**South Carolina General Assembly**

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**H. 5078**

**STATUS INFORMATION**

General Bill

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Introduced in the House on March 27, 2012

Currently residing in the House Committee on **Medical, Military, Public and Municipal Affairs**

Summary: Board of Chiropractic Examiners

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/27/2012 House Introduced and read first time ([House Journal‑page 9](file:///h:\hj%20archive\2012\03-27-12.docx))

3/27/2012 House Referred to Committee on **Medical, Military, Public and Municipal Affairs** ([House Journal‑page 9](file:///h:\hj%20archive\2012\03-27-12.docx))

**VERSIONS OF THIS BILL**

[3/27/2012](file:///p:\pprever\2011-12\5078_20120327.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40‑9‑100 SO AS TO IMPOSE NOTICE REQUIREMENTS ON A CHIROPRACTOR WHO CLOSES OR OTHERWISE DEPARTS FROM A CHIROPRACTIC PRACTICE; TO AMEND SECTION 40‑9‑10, AS AMENDED, RELATING TO DEFINITIONS, SO AS TO MODIFY THE DEFINITION OF THE TERM “ANALYSIS”; TO AMEND SECTION 40‑9‑20, AS AMENDED, RELATING TO LICENSURE REQUIREMENTS, SO AS TO EXEMPT CERTAIN STUDENTS AND MODIFY THE LIMITED APPLICATION OF THE SECTION CONCERNING CHIROPRACTIC SCHOOLS NOT ACCREDITED IN A CERTAIN MANNER; TO AMEND SECTION 40‑9‑25, RELATING TO REQUIREMENTS FOR EXEMPTING CERTAIN CHIROPRACTIC STUDENTS ALLOWED TO PRACTICE IN A LIMITED MANNER FROM LICENSURE, SO AS TO REQUIRE THE CHIROPRACTIC SCHOOL IN WHICH THE STUDENT IS ENROLLED TO PROVIDE CERTAIN NOTICE; TO AMEND SECTION 40‑9‑30, RELATING TO THE BOARD OF CHIROPRACTIC EXAMINERS, SO AS TO REDUCE THE MEMBERSHIP OF THE BOARD FROM EIGHT MEMBERS TO SEVEN MEMBERS; TO AMEND SECTION 40‑9‑31, RELATING TO OPTIONS AVAILABLE TO THE BOARD WHEN RESOLVING A PENDING COMPLAINT, SO AS TO PROVIDE THE BOARD MAY ISSUE A PUBLIC REPRIMAND, PRIVATE REPRIMAND, PUBLIC LETTER OF CAUTION, OR PRIVATE LETTER OF CAUTION; TO AMEND SECTION 40‑9‑36, RELATING TO THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION, SO AS TO DELETE AN OBSOLETE REFERENCE; TO AMEND SECTION 40‑9‑37, RELATING TO THE CONDUCT OF AN ADVISORY ELECTION FOR THE APPOINTMENT OF A MEMBER OF THE BOARD, SO AS TO DELETE THE REQUIREMENT THAT A BALLOT BE SENT BY CERTIFIED MAIL AND TO PROVIDE THE BALLOT MUST CONTAIN THE NAME OF EACH LICENSEE INTERESTED IN THE APPOINTMENT; TO AMEND SECTION 40‑9‑50, RELATING TO FILING CREDENTIALS AND A RELATED FEE, SO AS TO PROVIDE THE DEPARTMENT SHALL ESTABLISH THE FEE BY REGULATION; TO AMEND SECTION 40‑9‑60, RELATING TO THE ETHICS AND JURISPRUDENCE EXAMINATION REQUIREMENT OF CERTAIN APPLICANTS FOR LICENSURE, SO AS TO REQUIRE EACH APPLICANT TO TAKE AND PASS AN ETHICS AND JURISPRUDENCE EXAMINATION THAT MUST BE APPROVED BY THE BOARD; TO AMEND SECTION 40‑9‑70, RELATING TO RECIPROCAL LICENSE REGISTRATION FEES, SO AS TO REPLACE REFERENCES TO “RECIPROCAL” WITH “ENDORSEMENT”, TO REQUIRE THE APPLICANT TO TAKE AND PASS THE ETHICS AND JURISPRUDENCE EXAMINATION IN ADDITION TO EXISTING REQUIREMENTS, AMONG OTHER THINGS; TO AMEND SECTION 40‑9‑80, RELATING TO LICENSE RENEWAL, SO AS TO CHANGE THE ANNUAL RENEWAL TO A BIENNIAL RENEWAL OCCURRING IN EACH EVEN‑NUMBERED YEAR, TO CHANGE THE RENEWAL DEADLINE MONTH FROM JULY TO OCTOBER, TO PROVIDE RELATED FEES BE DEFINED IN REGULATION, AND TO ADD PROVISIONS CONCERNING AN INACTIVE LICENSEE SEEKING RENEWAL; AND TO AMEND SECTION 40‑9‑85, RELATING TO LICENSURE UNDER SPECIAL CIRCUMSTANCES, SO AS TO PROVIDE ADDITIONAL CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 9, Title 40 of the 1976 Code is amended by adding:

