervision of the chiropractor; or

19 (5) delegates professional chiropractic
20 responsibility or acts to a person if the delegating chiropractor
21 knows or has reason to know that the person is not qualified by
22 training, experience, or licensure to perform the responsibility or
23 acts.

24 (b) A complaint, indictment, or conviction of a violation is
25 not necessary for the enforcement of Subsection (a)(1). Proof of
26 the commission of the act while in the practice of chiropractic or
27 under the guise of the practice of chiropractic is sufficient for

1 the board's action.

2 SECTION 30. The heading to Section 201.504, Occupations
3 Code, is amended to read as follows:

4 Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS.

5 SECTION 31. Section 201.504, Occupations Code, is amended
6 by adding Subsections (c) and (d) to read as follows:

7 (c) Subject to Subsection (d), the board may order a license
8 holder to pay a refund to a consumer as provided in an agreement
9 resulting from an informal settlement conference instead of or in
10 addition to imposing an administrative penalty under this chapter.

11 (d) The amount of a refund ordered as provided in an
12 agreement resulting from an informal settlement conference may not
13 exceed the amount the consumer paid to the license holder for a
14 service regulated by this chapter. The board may not require
15 payment of other damages or estimate harm in a refund order.

16 SECTION 32. Subchapter K, Chapter 201, Occupations Code, is
17 amended by adding Section 201.5065 to read as follows:

18 Sec. 201.5065. REQUIRED SUSPENSION OR REVOCATION OF LICENSE
19 FOR CERTAIN OFFENSES. (a) The board shall suspend a chiropractor's
20 license on proof that the chiropractor has been:

21 (1) initially convicted of:

22 (A) a felony;

23 (B) a misdemeanor under Chapter 22, Penal Code,
24 other than a misdemeanor punishable by fine only;

25 (C) a misdemeanor on conviction of which a
26 defendant is required to register as a sex offender under Chapter
27 62, Code of Criminal Procedure;

1 (D) a misdemeanor under Section 25.07, Penal
2 Code; or

3 (E) a misdemeanor under Section 25.071, Penal
4 Code; or

5 (2) subject to an initial finding by the trier of fact
6 of guilt of a felony under:

7 (A) Chapter 481 or 483, Health and Safety Code;

8 (B) Section 485.033, Health and Safety Code; or

9 (C) the Comprehensive Drug Abuse Prevention and
10 Control Act of 1970 (21 U.S.C. Section 801 et seq.).

11 (b) On final conviction for an offense described by
12 Subsection (a), the board shall revoke the chiropractor's license.

13 SECTION 33. Subchapter M, Chapter 201, Occupations Code, is
14 amended by adding Section 201.6015 to read as follows:

15 Sec. 201.6015. CEASE AND DESIST ORDER. (a) If it appears
16 to the board that a person is engaging in an act or practice that
17 constitutes the practice of chiropractic without a license or
18 registration under this chapter, the board, after notice and
19 opportunity for a hearing, may issue a cease and desist order
20 prohibiting the person from engaging in that activity.

21 (b) A violation of an order under this section constitutes
22 grounds for imposing an administrative penalty under Subchapter L.

23 SECTION 34. Section 201.604, Occupations Code, is amended
24 to read as follows:

25 Sec. 201.604. GENERAL CRIMINAL PENALTY. A [~~Except as~~
26 ~~provided by Section 201.605, a~~] person commits an offense if the
27 person violates this chapter. An offense under this section is a

1 misdemeanor punishable by a fine of not less than \$50 or more than
2 \$500 or by confinement in the county jail for not more than 30 days.

3 SECTION 35. Subchapter M, Chapter 201, Occupations Code, is
4 amended by adding Section 201.606 to read as follows:

5 Sec. 201.606. CRIMINAL PENALTY: PROVIDING CHIROPRACTIC
6 TREATMENT OR SERVICES WHILE INTOXICATED. (a) In this section,
7 "intoxicated" has the meaning assigned by Section 49.01, Penal
8 Code.

9 (b) A person commits an offense if the person is licensed or
10 regulated under this chapter, provides chiropractic treatment or
11 services to a patient while intoxicated, and, by reason of that
12 conduct, places the patient at a substantial and unjustifiable risk
13 of harm.

