

CHAPTER 717

S.B. No. 839

AN ACT

relating to the regulation of the practice of vocational nursing and to the continuation of the Board of Vocational Nurse Examiners; providing penalties.

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

SECTION 1. Subsections (a) and (b), Section 1, Chapter 118, Acts of the 52nd Legislature, 1951 (Article 4528c, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) "Board" means the Board of Vocational Nurse Examiners.

(b) "Licensed Vocational Nurse" means a person who is licensed *under this Act* by the Board of Vocational Nurse Examiners.

SECTION 2. Section 5, Chapter 118, Acts of the 52nd Legislature, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. TERM OF OFFICE, ORGANIZATION, MEETINGS OF BOARD[; ~~CONTINUING EDUCATION~~]. (a) There is hereby created a board to be known as the Board of Vocational Nurse Examiners, consisting of *fifteen (15)* [~~twelve (12)~~] members to be appointed by the Governor and confirmed by the State Senate. Appointments to the Board shall be made without regard to the race, *color, handicap* [~~creed~~], sex, religion, or national origin of the appointees.

Seven (7) members of the Board must be Licensed Vocational Nurses who are graduates of approved schools of vocational nursing, who have been actively engaged in the practice of vocational nursing for five (5) years immediately preceding their appointments, and who are not licensed physicians, registered professional nurses, or hospital administrators.

One (1) member of the Board must be a Registered Nurse licensed by the Board of Nurse Examiners who is actively engaged in a teaching, administrative, or supervisory capacity in a vocational nursing educational program and who is not a licensed physician, hospital administrator, or licensed vocational nurse.

One (1) member of the Board must be a physician licensed by the Texas State Board of Medical Examiners who has been actively engaged in the practice of medicine for five (5) years immediately preceding appointment and who is not a hospital administrator, registered professional nurse, or licensed vocational nurse.

One (1) member of the Board must be a hospital administrator who has been actively engaged in hospital administration for a period of five (5) years and who is not a licensed physician, registered professional nurse, or licensed vocational nurse.

Five (5) ~~Two (2)~~ members of the Board must be representatives of the general public. A person is not eligible for appointment as a public member of the Board if the person or the person's spouse:

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

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

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

(4) uses or receives a substantial amount of tangible goods, services, or funds from the Board, other than compensation or reimbursement authorized by law for Board membership, attendance, or expenses ~~[if the person or the person's spouse is licensed by an occupational regulatory agency in the field of health care or is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization that provides health care services or that sells, manufactures, or distributes health care supplies or equipment].~~

(b) The term of office of each member of the Board shall be six (6) years. A member may not immediately succeed *the member's term* ~~[himself or herself]~~ in office. In case of death, resignation or vacancy from any cause on the Board, the vacancy of the unexpired term shall be filled by the Governor within sixty (60) days after the occurrence of such vacancy.

Each appointee to the Board ~~[of Vocational Nurse Examiners]~~ shall, within fifteen (15) days of the date of his appointment, qualify by taking the constitutional oath of office.

(c)(1) *An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a Board member.*

(2) *A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a Board member.*

(3) *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. ~~[A member or employee of the Board may not be an officer, employee, or paid consultant of a national or state trade association in the vocational nursing field.]~~*

(d) *A person may not serve as a Board member or serve as general counsel to the 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 Board ~~[member or employee of the Board may not be related within the second degree by affinity or consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a national or state trade association in the vocational nursing field].~~*

(e)(1) It is a ground for removal from the Board if a member:

(A) ~~[(1)]~~ does not have at the time of appointment the qualifications required by Subsection (a) of this section ~~[for appointment to the Board];~~

(B) ~~[(2)]~~ does not maintain during ~~[his]~~ service on the Board the qualifications required by Subsection (a) of this section ~~[for appointment to the Board];~~

(C) ~~[(3)]~~ violates a prohibition established ~~[prescribed]~~ by Subsections ~~[Subsection]~~ (c) and ~~[or]~~ (d) of this section;

(D) 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

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

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

(9) *If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the Board of the ground. The presiding officer shall then notify the Governor that a potential ground for removal exists.*

