

By: Truitt

H.B. No. 2602

Substitute the following for H.B. No. 2602:

By: Delisi

C.S.H.B. No. 2602

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain chiropractic clinics;
providing administrative and criminal penalties.

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

SECTION 1. Subtitle G, Title 2, Health and Safety Code, is amended by adding Chapter 147 to read as follows:

CHAPTER 147. NON-DOCTOR-OF-CHIROPRACTIC-OWNED CHIROPRACTIC
CLINICS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 147.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person or business seeking to be licensed under this chapter or seeking the renewal of a license under this chapter.

(2) "Board" means the Texas Board of Chiropractic Examiners.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Commissioner" means the commissioner of licensing and regulation.

(5) "Contracting doctor of chiropractic" means a person engaged in the practice of chiropractic as described by Section 201.002, Occupations Code, who holds a current active license to practice chiropractic and who has entered into a contractual agreement with a licensed chiropractic clinic owner to

1 provide chiropractic care.

2 (6) "Controlling person" means:

3 (A) an officer or director of a corporation
4 seeking a license under this chapter, a shareholder holding 10
5 percent or more of the voting stock of a corporation seeking to own
6 or operate a non-doctor-of-chiropractic-owned chiropractic clinic,
7 or a partner of a partnership seeking to own or operate a
8 non-doctor-of-chiropractic-owned chiropractic clinic; or

9 (B) an individual who possesses, directly or
10 indirectly, the power to direct or cause the direction of the
11 management or policies of a company that owns and operates a
12 non-doctor-of-chiropractic-owned chiropractic clinic through the
13 ownership of voting securities, by contract or otherwise.

14 (7) "Department" means the Texas Department of
15 Licensing and Regulation.

16 (8) "Doctor of chiropractic" means a person engaged in
17 the practice of chiropractic as described by Section 201.002,
18 Occupations Code.

19 (9) "License holder" means an individual or entity
20 licensed under this chapter who owns or operates a
21 non-doctor-of-chiropractic-owned chiropractic clinic.

22 (10) "Non-doctor-of-chiropractic-owned chiropractic
23 clinic" means a chiropractic facility licensed under this chapter
24 and registered under Section 201.312, Occupations Code.

25 Sec. 147.002. APPLICABILITY. This chapter does not apply
26 to the provision of chiropractic care, services, or procedures by a
27 doctor of chiropractic employed by or contracted with:

- 1 (1) a licensed physician;
2 (2) a person licensed as a physician and organized
3 under Title 7, Business Organizations Code;
4 (3) a person organized under Title 4, Business
5 Organizations Code, and composed entirely of licensed physicians;
6 (4) an approved nonprofit health corporation
7 certified under Chapter 162, Occupations Code;
8 (5) a medical school or medical and dental unit, as
9 defined by Section 61.003, Education Code, that employs or
10 contracts with a physician in a practice plan or to teach or provide
11 medical services; or
12 (6) any other entity wholly owned by one or more
13 licensed physicians.

14 [Sections 147.003-147.050 reserved for expansion]

15 SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND COMMISSIONER

16 Sec. 147.051. RULES. (a) The commissioner shall adopt
17 rules as necessary to administer this chapter.

18 (b) Each license holder is governed and controlled by this
19 chapter and the rules adopted by the commissioner.

20 Sec. 147.052. INTERAGENCY COOPERATION. (a) Each state
21 agency that, in performing duties under other law, affects the
22 regulation of non-doctor-of-chiropractic-owned chiropractic
23 clinics shall cooperate with the department, the commissioner, and
24 other state agencies as necessary to fully implement and enforce
25 this chapter.

26 (b) The board, the Texas Department of Insurance, the
27 division of workers' compensation of the Texas Department of

1 Insurance, and the attorney general's office shall assist in the
2 implementation of this chapter and shall provide information to the
3 department on request.

4 Sec. 147.053. USE OF FEES. A fee collected by the
5 department under this chapter shall be used to implement and
6 enforce this chapter.

7 [Sections 147.054-147.100 reserved for expansion]

8 SUBCHAPTER C. LICENSING

9 Sec. 147.101. LICENSE REQUIRED. A
10 non-doctor-of-chiropractic-owned clinic may not allow a doctor of
11 chiropractic to engage in or offer chiropractic services or
12 chiropractic care at the clinic unless each controlling person for
13 the clinic holds a license issued under this chapter.