“Section 40‑9‑100. (A) In accordance with R. 25‑6(D), a licensee who closes or otherwise departs from a chiropractic practice must notify his current patients, former patients, and the board by written or electronic mail correspondence a minimum of sixty days prior to the closure or departure. The notice must include:

(1) the date of his departure of the office closing;

(2) where records will be stored;

(3) how to obtain records;

(4) a release of information form;

(5) a deadline for submitting a records request; and

(6) information on how to contact a new chiropractor or health care provider.

(B) The licensee also shall place an advertisement containing the information in items (A)(1) through (6) in a local newspaper of general circulation a minimum of sixty days prior to the closure or departure.”

SECTION 2. Section 40‑9‑10 of the 1976 Code, as last amended by Act 230 of 2010, is further amended to read:

“Section 40‑9‑10. As used in this chapter:

(~~a~~1) ‘Chiropractic’ is defined as that science and art which utilizes the inherent recuperative powers of the body and deals with the relationship between the nervous system and the spinal column, including its immediate articulations and the role of this relationship in the restoration and maintenance of health.

(~~b~~2) ‘Chiropractic practice’ is defined as the spinal analysis of any interference with normal nerve transmission and expression, and by adjustment to the articulations of the vertebral column and its immediate articulations for the restoration and maintenance of health and the normal regimen and rehabilitation of the patient without the use of drugs or surgery. The board must approve any machines used in chiropractic practice.

(~~c~~3) ‘Analysis’ is defined as physical examination, the use of x‑ray and procedures generally used in the practice of chiropractic.

~~(d)~~ ~~Any machine used in "chiropractic practice" or "analysis" must first be approved by the South Carolina Board of Chiropractic Examiner.~~ The board must approve any machines used in analysis.

(~~e~~4) ‘Preceptorship’ or ‘residency training program’ means a clinical program of an approved college of chiropractic in which a chiropractic intern or resident practices chiropractic under the direct supervision of a licensed chiropractor.

(~~f~~5) ‘Chiropractic preceptor’ means a person licensed under this chapter who is approved by the board to supervise chiropractic students in the performance of chiropractic at a location other than the premises of a chiropractic college in which the student is enrolled. A chiropractic preceptor must:

(~~1~~a) have been licensed to practice chiropractic in South Carolina for not less than five years;

(~~2~~b) not have been publicly or privately sanctioned by a chiropractic licensure board in any state;

(~~3~~c) sign a sworn statement that he or she has not knowingly violated state or federal rules or regulations including, but not limited to, those pertaining to the repayment of guaranteed federally funded student loans;

(~~4~~d) receive written approval of the chiropractic college to serve as an adjunct faculty member for the purpose of an individual student’s preceptorship or residency training program;

(~~5~~e) supervise no more than one chiropractic student at a time at a location other than the premises of the chiropractic college in which the student is enrolled.

(~~g~~6) ‘Direct supervision’ means the chiropractic preceptor must be within the immediate patient treatment area and available to the student at all times.”

SECTION 3. Section 40‑9‑20 of the 1976 Code, as last amended by Act 230 of 2010, is further amended to read:

“Section 40‑9‑20. (A) No person may practice chiropractic in this State without a license issued by the South Carolina Board of Chiropractic Examiners as provided in this chapter, except students participating in a preceptorship or residency training program are exempt from this requirement and may perform without a license chiropractic procedures under the direct supervision of a chiropractic preceptor licensed in this State. These procedures and this supervision must be practiced within the confines of the appropriate chiropractic college or office of a licensed chiropractor.

