

By: Nelson

S.B. No. 401

A BILL TO BE ENTITLED

AN ACT

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

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

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

(a) In this section:

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

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

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

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

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

Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of  
Chiropractic Examiners is subject to Chapter 325, Government Code  
(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 and the equipment that may be used to  
24 treat patients; and

25                   (2) may require a license holder to obtain additional  
26 training or certification to perform certain procedures or use  
27 certain equipment.

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

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

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

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

25       Sec. 201.1555. FRAUD. (a) The board shall strictly and  
26 vigorously enforce the provisions of this chapter prohibiting  
27 fraud.

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

3            (1) the filing of workers' compensation and insurance  
4 claims; and

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

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

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

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

17            (1) negotiated rulemaking procedures under Chapter  
18 2008, Government Code, for the adoption of board rules; and

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

23        (b) The board's procedures relating to alternative dispute  
24 resolution must conform, to the extent possible, to any model  
25 guidelines issued by the State Office of Administrative Hearings  
26 for the use of alternative dispute resolution by state agencies.

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

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

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

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

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

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

13           (1) distinguish between categories of complaints;

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

18           (3) ensure that a complaint is not dismissed without  
19 appropriate consideration;

20           (4) [~~(3)~~] require that the board be advised of a  
21 complaint that is dismissed and that a letter be sent to the person  
22 who filed the complaint explaining the action taken on the  
23 complaint;

24           (5) [~~(4)~~] ensure that the person who filed the  
25 complaint has the opportunity to explain the allegations made in  
26 the complaint; and

27           (6) [~~(5)~~] prescribe guidelines concerning the

1 categories of complaints that require the use of a private  
2 investigator and the procedures for the board to obtain the  
3 services of a private investigator.

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

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

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

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

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

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

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

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

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

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

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

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

20 SECTION 13. Section 201.251, Occupations Code, is amended  
21 to read as follows:

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

23 (a) The board shall appoint local chiropractic peer review  
24 committees. Members of a local chiropractic peer review committee  
25 serve staggered terms of three years, with as near to one-third of  
26 the members' terms as possible expiring December 31 of each year.

27 (b) The board may seek input [~~shall appoint the members of~~

1 ~~the peer review committee]~~ from a [~~list of nominees submitted by~~  
2 ~~the]~~ local chiropractic association in selecting persons to appoint  
3 to a local [~~to conduct]~~ peer review committee [~~procedures]~~.

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

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

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

15 (1) a clean disciplinary record; and

16 (2) an acceptable record regarding utilization review  
17 performed in accordance with Article 21.58A, Insurance Code.

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

20 (a) The board shall appoint an executive chiropractic peer  
21 review committee to direct the activities of the local committees.  
22 The executive peer review committee consists of six volunteer  
23 members. Members of the executive peer review committee serve  
24 staggered terms of three years, with one-third of the members'  
25 terms expiring December 31 of each year. The executive peer review  
26 committee shall elect a presiding officer from its members.

27 SECTION 16. The heading to Section 201.254, Occupations

1 Code, is amended to read as follows:

2 Sec. 201.254. DUTIES OF PEER REVIEW COMMITTEE WITH REGARD  
3 TO CERTAIN DISPUTES.

4 SECTION 17. Subchapter F, Chapter 201, Occupations Code, is  
5 amended by adding Sections 201.2545 and 201.2546 to read as  
6 follows:

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

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

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

19 (1) the standard of care in the practice of  
20 chiropractic governing the chiropractic treatment or services  
21 provided by the chiropractor;

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

24 (3) the clinical basis for the committee's finding  
25 under Subdivision (2).

26 (d) The board may request a member of the committee to  
27 attend an informal conference or testify at a contested case

1 hearing.

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

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

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

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

21 SECTION 18. Section 201.255, Occupations Code, is amended  
22 to read as follows:

23 Sec. 201.255. REQUEST FOR INFORMATION; REPORT TO BOARD ON  
24 DISPUTES MEDIATED. (a) The board may request from a chiropractic  
25 peer review committee information pertaining to actions taken by  
26 the peer review committee.