14 Sec. 147.102. LICENSE APPLICATION. (a) Each controlling
15 person for a non-doctor-of-chiropractic-owned chiropractic clinic
16 that desires an original or renewal
17 non-doctor-of-chiropractic-owned chiropractic clinic license
18 shall file with the department a written application accompanied by
19 the application fee.

20 (b) The department may require an applicant for a license
21 to provide information and certifications necessary to determine
22 that the applicant meets the licensing requirements of this
23 chapter. The department may also require the applicant to provide
24 information and certifications necessary to determine whether
25 individuals affiliated with the applicant are qualified to serve as
26 controlling persons.

27 (c) An applicant, a license holder, the spouse of an

1 applicant or license holder, a partner of a limited liability
2 partnership, or any stockholder of a corporation is ineligible for
3 a license for two years after the date of a final department action
4 on the denial or revocation of a license applied for or issued under
5 this chapter. This restriction does not apply to a denial or
6 revocation of a license based on:

7 (1) an inadvertent error or omission in the
8 application if that error or omission is promptly corrected;

9 (2) the fact that the experience documented to the
10 department was insufficient at the time of the previous
11 application; or

12 (3) the department being unable to complete the
13 background investigation required under Section 147.103 because of
14 insufficient information received from a local, state, or federal
15 law enforcement agency.

16 (d) An applicant, a license holder, the spouse of an
17 applicant or license holder, a partner of a limited liability
18 partnership, or any stockholder of a corporation is ineligible for
19 a license until the first anniversary of the date of a final
20 department action on the denial or revocation of a license applied
21 for or issued under this chapter if:

22 (1) the basis of the denial or revocation was that one
23 or more of the controlling persons affiliated with the applicant or
24 license holder was determined by the department to be unsuitable;
25 and

26 (2) that unsuitable controlling person has in fact
27 ceased to be a controlling person of the applicant or license

1 holder.

2 Sec. 147.103. LICENSE REQUIREMENTS. (a) In this section,
3 "good moral character" means a personal history of honesty,
4 trustworthiness, fairness, a good reputation for fair dealing, and
5 respect for the rights of others and for the laws of this state and
6 nation.

7 (b) To be qualified to serve as a controlling person for a
8 non-doctor-of-chiropractic-owned chiropractic clinic under this
9 chapter, the person must be at least 18 years of age, be of good
10 moral character, and have educational, managerial, or business
11 experience relevant to:

12 (1) operation of a business entity offering
13 chiropractic care; or

14 (2) service as a controlling person of a chiropractic
15 care facility.

16 (c) The department shall conduct a thorough background
17 investigation of each applicant to determine whether the applicant
18 is qualified under this chapter. The department may deny an
19 application for the issuance or renewal of a license if it finds
20 that the applicant is not qualified to be a controlling person under
21 this chapter. The investigation must include:

22 (1) the submission of fingerprints for processing
23 through appropriate local, state, and federal law enforcement
24 agencies; and

25 (2) examination by the department of police or other
26 law enforcement records maintained by local, state, or federal law
27 enforcement agencies.

1 (d) Department background investigations are governed by
2 this chapter and by Chapter 53, Occupations Code, and Section
3 411.122, Government Code. Conviction of a crime does not
4 automatically disqualify a controlling person, require the
5 revocation of a license, or require the denial of an application for
6 an original or renewal license. The department shall consider
7 criminal convictions as provided by Chapter 53, Occupations Code,
8 and Section 411.122, Government Code.

9 (e) Each license holder shall maintain a registered agent
10 for the service of process in this state.

11 (f) An applicant for an original or renewal license must
12 demonstrate that the clinic for which the person is applying as a
13 controlling person has a net worth as follows:

14 (1) \$50,000 if the clinic employs fewer than five
15 assigned employees;

16 (2) \$75,000 if the clinic employs at least five but not
17 more than eight assigned employees; or

18 (3) \$100,000 if the clinic employs more than eight
19 assigned employees.

20 (g) The applicant shall demonstrate the net worth of the
21 clinic to the department by providing the department with the
22 applicant's financial statement or a copy of the applicant's most
23 recent federal tax return. The net worth requirement may also be
24 satisfied through guarantees, letters of credit, or other security
25 acceptable to the department. A guaranty is not acceptable under
26 this subsection unless the applicant submits sufficient evidence to
27 satisfy the department that the guarantor has adequate resources to

1 satisfy the obligations of the guaranty.