(B) No charges for professional service may be made to any patient or to his insurance company for any work performed on the patient by the students or by the licensed chiropractor on the college staff while supervising the students or by the licensed chiropractor in an office while supervising the students. However, the chiropractic college or the office of the licensed chiropractor may charge the patient for the actual costs and expenses it incurs for the use of its clinical property or facilities by the patient.

(C) This section does not apply to any chiropractic college which has failed to attain accredited status from the Council on Chiropractic Education or its ~~successors~~ equivalent or from the Commission on Accreditation of the Straight Chiropractic Academic Standards Association or its equivalent.”

SECTION 4. Section 40‑9‑25 of the 1976 Code, as added by Act 230 of 2010, is amended to read:

“Section 40‑9‑25. A student enrolled in a board‑approved preceptorship or residency training program is exempt from licensure requirements, but may perform chiropractic procedures ~~only~~ if:

(a) the student has met all academic requirements for graduation from an accredited chiropractic college approved by the board; ~~and~~

(b) the school has notified the board by written correspondence of the preceptorship, the chiropractic preceptor, the student, and the site location where the preceptorship is being performed; and

(~~b~~c) the chiropractic procedures are performed only under the direct supervision of the student’s chiropractic preceptor.”

SECTION 5. Section 40‑9‑30 of the 1976 Code is amended to read:

“Section 40‑9‑30. (A) There is hereby created the South Carolina Board of Chiropractic Examiners ~~consisting of eight members. One~~. The board must consist of one licensed chiropractor ~~must be~~ appointed by the Governor from each congressional district ~~and~~, who must be a chiropractor residing and practicing in the district the chiropractor represents. The board shall certify in writing to the Governor the names of the two nominees who received the highest number of votes in each district’s election conducted pursuant to Section 40‑9‑37. The Governor may reject any or all of the nominees upon satisfactory showing of the unfitness of those rejected. If the Governor declines to appoint any of the nominees submitted, additional nominees must be submitted in the same manner. One member of the board, who must be a licensed and practicing chiropractor, must be appointed by the Governor from the State at large, and one member, who may not be a member of the chiropractic or medical profession, must be appointed by the Governor. The conduct of the balloting for the nominees for the board from the respective congressional districts is the responsibility of the Board of Chiropractic Examiners. Each chiropractic member must be a licensed and practicing chiropractor in South Carolina in good standing for a period of five years preceding the date of appointment to the board.

(B) All terms are for four years and until their successors are appointed and qualify. The Governor may remove a member of the board who is guilty of continued neglect of board duties, guilty of a misdemeanor or a felony, or who is found to be incompetent. No member may be removed without first giving the member an opportunity to refute the charges filed against that member who must be given a copy of the charges at the time they are filed.

(C) The South Carolina Board of Chiropractic Examiners shall meet at least twice a year at a time and place as determined by the board. The board shall hold elections for its officers each year. The board may call additional meetings when necessary for the transaction of board business. The board shall adopt regulations for its government, for judging the professional and ethical competence of chiropractors, including compliance with the code of chiropractic ethics, and for the discipline of chiropractors. A majority of the board constitutes a quorum for the transaction of business.

(D) The board may:

(1) establish suitable procedures for carrying out its duties pursuant to this chapter;

(2) execute certificates which must be accepted in the courts of this State and by an administrative law judge as provided under Article 5 of Chapter 23 of Title 1 as the best evidence of the minutes of the board and the best evidence of whether a person is registered under the requirements of this chapter;

(3) adopt and revise regulations not inconsistent with the law as may be necessary to carry out this chapter including, but not limited to, regulations concerning patient care and treatment, solicitation of patients, and advertising; however, the board may not prohibit or discriminate against advertising in any particular media;

(4) conduct investigations and cause the prosecution of all persons violating this chapter and have power to incur necessary expenses for this;

(5) keep a record of all its proceedings;

(6) ~~(reserved);~~

~~(7)~~ fix the time for holding its meetings;

(~~8~~7) examine, license, and renew the licenses of qualified applicants and certify applicants as to their ability and as to the degree of their practice of chiropractic as authorized under the laws of this State; however, the nonchiropractic member of the board may not participate in the examination of a license applicant on matters of technical or professional nature; the board shall use the National Board Examination of the National Board of Chiropractic Examiners in lieu of the state written examination for persons graduating from an approved chiropractic college pursuant to Section 40‑9‑40 after July 1, 1982;

(~~9~~8) judge the professional and ethical competence of chiropractors, establish a code of chiropractic ethics, and provide for the discipline of chiropractors;

(~~10~~9) order the revocation, suspension, or restriction of the license of a licensee to practice chiropractic or take other disciplinary action, including assessing a civil fine for a violation of this chapter;

(~~11~~10) assess and collect costs from a licensee for investigating a complaint and conducting proceedings pursuant to this chapter.”

