87R3084 DRS-D

By:  Ortega H.B. No. 1072

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of lactation consultants and the creation of the Lactation Consultant Advisory Board; requiring an occupational license; imposing fees; providing penalties; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 51.2031(a), Occupations Code, is amended to read as follows:

(a)  This section applies only to the regulation of the following professions by the department:

(1)  athletic trainers;

(2)  behavior analysts;

(3)  dietitians;

(4)  hearing instrument fitters and dispensers;

(5)  midwives;

(6)  orthotists and prosthetists; [~~and~~]

(7)  speech-language pathologists and audiologists; and

(8)  lactation consultants.

SECTION 2.  Subtitle M, Title 3, Occupations Code, is amended by adding Chapter 703 to read as follows:

CHAPTER 703. LACTATION CONSULTANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 703.001.  SHORT TITLE. This chapter may be cited as the Texas Lactation Consultant Act.

Sec. 703.002.  DEFINITIONS. In this chapter:

(1)  "Advisory board" means the Lactation Consultant Advisory Board.

(2)  "Commission" means the Texas Commission of Licensing and Regulation.

(3)  "Department" means the Texas Department of Licensing and Regulation.

(4)  "Executive director" means the executive director of the department.

(5)  "Lactation consultant" means a health care professional licensed under this chapter who specializes in the clinical management of breastfeeding and works in a variety of settings.

Sec. 703.003.  APPLICABILITY. Unless the person uses the title "lactation consultant" or "licensed lactation consultant" to describe the person's activities, this chapter does not apply to:

(1)  a person licensed in this state as a physician or nurse;

(2)  a health care professional licensed by this state and operating within the scope of the person's license;

(3)  a person acting as a paid or volunteer peer counselor, La Leche League Leader, doula, or childbirth educator; or

(4)  a licensed midwife.

Sec. 703.004.  APPLICATION OF SUNSET ACT. The Lactation Consultant Advisory Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the Lactation Consultant Advisory Board is abolished and this chapter expires September 1, 2023.

SUBCHAPTER B. LACTATION CONSULTANT ADVISORY BOARD

Sec. 703.051.  ADVISORY BOARD MEMBERSHIP. (a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1)  five lactation consultant members, each of whom has at least three years' experience in the practice of lactation consulting;

(2)  one physician member who is certified by a national professional organization of physicians that certifies:

(A)  obstetricians and gynecologists;

(B)  family practitioners; or

(C)  pediatricians;

(3)  one member who:

(A)  is an advanced practice registered nurse; and

(B)  practices in obstetrics, pediatrics, or family practice; and

(4)  two members who represent the public and are not practicing or trained in a health care profession, at least one of whom is a parent who has been assisted by a lactation consultant.

(b)  Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 703.052.  DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Sec. 703.053.  TERMS; VACANCIES. (a) Members of the advisory board serve for staggered terms of six years.  The terms of three members expire on January 31 of each odd-numbered year.

(b)  If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

Sec. 703.054.  PRESIDING OFFICER. The presiding officer of the commission shall designate a public member of the advisory board to serve as the presiding officer of the advisory board to serve for a term of one year.  The presiding officer of the advisory board may vote on any matter before the advisory board.

Sec. 703.055.  MEETINGS. The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

Sec. 703.056.  APPLICABILITY OF OTHER LAW. Chapter 2110, Government Code, does not apply to the composition or duration of the advisory board or to the appointment of the advisory board's presiding officer.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 703.101.  GENERAL POWERS AND DUTIES. (a) The executive director shall administer and enforce this chapter.

(b)  The commission shall adopt rules:

(1)  prescribing the standards for the practice of lactation consulting in this state;

(2)  prescribing the type of courses and number of hours required to meet the basic lactation consulting education course and continuing lactation consulting education course requirements;

(3)  prescribing minimum standards for the approval and revocation of approval of:

(A)  basic lactation consulting education courses and continuing lactation consulting education courses; and

(B)  instructors or facilities offering basic lactation consulting education courses and continuing lactation consulting education courses;

(4)  requiring lactation consultants to obtain each patient's signature on a release advising the patient that lactation consultation is not a substitute for conventional medical care by a physician, including diagnosis, treatment, and well-child care; and

(5)  establishing requirements necessary to establish eligibility for reciprocity for initial licensing under this chapter.

(c)  The standards prescribed under Subsection (b)(1) must be equivalent to national standards prescribed by the International Board of Lactation Consultant Examiners for an International Board Certified Lactation Consultant. The standards must include ethical requirements.

