

By: Chisum

H.B. No. 2405

A BILL TO BE ENTITLED

AN ACT

relating to discrimination and restraint of trade against certain persons regulated under the Occupations Code.

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

SECTION 1. Section 15.05, Business and Commerce Code, is amended by adding Subsections (e-1), (e-2), (e-3), (e-4), and (f-1) and amending Subsections (g) and (i) to read as follows:

(e-1) Notwithstanding Titles 4 and 7, Business Organizations Code, it is unlawful to prohibit any person licensed under Subtitle C, Title 3, Occupations Code, from forming a partnership, professional association, or professional limited liability company with persons licensed under Subtitle B, Title 3, Occupations Code.

(e-2) With regard to a person licensed under a chapter of Title 3, Occupations Code, who is authorized under state law, rules, or regulations to provide services covered under an insurance policy, it is unlawful for an insurer to:

(1) deny payment or reimbursement for the services solely because the services are provided by a person licensed under a particular chapter of Title 3, Occupations Code, if:

(A) the services are performed in strict compliance with state laws, rules, and regulations relating to that person's license; and

(B) the insurer allows payment or reimbursement

1 for the same services provided by a person licensed under a
2 different chapter of Title 3, Occupations Code;

3 (2) make payment or reimbursement for particular
4 services that the person is authorized to provide under state law,
5 rules, or regulations contingent on provision of those services by
6 a person licensed under a different chapter of Title 3, Occupations
7 Code; or

8 (3) establish a cap on annual expenditures for or
9 number of visits to a person licensed to provide covered services
10 under a particular chapter of Title 3, Occupations Code, that would
11 prohibit the insured from seeking the provision of covered services
12 from a person licensed to provide covered services under that
13 chapter of Title 3, Occupations Code, to the same extent that the
14 insured may seek the provision of covered services by a person
15 licensed to provide those services under a different chapter of
16 Title 3, Occupations Code.

17 (e-3) It is unlawful for a licensing or regulatory entity
18 created under Title 3, Occupations Code, to file, join, serve as an
19 amicus curiae, or otherwise participate in a lawsuit against
20 another licensing or regulatory entity created under Title 3,
21 Occupations Code, for any purpose, including the purpose of
22 preventing persons licensed under a particular chapter of Title 3,
23 Occupations Code, from providing services that those persons have
24 been legally trained and licensed by the state to perform.

25 (e-4) Notwithstanding any other law, it is unlawful to
26 prevent by any means a person licensed under a particular chapter of
27 Title 3, Occupations Code, from:

1 (1) collaborating with a person licensed under a
2 different chapter of Title 3, Occupations Code, in providing
3 services to a client if each person performs only those services
4 that the person is authorized under state law, rules, or
5 regulations to perform; or

6 (2) using objective or subjective means to diagnose,
7 analyze, examine, or evaluate the condition of the person's client
8 for the purpose of:

9 (A) providing services to the client that the
10 person is authorized under state laws, rules, or regulations to
11 provide; or

12 (B) referring the client to an appropriate person
13 licensed under another chapter of Title 3, Occupations Code, for
14 the provision of services needed by the client.

15 (f-1) Notwithstanding any other law, it is not unlawful for
16 a person licensed under another chapter of Title 3, Occupations
17 Code, to use the same billing codes used by a person licensed under
18 Chapter 453, Occupations Code, if the billing codes describe
19 services that the person is authorized under state law, rules, or
20 regulations to provide.

21 (g) Nothing in this section shall be construed to prohibit
22 activities that are exempt from the operation of the federal
23 antitrust laws, 15 U.S.C. Section 1 et seq., except that an
24 exemption otherwise available under the McCarran-Ferguson Act (15
25 U.S.C. Sections 1011-1015) does not serve to exempt activities
26 under this Act. Except as provided by Subsections (e-3) and (e-4),
27 nothing [~~Nothing~~] in this section shall apply to actions required

1 or affirmatively approved by any statute of this state or of the
2 United States or by a regulatory agency of this state or of the
3 United States duly acting under any constitutional or statutory
4 authority vesting the agency with such power.

5 (i) In determining whether a restraint related to the sale
6 or delivery of professional services is reasonable, except in cases
7 involving price fixing, or other per se violations, the court may
8 consider, but shall not reach its decision solely on the basis of,
9 criteria which include: (1) whether the activities involved
10 maintain or improve the quality of such services to benefit the
11 public interest; (2) whether the activities involved limit or
12 reduce the cost of such services to benefit the public interest.
13 For purposes of this subsection, the term "professional services"
14 means services performed by any licensed accountant, physician or
15 other person licensed under Title 3, Occupations Code, or
16 professional engineer in connection with his or her professional
17 employment or practice.

18 SECTION 2. This Act takes effect September 1, 2011.