

## **BILL ANALYSIS**

Senate Research Center  
76R3357 GJH-F

S.B. 146  
By: Luna  
Health Services  
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### **DIGEST**

Naturopathic physicians use therapies that are primarily natural and nontoxic, including clinical nutrition, homeopathy, botanic medicine, hydrotherapy, physical medicine, and counseling. Naturopathic physicians' main tools are herbs, foods, water, fasting, and tissue manipulation, in addition to primary prevention. Hippocrates, an early naturopathic physician, formulated a concept that "nature is the healer of all diseases."

Currently, a significant number of Texans are turning to these physicians for their health care needs; however, Texas law has no method with which to identify naturopathic physicians. Licensure creates an infrastructure of accountability supported by law to ensure that licensees are subject to the scrutiny of a board of examiners which is responsible for protecting the public by maintaining professional standards. S.B. 146 provides standards for the regulation of naturopathic medicine and creates the Naturopathic Physicians Board which administers licensing.

### **PURPOSE**

As proposed, S.B. 146 provides standards for the regulation of naturopathic medicine and creates the Naturopathic Physicians Board.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Naturopathic Physicians Board in SECTION 1 (Sections 3.01-3.05, 5.02, 5.04, 6.05, 6.09, 6.10, 6.11, 8.02, 9.04, and 10.01) and SECTION 4 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Adopts the Naturopathic Physicians Act, as follows:

#### **ARTICLE 1. GENERAL PROVISIONS**

Sec. 1.01. **SHORT TITLE:** Naturopathic Physicians Act.

Sec. 1.02. **PURPOSE.** Provides that this bill creates standards for the licensing and regulation of naturopathic medicine, and provides a means of identifying qualified naturopathic physicians.

Sec. 1.03. **DEFINITIONS.** Defines "approved naturopathic college," "board," "commissioner," "department," "diagnose," "minor office procedure," "natural antibiotics," "natural medicines," "naturopathic medicine," "naturopathy," "naturopathic childbirth," "naturopathic mobilization therapy," "naturopathic physician," "naturopathic physical medicine," and "topical preparations."

Sec. 1.04. **APPLICATION OF SUNSET ACT.** Subjects the Naturopathic Physicians Board (board) to Chapter 325, Government Code (Texas Sunset Act). Abolishes the board and this Act expires September 1, 2011, unless continued by the aforementioned chapter.

Sec. 1.05. **APPLICATION OF ACT.** Provides that this Act does not apply to certain persons.

#### **ARTICLE 2. NATUROPATHIC PHYSICIANS BOARD**

Sec. 2.01. **BOARD; MEMBERSHIP.** Provides that the board consists of six members of certain professions and three representatives of the general public appointed by the governor. Requires

the appointments to be made without discrimination.

Sec. 2.02. MEMBERSHIP ELIGIBILITY. Prohibits a person from board membership for involvement or a spouse's involvement in certain activities.

Sec. 2.03. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. Defines "Texas trade association." Prohibits a person from board membership for involvement or a spouse's involvement with a Texas trade association. Prohibits a person from board membership for being a lobbyist in a field related to the board.

Sec. 2.04. TERMS; VACANCY. Sets forth board member terms and expirations. Requires the governor to fill a board vacancy. Prohibits a person from serving more than two consecutive terms.

Sec. 2.05. GROUNDS FOR REMOVAL. Sets forth justifications for removal of a board member.

Sec. 2.06. OFFICERS. Requires the governor to designate biennially a presiding officer of the board. Requires the board to elect biennially an assistant presiding officer and secretary-treasurer.

Sec. 2.07. COMPENSATION; REIMBURSEMENT. Prohibits board members from receiving compensation for board services. Entitles a board member to certain reimbursements.

Sec. 2.08. MEETINGS. Requires the board to meet twice a year, and authorizes the board to meet at other times.

Sec. 2.09. TRAINING REQUIREMENTS. Prohibits a board member from action on the board before completion of a training program. Sets forth requirements of the training program. Entitles a board member to reimbursement for travel expenses incurred while attending the training program.

### ARTICLE 3. BOARD POWERS AND DUTIES

Sec. 3.01. GENERAL RULEMAKING AUTHORITY. Requires the board to adopt rules for the performance of its duties.

