

By: Truitt, Solomons, Hamric

H.B. No. 1535

Substitute the following for H.B. No. 1535:

By: Laubenberg

C.S.H.B. No. 1535

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Midwifery Board.

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

SECTION 1. Section 203.002, Occupations Code, is amended by amending Subdivisions (3), (4), and (6) and adding Subdivision (4-a) to read as follows:

(3) "Commissioner" means the commissioner of state health services [~~public health~~].

(4) "Department" means the Department of State Health Services [~~Texas Department of Health~~].

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Midwife" means a person who practices midwifery and has met the licensing [~~documentation~~] requirements established by this chapter and midwifery board rules.

SECTION 2. Section 203.005, Occupations Code, is amended to read as follows:

Sec. 203.005. EFFECT ON LOCAL ORDINANCES. This chapter does not prohibit a municipality from adopting a local ordinance or rule to regulate the practice of midwifery in the municipality if the ordinance or rule is compatible with and at least as strict as this chapter and midwifery board rules.

SECTION 3. Section 203.006, Occupations Code, is amended to

1 read as follows:

2 Sec. 203.006. APPLICATION OF SUNSET ACT. The midwifery
3 board is subject to Chapter 325, Government Code (Texas Sunset
4 Act). Unless continued in existence as provided by that chapter,
5 the midwifery board is abolished and this chapter expires September
6 1, 2017 [~~2005~~].

7 SECTION 4. Section 203.051, Occupations Code, is amended to
8 read as follows:

9 Sec. 203.051. MIDWIFERY BOARD. The commissioner [~~board~~]
10 shall appoint a midwifery board that reports directly to the
11 commissioner [~~board~~].

12 SECTION 5. Section 203.052(a), Occupations Code, is amended
13 to read as follows:

14 (a) The midwifery board consists of nine members appointed
15 as follows:

16 (1) five licensed [~~three~~] midwife members each of whom
17 has at least three years' experience in the practice of midwifery
18 [~~and not more than one of whom is a licensed health care~~
19 ~~professional~~];

20 (2) [~~one certified nurse-midwife member,~~
21 [~~3~~] one physician member who is certified by a
22 national professional organization of physicians that certifies
23 obstetricians and gynecologists;

24 (3) [~~4~~] one physician member who is certified by a
25 national professional organization of physicians that certifies
26 family practitioners or pediatricians; and

27 (4) two [~~5~~ ~~three~~] members who represent the public

1 and who are not practicing or trained in a health care profession,
2 one of whom is a parent with at least one child born with the
3 assistance of a midwife.

4 SECTION 6. Section 203.054, Occupations Code, is amended to
5 read as follows:

6 Sec. 203.054. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
7 In this section, "Texas trade association" means a [~~nonprofit,~~
8 cooperative~~]~~ and voluntarily joined statewide association of
9 business or professional competitors in this state designed to
10 assist its members and its industry or profession in dealing with
11 mutual business or professional problems and in promoting their
12 common interest.

13 (b) A person [~~An officer, employee, or paid consultant of a~~
14 ~~Texas trade association in the field of midwifery]~~ may not be a
15 midwifery board member, [~~or~~] an employee of the midwifery board, or
16 a department employee employed in a "bona fide executive,
17 administrative, or professional capacity," as that phrase is used
18 for purposes of establishing an exemption to the overtime
19 provisions of the federal Fair Labor Standards Act of 1938 (29
20 U.S.C. Section 201 et seq.) if:

21 (1) the person is an officer, employee, or paid
22 consultant of a Texas trade association in the field of health care;
23 or

24 (2) the person's spouse is an officer, manager, or paid
25 consultant of a Texas trade association in the field of health care
26 [~~who is exempt from the state's position classification plan or is~~
27 ~~compensated at or above the amount prescribed by the General~~

1 ~~Appropriations Act for step 1, salary group A17, of the position~~
2 ~~classification salary schedule].~~

3 (c) ~~[A person who is the spouse of an officer, manager, or~~
4 ~~paid consultant of a Texas trade association in the field of~~
5 ~~midwifery may not be a midwifery board member and may not be an~~
6 ~~employee of the midwifery board who is exempt from the state's~~
7 ~~position classification plan or is compensated at or above the~~
8 ~~amount prescribed by the General Appropriations Act for step 1,~~
9 ~~salary group A17, of the position classification salary schedule.~~

10 [~~(d)~~] A person may not be ~~[serve as]~~ a midwifery board
11 member or act as the general counsel to the midwifery board or the
12 department if the person is required to register as a lobbyist under
13 Chapter 305, Government Code, because of the person's activities
14 for compensation on behalf of a profession related to the operation
15 of the midwifery board.

16 SECTION 7. Section 203.056, Occupations Code, is amended to
17 read as follows:

18 Sec. 203.056. OFFICERS. The commissioner shall designate a
19 public member of the midwifery board as the presiding officer of the
20 midwifery board to serve in that capacity at the pleasure of the
21 commissioner. The midwifery board shall elect ~~[one of the public~~
22 ~~members of the midwifery board as presiding officer and]~~ one of the
23 other members of the midwifery board as vice presiding officer.

