

BILL ANALYSIS

C.S.H.B. 2602
By: Truitt
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under existing law, chiropractic clinics may either be owned by a chiropractor who is licensed and regulated by the Texas Board of Chiropractic Examiners, or by others who are not regulated or licensed by any state agency.

In the public's interest and the patient's right to know, HB 2602 provides for the licensing and regulation of non-doctor-of chiropractic-owned chiropractic clinics.

RULEMAKING AUTHORITY

It is the opinion of the committee that additional rulemaking authority is expressly granted to the commissioner of licensing and regulation in SECTION 1 and SECTION 2 of the bill. The rulemaking authority of the commissioner of licensing and regulation is also referenced in SECTION 1 of the bill.

ANALYSIS

CSHB 2602 amends Subtitle G, Title 2, Health and Safety Code, by adding Chapter 147 to create a new licensing regime for non-doctor-of-chiropractic-owned chiropractic clinics.

CSHB 2602 defines the following terms: "applicant," board," "commission," "commissioner," "contracting doctor of chiropractic," controlling person," "department," "doctor of chiropractic," "license holder," and "non-doctor-of-chiropractic-owned chiropractic clinic."

CSHB 2602 does not apply to the provision of chiropractic care, services, or procedures by a doctor of chiropractic employed by or contracted with certain specified entities.

CSHB 2602 requires the commissioner of licensing and regulation ("commissioner") to adopt rules as necessary to administer the bill. The rules set by the commissioner govern and control each license holder under the bill. Each state agency whose duties under other law affects the regulation of non-doctor-of-chiropractic-owned chiropractic clinics is required to cooperate with the Texas Department of Licensing and Regulation ("TDLR"), the commissioner, and other state agencies as necessary to enforce this chapter. In particular, the Texas Department of Insurance ("TDI"), the division of workers' compensation at TDI, and the attorney general's office are required to assist in the implementation of this bill.

A fee collected by TDLR under this bill is required to be used to implement and enforce the bill.

CSHB 2602 prohibits a non-doctor-of-chiropractic-owned chiropractic clinic from allowing a doctor of chiropractic to engage in or offer chiropractic services or care at the clinic unless each controlling person for the clinic holds a license issued under the bill. Each controlling person for a non-doctor-of-chiropractic-owned chiropractic clinic that desires an original or renewal non-doctor-of-chiropractic-owned chiropractic clinic license is required to file with TDLR a written application accompanied by an application fee. TDLR is authorized to require an applicant to provide information and certifications necessary to determine that the applicant meets the licensing requirements of the bill, as well as information and certifications necessary to determine that individuals affiliated with the applicant are qualified to serve as controlling persons. Except under certain specified circumstances, an applicant, license holder, a spouse of an applicant or license holder, a partner of a limited liability partnership, or any stockholder of a corporation is ineligible for a license for two years after the date of final TDLR action on the

denial or revocation of a license applied for or issued. If the basis for the denial or revocation was that one or more of the controlling persons affiliated with the applicant or licensee was determined to be unsuitable, and that controlling person has ceased to be a controlling person, the ineligibility lasts one year from final action by TDLR.

CSHB 2602 provides that to be qualified to serve as a controlling person of a licensee, that person must be at least 18 years of age, of good moral character as defined by the bill, and have educational, managerial, or business experience relevant to operation of a business entity offering chiropractic care or service as a controlling person of a chiropractic care facility. TDLR is required to conduct a thorough background investigation of each applicant to determine whether that applicant is qualified. This background check may be the basis for the denial of an original or renewal license. CSHB 2602 provides minimum standards that the background investigation must meet. Conviction of a crime does not automatically disqualify a controlling person, require revocation of a license, or require the denial of an application for a new or renewal license. CSHB 2602 requires each license holder to maintain a registered agent for the service of process in this state. CSHB 2602 requires an applicant for an original or renewal license to demonstrate that the clinic for which the person is applying as a controlling person has a certain specified net worth based on the number of assigned employees. CSHB 2602 provides the methods by which an applicant may prove and calculate the applicant's net worth.