Sec. 3.02. RULES REGARDING BOARD PROCEDURES. Authorizes the board to adopt procedural rules.

Sec. 3.03. FEES. Requires the board, by rule, to set reasonable fees to cover costs for the administration of this Act.

Sec. 3.04. POWERS AND DUTIES REGARDING EXAMINATION. Requires the board to take certain action regarding the times and places of examinations. Authorizes the board to determine the standards of the examination. Requires the board, by rule, to determine the passing criteria for the examination. Authorizes the board to adopt rules for the administration of the exam.

Sec. 3.05. POWERS AND DUTIES REGARDING CONTINUING EDUCATION. Requires the board to adopt rules to determine an approved program of continuing education.

Sec. 3.06. RULES RESTRICTING COMPETITIVE BIDDING OR ADVERTISING. Prohibits the board from creating rules that restrict advertising by a license holder, except to prohibit false practices by the person. Sets forth restrictions for rules created by the board.

Sec. 3.07. ANNUAL REPORT. Requires the board to file a written report describing activities and accounts by February 1 of each year.

### ARTICLE 4. POWERS AND DUTIES OF DEPARTMENT

Sec. 4.01. GENERAL DUTIES OF DEPARTMENT. Requires the Texas Department of

Health (department) to administer this Act, prepare and administer examinations, and conduct investigations for violations of this Act.

#### ARTICLE 5. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 5.01. PUBLIC INTEREST INFORMATION. Requires the board to prepare information describing the functions of the board and how complaints are filed. Requires the board to make this information available to the public.

Sec. 5.02. COMPLAINTS. Requires the board, by rule, to establish methods for the public to communicate complaints to the board. Authorizes the board to determine the format of such a public notification. Requires the board to have a toll-free number that may be called to register a complaint about a health professional.

Sec. 5.03. RECORDS OF COMPLAINTS. Requires the board to maintain a file of each complaint and sets forth requirements for the file. Sets forth required actions the board must take regarding the person filing a complaint.

Sec. 5.04. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. Requires the board to adopt rules concerning complaint investigations. Sets forth requirements for the rules. Sets forth time-line requirements for the board to process complaints. Requires certain people to be notified by a certain date of changes in the complaint. Requires the commissioner of public health to notify the board of an unresolved complaint.

#### ARTICLE 6. LICENSE REQUIREMENTS AND EXEMPTIONS

Sec. 6.01. LICENSE REQUIRED. Prohibits a person from practicing naturopathic medicine without a license. Sets forth certain prohibitions for persons who are not licensed.

Sec. 6.02. LICENSE APPLICATION. Requires an applicant for a license to take certain actions.

Sec. 6.03. LICENSE ELIGIBILITY. Sets forth eligibility requirements for an applicant.

Sec. 6.04. DETERMINATION WHETHER EXAMINATION REQUIRED. Requires each eligible licensee to pass an examination prescribed by the board. Provides that there are exceptions to this rule.

Sec. 6.05. SPECIAL ELIGIBILITY FOR LICENSE. Entitles an applicant to take the examination before December 1, 1999, under certain conditions. Entitles a person to be licensed as a naturopathic physician under this Act without meeting certain requirements if the applicant is a Texan over 21 years of age, and provides acceptable proof of having been actively engaged in naturopathic health care for a certain period of time; earns most of the person's income from naturopathy; and applies for a license before January 1, 2001. Authorizes the board to limit certain licensed naturopathic physicians, and prohibits the board from identifying such a person as being limited.

Sec. 6.06. EXAMINATION. Sets forth requirements for the applicant.

Sec. 6.07. EXAMINATION RESULTS. Requires the board to notify an applicant of examination results not later than the 30th day after the examination. Sets forth provisions in the case of the examination being reviewed by a testing service. Authorizes the board to require a testing service to notify an applicant of the examination results. Requires the department to give an analysis of the examination to a failed applicant if requested in writing by the applicant.

Sec. 6.08. REEXAMINATION. Entitles a failed applicant to retake the examination under certain conditions. Authorizes the board to require certain actions of an applicant who fails the examination two or more times.

Sec. 6.09. ISSUANCE OF LICENSE. Requires the board to issue a license to successful applicants. Authorizes the board to determine license expirations and sets guidelines for renewal

license fee payments.

