

A BILL TO BE ENTITLED

AN ACT

relating to the regulation by the Texas Department of Licensing and Regulation of certain chiropractic clinics; providing penalties.

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

SECTION 1. Chapter 201, Occupations Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. CLINIC NOT OWNED BY CHIROPRACTOR

Sec. 201.651. DEFINITIONS. In this subchapter:

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

(2) "Chiropractic clinic owned by a non-chiropractor" means a chiropractic facility subject to licensing under this subchapter and registered under Section 201.312.

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

(4) "Contracted chiropractor" means a chiropractor who holds a current active license to practice chiropractic and who has entered into a contractual agreement with a chiropractic clinic owner to provide chiropractic care.

(5) "Controlling person" means:

(A) an officer or director of a corporation seeking a license under this subchapter, a shareholder holding 10 percent or more of the voting stock of a corporation seeking to own

1 or operate a chiropractic clinic owned by a non-chiropractor, or a  
2 partner of a partnership seeking to own or operate a chiropractic  
3 clinic owned by a non-chiropractor; or

4 (B) an individual who possesses, directly or  
5 indirectly, the power to direct or cause the direction of the  
6 management or policies of a company that owns and operates a  
7 chiropractic clinic owned by a non-chiropractor through the  
8 ownership of voting securities, by contract, or otherwise.

9 (6) "Department" means the Texas Department of  
10 Licensing and Regulation.

11 (7) "Executive director" means the executive director  
12 of the Texas Department of Licensing and Regulation.

13 (8) "Licensee" means a person or entity licensed under  
14 this subchapter who owns or operates a chiropractic clinic but who  
15 is not a chiropractor.

16 Sec. 201.652. RULES; INTERAGENCY COOPERATION. (a) The  
17 executive director shall adopt rules as necessary to administer  
18 this subchapter.

19 (b) The rules shall be adopted in compliance with Chapter  
20 2001, Government Code.

21 (c) Each licensee is governed and controlled by this  
22 subchapter and the rules adopted by the executive director.

23 (d) Notwithstanding any other provision of this subchapter,  
24 nothing in this subchapter preempts the existing statutory or  
25 rulemaking authority of any other state agency or entity to  
26 regulate chiropractic clinics owned by a non-chiropractor.

27 (e) Each state agency that, in performing duties under other

1 law, affects the regulation of chiropractic clinics owned by a  
2 non-chiropractor shall cooperate with the department, the  
3 executive director, and other state agencies as necessary to fully  
4 implement and enforce this subchapter. The board, the Texas  
5 Department of Insurance, including the division of workers'  
6 compensation, and the attorney general's office shall assist in the  
7 implementation of this subchapter and shall provide information to  
8 the department on request.

9 Sec. 201.653. LICENSE REQUIRED; APPLICATION. (a) A  
10 chiropractic clinic owned by a non-chiropractor may not allow a  
11 contracted chiropractor to engage in or offer chiropractic services  
12 or care in this state unless the clinic holds a license under this  
13 subchapter.

14 (b) A chiropractic clinic owned by a non-chiropractor that  
15 seeks an original or renewal license under this subchapter shall  
16 file with the department a written application accompanied by the  
17 application fee.

18 (c) The department may require an applicant to provide  
19 information and certifications necessary to determine that the  
20 applicant meets the licensing requirements of this subchapter. The  
21 department may also require the applicant to provide information  
22 and certifications necessary to determine whether individuals  
23 affiliated with the applicant are qualified to serve as controlling  
24 persons.

25 (d) Except as provided by Subsection (e) and Section  
26 201.661(f), an applicant or licensee, a spouse of an applicant or  
27 licensee, a partner of a limited liability partnership that is or

1 was an applicant or licensee, or any stockholder of a corporation  
2 that is or was an applicant or licensee is ineligible for a license  
3 for two years after the date of final departmental action on the  
4 denial or revocation of a license applied for or issued under this  
5 subchapter. This restriction does not apply to a denial or  
6 revocation of a license if the basis of the action was:

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

9 (2) a determination by the department that the  
10 documented experience level was insufficient at the time of the  
11 previous application; or

12 (3) the inability of the department to complete the  
13 criminal background investigation required under Section 201.654  
14 because of insufficient information received from a local, state,  
15 or federal law enforcement agency.