CSHB 2602 requires each applicant for an original or renewal license to pay to TDLR on the issuance or renewal of the license a fee set by the Commission on Licensing and Regulation ("commission") by rule in an amount not to exceed \$3,000. The commission is authorized to charge a reasonable fee for license applications and license renewals, investigations, inspections, and any other administrative or enforcement responsibilities created under this chapter.

CSHB 2602 directs the commissioner to determine by rule the form and content of the licenses issued under this chapter and the notices required to be posted under the bill. Each license issued under the bill is required to be posted in a conspicuous place in the principal place of business. Each license holder must also display clearly a notice stating that the business operated at the location is licensed and regulated by TDLR and that any questions or complaints should be directed to TDLR. Each license holder must also provide a copy of the license to the Texas Board of Chiropractic Examiners ("TBCE") and to each contracting doctor of chiropractic upon receipt of the initial license and annually upon renewal.

CSHB 2602 prohibits a license holder from conducting business under any name other than that specified in the license, under any fictitious or assumed name without prior written authorization from TDLR, or under more than one name unless it has obtained a separate license for each name. TDLR is prohibited from authorizing the use of a name that is so similar to that of a public office or agency or to that of another license holder that the public may be confused or misled by its use. A license issued under this bill is not assignable. CSHB 2602 allows a license holder to change its licensed name at any time by notifying TDLR and paying a fee for each change of name as set by TDLR by rule in amount not to exceed \$50. A license holder is authorized to change its licensed name on renewal of the license without the payment of the name change fee. CSHB 2365 requires a license holder to notify TDLR in writing within 30 days of any change in the location of its primary business office, the addition of more business offices, or a change in the location of business records maintained by the licensee.

CSHB 2602 stipulates that records of patient care and treatment are the sole property of the patient and must be maintained and kept in the custody of the doctor of chiropractic who treats the patient for a period prescribed by TBCE.

CSHB 2602 creates an offense of a Class A misdemeanor for certain specified prohibited acts. The commissioner is authorized to notify the attorney general of a violation, and the attorney general is authorized to apply to a district court in Travis County for permission to file suit in the nature of quo warrant or for injunctive relief, or both. The attorney general may not be required to post a bond for injunctive relief.

CSHB 2602 stipulates that for the purposes of the section of the bill relating to disciplinary actions, "conviction" includes a plea of nolo contendere or a finding of guilt, regardless of adjudication. CSHB 2602 authorizes TDLR to take disciplinary action against a license holder on

certain specified grounds. CSHB 2602 specifies what disciplinary actions may be taken. Upon revocation of a license, the license holder is required to immediately return the revoked license to TDLR and notify all employees, all patients, and TBCE that the clinic may no longer provide chiropractic care and services. TDLR is authorized to take disciplinary action, deny a license application or renewal, or revoke a license only on a determination that a controlling person is unqualified, after notice to, and an opportunity for a hearing by, the affected applicant, license holder, or controlling person in accordance with Chapter 2001, Government Code. If a license is revoked or a renewal is denied, the affected license holder may not request a reinstatement hearing before the first anniversary of the date of the revocation or denial. TDLR is authorized to reinstate or renew the license only if the cause of the revocation or denial has been corrected.

Not later than November 1, 2007, CSHB 2602 requires the commissioner to adopt rules as required by Section 147.051, Health and Safety Code, as added by the bill.

EFFECTIVE DATE

September 1, 2007, except that Section 147.101 and Subchapter D, Chapter 147, Health and Safety Code, as added by the bill, take effect January 1, 2008.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Whereas SECTION 1 of the bill as filed amended Subtitle C, Title 3, Occupations Code by adding Chapter 207, the substitute amends Subtitle G, Title 2, Health and Safety Code, by adding Chapter 147.