2 (h) In calculating net worth, an applicant shall include
3 adequate reserves for all taxes and insurance, including reserves
4 for claims incurred but not paid and for claims incurred but not
5 reported under plans of self-insurance for health benefits. The
6 calculation of net worth by an applicant shall be made according to
7 Section 448, Internal Revenue Code of 1986.

8 (i) A document submitted to establish net worth must reflect
9 the net worth as of a date not earlier than six months before the
10 date on which the application is submitted. A document submitted to
11 establish net worth must be prepared or certified by an independent
12 certified public accountant. Information supplied regarding net
13 worth, including copies of federal tax returns, is proprietary and
14 confidential and is exempt from disclosure to third parties, other
15 than to other governmental agencies with a reasonable legitimate
16 purpose for obtaining the information.

17 Sec. 147.104. FEES. (a) Each applicant for an original or
18 renewal license shall pay to the department on the issuance or
19 renewal of the license a fee set by the commission by rule in an
20 amount not to exceed \$3,000.

21 (b) The commission may charge reasonable fees for license
22 applications and license renewals, investigations, inspections,
23 and any other administrative or enforcement responsibilities
24 created under this chapter.

25 Sec. 147.105. POSTING OF LICENSES. (a) The commissioner
26 by rule shall determine the form and content of:

27 (1) licenses issued under this chapter; and

1 (2) notices required to be posted under this section.

2 (b) Each license issued under this chapter must be posted in
3 a conspicuous place in the principal place of business in this state
4 of the license holder. Each license holder shall display, in a
5 place that is clear and unobstructed to public view, a notice
6 stating that the business operated at the location is licensed and
7 regulated by the department and that any questions or complaints
8 should be directed to the department.

9 (c) Each license holder issued a
10 non-doctor-of-chiropractic-owned chiropractic clinic license
11 under this chapter shall provide a copy of the license to the board
12 and to each contracting doctor of chiropractic on receipt of the
13 initial license and annually on renewal.

14 Sec. 147.106. LICENSE NOT ASSIGNABLE; CHANGE OF NAME OR
15 LOCATION. (a) A license holder may not conduct business under any
16 name other than that specified in the license. A license issued
17 under this chapter is not assignable. A license holder may not
18 conduct business under any fictitious or assumed name without prior
19 written authorization from the department. The department may not
20 authorize the use of a name that is so similar to that of a public
21 office or agency or to that of another license holder that the
22 public may be confused or misled by its use. A license holder may
23 not conduct business under more than one name unless it has obtained
24 a separate license for each name.

25 (b) A license holder may change its licensed name at any
26 time by notifying the department and paying a fee for each change of
27 name. The commission by rule shall set the fee for a name change in

1 an amount not to exceed \$50. A license holder may change its name on
2 renewal of the license without the payment of the name change fee.

3 (c) A license holder must notify the department in writing
4 within 30 days of:

5 (1) any change in the location of its primary business
6 office;

7 (2) the addition of more business offices; or

8 (3) a change in the location of business records
9 maintained by the license holder.

10 Sec. 147.107. RECORDS. Records of patient care and
11 treatment are the sole property of the patient and must be
12 maintained and kept in the custody of the doctor of chiropractic who
13 treats the patient for a period prescribed by the board.

14 [Sections 147.108-147.150 reserved for expansion]

15 SUBCHAPTER D. ADMINISTRATIVE AND CRIMINAL PENALTIES

16 Sec. 147.151. PROHIBITED ACTS; CRIMINAL PENALTY. (a) A
17 person may not:

18 (1) offer chiropractic services without holding a
19 license under this chapter as a non-doctor-of-chiropractic-owned
20 chiropractic clinic;

21 (2) use the name or title "chiropractic clinic" or
22 "chiropractic offices," or any derivation of the term
23 "chiropractic," or otherwise represent that the person is licensed
24 under this chapter unless the person holds a license issued under
25 this chapter;

26 (3) represent as the person's own the license of
27 another location or represent that a facility is licensed if the

1 person does not hold a license;

2 (4) give materially false or forged evidence to the
3 department in connection with obtaining or renewing a license or in
4 connection with disciplinary proceedings under this chapter; or

5 (5) use or attempt to use a license that has expired or
6 been revoked.

7 (b) A person that violates Subsection (a) commits an
8 offense. An offense under this subsection is a Class A misdemeanor.

9 (c) The commissioner may notify the attorney general of a
10 violation, and the attorney general may apply to a district court in
11 Travis County for permission to file suit in the nature of quo
12 warranto or for injunctive relief, or both. The attorney general
13 may not be required to post a bond for injunctive relief.