16 (e) An applicant or licensee, a spouse of an applicant or  
17 licensee, a partner of a limited liability partnership that is or  
18 was an applicant or licensee, or any stockholder of a corporation  
19 that is or was an applicant or licensee is eligible for a license  
20 one year after the date of final departmental action on the denial  
21 or revocation of a license applied for or issued under this  
22 subchapter if:

23 (1) the basis of the denial or revocation was that a  
24 controlling person affiliated with the applicant or licensee was  
25 determined by the department to be unsuitable; and

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

1       Sec. 201.654. LICENSE REQUIREMENTS. (a) To be qualified  
2 to serve as a controlling person of a licensee under this  
3 subchapter, a person must be at least 18 years of age, be of good  
4 moral character, and have educational, managerial, or business  
5 experience relevant to:

6           (1) the operation of a business entity offering  
7 chiropractic care; or

8           (2) service as a controlling person of a chiropractic  
9 care facility.

10       (b) For the purposes of this section, "good moral character"  
11 means a personal history of honesty, trustworthiness, fairness, and  
12 respect for the rights of others and for the laws of this state and  
13 nation, and a good reputation for fair dealing.

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

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

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

27       (d) Background investigations by the department are

1 governed by this subchapter and Chapter 53. Conviction of a crime  
2 does not automatically disqualify a controlling person, require the  
3 revocation of a license, or require the denial of an application for  
4 a new or renewed license. The department shall consider criminal  
5 convictions as provided by Section 53.022.

6 (e) A licensee shall maintain a registered agent for the  
7 service of process in this state.

8 (f) An applicant for an original or renewal license must  
9 demonstrate a net worth as follows:

10 (1) \$50,000 if the applicant employs fewer than five  
11 assigned employees;

12 (2) \$75,000 if the applicant employs at least five but  
13 not more than eight assigned employees;

14 (3) \$100,000 if the applicant employs more than eight  
15 assigned employees.

16 (g) For purposes of Subsection (f), "assigned employee"  
17 means a full-time employee whose normal work week is at least 25  
18 hours per week and whose work is performed in this state. The term  
19 does not include an employee hired to support or supplement the  
20 client's workforce in special work situations, such as employee  
21 absences.

22 (h) The applicant shall demonstrate the applicant's net  
23 worth to the department by providing the department with the  
24 applicant's financial statement or a copy of the applicant's most  
25 recent federal tax return. The net worth requirement may also be  
26 satisfied through guarantees, letters of credit, or other security  
27 acceptable to the department. A guaranty is not acceptable to

1 satisfy this subsection unless the applicant submits sufficient  
2 evidence to satisfy the department that the guarantor has adequate  
3 resources to satisfy the obligations of the guaranty.

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

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

19 Sec. 201.655. FEES. (a) Each applicant for an original or  
20 renewal license shall pay to the department on the issuance of the  
21 license or license renewal a fee set by the commission by rule, in  
22 an amount not to exceed \$3,000.

23 (b) The commission is authorized to charge reasonable fees  
24 for license applications and renewals, investigations,  
25 inspections, and any other administrative or enforcement  
26 responsibilities under this subchapter.

27 Sec. 201.656. WORKERS' COMPENSATION INSURANCE. A licensee

1 may elect to obtain workers' compensation insurance coverage for  
2 its assigned employees through an insurance company as defined  
3 under Section 401.011, Labor Code, or through self-insurance as  
4 provided under Chapter 407, Labor Code.

5 Sec. 201.657. UNEMPLOYMENT TAXES; PAYROLL. A licensee is  
6 the employer of an assigned employee for purposes of Chapters 61 and  
7 207, Labor Code. In addition to any other reports required to be  
8 filed by law, a licensee shall report quarterly to the Texas  
9 Workforce Commission the name, address, telephone number, federal  
10 income tax identification number, and classification code as  
11 described in the "Standard Industrial Classification Manual," as  
12 published by the United States Office of Management and Budget, of  
13 each client company on a form prescribed by the Texas Workforce  
14 Commission.