14 (c) An offense under this section is a state jail felony.

15 SECTION 36. Sections 201.053(c), 201.059, 201.162, and
16 201.254(c)-(e), Occupations Code, are repealed.

17 SECTION 37. The changes in law made by Section 201.053,
18 Occupations Code, as amended by this Act, and Section 201.061,
19 Occupations Code, as added by this Act, regarding the prohibitions
20 on or qualifications of members of the Texas Board of Chiropractic
21 Examiners do not affect the entitlement of a member serving on the
22 board immediately before September 1, 2005, to continue to serve
23 and function as a member of the board for the remainder of the
24 member's term. The changes in law made by those sections apply only
25 to a member appointed on or after September 1, 2005.

26 SECTION 38. Not later than January 1, 2006, the Texas Board
27 of Chiropractic Examiners shall adopt the rules required by

1 Sections 201.1525, 201.1555, and 201.2545, Occupations Code, as
2 added by this Act, and Sections 201.205 and 201.252, Occupations
3 Code, as amended by this Act.

4 SECTION 39. The changes in law made by this Act to Chapter
5 201, Occupations Code, relating to the investigation of a complaint
6 apply only to a complaint filed with the Texas Board of Chiropractic
7 Examiners on or after the effective date of this Act. A complaint
8 filed with the board before the effective date of this Act is
9 governed by the law as it existed immediately before that date, and
10 the former law is continued in effect for that purpose.

11 SECTION 40. (a) The terms of the members of the local
12 chiropractic peer review committees appointed under Section
13 201.251, Occupations Code, serving on December 31, 2005, expire on
14 that date.

15 (b) On or before January 1, 2006, the Texas Board of
16 Chiropractic Examiners shall appoint the members of the local
17 chiropractic peer review committees under Section 201.251,
18 Occupations Code, as amended by this Act. In appointing the initial
19 members of each committee, the board shall appoint as near to
20 one-third of the members as possible to terms expiring December 31,
21 2006, as near to one-third as possible to terms expiring December
22 31, 2007, and as near to one-third as possible to terms expiring
23 December 31, 2008. This Act does not prohibit a person who is a
24 member of a local chiropractic peer review committee before January
25 1, 2006, from being appointed as a member of the committee to serve
26 a term beginning on or after January 1, 2006, if the person has the
27 qualifications required for the position under Section 201.252,

1 Occupations Code, as amended by this Act.

2 SECTION 41. (a) The terms of the members of the executive
3 chiropractic peer review committee appointed under Section
4 201.253, Occupations Code, serving on December 31, 2005, expire on
5 that date.

6 (b) On or before January 1, 2006, the Texas Board of
7 Chiropractic Examiners shall appoint the members of the executive
8 chiropractic peer review committee under Section 201.253,
9 Occupations Code, as amended by this Act. In appointing the initial
10 members of the committee, the board shall appoint two persons to
11 terms expiring December 31, 2006, two to terms expiring December
12 31, 2007, and two to terms expiring December 31, 2008. This Act
13 does not prohibit a person who is a member of the executive
14 chiropractic peer review committee before January 1, 2006, from
15 being appointed as a member of the committee to serve a term
16 beginning on or after January 1, 2006, if the person has the
17 qualifications required for the position under Section 201.253,
18 Occupations Code, as amended by this Act.

19 SECTION 42. The changes in law made by this Act to Sections
20 201.302 and 201.303, Occupations Code, apply only to a person who
21 enrolls in a chiropractic school on or after the effective date of
22 this Act. A person who enrolled in a chiropractic school before
23 that date is governed by the law in effect on the date of
24 enrollment, and the former law is continued in effect for that
25 purpose.

26 SECTION 43. The changes in law made by this Act to Sections
27 201.354 and 201.355, Occupations Code, apply only to the renewal of

1 a license to practice chiropractic that expires on or after the
2 effective date of this Act. A license that expires before that date
3 is governed by the law in effect on the date the license expires,
4 and the former law is continued in effect for that purpose.

5 SECTION 44. This Act takes effect September 1, 2005.