

CHAPTER 337

S.B. No. 1433

AN ACT

relating to the continuation and functions of the midwifery board and the regulation of the practice of midwifery.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 3, Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) The midwifery board is composed of *the following nine members*:

(1) *three [six]* midwives with at least three years of experience in the practice of midwifery, not more than *one [three]* of whom may be a licensed health care *professional [professionals]*;

(2) one certified nurse-midwife;

(3) a person licensed to practice medicine who is certified by a national professional organization of physicians that certifies obstetricians and gynecologists;

(4) one person licensed to practice medicine who is certified by a national professional organization of physicians that certifies family practitioners or pediatricians; and

(5) three persons who are not practicing or trained in a health care profession and who represent the public interest, one of whom must be a parent with at least one child born with the assistance of a midwife.

(c) *A person is not eligible for appointment as a public member of the midwifery board if the person or the person's spouse:*

(1) *is registered, certified, or licensed by an occupational regulatory agency in the field of midwifery;*

(2) *is employed by or participates in the management of a business entity or other organization regulated by the midwifery board or receiving funds from the midwifery board;*

(3) *owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the midwifery board or receiving funds from the midwifery board; or*

(4) *uses or receives a substantial amount of tangible goods, services, or funds from the midwifery board, other than compensation or reimbursement authorized by law for midwifery board membership, attendance, or expenses.*

(d) *Appointments to the midwifery board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.*

SECTION 2. Section 3A, Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3A. SUNSET PROVISION. The midwifery board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the *midwifery* board is abolished and this Act expires September 1, 2005 [1993].

SECTION 3. The Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes) is amended by adding Section 3B to read as follows:

Sec. 3B. CONFLICT OF INTEREST RESTRICTIONS. (a) *An officer, employee, or paid consultant of a Texas trade association in the field of midwifery may not be a member or employee of the midwifery board who is exempt from the state's position classification*

plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of midwifery may not be a midwifery board member and may not be an employee of the midwifery board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

SECTION 4. The Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes) is amended by adding Section 3C to read as follows:

Sec. 3C. EFFECT OF LOBBYING ACTIVITY. A person may not serve as a member of the midwifery board or act as the general counsel to the midwifery board if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the midwifery board.

SECTION 5. The Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes) is amended by adding Section 3D to read as follows:

Sec. 3D. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground for removal from the midwifery board if a member:

(1) does not have at the time of appointment the qualifications required by Section 3 of this Act;

(2) does not maintain during service on the midwifery board the qualifications required by Section 3 of this Act;

(3) violates a prohibition established by Section 3(c), 3B, or 3C of this Act;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled midwifery board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the midwifery board.

(b) The validity of an action of the midwifery board is not affected by the fact that it is taken when a ground for removal of a midwifery board member exists.

(c) If the program coordinator has knowledge that a potential ground for removal exists, the program coordinator shall notify the chairman of the midwifery board of the ground. The board of health shall then notify the governor that a potential ground for removal exists.

SECTION 6. Section 8A, Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) Subject to the approval of the Texas Board of Health, the midwifery board by rule shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the costs of administering this Act. The fee amounts set by the midwifery board may be adjusted so that the total fees collected are sufficient to cover the costs of administering this Act. The midwifery board may not set a fee for an amount less than the amount of that fee on September 1, 1993.

SECTION 7. The Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes) is amended by adding Section 8C to read as follows:

Sec. 8C. ANNUAL FINANCIAL REPORT. The department shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the midwifery board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

SECTION 8. The Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes) is amended by adding Section 8D to read as follows:

Sec. 8D. PUBLIC INTEREST INFORMATION. (a) The midwifery board shall prepare information of public interest describing the functions of the midwifery board and the midwifery board's procedures by which complaints are filed with and resolved by the midwifery board. The midwifery board shall make the information available to the public and appropriate state agencies.

(b) The midwifery board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the midwifery board for the purpose of directing complaints to the midwifery board. The midwifery board may provide for that notification:

(1) on each registration form, application, or disclosure and informed consent form of an individual or entity regulated by the midwifery board;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the midwifery board; or

(3) in a bill for service provided by an individual or entity regulated by the midwifery board.

(c) The midwifery board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.

SECTION 9. The Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes) is amended by adding Section 8E to read as follows:

Sec. 8E. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The program coordinator or the coordinator's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;

(2) a comprehensive analysis of the midwifery board work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underutilization in the midwifery board work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underutilization.

(b) A policy statement prepared under Subsection (a) of this section must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1) of this section, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b) of this section. The report may be made separately or as part of other biennial reports to the legislature.

SECTION 10. The Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes) is amended by adding Section 8F to read as follows:

Sec. 8F. PUBLIC PARTICIPATION IN MIDWIFERY BOARD HEARINGS. The midwifery board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the midwifery board and to speak on any issue under the jurisdiction of the midwifery board.