15 Sec. 201.658. POSTING OF LICENSES. (a) The executive  
16 director by rule shall determine the form and content of:

17 (1) the licenses issued under this subchapter; and

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

19 (b) A license issued under this subchapter must be posted in  
20 a conspicuous place in the principal place of business of the  
21 licensee in this state. Each licensee shall display, in a place  
22 that is in clear and unobstructed public view, a notice stating that  
23 the business operated at the location is licensed and regulated by  
24 the department and that any questions or complaints should be  
25 directed to the department.

26 (c) A person who is issued a license under this subchapter  
27 must provide a copy of the license to the board and to any



1 chiropractors who are contracted with the licensee upon receipt of  
2 the initial license and annually upon renewal.

3 Sec. 201.659. LICENSE NOT ASSIGNABLE; CHANGES OF NAME OR  
4 LOCATION. (a) A licensee may not conduct business under any name  
5 other than the name specified in the license. A license issued  
6 under this subchapter is not assignable. A licensee may not conduct  
7 business under any fictitious or assumed name without written  
8 authorization from the department. The department may not  
9 authorize the use of a name that is so similar to that of a public  
10 office or agency, or to that of another licensee, that the public  
11 may be confused or misled by its use. A licensee may not conduct  
12 business under more than one name unless it has obtained a separate  
13 license for each name.

14 (b) A licensee may change its licensed name at any time by  
15 notifying the department and paying a fee for each change. The  
16 commission by rule shall set the fee for a name change in an amount  
17 not to exceed \$50. A licensee may change its name on renewal of the  
18 license without the payment of the fee.

19 (c) A licensee must notify the department in writing not  
20 later than 30 days after the date of:

21 (1) any change in the location of its primary business  
22 office;

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

24 (3) a change in the location of business records  
25 maintained by the licensee.

26 Sec. 201.660. PROHIBITED ACTS; CRIMINAL PENALTY. (a) A  
27 person may not:

1           (1) offer chiropractic services as a chiropractic  
2 clinic owned by a non-chiropractor without holding a license under  
3 this subchapter;

4           (2) use the name or title "chiropractic clinic,"  
5 "chiropractic offices," or any derivation of the term  
6 "chiropractic," or otherwise represent that it is licensed under  
7 this subchapter, unless the person holds a license under this  
8 subchapter;

9           (3) represent as its own the license of a clinic at  
10 another location or represent that a facility is licensed if the  
11 person does not hold a license for that facility;

12           (4) give materially false or forged evidence to the  
13 department in connection with obtaining or renewing a license or in  
14 connection with disciplinary proceedings under this subchapter; or

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

17           (b) A person who violates Subsection (a) commits an offense.  
18 An offense under this section is a Class A misdemeanor.

19           (c) The executive director may notify the attorney general  
20 of a violation, and the attorney general may apply to a district  
21 court in Travis County for permission to file suit in the nature of  
22 quo warranto or for injunctive relief, or both. The attorney  
23 general may not be required to post a bond for injunctive relief.

24           Sec. 201.661. DISCIPLINARY ACTIONS. (a) For purposes of  
25 this section, "conviction" includes a plea of nolo contendere or a  
26 finding of guilt, regardless of adjudication.

27           (b) Disciplinary action may be taken against a licensee, an

1 applicant, or a former licensee by the department on any of the  
2 following grounds:

3 (1) the conviction of a licensee or any controlling  
4 person of a licensee of bribery, fraud, or intentional or material  
5 misrepresentation in obtaining, attempting to obtain, or renewing a  
6 license;

7 (2) the conviction of a licensee or any controlling  
8 person of a licensee of a crime that relates to the operation of a  
9 chiropractic clinic owned by a non-chiropractor or the ability of  
10 the licensee or any controlling person of a licensee to operate the  
11 clinic;

12 (3) the conviction of a licensee or any controlling  
13 person of a licensee of a crime that relates to the classification,  
14 misclassification, or under-reporting of employees under Chapter  
15 401, Labor Code;