SECTION 6. Section 40‑9‑31 of the 1976 Code is amended to read:

“Section 40‑9‑31. (A) An action of the board relating to the revocation or suspension of a license or other action restricting a license or disciplining a licensee must be taken only after a written complaint of misconduct has been filed with the board in accordance with regulations promulgated by the board. After receiving a complaint a closed hearing must be held by an examiner selected by the board after thirty days’ notice to the complainant and the licensee or their counsel. The Attorney General’s office, upon request of the board, shall present the case for the complainant before the examiner. Upon receipt of the examiner’s report, the board shall notify the complainant and the licensee and the licensee’s counsel of the time and place at which the board will consider the report for the purpose of determining its action on the report; the notice must be given not less than ten days before the meeting. The complainant and the licensee and the licensee’s counsel have the right to appear before the board at the meeting, submit briefs, and be heard in oral argument in opposition to or in support of the recommendations of the board. The Attorney General’s office also has the right to appear before the board and submit briefs and be heard in oral argument. Upon its final review the board may ~~either~~ dismiss the complaint ~~or~~, find that the licensee is guilty of misconduct meriting sanction, issue a public or private reprimand, or issue a private letter of caution. The board shall file a final certified report of the proceedings before it with the secretary of the board who shall notify the complainant and the licensee and the licensee’s counsel of this action. A decision of the board to revoke, suspend, or restrict a license or to limit or discipline a person engaging in the practice of chiropractic requires a majority vote of the membership of the board. The board’s decision may be appealed to an administrative law judge as provided under Article 5 ~~of~~, Chapter 23 ~~of~~, Title 1, which shall hear the matter upon petition filed by the licensee with an administrative law judge as provided under Article 5 ~~of~~, Chapter 23 ~~of~~, Title 1, and served upon the secretary of the board within ten days from the date of delivery of the board’s decision to the licensee. A decision by the board to revoke, suspend, or restrict a license or to limit or discipline a licensee or one who is found to be practicing chiropractic without complying with this chapter is not effective until the tenth day following the date of delivery of a written copy of the decision to the licensee. Service of a petition for a review of the decision stays the board’s decision pending completion of the appellate process.

(B) If a licensee is found to have violated this chapter or a regulation promulgated under this chapter, in addition to or instead of taking action to revoke, suspend, or restrict the license of the licensee, the board may assess a civil fine of up to two thousand dollars for each violation, but the total fine may not exceed ten thousand dollars.”

SECTION 7. Section 40‑9‑36 of the 1976 Code is amended to read:

“Section 40‑9‑36. The Director of the Department of Labor, Licensing~~,~~ and Regulation~~, pursuant to Section 40‑73‑15~~ may appoint and employ a qualified person to serve as executive director, and shall fix his compensation and define his duties. The executive director of the board shall have the power to make contracts, with board approval, for the furtherance of the board’s functions and the management of the office. The Director of the Department of Labor, Licensing~~,~~ and Regulation may employ such other persons as may be necessary to carry on its work. The salaries of employees and necessary expenses incurred in the performance of their duties shall be paid out of funds held by the board.”

SECTION 8. Section 40‑9‑37 of the 1976 Code is amended to read:

“Section 40‑9‑37. ~~Each~~ A chiropractor~~,~~ licensed pursuant to Title 40, Chapter 9, ~~Code of Laws of South Carolina, 1976,~~ and residing within the congressional district from which the appointment is to be made, ~~shall be entitled to~~ may vote in the advisory election. A ballot ~~shall~~ must be sent ~~by certified mail~~ to each licensed chiropractor residing in that congressional district from which the appointment is to be made. The ballot ~~shall~~ must contain the name of each chiropractor ~~licensed pursuant to this chapter~~ who is interested in being appointed and residing within the congressional district from which the appointment is to be made, as indicated by the records of the Board of Chiropractic Examiners or its predecessor. ~~For the initial election the records used shall be the records of the South Carolina Board of Chiropractic Examiners on May 10, 1978.~~ A space ~~shall~~ must be provided for write‑in votes for qualified candidates whose names do not appear on the ballot. The ballot ~~shall~~ must specify the date by which the returned ballot must be received by the agency conducting the advisory election. The ballots ~~shall~~ must be opened at 9:00 A.M. on the day following the date specified for the receipt of the ballots and the ~~results shall~~ votes must be tabulated. The ~~tabulated~~ results ~~shall~~ of the tabulated votes must be immediately forwarded to the Governor.”