(d)  The department shall:

(1)  implement rules governing:

(A)  basic lactation consulting education courses and continuing lactation consulting education courses; and

(B)  approval of instructors or facilities offering basic lactation consulting education courses and continuing lactation consulting education courses;

(2)  adopt and provide information about basic lactation consulting resources and instructor manuals;

(3)  enter into agreements necessary to administer this chapter; and

(4)  establish a program to license lactation consultants as prescribed by commission rules.

Sec. 703.102.  REPORTS ON LACTATION CONSULTING. (a) The department shall prepare and publish reports on the practice of lactation consulting in this state.

(b)  The Department of State Health Services shall publish a statistical report of breastfeeding initiation and continuation rates.

Sec. 703.103.  COMPLAINTS. (a) For purposes of Section 51.252, the commission shall adopt rules to provide for the release of any relevant lactation consulting or medical record to the department, without the consent of the lactation consultant's client, as necessary to conduct an investigation of a complaint.

(b)  The department shall provide reasonable assistance to a person who wishes to file a complaint with the department regarding a person or activity regulated by this chapter.

Sec. 703.104.  ROSTER. (a) The department shall maintain a roster of each person licensed as a lactation consultant in this state.

(b)  The roster must contain for each person the information required on the license form under this chapter and other information the department determines necessary to accurately identify each licensed lactation consultant.  The information is public information as defined by Chapter 552, Government Code.

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 703.151.  LICENSE REQUIRED. (a) A person may not practice lactation consulting unless the person holds a license issued under this chapter.

(b)  The department shall issue a license to each person who fulfills the licensing requirements.

(c)  Unless the person holds a license issued under this chapter, a person may not use:

(1)  the title "lactation consultant";

(2)  the title "registered lactation consultant";

(3)  the letters "LC";

(4)  the letters "RLC"; or

(5)  any other words, letters, abbreviations, or insignia indicating or implying that the person is a licensed lactation consultant.

Sec. 703.152.  QUALIFICATIONS FOR INITIAL LICENSE. A person is qualified to become a licensed lactation consultant under this chapter if the person provides the department with documentary evidence that the person has:

(1)  satisfied each requirement for basic lactation consulting education; and

(2)  passed the comprehensive lactation consulting examination and jurisprudence examination required by this chapter.

Sec. 703.153.  LICENSE APPLICATION. A person who practices lactation consulting shall apply to the department for a lactation consultant license in the manner and on a form prescribed by the executive director.  The application must:

(1)  be accompanied by a nonrefundable application fee; and

(2)  include information required by commission rules.

Sec. 703.154.  INITIAL LICENSE TERM. An initial license is valid for one year.

Sec. 703.155.  BASIC LACTATION CONSULTING EDUCATION. The commission by rule shall establish requirements for basic lactation consulting education.

Sec. 703.156.  EXAMINATION. (a) The department shall:

(1)  adopt standards for a comprehensive lactation consulting examination for persons regulated under this chapter that an applicant must pass before an initial license may be issued; and

(2)  establish eligibility requirements for persons taking a comprehensive lactation consulting examination.

(b)  The department may employ and cooperate with an organization or consultant in preparing an appropriate examination.

(c)  Instead of preparing a department examination, the department may accept the results of a criterion-referenced, standardized national examination by an independent lactation consultant organization that meets the standards set by the department.

Sec. 703.157.  JURISPRUDENCE EXAMINATION. (a) The department shall develop a jurisprudence examination to determine an applicant's knowledge of this chapter, commission rules under this chapter, and any other applicable laws of this state affecting the applicant's lactation consulting practice. The department shall administer the examination at least twice each calendar year.

(b)  The commission shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

SUBCHAPTER E. LICENSE RENEWAL

Sec. 703.201.  APPLICATION FOR LICENSE RENEWAL. An applicant for renewal of a license under this chapter shall apply in the manner provided by Section 703.153.

Sec. 703.202.  RENEWAL LICENSE TERM. A renewal license is valid for two years.

Sec. 703.203.  CONTINUING LACTATION CONSULTING EDUCATION. (a) The commission by rule shall establish requirements for continuing lactation consulting education, including a minimum number of hours of continuing education required to renew a license under this chapter.

(b)  On renewal of the license, a lactation consultant shall provide the department with evidence of successful completion of continuing lactation consulting education as prescribed by commission rule.

(c)  The commission by rule shall develop a process to evaluate and approve continuing education courses.

Sec. 703.204.  REQUIRED ATTENDANCE AT SPECIFIC LACTATION CONSULTING EDUCATION COURSES. The department may assess the continuing education needs of lactation consultants and may require lactation consultants to attend continuing lactation consulting education courses specified by the department.