27 (b) The executive chiropractic peer review committee shall

1 file annually with the board a report on the disputes mediated by  
2 the local chiropractic peer review committees under Section 201.254  
3 during the preceding calendar year. The report must include:

- 4 (1) the number of disputes referred to the committees;  
5 (2) a categorization of the disputes referred to the  
6 committees and the number of complaints in each category; and  
7 (3) the number of disputes resolved and the manner in  
8 which they were resolved.

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

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

- 15 (1) the services committees provide; and  
16 (2) the types of disputes committees mediate.

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

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

- 22 (1) is at least 18 years of age;  
23 (2) is of good moral character;  
24 (3) has completed 90 [~~60~~] semester hours of college  
25 courses at a school other than a chiropractic school; and

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

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

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

12        (a) To comply with the requirements of Section 201.302  
13 [~~201.302(a)(3)~~], the applicant must submit to the board a  
14 transcript of credits that certifies that the applicant has  
15 satisfactorily completed at least the number of [~~60 or more~~]  
16 semester hours of college credits required by that section at a  
17 college or university that issues credits accepted by The  
18 University of Texas at Austin for a bachelor of arts or bachelor of  
19 science degree.

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

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

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

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

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

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

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

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

1 (2) the person pays to the board:

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

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

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

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

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

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

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

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

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

24 SECTION 27. Subchapter J, Chapter 201, Occupations Code, is  
25 amended by adding Section 201.453 to read as follows:

26 Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND  
27 EXPERT REPORTS. (a) The Texas Department of Insurance shall

1 provide to the board any information received by the department  
2 regarding a settlement of a malpractice claim against a  
3 chiropractor.

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

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

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

14 (1) violating this chapter or a rule adopted under  
15 this chapter, including committing an act prohibited under Section  
16 201.5025;

17 (2) engaging in deception or fraud in the practice of  
18 chiropractic;

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

23 (4) presenting to the board an untrue statement or a  
24 document or testimony that was illegally used to pass the  
25 examination;

26 (5) being convicted of a crime involving moral  
27 turpitude or a felony;

1           (6) procuring or assisting in the procuring of an  
2 abortion;

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

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

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

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

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

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

23           (13) altering with fraudulent intent a chiropractic  
24 license, certificate, or diploma or transcript of a chiropractic  
25 license, certificate, or diploma;

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

1 (15) impersonating a licensed chiropractor;

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

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

6 (18) failing to use proper diligence in the practice  
7 of chiropractic or using gross inefficiency in the practice of  
8 chiropractic;

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

11 (20) personally soliciting a patient or causing a  
12 patient to be solicited by the use of a case history of another  
13 patient of another chiropractor;

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

17 (22) advertising using the term "physician" or  
18 "chiropractic physician" or any combination or derivation of the  
19 term "physician."

20 SECTION 29. Subchapter K, Chapter 201, Occupations Code, is  
21 amended by adding Sections 201.5025 and 201.5026 to read as  
22 follows:

23 Sec. 201.5025. PROHIBITED PRACTICES BY CHIROPRACTOR OR  
24 LICENSE APPLICANT. (a) A chiropractor or an applicant for a  
25 license to practice chiropractic commits a prohibited practice if  
26 that person:

27 (1) submits to the board a false or misleading

1 statement, document, or certificate in an application for a  
2 license;

3 (2) commits fraud or deception in taking or passing an  
4 examination;

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

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

11 (5) directly or indirectly employs a person whose  
12 license to practice chiropractic has been suspended, canceled, or  
13 revoked;

14 (6) associates in the practice of chiropractic with a  
15 person:

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

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

20 (7) directly or indirectly aids or abets the practice  
21 of chiropractic by a person that is not licensed to practice  
22 chiropractic by the board.