SECTION 9. Section 40‑9‑50 of the 1976 Code is amended to read:

“Section 40‑9‑50. (A) All applicants for a license ~~examination~~ shall file with ~~the secretary of~~ the board, on or before a specified date to be determined by the board, a completed application to be provided by the board, supported by proper credentials and the payment of a fee to be set by the board.

(B) The department must establish licensing fees in conjunction with the board and adjudicated in accordance with Section 40‑1‑50(D).”

SECTION 10. Section 40‑9‑60 of the 1976 Code is amended to read:

“Section 40‑9‑60. ~~In case the applicant fails in the first examination, he shall be entitled to a second examination at the next regular meeting of the board~~ In addition to the National Board of Examinations, all applicants must take and pass the ethics and jurisprudence examination approved by the board.”

SECTION 11. Section 40‑9‑70 of the 1976 Code is amended to read:

“Section 40‑9‑70. The board shall have authority to grant licensure in accordance with ~~item (8) of~~ Section 40‑9‑30(D)(7) by ~~reciprocity~~ endorsement to applicants from states having commensurate requirements as provided in this chapter and which also grant ~~reciprocal~~ endorsement privileges to licensees of this State provided that an applicant shall have been in practice in that state for at least one year and must take and pass the ethics and jurisprudence examination approved by the board.”

SECTION 12. Section 40‑9‑80 of the 1976 Code is amended to read:

“Section 40‑9‑80. (~~a~~A) The board may set and charge ~~annually~~ a fee for the renewal of a license and set the renewal fee for license holders not practicing in the State or for those inactive at a lower fee than for those practicing in the State. The board may waive the renewal fee for all licensees who are serving on active duty in the Armed Services of the United States at the time the fee is due.

(~~b~~B) If the license renewal fee is not paid by the first of ~~July~~ October of each even‑numbered year, or within sixty days from the mailing of notice by the board, whichever is later, the license shall automatically expire and be forfeited. ~~Such~~ This license can only be reinstated upon payment of all sums due, and the board may assess ~~such~~ a delinquent holder an additional ~~sum not to exceed twenty‑five percent of the amount due as a penalty~~ fee as defined by regulation.

(C) The board shall establish fees in regulation pursuant to Section 40‑9‑50(B).

(D)(1) A person requesting inactive licensure at the time of renewal must:

(a) hold a valid unrestricted license in this State; and

(b) agree not to practice in this State while holding an inactive license.

(2) An inactive license can be renewed biennially for up to five renewal periods.

(E) A licensee on inactive status must pay a fee for each renewal period, but is not required to satisfy continuing education requirements except as provided in subsection (F).

(F) To reinstate a license, the required number of continuing education units for the immediate, prior renewal period must be submitted.”

SECTION 13. Section 40‑9‑85 of the 1976 Code is amended to read:

“Section 40‑9‑85. (A) The South Carolina Board of Chiropractic Examiners is authorized to issue a special volunteer license for chiropractors who wish to devote their expertise exclusively to providing chiropractic care to the needy ~~and~~, indigent ~~in South Carolina~~, and to citizens of the State in areas declared to be in a state of emergency by the Governor. The board will waive all application fees, examination fees, and annual registration fees for any chiropractor licensed in accordance with this section.

(B) The board shall promulgate regulations outlining the qualifications for the issuance of a ~~special~~ volunteer license.

(C) The board may, in its discretion, grant a temporary license upon request to licensees from other states. A person with a temporary license under this subsection only may treat members of the team or organization with which they are associated during the period in which that team or organization is in this State. This temporary license expires upon the departure of this team from the State and a new temporary license must be requested for each subsequent visit.”

SECTION 14 . This act takes effect upon approval by the Governor.

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