24 SECTION 8. Sections 203.057(a) and (c), Occupations Code,
25 are amended to read as follows:

26 (a) It is a ground for removal from the midwifery board that
27 a member:

1 (1) does not have at the time of taking office
2 [~~appointment~~] the qualifications required by Section 203.052;

3 (2) does not maintain during service on the midwifery
4 board the qualifications required by Section 203.052;

5 (3) is ineligible for membership under [~~violates a~~
6 ~~prohibition established by~~] Section 203.053 or 203.054;

7 (4) cannot, because of illness or disability,
8 discharge the member's duties for a substantial part of the member's
9 term; or

10 (5) is absent from more than half of the regularly
11 scheduled midwifery board meetings that the member is eligible to
12 attend during a calendar year without an excuse approved [~~unless~~
13 ~~the absence is excused~~] by a majority vote of the midwifery board.

14 (c) If the program coordinator has knowledge that a
15 potential ground for removal exists, the program coordinator shall
16 notify the presiding officer of the midwifery board of the
17 potential ground. The presiding officer shall then notify the
18 commissioner that a potential ground for removal exists. If the
19 potential ground for removal involves the presiding officer, the
20 program coordinator shall notify the next highest ranking member of
21 the midwifery board, who shall then notify the commissioner [~~The~~
22 ~~program coordinator and presiding officer of the midwifery board~~
23 ~~shall then notify the board~~] that a potential ground for removal
24 exists.

25 SECTION 9. Section 203.058, Occupations Code, is amended to
26 read as follows:

27 Sec. 203.058. [~~COMPENSATION,~~] REIMBURSEMENT. A midwifery

1 board member may receive reimbursement for travel expenses as
2 provided by the General Appropriations Act. [~~A member may not~~
3 ~~receive compensation for service on the midwifery board. Each~~
4 ~~member is entitled to receive \$50 for each meeting the member~~
5 ~~attends and the per diem and travel allowance authorized for state~~
6 ~~employees.~~]

7 SECTION 10. Section 203.059(b), Occupations Code, is
8 amended to read as follows:

9 (b) The midwifery board shall meet at other times at the
10 call of the midwifery board or the commissioner [~~board~~].

11 SECTION 11. Subchapter B, Chapter 203, Occupations Code, is
12 amended by adding Section 203.060 to read as follows:

13 Sec. 203.060. TRAINING. (a) A person who is appointed to
14 and qualifies for office as a member of the midwifery board may not
15 vote, deliberate, or be counted as a member in attendance at a
16 meeting of the midwifery board until the person completes a
17 training program that complies with this section.

18 (b) The training program must provide the person with
19 information regarding:

20 (1) this chapter and the programs, functions, rules,
21 and budget of the midwifery board;

22 (2) the results of the most recent formal audit of the
23 midwifery board;

24 (3) the requirements of laws relating to open
25 meetings, public information, administrative procedure, and
26 conflicts of interest; and

27 (4) any applicable ethics policies adopted by the

1 midwifery board or the Texas Ethics Commission.

2 (c) A person appointed to the midwifery board is entitled to
3 reimbursement, as provided by the General Appropriations Act, for
4 the travel expenses incurred in attending the training program
5 regardless of whether the attendance at the program occurs before
6 or after the person qualifies for office.

7 SECTION 12. Section 203.101, Occupations Code, is amended
8 to read as follows:

9 Sec. 203.101. PROGRAM COORDINATOR. The department shall,
10 [~~with the approval of the board and~~] after consultation with the
11 midwifery board, employ a coordinator for the midwifery program and
12 the staff necessary to administer the program.

13 SECTION 13. Section 203.102, Occupations Code, is amended
14 to read as follows:

15 Sec. 203.102. DUTIES OF PROGRAM COORDINATOR. The program
16 coordinator shall supervise the staff in the performance of
17 administrative duties, including:

18 (1) keeping the minutes of midwifery board meetings;
19 and

20 (2) maintaining:

21 (A) records about basic midwifery education
22 courses and continuing midwifery education courses;

23 (B) a roster of midwives licensed [~~documented~~]
24 under Section 203.251; and

25 (C) a record of each person who is licensed
26 [~~receives documentation~~] under this chapter.

27 SECTION 14. The heading to Subchapter D, Chapter 203,

1 Occupations Code, is amended to read as follows:

2 SUBCHAPTER D. POWERS AND DUTIES OF MIDWIFERY BOARD,
3 EXECUTIVE COMMISSIONER [~~BOARD~~], AND DEPARTMENT

4 SECTION 15. Section 203.151, Occupations Code, is amended
5 to read as follows:

6 Sec. 203.151. RULEMAKING AUTHORITY OF MIDWIFERY BOARD. (a)
7 Subject to the approval of the executive commissioner [~~board~~], the
8 midwifery board shall:

9 (1) adopt substantive and procedural rules necessary
10 for the licensing [~~documentation~~] of midwives;

11 (2) adopt rules prescribing the standards for the
12 practice of midwifery in this state, including standards for:

13 (A) the delineation of findings that preclude a
14 woman or newborn from being classified as having a normal
15 pregnancy, labor, delivery, postpartum period, or newborn period;
16 and

17 (B) administration of oxygen by a midwife to a
18 mother or newborn;

19 (3) adopt rules prescribing:

20 (A) the type of courses and number of hours
21 required to meet the basic midwifery education course and
22 continuing midwifery education course requirements; and

23 (B) minimum standards for the approval and
24 revocation of approval of:

25 (i) basic midwifery education courses and
26 continuing midwifery education courses; and

27 (ii) instructors or facilities used in

1 basic midwifery education courses and continuing midwifery
2 education courses;

3 (4) adopt rules prescribing a procedure for reporting
4 and processing complaints relating to the practice of midwifery in
5 this state;

6 (5) adopt and implement substantive and procedural
7 rules as necessary to discipline midwives determined to be in
8 violation of this chapter or otherwise a threat to the public health
9 and safety;

10 (6) adopt rules as necessary to establish eligibility
11 for reciprocity for initial licensing [~~documentation~~] under this
12 chapter; and

13 (7) adopt other rules necessary to implement a duty
14 imposed on the executive commissioner [~~board~~] or the department
15 under this chapter.