Sec. 6.10. NATUROPATHIC CHILDBIRTH CERTIFICATION. Prohibits a naturopathic physician from practicing childbirth without specialty practice certification. Requires the board to adopt certification rules. Sets forth requirements for certification in naturopathic childbirth. Authorizes the board to prescribe the format of the specialty examination.

Sec. 6.11. X-RAY CERTIFICATION. Prohibits a naturopathic physician from using an x-ray unless certified. Requires the board to adopt certification rules.

Sec. 6.12. INACTIVE STATUS. Authorizes the board to make a license inactive under certain conditions. Requires the board to maintain a list of inactive licenses. Sets forth provisions for the holder of an inactive license. Requires the board to reactivate a license under certain conditions.

Sec. 6.13. RETIRED STATUS. Authorizes the board to place a license on retired status if the licensee notifies the department at the time of renewal. Prohibits a retired license from being reactivated, and prohibits the practice of naturopathic medicine by the holder of a retired license.

#### ARTICLE 7. LICENSE RENEWAL

Sec. 7.01. RENEWAL OF LICENSE. Requires annual renewal of a license, and sets forth provisions for license renewal and expiration procedures.

Sec. 7.02. CONTINUING EDUCATION. Requires a naturopathic physician, persons certified in naturopathic childbirth, and holders of expired licenses to complete a certain number of hours of continuing education each year and to comply with certain requirements.

#### ARTICLE 8. PRACTICE BY LICENSE HOLDERS

Sec. 8.01. DUTIES AND RESPONSIBILITIES. Provides that a naturopathic physician has certain responsibilities consistent with other licensed health care providers.

Sec. 8.02. AUTHORIZED ACTIVITIES. Authorizes licensed naturopathic physicians to use certain preparations, therapies, and evaluation procedures. Authorizes the board to allow license holders to use other treatments taught in approved courses of study.

Sec. 8.03. PROHIBITED ACTS. Prohibits a naturopathic physician from dispensing nonauthorized drugs, performing nonauthorized procedures, practicing emergency care, and claiming to practice nonauthorized forms of treatment.

#### ARTICLE 9. DISCIPLINARY ACTIONS AND PROCEDURES

Sec. 9.01. GROUNDS FOR DISCIPLINARY ACTIONS. Authorizes the board to discipline licensees under certain conditions.

Sec. 9.02. DISCIPLINARY ACTIONS. Authorizes the board to take certain actions to limit a licensee who violates this Act. Authorizes the board to place a licensee on probation and require certain actions from that person.

Sec. 9.03. HEARING. Entitles a license holder to a hearing before a sanction is imposed.

Sec. 9.04. SANCTIONS. Requires the board, by rule, to adopt a broad schedule of sanctions for violations. Sets forth provisions for the administration of sanctions.

#### ARTICLE 10. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 10.01. MONITORING OF LICENSE HOLDER. Requires the board, by rule, to develop methods to ensure compliance with this Act, and sets forth requirements for such methods.

Sec. 10.02. CIVIL PENALTY. Provides that a violator of this Act is liable for a civil penalty of \$1,000 a day. Requires the attorney general to bring action to recover a civil penalty under certain

conditions.

Sec. 10.03. CRIMINAL PENALTY. Provides that nonlicensed person who knowingly acts as a naturopathic physician without the license commits an offense, and provides that such an offense is a felony of the third degree.

Sec. 10.04 INJUNCTION. Authorizes the board to seek an injunction against a violation.

SECTION 2. Amends Section 3.06(b), Article 4495b, V.T.C.S. (Medical Practice Act), to make conforming changes.

SECTION 3. Amends Section 3(a), Article 4512g, V.T.C.S. (Licensed Professional Counselor Act), to provide that this Act does not apply to a person performing counseling activities within the scope of the person's employment, rather than his employment. Makes conforming and nonsubstantive changes.

SECTION 4. Requires an initial member of the board who is a naturopathic physician, to be licensed by January 1, 2001. Requires the governor to make initial board appointments by November 1, 1999, and sets forth the guidelines for their term expirations. Requires the board to hold its first meeting before January 1, 2000, and to adopt rules before July 1, 2000.

SECTION 5. Effective date: September 1, 1999.

SECTION 6. Emergency clause.