16 (4) the conviction of a licensee or any controlling  
17 person of a licensee of a crime that relates to the establishment or  
18 maintenance of a self-insurance program, whether health insurance,  
19 workers' compensation insurance, or other insurance;

20 (5) the conviction of a licensee or any controlling  
21 person of a licensee of a crime that relates to fraud, deceit, or  
22 misconduct in the operation of a staff leasing service;

23 (6) engaging in services, without a license, of a  
24 chiropractic clinic owned by a non-chiropractor;

25 (7) transferring or attempting to transfer a license  
26 issued under this subchapter;

27 (8) violating this subchapter or any order or rule

1 issued by the department or executive director under this  
2 subchapter;

3 (9) failing to notify the department, in writing, of  
4 the felony conviction of any controlling person not later than the  
5 30th day after the date on which that conviction is final;

6 (10) failing to cooperate with an investigation,  
7 examination, or audit of the licensee's records conducted by the  
8 licensee's insurance company or the insurance company's designee,  
9 as allowed by the insurance contract or as authorized by law by the  
10 board;

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

15 (12) failing to correct any tax filings or payment  
16 deficiencies within a reasonable time as determined by the  
17 executive director;

18 (13) refusing, after reasonable notice, to meet  
19 reasonable health and safety requirements within the licensee's  
20 control and made known to the licensee by a federal or state agency;

21 (14) a delinquency in the payment of any taxes or debts  
22 owed to the state other than those subject to a legitimate dispute;

23 (15) knowingly making a material misrepresentation to  
24 an insurance company or to the department or other governmental  
25 agency; or

26 (16) failing to maintain the net worth requirements  
27 required under Section 201.654.

1        (c) On a finding that a licensee or applicant has violated  
2 one or more provisions of Subsection (b), the department may:

- 3            (1) deny an application for a license;  
4            (2) revoke, restrict, or refuse to renew a license;  
5            (3) impose an administrative penalty in an amount of  
6 not less than \$1,000 per violation, but not more than \$50,000;  
7            (4) issue a reprimand; or  
8            (5) place the licensee on probation for a period and  
9 subject to conditions specified by the department.

10        (d) On revocation of a license, the licensee shall  
11 immediately return the revoked license to the department and notify  
12 all employees and patients and the board that the clinic may no  
13 longer provide chiropractic care and services.

14        (e) Disciplinary action may be taken, an application for a  
15 new or renewal license may be denied or a license revoked, or a  
16 determination that a controlling person is unqualified may be made  
17 by the department only as provided by Chapter 2001, Government  
18 Code, with notice to, and an opportunity for a hearing by, the  
19 affected applicant, licensee, or controlling person.

20        (f) If a license is revoked or renewal is denied, the  
21 affected person may request a reinstatement hearing after a minimum  
22 of one year. The department may reinstate or renew the license only  
23 if the cause of the nonrenewal or revocation has been corrected.

24        Sec. 201.662. FEES USED FOR ADMINISTRATION. All fees  
25 collected by the department under this subchapter shall be used to  
26 implement this subchapter.

27        Sec. 201.663. EFFECT OF OTHER LAW. This subchapter does not

1 exempt any assigned employee of a licensee from any other license  
2 requirements imposed under local, state, or federal law.

3 SECTION 2. (a) A person is not required to hold a license  
4 under Subchapter N, Chapter 201, Occupations Code, as added by this  
5 Act, to operate a chiropractic clinic before January 1, 2008.

6 (b) A person who applies for a license under Subchapter N,  
7 Chapter 201, Occupations Code, as added by this Act, on or before  
8 January 1, 2008, and whose application is granted is not liable for  
9 any act, omission, or representation that would be lawful under its  
10 license had the license been in effect at the time of the act,  
11 omission, or representation.

12 (c) The Texas Department of Licensing and Regulation shall  
13 adopt rules to implement Subchapter N, Chapter 201, Occupations  
14 Code, as added by this Act, not later than December 1, 2007.

15 SECTION 3. This Act takes effect September 1, 2007.