16 (b) The rules adopted under Subsection (a)(5) must include
17 rules relating to:

18 (1) warnings provided to midwives for a violation of
19 this chapter or rules adopted under this chapter;

20 (2) agreed orders for additional education by
21 midwives;

22 (3) recommendations or requirements for medical or
23 psychological treatment, including treatment related to substance
24 abuse by a midwife; and

25 (4) restrictions on the practice of a midwife,
26 including practice limitations and the suspension and revocation of
27 a license [~~documentation~~], and placement of a midwife on probation.

1 SECTION 16. Subchapter D, Chapter 203, Occupations Code, is
2 amended by adding Section 203.1515 to read as follows:

3 Sec. 203.1515. RULES ON CONSEQUENCES OF CRIMINAL
4 CONVICTION. (a) Subject to the approval of the executive
5 commissioner, the midwifery board shall adopt rules necessary to
6 comply with Chapter 53.

7 (b) In its proposed rules under this section, the midwifery
8 board shall list the specific offenses for which a conviction would
9 constitute grounds for the midwifery board to take action under
10 Section 53.021.

11 SECTION 17. Section 203.152(a), Occupations Code, is
12 amended to read as follows:

13 (a) Subject to the approval of the executive commissioner
14 [~~board~~], the midwifery board by rule shall establish reasonable and
15 necessary fees that, in the aggregate, produce sufficient revenue
16 to cover the costs of administering this chapter.

17 SECTION 18. Sections 203.153(a)-(c), Occupations Code, are
18 amended to read as follows:

19 (a) Subject to the approval of the department [~~board~~], the
20 midwifery board shall issue basic information manuals for the
21 practice of midwifery. The midwifery board shall approve the basic
22 information manuals and instructor manuals that may be used in
23 basic midwifery education courses.

24 (b) The department shall provide the manuals to each
25 licensed [~~documented~~] midwife and to any other person on request.

26 (c) A basic information manual must include information
27 about:

- 1 (1) the knowledge necessary to practice as a midwife;
- 2 (2) the basic education and continuing education
3 requirements for a midwife;
- 4 (3) the legal requirements and procedures relating to
5 midwifery;
- 6 (4) the standards of practice as a midwife; and
- 7 (5) other information or procedures required by the
8 midwifery board or the department [~~board~~].

9 SECTION 19. Section 203.154(c), Occupations Code, is
10 amended to read as follows:

11 (c) The [~~Subject to the approval of the board, the~~]
12 midwifery board shall prepare and publish reports on the practice
13 of midwifery in this state, including statistical reporting of
14 infant fetal morbidity and mortality.

15 SECTION 20. The heading to Section 203.156, Occupations
16 Code, is amended to read as follows:

17 Sec. 203.156. DUTIES OF MIDWIFERY BOARD AND DEPARTMENT.

18 SECTION 21. Section 203.156(c), Occupations Code, is
19 amended to read as follows:

20 (c) The department shall:

- 21 (1) establish a program for licensure [~~documentation~~]
22 as a midwife as prescribed by midwifery board rules;
- 23 (2) pay the salaries of the program coordinator and
24 any additional staff the department determines to be necessary; and
- 25 (3) provide office space and supplies for the program
26 coordinator and other staff.

27 SECTION 22. Sections 203.157(a) and (b), Occupations Code,

1 are amended to read as follows:

2 (a) The department shall maintain a roster of each person
3 licensed [~~documented~~] as a midwife in this state.

4 (b) The roster shall contain for each person the information
5 required on the licensure [~~documentation~~] form under this chapter
6 and other information the department determines necessary to
7 accurately identify each licensed [~~documented~~] midwife. The
8 information is public information as defined by Chapter 552,
9 Government Code.

10 SECTION 23. Subchapter D, Chapter 203, Occupations Code, is
11 amended by adding Sections 203.158, 203.159, 203.160, and 203.161
12 to read as follows:

13 Sec. 203.158. RULES RESTRICTING ADVERTISING OR COMPETITIVE
14 BIDDING. (a) The midwifery board may not propose rules restricting
15 advertising or competitive bidding by a licensed midwife except to
16 prohibit false, misleading, or deceptive practices.

17 (b) The midwifery board may not include in its proposed
18 rules to prohibit false, misleading, or deceptive practices by a
19 licensed midwife a rule that:

20 (1) restricts the licensed midwife's use of any
21 advertising medium;

22 (2) restricts the licensed midwife's personal
23 appearance or use of the licensed midwife's voice in an
24 advertisement;

25 (3) relates to the size or duration of an
26 advertisement by the licensed midwife; or

27 (4) restricts the licensed midwife's advertisement

1 under a trade name.

2 Sec. 203.159. BOARD COMMITTEES. (a) The midwifery board
3 may appoint committees to assist the midwifery board with its
4 functions under this chapter.

5 (b) Only a member of the midwifery board may serve as a
6 member of a midwifery board committee.