~~[(4) fails to attend at least half of the regularly scheduled Board meetings held in a calendar year, excluding meetings held while the person was not a Board member.]~~

(f) *The Governor shall designate from the members of the Board the President of the Board. The person designated as President serves in that capacity at the will of the Governor.* ~~[validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.]~~

~~[(g)]~~ The Board shall elect a ~~[President,]~~ Vice-president~~[,]~~ and Secretary-treasurer yearly at an annual meeting. The Board may make such rules and regulations as may be necessary to govern its proceedings and to carry in effect the purposes of this law. The Secretary-treasurer shall be required to keep minutes of each meeting of said Board, a register of the names of all nurses licensed under this law, and books of account of fees received and disbursements; and all minutes, the register of Licensed Vocational Nurses and books of account shall be at all times open to public inspection. The financial transactions of this Board are subject to audit by the state auditor in accordance with Chapter 321, Government Code. The Board shall employ a person other than a member of the Board as the executive director of the Board. The executive director shall perform the administrative functions of the Board. The Board shall employ other persons that it considers necessary in carrying out the provisions of this law. The Secretary-treasurer shall be bonded by the Board in such amount as may be recommended by the State Auditor.

~~(g) [(h) The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive director must be based on the system established under this subsection.]~~

~~[(i)]~~ The Board shall employ a full-time Director of Education, who shall have had at least five (5) years experience in teaching nursing in an accredited school of nursing or an approved program in vocational nursing. The Board may select either a Licensed Vocational Nurse or a Registered Nurse as the Director of Education. The duties of the Director of Education shall be to visit and inspect all schools of vocational nursing to determine whether the Board's minimum requirements for vocational nursing programs are being met. *The Board, by rule, may establish a separate fee for the survey of approved programs.* The Board shall prescribe such methods and rules of visiting, and such methods of reporting ~~[by the Director of Education]~~ as may in its judgment be deemed proper.

~~(h) [(j)]~~ Regular meetings of the Board shall be held at least twice a year, one of which shall be designated as an Annual Meeting for election of officers and the reading of auditors' reports. At least twice each year the Board shall hold examinations in various cities in the state for qualified applicants for licensure. Examinations may be held under the supervision of a Board member or such other person as the Board may specify. *Special* ~~[Not less than sixty (60) days notice of the holding of the examination shall be given by publication in at least three (3) daily newspapers of general circulation, to be selected by the Board; special]~~ meetings shall be held upon request of *five (5)* ~~[four (4)]~~ members of the Board or upon the call of the president; *eight (8)* ~~[six (6)]~~ members of the Board shall constitute a quorum for the transaction of business, and should a quorum not be present on the day appointed for any meeting, those persons present may adjourn from day to day until a quorum shall be present, providing that such period shall not be longer than three (3) successive days; each member of said Board is entitled to a per diem set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

~~(i) [(k)]~~ The Board may not adopt rules restricting competitive bidding or advertising by a licensee of the Board except to prohibit false, misleading, or deceptive practices by the licensee. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a licensee a rule that:

- (1) restricts the licensee's use of any medium for advertising;

(2) restricts the licensee's personal appearance or use of *the person's* [his] voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensee; or

(4) restricts the licensee's advertisement under a trade name.

~~(j) [(4)(1) The Board may recognize, prepare, or implement continuing education programs for licensees and may require participation in continuing education programs as a condition of renewal of a license.~~

~~[(2) The Board may not require more than a total of 20 hours of continuing education in a two-year license period and may not require that more than 10 of those hours consist of classroom instruction in approved programs. The remaining 10 hours may consist of any combination of classroom instruction, institutional based instruction, or individualized study.~~

~~[(3) If the Board requires participation in continuing education programs as a condition of renewal of a license, the Board shall by rule establish a system for the approval of programs and providers of continuing education. In adopting the rules, the board shall consider but is not obligated to approve programs or providers approved or accredited through continuing education accreditation systems established by national or state associations of licensed vocational nurses and nurse in-service programs offered by hospitals accredited by the Joint Commission on Accreditation of Healthcare Organizations, certified by Medicare, or maintained or operated by the federal government or the State of Texas. The Board may assess programs and providers a fee in an amount reasonable and necessary to defray the costs incurred in approving providers and programs. The fee collected under this subsection shall be deposited in the Vocational Nurse Examiners Fund.~~

