

1-1 By: Truitt, et al. (Senate Sponsor - Shapleigh) H.B. No. 1535
1-2 (In the Senate - Received from the House May 11, 2005;
1-3 May 13, 2005, read first time and referred to Committee on
1-4 Government Organization; May 17, 2005, reported favorably by the
1-5 following vote: Yeas 7, Nays 0; May 17, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the continuation and functions of the Texas Midwifery
1-9 Board.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 203.002, Occupations Code, is amended by
1-12 amending Subdivisions (3), (4), and (6) and adding Subdivision
1-13 (4-a) to read as follows:

1-14 (3) "Commissioner" means the commissioner of state
1-15 health services [~~public health~~].

1-16 (4) "Department" means the Department of State Health
1-17 Services [~~Texas Department of Health~~].

1-18 (4-a) "Executive commissioner" means the executive
1-19 commissioner of the Health and Human Services Commission.

1-20 (6) "Midwife" means a person who practices midwifery
1-21 and has met the licensing [~~documentation~~] requirements established
1-22 by this chapter and midwifery board rules.

1-23 SECTION 2. Section 203.005, Occupations Code, is amended to
1-24 read as follows:

1-25 Sec. 203.005. EFFECT ON LOCAL ORDINANCES. This chapter
1-26 does not prohibit a municipality from adopting a local ordinance or
1-27 rule to regulate the practice of midwifery in the municipality if
1-28 the ordinance or rule is compatible with and at least as strict as
1-29 this chapter and midwifery board rules.

1-30 SECTION 3. Section 203.006, Occupations Code, is amended to
1-31 read as follows:

1-32 Sec. 203.006. APPLICATION OF SUNSET ACT. The midwifery
1-33 board is subject to Chapter 325, Government Code (Texas Sunset
1-34 Act). Unless continued in existence as provided by that chapter,
1-35 the midwifery board is abolished and this chapter expires September
1-36 1, 2017 [~~2005~~].

1-37 SECTION 4. Section 203.051, Occupations Code, is amended to
1-38 read as follows:

1-39 Sec. 203.051. MIDWIFERY BOARD. The commissioner [~~board~~]
1-40 shall appoint a midwifery board that reports directly to the
1-41 commissioner [~~board~~].

1-42 SECTION 5. Section 203.052(a), Occupations Code, is amended
1-43 to read as follows:

1-44 (a) The midwifery board consists of nine members appointed
1-45 as follows:

1-46 (1) five licensed [~~three~~] midwife members each of whom
1-47 has at least three years' experience in the practice of midwifery
1-48 [~~and not more than one of whom is a licensed health care~~
1-49 ~~professional~~];

1-50 (2) [~~one certified nurse-midwife member,~~
1-51 [~~3~~] one physician member who is certified by a
1-52 national professional organization of physicians that certifies
1-53 obstetricians and gynecologists;

1-54 (3) [~~4~~] one physician member who is certified by a
1-55 national professional organization of physicians that certifies
1-56 family practitioners or pediatricians; and

1-57 (4) two [~~5~~ ~~three~~] members who represent the public
1-58 and who are not practicing or trained in a health care profession,
1-59 one of whom is a parent with at least one child born with the
1-60 assistance of a midwife.

1-61 SECTION 6. Section 203.054, Occupations Code, is amended to
1-62 read as follows:

1-63 Sec. 203.054. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a)
1-64 In this section, "Texas trade association" means a [~~nonprofit~~]

2-1 cooperative~~[r]~~ and voluntarily joined statewide association of
 2-2 business or professional competitors in this state designed to
 2-3 assist its members and its industry or profession in dealing with
 2-4 mutual business or professional problems and in promoting their
 2-5 common interest.

2-6 (b) A person [An officer, employee, or paid consultant of a
 2-7 Texas trade association in the field of midwifery] may not be a
 2-8 midwifery board member, ~~[or]~~ an employee of the midwifery board, or
 2-9 a department employee employed in a "bona fide executive,
 2-10 administrative, or professional capacity," as that phrase is used
 2-11 for purposes of establishing an exemption to the overtime
 2-12 provisions of the federal Fair Labor Standards Act of 1938 (29
 2-13 U.S.C. Section 201 et seq.) if:

2-14 (1) the person is an officer, employee, or paid
 2-15 consultant of a Texas trade association in the field of health care;
 2-16 or

2-17 (2) the person's spouse is an officer, manager, or paid
 2-18 consultant of a Texas trade association in the field of health care
 2-19 [who is exempt from the state's position classification plan or is
 2-20 compensated at or above the amount prescribed by the General
 2-21 Appropriations Act for step 1, salary group A17, of the position
 2-22 classification salary schedule].