Sec. 147.001, Health and Safety Code, as added by the substitute, corresponds to Sec. 207.001, Occupations Code, as added by the bill as filed. The substitute does not provide definitions for the following terms: "chiropractic care records," "licensee," "contracted doctor of chiropractic," "independent contractor," "patient," "person" and "public company." The substitute provides definitions for the following terms that were not defined in the bill as filed: "contracting doctor of chiropractic" and "license holder." The substitute changes the definition of the following terms defined by the bill as filed: "doctor of chiropractic" and "non-doctor-of-chiropractic-owned chiropractic clinic."

Wherever the term "licensee" appears in the bill as filed, the term "license holder" appears in the substitute. These changes are meant to conform with generally accepted Legislative Council practice. Because the bill was moved from one code to another, conforming changes are made to correct references in the substitute.

The substitute adds Sec. 147.002, Health and Safety Code, relating to the applicability of the bill, which does not have a corresponding section in the bill as filed.

The substitute reserves the following sections for expansion: Sections 147.003-147.050, Sections 147.054-147.100, and 147.108-147.150, Health and Safety Code.

Subsections (a) and (c) of Section 207.002, Occupations Code, as added by the bill as filed, correspond to Section 147.051, Health and Safety Code, as added by the substitute, except that conforming changes are made. Subsection (e) of Section 207.002, Occupations Code, as added by the bill as filed, corresponds to Section 147.052, Health and Safety Code, as added by the substitute, except that conforming changes are made and the language is reorganized.

The substitute adds Section 147.053, Health and Safety Code, relating to the use of fees, which does not have a corresponding Section in the bill as filed.

Subsection (a) of Section 207.003, Occupations Code, as added by the bill as filed, corresponds to Section 147.101, Health and Safety Code, as added by the substitute, except that the phrase "in this state without holding" in the bill as filed is replaced with "at the clinic unless each controlling person for the clinic holds" in the substitute.

Subsections (b), (c), (d), and (e) of Section 207.003, Occupations Code, as added by the bill as filed, correspond to Section 147.102, Health and Safety Code, as added by the substitute, except

that: in Subsection (a) of the substitute, corresponding to Subsection (b) of the bill as filed, the phrase "controlling person for" is inserted after the word "each"; in Subsection (c) of the substitute, corresponding to Subsection (d) of the bill as filed, "LLP" in the bill as filed is replaced with "limited liability partnership" in the substitute and the phrase "if the basis of the action was" in the bill as filed is replaced with the phrase "based on" in the substitute; in Subdivision (c)(2) of the substitute, corresponding to Subdivision (d)(2) of the bill as filed, the substitute inserts the phrase "the fact that" at the beginning of the subdivision; in Subdivision (c)(3) of the substitute, corresponding to Subdivision (d)(3) of the bill as filed, the substitute replace the word "was" in the bill as filed with "being"; in Subsection (d) of the substitute, corresponding to Subsection (e) of the bill as filed, "LLP" in the bill as filed is replaced with "limited liability partnership" in the substitute and the phrase "for one year after" in the bill as filed is replaced with "until the first anniversary of" in the substitute; and in Subdivision (d)(1) of the substitute, corresponding to Subdivision (e)(1) in the bill as filed, the third instance of the word "or" in the bill as filed is replaced with "and".

Sec. 147.103, Health and Safety Code, as added by the substitute, corresponds to Sec. 207.004, Occupations Code, as added by the bill as filed, except that: Subsection (a) of the substitute, corresponding to Subsection (b) of the bill as filed, replaces the phrase "for the purposes of" in the bill as filed with "in"; in Subsection (b) of the substitute, corresponding to Subsection (a) of the bill as filed, the phrase "of a licensee" is removed; in Subsection (c) of the substitute and bill as filed the phrases "individual" and "and of each controlling person of each applicant" in the bill as filed are removed and the substitute replaces the phrase "a controlling person is not qualified" in the bill as filed with "the applicant is not qualified"; in Subsection (d) of the substitute and the bill as filed, the substitute replaces the phrase "a new or renewed license" in the bill as filed with the phrase "an original or renewal license"; in Subsection (f) of the bill as filed and substitute, the substitute adds the phrase "that the clinic for which the person is applying as a controlling person has" between the words "demonstrate" and "a" in the bill as filed; in subdivisions (f)(1), (2), and (3) of the substitute and bill as filed, the substitute replaces the word "applicant" in the bill as filed with the word "clinic"; Subsection (g) of the bill as filed does not have a corresponding section in the substitute; and in Subsection (g) of the substitute, corresponding to Subsection (h) of the bill as filed, the phrase "demonstrate net worth to the department" in the bill as filed is replaced with "demonstrate the net worth of the clinic to the department" and the phrase "to satisfy" in the bill as filed is replaced by "under".