~~[(4) The Board may adopt other rules as necessary to implement this section.~~

~~[(m) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies.~~

~~[(n)] The Board shall enforce this Act. The Board may retain outside legal counsel to represent the Board. However, before the Board may retain outside counsel, the Board shall request the attorney general to perform the necessary services and may retain the outside counsel only if the attorney general certifies to the Board that the services cannot be performed.~~

~~[(k) [(o) A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the Board or act as the general counsel to the Board.~~

~~[(p)] The Board of Vocational Nurse Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2005 [1993].~~

~~[(l) [(q)] The Board is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).~~

~~(m)(1) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all non-entry-level positions concurrently with any public posting.~~

~~(2) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for Board employees must be based on the system established under this subsection.~~

~~(n)(1) The executive director or the executive director'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:~~

~~(A) 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;

(B) a comprehensive analysis of the Board workforce that meets federal and state guidelines;

(C) procedures by which a determination can be made of significant underuse in the Board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(D) reasonable methods to appropriately address those areas of underuse.

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

(3) The governor's office shall deliver a biennial report to the legislature based on the information received under Subdivision (2) of this subsection. The report may be made separately or as part of other biennial reports to the legislature.

(o)(1) The Board shall prepare information of public interest describing the functions of the Board and the Board's procedures by which complaints are filed with and resolved by the Board. The Board shall make the information available to the public and appropriate state agencies.

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

(A) on each registration form, application, or written contract for services of an individual or entity regulated by the Board;

(B) on a sign prominently displayed in the place of business of each individual or entity regulated by the Board; or

(C) in a bill for service provided by an individual or entity regulated by the Board.

(3) The Board shall enter into memoranda of understanding with each state agency that licenses health care facilities or agencies for the purpose of coordinating any notification requirements under Subdivision (2) of this subsection with notification requirements that may be imposed on the health care facility or agency by any other state agency.

(4) The 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.

(p) The Board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under the jurisdiction of the Board.

(q) The 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 Board's programs. The Board shall also comply with federal and state laws for program and facility accessibility.

(r)(1) The Board shall establish a training program for the members of the Board.

(2) Before a member of the Board may assume the member's duties, the member must complete at least one course of the training program established under this subsection.

(3) A training program established under this subsection shall provide information to a participant regarding:

(A) the enabling legislation that created the Board;

(B) the programs operated by the Board;

(C) the role and functions of the Board;

(D) the rules of the Board with an emphasis on the rules that relate to disciplinary and investigatory authority;

(E) the current budget for the Board;

(F) the results of the most recent formal audit of the Board;

(G) the requirements of the:

(i) open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;

(ii) open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(iii) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;

(H) the requirements of the conflict of interest laws and other laws relating to public officials; and

(I) any applicable ethics policies adopted by the Board or the Texas Ethics Commission.

(4) In developing the training requirements provided for in this subsection, the Board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.

(5) In the event that another state agency or entity is given the authority to establish the training requirements, the Board shall allow that training in lieu of developing its own program.

(s) The Board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this article and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(t) The Board may enter interagency contracts for any purpose authorized by law.

~~[(r) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the Board receives the committee's statements.]~~

SECTION 3. Section 6, Chapter 118, Acts of the 52nd Legislature, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. EXAMINATION AND LICENSES. (a) Except as provided in Section 7 of this Act, every person desiring to be licensed as a Licensed Vocational Nurse or use the abbreviation L.V.N. in the State of Texas, shall be required to pass the examination *approved* ~~[given]~~ by the Board of Vocational Nurse Examiners ~~[or its delegate]~~. The applicant shall make application by presenting to ~~[the secretary of]~~ the Board, on forms furnished by the Board, satisfactory sworn evidence that the applicant has had at least two (2) years of high school education or its equivalent and has completed an approved course ~~[of not less than twelve (12) months]~~ in an approved school for educating vocational nurses. An approved school as used herein shall mean one approved by the Board *or by another state*. Application for examination by the Board or its delegate shall be made at least thirty (30) days prior to the date set for the examination.