7 Sec. 203.160. USE OF TECHNOLOGY. Subject to the approval
8 of the executive commissioner, the midwifery board shall implement
9 a policy requiring the midwifery board to use appropriate
10 technological solutions to improve the midwifery board's ability to
11 perform its functions. The policy must ensure that the public is
12 able to interact with the midwifery board on the Internet.

13 Sec. 203.161. NEGOTIATED RULEMAKING AND ALTERNATIVE
14 DISPUTE RESOLUTION POLICY. (a) Subject to the approval of the
15 executive commissioner, the midwifery board shall develop and
16 implement a policy to encourage the use of:

17 (1) negotiated rulemaking procedures under Chapter
18 2008, Government Code, for the adoption of midwifery board rules;
19 and

20 (2) appropriate alternative dispute resolution
21 procedures under Chapter 2009, Government Code, to assist in the
22 resolution of internal and external disputes under the midwifery
23 board's jurisdiction.

24 (b) The midwifery board's procedures relating to
25 alternative dispute resolution must conform, to the extent
26 possible, to any model guidelines issued by the State Office of
27 Administrative Hearings for the use of alternative dispute

1 resolution by state agencies.

2 (c) The department shall designate a trained person to:

3 (1) coordinate the implementation of the policy
4 adopted under Subsection (a);

5 (2) serve as a resource for any training needed to
6 implement the procedures for negotiated rulemaking or alternative
7 dispute resolution; and

8 (3) collect data concerning the effectiveness of those
9 procedures, as implemented by the midwifery board.

10 SECTION 24. Section 203.202, Occupations Code, is amended
11 by amending Subsections (c) and (d) and adding Subsection (e) to
12 read as follows:

13 (c) The midwifery board shall maintain a system to promptly
14 and efficiently act on complaints filed with the midwifery board.

15 The midwifery board shall maintain:

16 (1) information about the parties to the complaint and
17 the subject matter of the complaint;

18 (2) a summary of the results of the review or
19 investigation of the complaint; and

20 (3) information about the disposition of the complaint
21 ~~[keep an information file about each complaint filed with the~~
22 ~~midwifery board].~~

23 (d) The midwifery board shall make information available
24 describing its procedures for complaint investigation and
25 resolution ~~[board's information file shall be kept current and~~
26 ~~contain a record for each complaint of:~~

27 ~~[(1) each person contacted in relation to the~~

1 ~~complaint,~~

2 ~~[(2) a summary of findings made at each step of the~~
3 ~~complaint process; and~~

4 ~~[(3) other relevant information].~~

5 (e) The midwifery board shall periodically notify the
6 parties of the status of the complaint until final disposition of
7 the complaint.

8 SECTION 25. Subchapter E, Chapter 203, Occupations Code, is
9 amended by adding Section 203.2021 to read as follows:

10 Sec. 203.2021. COMPLAINT COMMITTEE. The midwifery board
11 shall appoint at least one public member of the midwifery board to
12 any midwifery board committee established to review a complaint
13 filed with the midwifery board or review an enforcement action
14 against a licensed midwife related to a complaint filed with the
15 midwifery board.

16 SECTION 26. The heading to Subchapter F, Chapter 203,
17 Occupations Code, is amended to read as follows:

18 SUBCHAPTER F. LICENSURE [~~DOCUMENTATION~~] REQUIREMENTS

19 SECTION 27. Section 203.251, Occupations Code, is amended
20 to read as follows:

21 Sec. 203.251. LICENSE [~~DOCUMENTATION~~] REQUIRED. (a) A
22 person may not practice midwifery unless the person holds a license
23 [~~documentation letter~~] issued under this chapter.

24 (b) The department shall provide a license [~~documentation~~
25 ~~letter~~] to each person who fulfills the licensing [~~documentation~~]
26 requirements.

27 SECTION 28. Section 203.252, Occupations Code, is amended

1 to read as follows:

2 Sec. 203.252. QUALIFICATIONS FOR INITIAL LICENSE
3 ~~[DOCUMENTATION]~~. (a) A person qualifies to become a licensed
4 midwife under this chapter if the person provides ~~[At the time of~~
5 ~~initial documentation, an applicant for documentation must~~
6 ~~provide]~~ the program coordinator with documentary evidence that the
7 person has:

8 (1) satisfied each requirement for basic midwifery
9 education; and

10 (2) passed the comprehensive midwifery examination
11 and jurisprudence examination required by this chapter.

12 (b) The initial license ~~[documentation]~~ must be issued
13 before the midwife begins to practice midwifery and may be issued at
14 any time during the year.

15 (c) The term of the initial license ~~[documentation]~~ begins
16 on the date the requirements are met and extends through December 31
17 of the year in which the initial license ~~[documentation]~~ is issued.

18 SECTION 29. Section 203.253, Occupations Code, is amended
19 to read as follows:

20 Sec. 203.253. LICENSE ~~[DOCUMENTATION]~~ APPLICATION. A
21 person who practices midwifery must apply to the department to be
22 licensed ~~[documented]~~ as a midwife. The application must:

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

25 (2) include information required by midwifery board
26 rules.

27 SECTION 30. Section 203.254, Occupations Code, is amended

1 to read as follows:

2 Sec. 203.254. BASIC MIDWIFERY EDUCATION. Subject to the
3 approval of the executive commissioner [~~board~~], the midwifery board
4 shall establish requirements for basic midwifery education.