Sec. 703.205.  REFUSING RENEWAL FOR FAILURE TO PAY ADMINISTRATIVE PENALTY. The department may refuse to renew the license of a person who fails to pay an administrative penalty unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

SUBCHAPTER F. DISCIPLINARY ACTIONS

Sec. 703.251.  GROUNDS FOR DISCIPLINARY ACTION. (a) The commission or executive director may take disciplinary action against or refuse to issue or renew a license of an applicant or license holder who:

(1)  violates this chapter or a rule adopted under this chapter;

(2)  submits false or misleading information to the department;

(3)  is convicted of a misdemeanor involving moral turpitude or a felony;

(4)  uses alcohol or drugs intemperately;

(5)  engages in unprofessional or dishonorable conduct that may reasonably be determined to deceive or defraud the public;

(6)  is unable to practice lactation consulting with reasonable skill and safety because of illness, disability, or psychological impairment;

(7)  is determined by a court judgment to be mentally impaired; or

(8)  fails to practice lactation consulting in a manner consistent with the public health and safety.

(b)  The commission or executive director may take disciplinary action against or refuse to issue or renew a license of an applicant or license holder if disciplinary action is taken by another jurisdiction that affects the applicant's or license holder's authority to practice lactation consulting, including a suspension, revocation, or other action.

Sec. 703.252.  REFUND. (a) Subject to Subsection (b), the commission or executive director may order a license holder to pay a refund to a consumer as provided in an agreed settlement, default order, or commission order instead of or in addition to imposing an administrative penalty against the license holder.

(b)  The amount of a refund ordered may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter.  The commission or executive director may not require payment of other damages or estimate harm in a refund order.

SUBCHAPTER G. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 703.301.  CIVIL PENALTY. (a) A person is liable for a civil penalty if the person is required to be licensed under this chapter and the person knowingly or intentionally practices lactation consulting:

(1)  without a license or while the person's license is suspended or revoked; or

(2)  in violation of a commission order.

(b)  A civil penalty under this section may not exceed $250 for each violation. Each day of violation may constitute a separate violation for purposes of penalty assessment. In determining the amount of the penalty, the court shall consider:

(1)  the person's history of previous violations;

(2)  the seriousness of the violation;

(3)  any hazard to the health and safety of the public; and

(4)  the demonstrated good faith of the person charged.

Sec. 703.302.  INJUNCTIONS. (a) In this section, "health authority" means a physician who administers state and local laws regulating public health under Chapter 121, Health and Safety Code.

(b)  If the executive director or a health authority determines that a person has violated this chapter, the executive director may institute an action described by Section 51.352.

Sec. 703.303.  VENUE. (a) Venue for a civil action arising out of the imposition of an administrative penalty is in the county in which the defendant resides or the violation occurred.

(b)  Venue for the civil action may be changed only after a good faith effort has been made to address the violation in the county in which venue is proper.

Sec. 703.304.  CRIMINAL PENALTY. (a) A person commits an offense if the person is required to be licensed under this chapter and the person knowingly practices lactation consulting without a license.

(b)  An offense under this section is a Class C misdemeanor.

Sec. 703.305.  CEASE AND DESIST ORDER. A violation of a cease and desist order issued by the executive director constitutes grounds for imposing an administrative penalty.

SECTION 3.  (a) As soon as practicable after the effective date of this Act, the presiding officer of the Texas Commission of Licensing and Regulation shall appoint the initial members to the Lactation Consultant Advisory Board as required by Section 703.051, Occupations Code, as added by this Act. In appointing the members, the presiding officer shall appoint three members to terms expiring January 31, 2023, three members to terms expiring January 31, 2025, and three members to terms expiring January 31, 2027.

(b)  Not later than June 1, 2022, the Texas Department of Licensing and Regulation shall prescribe the forms and procedures and the Lactation Consultant Advisory Board shall propose to the Texas Commission of Licensing and Regulation the rules necessary to implement Chapter 703, Occupations Code, as added by this Act.

(c)  Notwithstanding Chapter 703, Occupations Code, as added by this Act, a person is not required to hold a license under that chapter before September 1, 2022.

(d)  Subchapters F and G, Chapter 51, Occupations Code, do not apply to conduct described by Section 703.151, Occupations Code, as added by this Act, before September 1, 2022.

SECTION 4.  (a)  Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2021.

(b)  Section 703.151, Occupations Code, and Subchapters F and G, Chapter 703, Occupations Code, as added by this Act, take effect September 1, 2022.