Section 147.104, Health and Safety Code, as added by the substitute, corresponds to Sec. 207.005, Occupations Code, as added by the bill as filed, except that: in Subsection (a) of the bill as filed and substitute, the phrase "on the issuance of the license or license renewal" in the bill as filed is replaced with the phrase " on the issuance or renewal of the license"; and in Subsection (b) of the substitute and the bill as filed, the phrase "is authorized to" in the bill as filed is replaced with the word "may" and the substitute inserts the word "license" before the word "renewals" in the bill as filed.

Sections 207.006 and 207.007, Occupations Code, as added by the bill as filed, do not have corresponding sections in the substitute.

Sec. 147.105, Health and Safety Code, as added by the substitute, corresponds to Sec. 207.008, Occupations Code, as added by the bill as filed, except that in Subsection (c), the substitute replaces the phrase "must provide a copy of that license" in the bill as filed with the phrase "shall provide a copy of the license" and changes the phrase "doctors of chiropractic" in the bill as filed to "doctor".

Sec. 147.106, Health and Safety Code, as added by the substitute, corresponds to Sec. 207.009, Occupations Code, as added by the bill as filed, except that in Subsection (a) the substitute removes the phrase "fictitious or assumed" from the language added by the bill as filed.

The substitute adds Section 147.107, Health and Safety Code, relating to maintenance of patient records which has no corresponding section in the bill as filed.

Sec. 147.151, Health and Safety Code, as added by the substitute, corresponds to Sec. 207.010, Occupations Code, as added by the bill as filed, except that: in Subdivision (a)(2) the substitute removes the comma and adds the word "or" between the phrases "chiropractic clinic" and

"chiropractic office"; and in Subdivision (a)(3) the substitute replaces the phrase "its own" in the bill as filed with the phrase "the person's own".

Sec. 147.152, Health and Safety Code, as added by the substitute, corresponds to Sec. 207.011, Occupations Code, as added by the bill as filed, except that: wherever the phrase "controlling person of a licensee" appears in the bill as filed the substitute replaces it with the phrase "controlling person affiliated with a license holder"; in Subdivision (b)(10), the substitute removes the phrase "by law" from the language added by the bill as filed; in Subdivision (b)(11), the substitute removes the phrase "the change of" from the language added by the bill as filed; in Subdivision (b)(14), the substitute replaces the phrase "the State of Texas" in the bill as filed with the phrase "this state" and replaces the phrase "other than those" in the bill as filed with the phrase "a tax or debt"; in Subdivision (c)(5), the substitute replaces the phrase "the period" in the bill as filed with "a period"; the substitute rewords Subsection (e); and in Subsection (f), the substitute inserts the word "not" after the word "may", replaces the phrase "after a minimum of one year" in the bill as filed with the phrase "before the first anniversary of the date of the revocation or denial", and replaces the phrase "cause of the nonrenewal or revocation" in the bill as filed with the phrase "cause of the revocation or denial".

Sections 207.012 and 207.013, Occupations Code, as added by the bill as filed, have no corresponding sections in the substitute.

SECTION 2 of the bill as filed does not have a corresponding section in the substitute. SECTION 2 of the substitute directs the commissioner of licensing and regulation to adopt certain rules before a specified date.

SECTION 3 of the bill as filed corresponds to SECTION 3 of the substitute, except that the substitute stipulates that certain portions of the bill do not become effective until January 1, 2008.