5 SECTION 31. Section 203.255(a), Occupations Code, is
6 amended to read as follows:

7 (a) The midwifery board, with the approval of the executive
8 commissioner [~~board~~], shall:

9 (1) adopt a comprehensive midwifery examination for
10 persons regulated under this chapter that must be passed before the
11 initial license may be issued [~~documentation~~]; and

12 (2) establish eligibility requirements for persons
13 taking a comprehensive midwifery examination.

14 SECTION 32. Subchapter F, Chapter 203, Occupations Code, is
15 amended by adding Sections 203.2555 and 203.2556 to read as
16 follows:

17 Sec. 203.2555. JURISPRUDENCE EXAMINATION. (a) The
18 midwifery board shall develop and administer at least twice each
19 calendar year a jurisprudence examination to determine an
20 applicant's knowledge of this chapter, midwifery board rules, and
21 any other applicable laws of this state affecting the applicant's
22 midwifery practice.

23 (b) Subject to the approval of the executive commissioner,
24 the midwifery board shall adopt rules to implement this section,
25 including rules related to the development and administration of
26 the examination, examination fees, guidelines for reexamination,
27 grading the examination, and providing notice of examination

1 results.

2 Sec. 203.2556. EXAMINATION RESULTS. (a) The midwifery
3 board shall notify each examinee of the examination results not
4 later than the 30th day after the date on which the examination is
5 administered. If an examination is graded or reviewed by a national
6 testing service, the midwifery board shall notify each examinee of
7 the examination results not later than the 14th day after the date
8 the midwifery board receives the results from the testing service.

9 (b) If the notice of the examination results graded or
10 reviewed by a national testing service will be delayed for more than
11 90 days after the examination date, the midwifery board shall
12 notify the examinee of the reason for the delay before the 90th day.

13 (c) The midwifery board may require a testing service to
14 notify an examinee of the examination results.

15 (d) If requested in writing by a person who fails an
16 examination administered under this chapter, the midwifery board
17 shall furnish the person with an analysis of the person's
18 performance on the examination.

19 SECTION 33. The heading to Subchapter G, Chapter 203,
20 Occupations Code, is amended to read as follows:

21 SUBCHAPTER G. LICENSE [~~DOCUMENTATION~~] RENEWAL

22 SECTION 34. Section 203.301, Occupations Code, is amended
23 to read as follows:

24 Sec. 203.301. APPLICATION FOR LICENSE [~~DOCUMENTATION~~]
25 RENEWAL. An applicant for renewal of a license under this chapter
26 [~~documentation~~] must apply biennially [~~annually~~] as provided in
27 Section 203.253.

1 SECTION 35. Section 203.302, Occupations Code, is amended
2 to read as follows:

3 Sec. 203.302. PROCEDURE [~~LATE APPLICATION~~] FOR RENEWAL.

4 (a) A licensed midwife is responsible for renewing a license before
5 the expiration date of the license. A person whose license has
6 expired may not engage in activities that require a license until
7 the license has been renewed. [~~The department may accept an~~
8 ~~application for documentation renewal that is filed not later than~~
9 ~~the expiration date of a grace period established by board rule.~~
10 ~~The grace period may not exceed the 60th day after the expiration~~
11 ~~date of a person's documentation.~~]

12 (b) A person may renew an unexpired license by paying the
13 required renewal fee to the midwifery board before the expiration
14 date of the license [~~The department may charge a late filing fee~~
15 ~~that must be paid in addition to the application fee].~~

16 (c) A person whose license has been expired for 90 days or
17 less may renew the license by paying to the midwifery board a fee
18 that is equal to 1-1/4 times the amount of the renewal fee.

19 (d) If a person's license has been expired for more than 90
20 days but less than one year, the person may renew the license by
21 paying to the midwifery board a fee that is equal to 1-1/2 times the
22 amount of the renewal fee.

23 (e) A person whose license has been expired for one year or
24 more may not renew the license. The person may obtain a new license
25 by submitting to reexamination and complying with the requirements
26 and procedures for obtaining an initial license.

27 (f) Not later than the 30th day before the date a person's

1 license is scheduled to expire, the midwifery board shall send
2 written notice of the impending expiration to the person at the
3 person's last known address according to the records of the
4 midwifery board.

5 SECTION 36. Section 203.303, Occupations Code, is amended
6 to read as follows:

7 Sec. 203.303. STAGGERED RENEWAL DATES. (a) The midwifery
8 board by rule may adopt a system under which licenses
9 ~~[documentations]~~ expire on various dates during the year.

10 (b) For the year in which the license ~~[documentation]~~
11 expiration date is changed, license ~~[documentation]~~ fees payable on
12 the original expiration date shall be prorated on a monthly basis so
13 that each licensed ~~[documented]~~ midwife pays only that portion of
14 the license ~~[documentation]~~ fee that is allocable to the number of
15 months during which the license ~~[documentation]~~ is valid.

16 (c) On renewal of the license ~~[documentation]~~ on the new
17 expiration date, the total license ~~[documentation]~~ renewal fee is
18 payable.

19 SECTION 37. Sections 203.304(a) and (b), Occupations Code,
20 are amended to read as follows:

21 (a) Subject to the approval of the executive commissioner
22 ~~[board]~~, the midwifery board shall establish requirements for
23 continuing midwifery education, including a minimum number of hours
24 of continuing education required to renew a license ~~[documentation]~~
25 under this chapter.