(b) The Board in its discretion may waive the requirement in Subsection (a) of this section for completion of a course in an approved school for educating vocational or practical nurses upon presentation of satisfactory sworn evidence that the applicant has completed an *acceptable level* ~~[at least two (2) years]~~ of education in a nursing school approved by the State Board of Nurse Examiners of Texas or in some other school of professional nurse education located in another state, the District of Columbia, a possession of the United States, or a foreign country. *The Board by rule shall determine acceptable levels of education. The Board shall have the written portion of the examination, if any, validated by an independent testing professional.* If the applicant received training in another state, the District of Columbia, a possession of the United States, or a foreign country, the applicant must present

evidence satisfactory to the Board that the nursing education received is equivalent to that required for licensure as a vocational nurse in this state.

(c) *Not later than the 30th day [Within 30 days] after the date a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the date the Board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination or other information which the Board has available to it after the tests are scored.*

(d) *If an applicant has graduated from an approved educational program in vocational nursing in this state, another state, or the District of Columbia, or successfully completed an acceptable level of education in a professional nursing program [two years of an associate degree program or diploma program in professional nursing education] in this state, another state, or the District of Columbia, the Board may issue to the applicant, pending the results of the licensing examination, a temporary permit to practice vocational nursing under the direct supervision of a licensed vocational nurse, registered professional nurse, or licensed physician. A permit issued to an applicant who fails the examination expires on the date indicated on the permit. A permit issued to an applicant who passes the examination expires on the applicant's receipt of a license from the Board. A permit may not be issued to an applicant who has previously failed an examination administered by the Board or by another state. [The Board may issue a temporary permit to practice vocational nursing to an applicant who is a vocational or practical nurse who has graduated from an approved program for educating vocational or practical nurses, holds a license as a vocational or practical nurse from another state, the District of Columbia, or a possession of the United States, and has actually been engaged in the practice of vocational or practical nursing within the past five years. Such an applicant must practice under the direct supervision of a licensed vocational nurse, registered professional nurse, or licensed physician. A temporary permit issued to an applicant from another state, the District of Columbia, or a possession of the United States expires on receipt of a license from the Board or on the expiration of 90 days, whichever occurs first. The Board may, by mutual agreement, assign the function of physical distribution of the temporary permits to an agent designated by the Board to act on behalf of the Board.]*

(e) *Any nurse who is licensed under the provisions of this Act, when on duty in a public or private hospital, nursing home, or licensed health-care facility, shall wear [identifying] insignia identifying the nurse as a licensed vocational nurse [on white caps or uniforms].*

SECTION 4. Section 7, Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. *QUALIFICATION FOR LICENSING BY ENDORSEMENT. (a) To qualify for a temporary license to practice as a licensed vocational nurse by endorsement, an applicant for licensing must:*

(1) *submit to the Board an application fee as determined by the Board and a completed application given under oath, in the form prescribed by the Board;*

(2) *have possessed at the time of initial licensing as a licensed vocational nurse the qualifications necessary to have been eligible for licensing at that time in this state;*

(3) *have presented to the Board proof of initial licensing by examination and proof that the current active license and other license or licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason; and*

(4) *submit to the Board a notice of sponsorship of the applicant by the holder of a Texas health care professional license under whom the applicant will practice.*

(b) *A holder of a temporary license under this section shall receive a permanent license if the applicant:*

(1) has submitted official verification of the academic and professional credentials of the applicant; and

(2) satisfies any other requirement set by statute.

(c) The Board shall either grant or deny an application for a permanent license within 180 days after the date of the Board's receipt of all required forms or information. The Board may extend the 180-day deadline to allow for the receipt and tabulation of pending examination results.

(d) The Board shall adopt rules relating to the conditions of sponsorship under Subsection (a)(4) of this section, including waiver of the requirement in the event of a hardship.