SECTION 11. The Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes) is amended by adding Section 8G to read as follows:

Sec. 8G. DIVISION OF RESPONSIBILITY. The midwifery board shall develop and implement policies that clearly define the respective responsibilities of the midwifery board and the staff of the midwifery board.

SECTION 12. The Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes) is amended by adding Section 8H to read as follows:

Sec. 8H. PROGRAM ACCESSIBILITY. The midwifery board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the midwifery board's programs. The midwifery board shall also comply with federal and state laws for program and facility accessibility.

SECTION 13. Section 10, Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes), is amended by amending Subsection (c) and adding Subsection (i) to read as follows:

(c) On renewal of the documentation, the person must provide the program coordinator with evidence, acceptable under the rules of the board, of completion of mandatory continuing education as prescribed by the midwifery board. *The midwifery board by rule shall establish a minimum number of hours of continuing education required to renew a documentation under this Act. The midwifery board may assess the continuing education needs of documented midwives and may require documented midwives to attend continuing education courses specified by the midwifery board. The midwifery board by rule shall develop a process to evaluate and approve continuing education courses.*

(i) *The midwifery board shall identify the key factors for the competent performance by a documented midwife of the documented midwife's professional duties. The midwifery board shall adopt a procedure to assess a documented midwife's participation in continuing education programs.*

SECTION 14. Section 11, Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) *The midwifery board shall have the written portion of the examination, if any, validated by an independent testing professional.*

SECTION 15. Subsections (b), (d), and (e), Section 13, Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) Each person who practices midwifery must apply to the department annually to be documented as a midwife. The application must be accompanied by a nonrefundable [\$50] application fee *in an amount set by the midwifery board*. The application must include the information required by board rule.

(d) The initial documentation issued to a midwife may be issued at any time during the year. The initial documentation must be issued before the midwife begins to practice midwifery within the state. The term of the initial practice under the documentation begins on the date that the requirements are met and extends through December 31 of the initial year. *The midwifery board by rule may adopt a system under which documentations expire on various dates during the year. For the year in which the documentation expiration date is changed, documentation fees payable on the original expiration date shall be prorated on a monthly basis so that each documented midwife shall pay only that portion of the documentation fee that is allocable to the number of months during which the documentation is valid. On renewal of the documentation on the new expiration date, the total documentation renewal fee is payable [After the initial year of documentation, the term of the documentation begins on January 1 and ends on December 31 of each year. A renewal application must be completed during December of the year preceding the year for which the renewal is requested].*

(e) The department may accept an application for renewal that is filed after the close of the documentation period during a grace period not to exceed 60 days after the end of the documentation period. The department may charge a late filing fee in an amount *set by the midwifery board* [not to exceed \$25]. The late filing fee must be paid in addition to the application fee. The board shall adopt rules to establish the duration of the grace period and the amount of the late filing fee.

SECTION 16. The Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes) is amended by adding Section 18C to read as follows:

Sec. 18C. COMPLAINT PROCEDURE IN GENERAL. (a) The midwifery board shall keep an information file about each complaint filed with the midwifery board. The midwifery board's information file shall be kept current and contain a record for each complaint of:

- (1) all persons contacted in relation to the complaint;
- (2) a summary of findings made at each step of the complaint process; and
- (3) other relevant information.

(b) The midwifery board by rule shall adopt a form to standardize information concerning complaints made to the midwifery board. The midwifery board by rule shall prescribe information to be provided to a person when the person files a complaint with the midwifery board.

(c) The midwifery board shall provide reasonable assistance to a person who wishes to file a complaint with the midwifery board.

SECTION 17. The Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes) is amended by adding Section 18D to read as follows:

Sec. 18D. COMPLAINT INVESTIGATION AND DISPOSITION. The midwifery board shall adopt rules concerning the investigation of a complaint filed with the midwifery board. The rules adopted under this subsection shall:

- (1) distinguish between categories of complaints; and
- (2) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint.

SECTION 18. This Act takes effect September 1, 1993.

SECTION 19. (a) A member of the midwifery board immediately before the effective date of this Act continues to serve as a member of the board on or after the effective date of this Act for the remainder of the member's term. The Texas Board of Health shall make appointments to the board on or after the effective date of this Act as terms of members of the board expire and vacancies occur on the board to accomplish, as soon as possible, the membership plan for the board established by Section 3, Texas Midwifery Act (Article 4512i, Vernon's Texas Civil Statutes), as amended by this Act.

(b) The changes in law made by this Act to the qualifications of members of the midwifery board do not affect the entitlement of a member appointed before September 1, 1993, to continue to hold office on the board for the term for which the member was appointed. The changes in the qualifications apply only to a member appointed on or after September 1, 1993.

SECTION 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 5, 1993, by a viva-voce vote; passed the House on May 18, 1993, by a non-record vote.

Approved May 29, 1993.

Effective Sept. 1, 1993.