26 (b) On renewal of the license ~~[documentation]~~, a midwife
27 must provide the program coordinator with evidence, acceptable

1 under midwifery board rules, of completion of continuing midwifery
2 education as prescribed by the midwifery board.

3 SECTION 38. Section 203.305, Occupations Code, is amended
4 to read as follows:

5 Sec. 203.305. REQUIRED ATTENDANCE AT SPECIFIC MIDWIFERY
6 EDUCATION COURSES. The midwifery board may assess the continuing
7 education needs of licensed [~~documented~~] midwives and may require
8 licensed [~~documented~~] midwives to attend continuing midwifery
9 education courses specified by the midwifery board.

10 SECTION 39. Subchapter G, Chapter 203, Occupations Code, is
11 amended by adding Section 203.306 to read as follows:

12 Sec. 203.306. GROUNDS FOR REFUSING RENEWAL. The midwifery
13 board may refuse to renew the license of a person who fails to pay an
14 administrative penalty imposed under Subchapter J, unless
15 enforcement of the penalty is stayed or a court has ordered that the
16 administrative penalty is not owed.

17 SECTION 40. Section 203.351(b), Occupations Code, is
18 amended to read as follows:

19 (b) The midwifery board shall prescribe the form of the
20 informed choice and disclosure statement required to be used by a
21 midwife under this chapter. The form must include:

22 (1) statistics of the midwife's experience as a
23 midwife;

24 (2) the date the midwife's license [~~documentation~~]
25 expires;

26 (3) the date the midwife's cardiopulmonary
27 resuscitation certification expires;

1 (4) the midwife's compliance with continuing education
2 requirements;

3 (5) a description of medical backup arrangements; and

4 (6) the legal responsibilities of a midwife, including
5 statements concerning newborn blood screening, ophthalmia
6 neonatorum prevention, and prohibited acts under Sections
7 203.401-203.403.

8 SECTION 41. Section 203.354(b), Occupations Code, is
9 amended to read as follows:

10 (b) A midwife may collect blood specimens for the newborn
11 screening tests if the midwife has been approved by the department
12 to collect the specimen. Subject to the approval of the executive
13 commissioner, the midwifery [~~The~~] board shall adopt rules
14 establishing the standards for approval. The standards must
15 recognize completion of a course of instruction that includes the
16 blood specimen collection procedure or verification by
17 appropriately trained health care providers that the midwife has
18 been instructed in the blood collection procedures.

19 SECTION 42. Section 203.355(e), Occupations Code, is
20 amended to read as follows:

21 (e) If available, appropriately trained personnel from
22 local health departments, public health districts, and local health
23 units shall instruct licensed [~~documented~~] midwives in the approved
24 techniques for collecting blood specimens to be used to perform
25 newborn screening tests.

26 SECTION 43. Section 203.356(b), Occupations Code, is
27 amended to read as follows:

1 (b) A physician who issues an order directing or instructing
2 a midwife is immune from liability arising out of the failure or
3 refusal of the midwife to comply with the order if, before the
4 issuance of the order, the midwife provided the physician with
5 evidence satisfactory to the department [~~board~~] of compliance with
6 this chapter.

7 SECTION 44. Section 203.401, Occupations Code, is amended
8 to read as follows:

9 Sec. 203.401. PROHIBITED PRACTICES. A midwife may not:

10 (1) provide midwifery care in violation of midwifery
11 board rule, except in an emergency that poses an immediate threat to
12 the life of a woman or newborn;

13 (2) administer a prescription drug to a client other
14 than:

15 (A) a drug administered under the supervision of
16 a licensed physician in accordance with state law;

17 (B) prophylaxis approved by the department
18 [~~board~~] to prevent ophthalmia neonatorum; or

19 (C) oxygen administered in accordance with
20 midwifery board rule;

21 (3) use forceps or a surgical instrument for a
22 procedure other than cutting the umbilical cord or providing
23 emergency first aid during delivery;

24 (4) remove placenta by invasive techniques;

25 (5) use a mechanical device or medicine to advance or
26 retard labor or delivery; or

27 (6) make on a birth certificate a false statement or

1 false record in violation of Section 195.003, Health and Safety
2 Code.

3 SECTION 45. Section 203.402, Occupations Code, is amended
4 to read as follows:

5 Sec. 203.402. PROHIBITED REPRESENTATION. A midwife may
6 not:

7 (1) except as provided by Section 203.403, use in
8 connection with the midwife's name a title, abbreviation, or
9 designation tending to imply that the midwife is a "registered" or
10 "certified" midwife as opposed to one who is licensed [~~documented~~]
11 under this chapter;

12 (2) advertise or represent that the midwife is a
13 physician or a graduate of a medical school unless the midwife is
14 licensed to practice medicine by the Texas State Board of Medical
15 Examiners;

16 (3) use advertising or an identification statement
17 that is false, misleading, or deceptive; or

18 (4) except as authorized by rules adopted by the Board
19 of Nurse Examiners, use in combination with the term "midwife" the
20 term "nurse" or another title, initial, or designation that implies
21 that the midwife is licensed as a registered nurse or vocational
22 nurse.