(e) The Board shall specify training, education, or examination requirements that an applicant may complete in lieu of the requirements of Subsection (a)(2) of this section. ~~Any applicant who holds a license as a Vocational Nurse or Practical Nurse issued by the District of Columbia or another state whose requirements are equal to those of Texas, and whose individual qualifications shall be equivalent to those required by this law, may be granted a license to practice nursing as a Licensed Vocational Nurse in this State without examination provided the required fee is paid to the Board by such applicant.]~~

SECTION 5. Subsections (a), (b), and (c), Section 8, Chapter 118, Acts of the 52nd Legislature, 1951 (Article 4528c, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The Board [board] by rule shall adopt a system under which licenses expire *on various dates during the year* ~~[every two years]. [For the year in which the expiration date is changed, license fees payable on September 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.]~~

(b) ~~At [The Board shall notify each licensee about the expiration date of the person's license at] least 30 days before the expiration of a person's license, the Board [date. The Board by United States mail] shall send written notice of the impending license expiration to the person, at the person's last known address according to the Board's records [with the notice an application for license renewal to the licensee's address contained in the Board's records. A licensee whose completed application for renewal is received by the Board after the expiration date of the license shall be charged a late fee].~~

(c) If a person's license has been expired for ~~[not more than] 90 days or less~~, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half the examination fee for the license. If a person's license has been expired for more than 90 days but less than *one year* ~~[two years]~~, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license. *The Board by rule shall set a length of time beyond which an expired license may not be renewed. The Board by rule may establish additional requirements that apply to the renewal of a license that has been expired for more than one year but less than the period set by the Board beyond which a license may not be renewed* ~~[If a person's license has been expired for two years or more, the person may renew the license by complying with the requirements set forth in substantive rules adopted by the Board]. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. However, the Board may renew without examination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the Board a fee that is equal to the examination fee for the license.~~

SECTION 6. Chapter 118, Acts of the 52nd Legislature, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended by adding Section 8A to read as follows:

Sec. 8A. **MANDATORY CONTINUING EDUCATION REQUIREMENTS.** (a) *To renew a license, a licensee must demonstrate to the satisfaction of the Board completion of the requirement for continuing professional education.*

(b) *The Board shall adopt rules relating to the operation of the mandatory continuing education programs. In establishing the requirement for continuing education, the Board shall consider:*

- (1) *factors that lead to the competent performance of professional duties; and*
- (2) *the continuing education needs of licensees.*

(c) *The Board shall adopt rules relating to the adoption or approval of mandatory continuing education programs and providers and shall adopt rules to evaluate the effectiveness of the programs and a licensee's participation and performance in the programs.*

SECTION 7. Section 9, Chapter 118, Acts of the 52nd Legislature, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. FEES. (a) *The Board by rule shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this Act. The fees set by the Board may be adjusted so that the total fees collected shall be sufficient to meet the expenses of administering this Act. The Board may not set a fee for an amount less than the amount of that fee on September 1, 1993 [for the administration of this Act in amounts not to exceed:*

- ~~(1) examination and application fee: \$40;~~
- ~~(2) reexamination fee: \$40;~~
- ~~(3) renewal fee: \$20;~~
- ~~(4) endorsement fee: \$40;~~
- ~~(5) accreditation of new programs fee: \$75;~~
- ~~(6) duplicate temporary permit or license fee: \$10;~~
- ~~(7) filing of affidavits in rechange of name fee: \$10;~~
- ~~(8) endorsement to another state fee: \$40; and~~
- ~~(9) reactivating from inactive status fee: \$30].~~

The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

(b) All expenses under this Act shall be paid from fees collected by the Board under this Act, and no expense incurred under this Act shall ever be charged against the funds of the State of Texas.

