

BILL ANALYSIS

C.S.H.B. 1535
By: Truitt
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Legislature established the regulation of midwifery in 1983 with the Lay Midwifery Board, and created the current Texas Midwifery Board in 1991 to ensure that safe and quality midwifery services are provided to the citizens of Texas. The Board has three primary functions: license qualified individuals to practice midwifery in Texas; set standards relating to the practice of midwifery; and enforce the Texas Midwifery Act, including investigating and resolving complaints.

The Board is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the Legislature. As a result of its review of the Board, the Sunset Advisory Commission recommended continuation of the agency and several statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, is expressly granted to the Texas Midwifery Board in SECTION 15, SECTION 16, SECTION 17, and SECTION 32 of this bill.

It is the committee's opinion that rulemaking approval authority is expressly transferred from the Texas Board of Health to the Executive Commissioner of the Health and Human Services Commission in SECTION 15 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Midwifery Board in SECTION 36 of this bill. In addition, under the general rulemaking authority already granted to the Texas Midwifery Board, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, rules may be developed to implement other new provisions found in this bill.

ANALYSIS

The substitute incorporates several standard across-the-board recommendations of the Sunset Commission.

Continuation of the Board

The substitute continues the Texas Midwifery Board until September 1, 2017.

Title Change

The substitute changes the title “documented” midwife to “licensed” midwife.

Board Composition Changes

The substitute changes the composition of the Board by replacing one public member and the certified nurse-midwife member with two licensed midwives and requires all midwife members of the Board to be licensed. The substitute also removes the requirement that not more than one of the midwife members of the Board may be a licensed health care professional.

Conflict of Interest and Board Member Provisions

The substitute removes Board member entitlement to a \$50 payment for each Board meeting a member attends, and authorizes Board members to receive reimbursement for travel expenses as provided by the General Appropriations Act. The substitute updates standard Sunset across-the-

board language prohibiting Board members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association. The substitute adds that a person may not be a member of the Board or serve as general counsel to the department if they are required to register as a lobbyist under the Government Code, because their activities for compensation are on behalf of a profession related to the operation of the board. The substitute also updates standard Sunset language requiring members of the Board to complete training before assuming their duties and specifies the grounds for removing a Board member. The substitute also specifies that the Board may appoint committees, but only consisting of Midwifery Board members. The substitute further requires the Board to appoint at least one public member of the Board to complaint review committees and authorizes the commissioner to designate the Board's presiding officer.

Rules on Advertising

The substitute prohibits the Board from proposing rules that restrict advertising or competitive bidding by licensees except to prohibit false, misleading, or deceptive practices.

Licensing Process

The substitute applies standard guidelines on the use of criminal convictions in licensing midwives. The substitute also requires the Board to develop and administer a jurisprudence exam that applicants must pass to become licensed, and to provide licensees with notification of exam results within a specified time. Finally, for licenses expired for 90 days or less the renewal fee would be equal to 1¼ times the normal renewal fee, while for licenses expired for more than 90 days the fee would be equal to 1½ times the normal renewal fee, instead of the examination fee. The substitute also specifies that a person whose license has been expired for more than one year may not renew the license, but must comply with all requirements for obtaining a new license.

Enforcement Authority and Complaints

The substitute authorizes the Board to refuse to renew the license of a person who fails to pay an administrative penalty. The substitute authorizes the Board to order refunds as part of the settlement conference process, not to exceed the amount the consumer paid to the midwife. The substitute increases the Board's maximum administration penalty amount from \$1,000 to \$5,000 per violation, per day. The substitute also authorizes the Board to issue cease-and-desist orders to stop unlicensed activity, after providing the unlicensed person with notice and opportunity for a hearing. The substitute also updates standard Sunset language requiring the Board to maintain information on all complaints, and notify all parties to a complaint about investigation procedures and status of the investigation.

Administrative Functions

The substitute adds standard Sunset language requiring the Board to make effective use of technology in the delivery of services and information to the public, and to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute conforms statutory language to changes in the function of the State Health Services Council and the executive commissioner of the Health and Human Services Commission, as required by H.B. 2292, 78th Legislative Session. The substitute makes the executive commissioner responsible for appointments to the Midwifery Board, to match other programs at the Department of State Health Services (DSHS) that do not have fully independent rulemaking authority. The substitute also assigns certain administrative responsibilities to DSHS to reflect current practice. The substitute clarifies that a local municipality may adopt ordinances to regulate the practice of midwifery if they are as strict and conform and to state statute and midwifery board rules. The substitute makes other technical and conforming changes.