23 SECTION 46. Section 203.404, Occupations Code, is amended
24 to read as follows:

25 Sec. 203.404. GROUNDS FOR DISCIPLINARY ACTION. (a) The
26 midwifery board may discipline a licensed [~~documented~~] midwife,
27 refuse to renew a midwife's license, or [~~and may~~] refuse to issue a

1 license [~~letter of documentation~~] to an applicant if the person
2 [~~who~~]:

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

5 (2) submits false or misleading information to the
6 midwifery board[~~, the board,~~] or the department;

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

9 (4) uses alcohol or drugs intemperately;

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

12 (6) is unable to practice midwifery with reasonable
13 skill and safety because of illness, disability, or psychological
14 impairment;

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

17 (8) submits a birth or death certificate known by the
18 person to be false or fraudulent or engages in another act that
19 violates Title 3, Health and Safety Code, or a rule adopted under
20 that title;

21 (9) violates Chapter 244, Health and Safety Code, or a
22 rule adopted under that chapter; or

23 (10) fails to practice midwifery in a manner
24 consistent with the public health and safety.

25 (b) The midwifery board may discipline a licensed
26 [~~documented~~] midwife and may refuse to issue a license [~~letter of~~
27 ~~documentation~~] to an applicant for a disciplinary action taken by

1 another jurisdiction that affects the person's authority to
2 practice midwifery, including a suspension, a revocation, or
3 another action.

4 SECTION 47. Sections 203.405(a) and (b), Occupations Code,
5 are amended to read as follows:

6 (a) The midwifery board or a three-member committee of
7 midwifery board members designated by the midwifery board shall
8 temporarily suspend the license [~~letter of documentation~~] of a
9 licensed [~~documented~~] midwife if the midwifery board or committee
10 determines from the evidence or information presented to it that
11 continued practice by the licensed [~~documented~~] midwife would
12 constitute a continuing and imminent threat to the public welfare.

13 (b) A license [~~letter of documentation~~] may be suspended
14 under this section without notice or hearing on the complaint if:

15 (1) action is taken to initiate proceedings for a
16 hearing before the State Office of Administrative Hearings
17 simultaneously with the temporary suspension; and

18 (2) a hearing is held as soon as practicable under this
19 chapter and Chapter 2001, Government Code.

20 SECTION 48. Subchapter I, Chapter 203, Occupations Code, is
21 amended by adding Section 203.406 to read as follows:

22 Sec. 203.406. REFUND. (a) Subject to Subsection (b), the
23 midwifery board may order a licensed midwife to pay a refund to a
24 consumer as provided in an agreement resulting from an informal
25 settlement conference instead of or in addition to imposing an
26 administrative penalty under this chapter.

27 (b) The amount of a refund ordered as provided in an

1 agreement resulting from an informal settlement conference may not
2 exceed the amount the consumer paid to the licensed midwife for a
3 service regulated by this chapter. The midwifery board may not
4 require payment of other damages or estimate harm in a refund order.

5 SECTION 49. Section 203.452(a), Occupations Code, is
6 amended to read as follows:

7 (a) The amount of the administrative penalty may not exceed
8 \$5,000 [~~\$1,000~~] for each violation. Each day a violation continues
9 is a separate violation.

10 SECTION 50. Section 203.501(a), Occupations Code, is
11 amended to read as follows:

12 (a) A person is liable for a civil penalty if the person is
13 required to be licensed [~~documented~~] under this chapter and the
14 person knowingly or intentionally practices midwifery:

15 (1) without a license [~~documentation~~] or while the
16 license [~~documentation~~] is suspended or revoked; or

17 (2) in violation of a midwifery board order.

18 SECTION 51. Section 203.504(a), Occupations Code, is
19 amended to read as follows:

20 (a) A person commits an offense if the person is required to
21 be licensed [~~documented~~] under this chapter and the person
22 knowingly practices midwifery without a license [~~documentation~~].

23 SECTION 52. Subchapter K, Chapter 203, Occupations Code, is
24 amended by adding Section 203.505 to read as follows:

25 Sec. 203.505. CEASE AND DESIST ORDER. (a) If it appears to
26 the midwifery board that a person who is not licensed under this
27 chapter is violating this chapter, a rule adopted under this

1 chapter, or another state statute or rule relating to the practice
2 of midwifery, the midwifery board after notice and opportunity for
3 a hearing may issue a cease and desist order prohibiting the person
4 from engaging in the activity.

5 (b) A violation of an order under this section constitutes
6 grounds for imposing an administrative penalty under Subchapter J.

7 SECTION 53. Section 157.004(c), Occupations Code, is
8 amended to read as follows:

9 (c) A physician who issues a standing delegation order to a
10 midwife under Chapter 203 is not liable in connection with an act
11 performed under that standing delegation order if the midwife
12 provides proof of licensure [~~documentation~~] under that chapter
13 before the order is issued.

14 SECTION 54. Section 483.001(13), Health and Safety Code, is
15 amended to read as follows:

16 (13) "Prescription" means an order from a
17 practitioner, or an agent of the practitioner designated in writing
18 as authorized to communicate prescriptions, or an order made in
19 accordance with Subchapter B, Chapter 157, Occupations Code, or
20 Section 203.353, Occupations Code, to a pharmacist for a dangerous
21 drug to be dispensed that states:

- 22 (A) the date of the order's issue;
- 23 (B) the name and address of the patient;
- 24 (C) if the drug is prescribed for an animal, the
25 species of the animal;
- 26 (D) the name and quantity of the drug prescribed;
- 27 (E) the directions for the use of the drug;

1 (F) the intended use of the drug unless the
2 practitioner determines the furnishing of this information is not
3 in the best interest of the patient;

4 (G) the name, address, and telephone number of
5 the practitioner at the practitioner's usual place of business,
6 legibly printed or stamped; and

7 (H) the name, address, and telephone number of
8 the licensed [~~documented~~] midwife, registered nurse, or physician
9 assistant, legibly printed or stamped, if signed by a licensed
10 [~~documented~~] midwife, registered nurse, or physician assistant.