(c) On or before January 1 of each year, the Board shall make in writing to the Governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the Board during the preceding year. *The annual report must be in the form and reported in the time provided by the General Appropriations Act.*

SECTION 8. Chapter 118, Acts of the 52nd Legislature, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended by adding Sections 10A through 10F to read as follows:

Sec. 10A. RECORDS OF COMPLAINTS. (a) *The Board shall keep an information file about each complaint filed with the Board. The 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;*
- (3) *an explanation of the legal basis and reason for a complaint that is dismissed; and*
- (4) *other relevant information.*

(b) *If a written complaint is filed with the Board that the Board has authority to resolve, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.*

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

(d) *The Board shall provide reasonable assistance to a person who wishes to file a complaint with the Board.*

Sec. 10B. COMPLAINT INVESTIGATION AND DISPOSITION. (a) *The Board shall adopt rules concerning the investigation of a complaint filed with the Board. The rules adopted under this subsection shall:*

- (1) *distinguish between categories of complaints;*
- (2) *ensure that complaints are not dismissed without appropriate consideration;*
- (3) *require that the Board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;*
- (4) *ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and*
- (5) *prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the Board to obtain the services of a private investigator.*

(b) *The Board shall dispose of all complaints in a timely manner. The Board shall establish a time line for conducting each phase of a complaint that is under the control of the Board not later than the 30th day after the date the complaint is received by the Board. The time line shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the time line must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.*

(c) *The executive director shall notify the Board of a complaint that extends beyond the time prescribed by the Board for resolving the complaint so that the Board may take necessary action on the complaint.*

Sec. 10C. INFORMAL PROCEEDINGS. (a) *The Board by rule shall adopt procedures governing:*

- (1) *informal disposition of a contested case under Subsection (e), Section 13, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and*
- (2) *informal proceedings held in compliance with Subsection (c), Section 18, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.*

(b) *Rules adopted under this section must provide the complainant and the licensee an opportunity to be heard and must require the presence of a representative of the Board's legal staff or of the office of the attorney general to advise the Board or the Board's employees.*

Sec. 10D. MONITORING OF LICENSEE. *The Board by rule shall develop a system for monitoring licensees' compliance with the requirements of this Act. Rules adopted under this section shall include procedures for monitoring a licensee who is ordered by the Board to perform certain acts to ascertain that the licensee performs the required acts and to identify and monitor licensees who represent a risk to the public.*

Sec. 10E. ADMINISTRATIVE PENALTIES. (a) *The Board may impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted under this Act.*

(b) *The penalty for each violation may be in an amount not to exceed \$1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.*

(c) *The amount of the penalty shall be based on:*

- (1) *the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;*
- (2) *the economic harm to property or the environment caused by the violation;*
- (3) *the history of previous violations;*

- (4) the amount necessary to deter future violations;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

(d) If the executive director determines that a violation has occurred, the executive director may issue to the Board a report that states the facts on which the determination is based and the executive director's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive director or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the executive director, the Board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law. The administrative law judge shall promptly issue to the Board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the Board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the Board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the Board's order is final as provided by Subsection (c), Section 16, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the Board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(l) An executive director who receives a copy of an affidavit under Subsection (k)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the Board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

Sec. 10F. SCHEDULE OF SANCTIONS. The schedule of sanctions adopted by the Board by rule shall be used by the State Office of Administrative Hearings for any sanction imposed as the result of a hearing conducted by that office.

SECTION 9. Section 11, Chapter 118, Acts of the 52nd Legislature, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended by adding Subsection (c) to read as follows:

(c) A person who violates this Act is liable to the state for a civil penalty that does not exceed \$1,000 a day. The civil penalty may be collected in a suit initiated by the Board.

SECTION 10. (a) The changes in law made by this Act in the qualifications of members of the Board of Vocational Nurse Examiners do not affect the entitlement of a member appointed before September 1, 1993, to continue to hold office 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.

(b) As soon as possible on or after September 1, 1993, the governor shall appoint three additional public members to the Board of Vocational Nurse Examiners. In making the initial appointments of the new members, the governor shall designate one for a term expiring on the regular expiration date of board members in 1995, one for a term expiring on the regular expiration date of board members in 1997, and one for a term expiring on the regular expiration date of board members in 1999.

SECTION 11. This Act takes effect September 1, 1993.

SECTION 12. 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 7, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 25, 1993, by a viva-voce vote; passed the House, with amendments, on May 22, 1993, by a non-record vote.

Approved June 16, 1993.

Effective Sept. 1, 1993.