23 (b) For purposes of Subsection (a)(4), conduct that  
24 subverts or attempts to subvert the chiropractic licensing  
25 examination process includes, as prescribed by board rule, conduct  
26 that violates:

27 (1) the security of the examination materials;

1           (2) the standard of test administration; or

2           (3) the accreditation process.

3           Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a)

4 For purposes of Section 201.5025(a)(3), unprofessional or  
5 dishonorable conduct that is likely to deceive or defraud the  
6 public includes conduct in which a chiropractor:

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

10           (2) prescribes or administers a treatment that is  
11 nontherapeutic in nature or nontherapeutic in the manner the  
12 treatment is prescribed or administered;

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

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

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

21           (b) A complaint, indictment, or conviction of a violation is  
22 not necessary for the enforcement of Subsection (a)(1). Proof of  
23 the commission of the act while in the practice of chiropractic or  
24 under the guise of the practice of chiropractic is sufficient for  
25 the board's action.

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

1           Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS.

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

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

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

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

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

18                   (1) initially convicted of:

19                           (A) a felony;

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

22                           (C) a misdemeanor on conviction of which a  
23 defendant is required to register as a sex offender under Chapter  
24 62, Code of Criminal Procedure;

25                           (D) a misdemeanor under Section 25.07, Penal  
26 Code; or

27                           (E) a misdemeanor under Section 25.071, Penal

1 Code; or

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

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

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

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

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

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

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

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

20 SECTION 34. Section 201.604, Occupations Code, is amended  
21 to read as follows:

22 Sec. 201.604. GENERAL CRIMINAL PENALTY. A [~~Except as~~  
23 ~~provided by Section 201.605, a~~] person commits an offense if the  
24 person violates this chapter. An offense under this section is a  
25 misdemeanor punishable by a fine of not less than \$50 or more than  
26 \$500 or by confinement in the county jail for not more than 30 days.

27 SECTION 35. Subchapter M, Chapter 201, Occupations Code, is

1 amended by adding Section 201.606 to read as follows:

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

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

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

12 SECTION 36. Sections 201.053(c), 201.059, 201.162, and  
13 201.254(c)-(e), Occupations Code, are repealed.

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

23 SECTION 38. Not later than January 1, 2006, the Texas Board  
24 of Chiropractic Examiners shall adopt the rules required by  
25 Sections 201.1525, 201.1555, and 201.2545, Occupations Code, as  
26 added by this Act, and Sections 201.205 and 201.252, Occupations  
27 Code, as amended by this Act.

1           SECTION 39. The changes in law made by this Act to Chapter  
2 201, Occupations Code, relating to the investigation of a complaint  
3 apply only to a complaint filed with the Texas Board of Chiropractic  
4 Examiners on or after the effective date of this Act. A complaint  
5 filed with the board before the effective date of this Act is  
6 governed by the law as it existed immediately before that date, and  
7 the former law is continued in effect for that purpose.

8           SECTION 40. (a) The terms of the members of the local  
9 chiropractic peer review committees appointed under Section  
10 201.251, Occupations Code, serving on December 31, 2005, expire on  
11 that date.

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

26           SECTION 41. (a) The terms of the members of the executive  
27 chiropractic peer review committee appointed under Section

1 201.253, Occupations Code, serving on December 31, 2005, expire on  
2 that date.

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

16 SECTION 42. The changes in law made by this Act to Sections  
17 201.302 and 201.303, Occupations Code, apply only to a person who  
18 enrolls in a chiropractic school on or after the effective date of  
19 this Act. A person who enrolled in a chiropractic school before  
20 that date is governed by the law in effect on the date of  
21 enrollment, and the former law is continued in effect for that  
22 purpose.

23 SECTION 43. The changes in law made by this Act to Sections  
24 201.354 and 201.355, Occupations Code, apply only to the renewal of  
25 a license to practice chiropractic that expires on or after the  
26 effective date of this Act. A license that expires before that date  
27 is governed by the law in effect on the date the license expires,

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1 and the former law is continued in effect for that purpose.

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