11 SECTION 55. Section 483.041(c), Health and Safety Code, is
12 amended to read as follows:

13 (c) Subsection (a) does not apply to the possession of a
14 dangerous drug in the usual course of business or practice or in the
15 performance of official duties by the following persons or an agent
16 or employee of the person:

17 (1) a pharmacy licensed by the board;

18 (2) a practitioner;

19 (3) a person who obtains a dangerous drug for lawful
20 research, teaching, or testing, but not for resale;

21 (4) a hospital that obtains a dangerous drug for
22 lawful administration by a practitioner;

23 (5) an officer or employee of the federal, state, or
24 local government;

25 (6) a manufacturer or wholesaler licensed by the
26 Department of State Health Services [~~commissioner of health~~] under
27 Chapter 431 (Texas Food, Drug, and Cosmetic Act);

1 (7) a carrier or warehouseman;

2 (8) a home and community support services agency
3 licensed under and acting in accordance with Chapter 142;

4 (9) a licensed [~~documented~~] midwife who obtains oxygen
5 for administration to a mother or newborn or who obtains a dangerous
6 drug for the administration of prophylaxis to a newborn for the
7 prevention of ophthalmia neonatorum in accordance with Section
8 203.353, Occupations Code; or

9 (10) a salvage broker or salvage operator licensed
10 under Chapter 432.

11 SECTION 56. The following sections are repealed:

12 (1) Section 203.002(1), Occupations Code; and

13 (2) Section 203.156(a), Occupations Code.

14 SECTION 57. (a) Not later than January 1, 2006, the Texas
15 Midwifery Board shall:

16 (1) adopt the policies required by Sections 203.160
17 and 203.161, Occupations Code, as added by this Act; and

18 (2) adopt the rules required by Chapter 203,
19 Occupations Code, as amended by this Act.

20 (b) Not later than March 1, 2006, the Texas Midwifery Board
21 shall develop the jurisprudence examination required by Section
22 203.2555, Occupations Code, as added by this Act.

23 SECTION 58. (a) The changes in law made by Section 203.052,
24 Occupations Code, as amended by this Act, regarding the composition
25 of the Texas Midwifery Board do not affect the entitlement of a
26 member serving on the board immediately before September 1, 2005,
27 to continue to serve and function as a member of the board for the

1 remainder of the member's term. Members appointed to fill
2 vacancies on the board occurring on or after the effective date of
3 this Act must be appointed in accordance with Section 203.052(a),
4 Occupations Code, as amended by this Act.

5 (b) The changes in law made by Sections 203.052, 203.054,
6 and 203.057, Occupations Code, as amended by this Act, and Section
7 203.060, Occupations Code, as added by this Act, regarding the
8 prohibitions on or qualifications of members of the Texas Midwifery
9 Board do not affect the entitlement of a member serving on the board
10 immediately before September 1, 2005, to continue to serve and
11 function as a member of the board for the remainder of the member's
12 term. The changes in law made by those sections apply only to a
13 member appointed on or after September 1, 2005.

14 (c) The changes in law made by this Act related to the filing
15 or investigation of a complaint under Chapter 203, Occupations
16 Code, as amended by this Act, apply only to a complaint filed with
17 the Texas Midwifery Board on or after the effective date of this
18 Act. A complaint filed before the effective date of this Act is
19 governed by the law as it existed immediately before that date, and
20 the former law is continued in effect for that purpose.

21 (d) The changes in law made by this Act governing the
22 eligibility of a person for a license under Chapter 203,
23 Occupations Code, apply only to an application for a license filed
24 with the Texas Midwifery Board under Chapter 203, Occupations Code,
25 as amended by this Act, on or after the effective date of this Act.
26 An application for documentation as a midwife filed before the
27 effective date of this Act is governed by the law in effect at the

1 time the application was filed, and the former law is continued in
2 effect for that purpose.

3 (e) The change in law made by this Act with respect to
4 conduct that is grounds for imposition of a disciplinary sanction,
5 including a refund or cease and desist order, applies only to
6 conduct that occurs on or after the effective date of this Act.
7 Conduct that occurs before the effective date of this Act is
8 governed by the law in effect on the date the conduct occurred, and
9 the former law is continued in effect for that purpose.

10 (f) The changes in law made by Section 203.252(a),
11 Occupations Code, as amended by this Act, and Section 203.2555,
12 Occupations Code, as added by this Act, regarding the jurisprudence
13 examination, apply only to an application for a license filed with
14 the Texas Midwifery Board under Chapter 203, Occupations Code, as
15 amended by this Act, on or after September 1, 2006.

16 SECTION 59. Notwithstanding Section 203.302, Occupations
17 Code, as amended by this Act, the fees for an applicant renewing an
18 expired license or documentation letter under Chapter 203,
19 Occupations Code, before September 1, 2007, is governed by the law
20 in effect immediately before the effective date of this Act, and the
21 former law is continued in effect for that purpose. An applicant
22 who renews an expired license or documentation letter under Chapter
23 203, Occupations Code, on or after September 1, 2007, is subject to
24 the fees provided by Section 203.302, Occupations Code, as amended
25 by this Act.

26 SECTION 60. This Act takes effect September 1, 2005.