

- SUBJECT:** Continuing the Texas Board of Chiropractic Examiners
- COMMITTEE:** Public Health — favorable, without amendment
- VOTE:** 8 ayes — Price, Arévalo, Coleman, Collier, Cortez, Guerra, Klick, Oliverson
- 0 nays
- 2 absent — Burkett, Zedler
- 1 present not voting — Sheffield
- SENATE VOTE:** On final passage, April 5 — 30-0
- WITNESSES:** For — William Morgan and Robert Rosenbaum, Parker University; Devin Pettiet and Todd Whitehead, Texas Chiropractic Association; Sheila Hemphill, Texas Right To Know; (*Registered, but did not testify:* Coleman Hemphill, Texas Right to Know; Jerome Young; Virginia Young)
- Against — None
- On — Carissa Nash, Sunset Advisory Commission; (*Registered, but did not testify:* Patricia Gilbert, Texas Board of Chiropractic Examiners)
- BACKGROUND:** The Texas Board of Chiropractic Examiners was created in 1949 by the 51st Legislature to examine and license chiropractors in the state.
- Functions.** The mission of the board is to protect the health, safety, and welfare of the people of Texas by licensing chiropractors, registering chiropractic facilities, and enforcing the Texas Chiropractic Act (Occupations Code, ch. 201) and board rules.
- Governing structure.** The board is composed of nine members, including six chiropractors and three members of the public, all appointed by the

governor. Members serve six-year terms and are limited to two terms.

Funding. The total expenditures of the board in fiscal 2015 totaled \$768,485. Most board funding comes from general revenue, with 6 percent coming from certain appropriated receipts. The agency generates revenue through fees paid by chiropractors, facility owners, radiological technicians, and continuing education providers.

Staffing. The Texas Board of Chiropractic Examiners employed 14 staff in fiscal 2015, most of whom work in Austin with one investigator each in Dallas and Houston.

The Texas Board of Chiropractic Examiners is subject to the Texas Sunset Act and, unless continued, will be abolished September 1, 2017.

DIGEST: SB 304 would continue the Texas Board of Chiropractic Examiners until September 1, 2029. The bill also would adopt certain recommendations from the Sunset Advisory Commission.

Investigative process. Complaints, adverse reports, and all investigative information received by the Texas Board of Chiropractic Examiners relating to a chiropractic license holder, license application, or criminal investigation would be privileged and confidential. The board would be required to protect the identity of a complainant to the extent possible.

The bill would prohibit the board from accepting anonymous complaints. A complaint filed by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a license holder would have to include the name and address of the person filing the complaint. The board would have to notify the license holder who was the subject of a complaint of the name and address of the individual within 15 days of the filing date unless the notice would jeopardize an investigation.

Expert review process. The Texas Board of Chiropractic Examiners would be required to adopt rules to develop an expert review process to assist with the investigation of complaints requiring additional

chiropractic expertise by March 1, 2018. The board would determine the type of complaints requiring expert review, create a list of qualified experts, and establish a method for assigning experts to a complaint that ensured unbiased assignments, maintained confidentiality, and avoided conflicts of interest.

Board rules would address qualifications of experts, grounds for removal of an expert, complaint resolution time frames, and the content and format of expert review documents.

Criminal history record information. The board would require applicants for a new or renewed chiropractic license to submit a complete and legible set of fingerprints for the purpose of obtaining criminal history record information from the Department of Public Safety (DPS) and the Federal Bureau of Investigation by September 1, 2019. The board could not issue a license to an individual who did not comply with fingerprinting requirements. A license holder would not have to submit fingerprints for a renewed license if the license holder had done so previously for the initial license or a prior license renewal.

The bill would allow the board to enter into an agreement with DPS to administer a criminal history record information check and authorize DPS to collect from an applicant any costs incurred in conducting the check. The board also would establish a process to search at least one national practitioner database to determine whether another state had taken disciplinary action against an applicant or license holder.

The board could refuse to admit an individual to an examination, revoke or suspend a license, or place a license holder on probation for failing to submit fingerprints or for violating a statute or rule of this or another state.

Training program. The bill would expand the training program required for members of the board to include information regarding the scope and limitation of the board's rulemaking authority and the types of board rules, interpretations, and enforcement actions that could implicate federal antitrust law. The executive director of the board would be required to

create a training manual and distribute the manual to each board member annually.

A board member who had not completed the additional training required in the bill could not vote, deliberate, or be counted as a member in attendance at a meeting of the board held on or after December 1, 2017, until the board member had completed the additional training.

Peer review and facility registration. The bill would repeal Occupations Code, ch. 201, subch. F, which currently authorizes the board to appoint local chiropractic peer review committees to evaluate chiropractic treatment and services in disputes involving a chiropractor and patient.

The bill also would repeal Occupations Code, sec. 201.312, which currently requires chiropractic facilities to be registered with the board before they can operate.

Chiropractic licenses. The bill would remove the requirement that a chiropractic license applicant be of good moral character, as well as the requirement that an applicant pass the examination within three attempts.

A license to practice chiropractic could be valid for a term of one or two years, as determined by board rule.

The bill would specify that licensed chiropractors could diagnose the biomechanical condition of the spine and musculoskeletal system of the human body.

Fees. The bill would repeal a provision prohibiting the board from reducing the fees collected to cover the costs of the Texas Board of Chiropractic Examiners to be less than the fee amount set on September 1, 1993.

Effective date. The bill would take effect September 1, 2017.

SUPPORTERS SB 304 appropriately would continue the Texas Board of Chiropractic

SAY: Examiners and adopt important Sunset Advisory Commission recommendations to improve certain ineffective enforcement procedures. Currently, the board does not resolve complaints in a timely manner and does not conduct background checks on the majority of chiropractic license applicants. The bill would solve these problems by amending the investigative process, developing expert review procedures, and requiring fingerprinting for applicants.

The bill would expand the information considered confidential to include complaints relating to a license holder, adverse reports, and other investigative information, which would help ensure the safety of the complainant's identity. The board could not accept anonymous complaints, so concerns that market competitors would submit frivolous complaints are unfounded.

The bill also would remove certain administrative functions that do not add to public safety, such as the facility registration requirement and the peer review process.

Further, the bill would clarify that licensed chiropractors had the ability to diagnose the biomechanical condition of the spine and musculoskeletal system, clearing up a source of costly litigation.

OPPONENTS SAY: SB 304 would adopt certain problematic Sunset recommendations for the Texas Board of Chiropractic Examiners, including a provision making any complaints against a chiropractor confidential to the furthest extent possible. This level of confidentiality could encourage a chiropractor's competitors to file spurious complaints with the board, creating an unnecessary and inappropriate administrative burden for the board and the chiropractor's business.

The repeal of required facility registration also would be a concern because it could put patients at risk. Dangerous situations can stem from a chiropractic facility itself or a non-licensed owner. Without facility registration, there would be no oversight of office procedures, marketing, or billing.

The bill should not expand the Texas Chiropractic Act to allow chiropractors to diagnose medical conditions because they are not qualified to diagnose certain diseases or other serious conditions.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have an estimated negative impact of \$600,000 through fiscal 2018-19, and \$300,000 each year afterwards.