14 Sec. 147.152. DISCIPLINARY ACTIONS. (a) For purposes of
15 this section, "conviction" includes a plea of nolo contendere or a
16 finding of guilt, regardless of adjudication.

17 (b) Disciplinary action may be taken against a license
18 holder by the department on any of the following grounds:

19 (1) the conviction of a license holder or any
20 controlling person affiliated with a license holder of bribery,
21 fraud, or intentional or material misrepresentation in obtaining,
22 attempting to obtain, or renewing a license;

23 (2) the conviction of a license holder or any
24 controlling person affiliated with a license holder of a crime that
25 relates to the operation of a non-doctor-of-chiropractic-owned
26 chiropractic clinic or the ability of the license holder or
27 controlling person to operate a non-doctor-of-chiropractic-owned

1 chiropractic clinic;

2 (3) the conviction of a license holder or any
3 controlling person affiliated with a license holder of a crime that
4 relates to the classification, misclassification, or
5 underreporting of employees under Subtitle A, Title 5, Labor Code;

6 (4) the conviction of a license holder or any
7 controlling person affiliated with a license holder of a crime that
8 relates to the establishment or maintenance of a self-insurance
9 program, whether health insurance, workers' compensation
10 insurance, or other insurance;

11 (5) the conviction of a license holder or any
12 controlling person affiliated with a license holder of a crime that
13 relates to fraud, deceit, or misconduct in the operation of a staff
14 leasing service;

15 (6) engaging in services of a
16 non-doctor-of-chiropractic-owned chiropractic clinic without a
17 license;

18 (7) transferring or attempting to transfer a license
19 issued under this chapter;

20 (8) violating this chapter or any order or rule issued
21 by the department or commissioner under this chapter;

22 (9) failing to notify the department, in writing, of
23 the felony conviction of any controlling person not later than the
24 30th day after the date on which that conviction is final;

25 (10) failing to cooperate with an investigation,
26 examination, or audit of the license holder's records conducted by
27 the license holder's insurance company or the insurance company's

1 designee, as allowed by the insurance contract or as authorized by
2 the board;

3 (11) failing to notify the department and the board
4 not later than the 30th day after the effective date of any change
5 in ownership, principal business address, or the address of
6 accounts and records;

7 (12) failing to correct any tax filing or payment
8 deficiency within a reasonable time as determined by the
9 commissioner;

10 (13) refusing, after reasonable notice, to meet
11 reasonable health and safety requirements within the license
12 holder's control and made known to the license holder by a federal
13 or state agency;

14 (14) a delinquency in the payment of any taxes or debts
15 owed to this state other than a tax or debt subject to a legitimate
16 dispute;

17 (15) knowingly making a material misrepresentation to
18 an insurance company, the department, or any other governmental
19 agency; or

20 (16) failing to maintain the net worth requirements
21 required under Section 147.103.

22 (c) On a finding that a license holder or applicant has
23 violated one or more provisions of Subsection (b), the department
24 may:

25 (1) deny an application for a license;

26 (2) revoke, restrict, or refuse to renew a license;

27 (3) impose an administrative penalty in an amount not

1 less than \$1,000 per violation, but not more than \$50,000;

2 (4) issue a reprimand; or

3 (5) place the license holder on probation for a period
4 and subject to conditions that the department specifies.

5 (d) On revocation of a license, the license holder shall
6 immediately return the revoked license to the department and notify
7 all employees, all patients, and the board that the clinic may no
8 longer provide chiropractic care and services.

9 (e) The department may take disciplinary action, deny a
10 license application or renewal, or revoke a license only on a
11 determination that a controlling person is unqualified, after
12 notice to, and an opportunity for a hearing by, the affected
13 applicant, license holder, or controlling person in accordance with
14 Chapter 2001, Government Code.

15 (f) If a license is revoked or renewal is denied, the
16 affected license holder may not request a reinstatement hearing
17 before the first anniversary of the date of revocation or denial.
18 The department may reinstate or renew the license only if the cause
19 of the revocation or denial has been corrected.

20 SECTION 2. Not later than November 1, 2007, the
21 commissioner of licensing and regulation shall adopt rules as
22 required by Section 147.051, Health and Safety Code, as added by
23 this Act.

24 SECTION 3. This Act takes effect September 1, 2007, except
25 that Section 147.101 and Subchapter D, Chapter 147, Health and
26 Safety Code, as added by this Act, take effect January 1, 2008.