2-23 (c) ~~[A person who is the spouse of an officer, manager, or~~
 2-24 ~~paid consultant of a Texas trade association in the field of~~
 2-25 ~~midwifery may not be a midwifery board member and may not be an~~
 2-26 ~~employee of the midwifery board who is exempt from the state's~~
 2-27 ~~position classification plan or is compensated at or above the~~
 2-28 ~~amount prescribed by the General Appropriations Act for step 1,~~
 2-29 ~~salary group A17, of the position classification salary schedule.~~

2-30 ~~[(d)]~~ A person may not be ~~[serve as]~~ a midwifery board
 2-31 member or act as the general counsel to the midwifery board or the
 2-32 department if the person is required to register as a lobbyist under
 2-33 Chapter 305, Government Code, because of the person's activities
 2-34 for compensation on behalf of a profession related to the operation
 2-35 of the midwifery board.

2-36 SECTION 7. Section 203.056, Occupations Code, is amended to
 2-37 read as follows:

2-38 Sec. 203.056. OFFICERS. The commissioner shall designate a
 2-39 public member of the midwifery board as the presiding officer of the
 2-40 midwifery board to serve in that capacity at the pleasure of the
 2-41 commissioner. The midwifery board shall elect [one of the public
 2-42 members of the midwifery board as presiding officer and] one of the
 2-43 other members of the midwifery board as vice presiding officer.

2-44 SECTION 8. Sections 203.057(a) and (c), Occupations Code,
 2-45 are amended to read as follows:

2-46 (a) It is a ground for removal from the midwifery board that
 2-47 a member:

2-48 (1) does not have at the time of taking office
 2-49 ~~[appointment]~~ the qualifications required by Section 203.052;

2-50 (2) does not maintain during service on the midwifery
 2-51 board the qualifications required by Section 203.052;

2-52 (3) is ineligible for membership under [violates a
 2-53 prohibition established by] Section 203.053 or 203.054;

2-54 (4) cannot, because of illness or disability,
 2-55 discharge the member's duties for a substantial part of the member's
 2-56 term; or

2-57 (5) is absent from more than half of the regularly
 2-58 scheduled midwifery board meetings that the member is eligible to
 2-59 attend during a calendar year without an excuse approved [unless
 2-60 the absence is excused] by a majority vote of the midwifery board.

2-61 (c) If the program coordinator has knowledge that a
 2-62 potential ground for removal exists, the program coordinator shall
 2-63 notify the presiding officer of the midwifery board of the
 2-64 potential ground. The presiding officer shall then notify the
 2-65 commissioner that a potential ground for removal exists. If the
 2-66 potential ground for removal involves the presiding officer, the
 2-67 program coordinator shall notify the next highest ranking member of
 2-68 the midwifery board, who shall then notify the commissioner [The
 2-69 program coordinator and presiding officer of the midwifery board

3-1 ~~shall then notify the board]~~ that a potential ground for removal
 3-2 exists.

3-3 SECTION 9. Section 203.058, Occupations Code, is amended to
 3-4 read as follows:

3-5 Sec. 203.058. ~~[COMPENSATION;]~~ REIMBURSEMENT. A midwifery
 3-6 board member may receive reimbursement for travel expenses as
 3-7 provided by the General Appropriations Act. [A member may not
 3-8 receive compensation for service on the midwifery board. Each
 3-9 member is entitled to receive \$50 for each meeting the member
 3-10 attends and the per diem and travel allowance authorized for state
 3-11 employees.]

3-12 SECTION 10. Section 203.059(b), Occupations Code, is
 3-13 amended to read as follows:

3-14 (b) The midwifery board shall meet at other times at the
 3-15 call of the midwifery board or the commissioner ~~[board]~~.

3-16 SECTION 11. Subchapter B, Chapter 203, Occupations Code, is
 3-17 amended by adding Section 203.060 to read as follows:

3-18 Sec. 203.060. TRAINING. (a) A person who is appointed to
 3-19 and qualifies for office as a member of the midwifery board may not
 3-20 vote, deliberate, or be counted as a member in attendance at a
 3-21 meeting of the midwifery board until the person completes a
 3-22 training program that complies with this section.

3-23 (b) The training program must provide the person with
 3-24 information regarding:

3-25 (1) this chapter and the programs, functions, rules,
 3-26 and budget of the midwifery board;

3-27 (2) the results of the most recent formal audit of the
 3-28 midwifery board;

3-29 (3) the requirements of laws relating to open
 3-30 meetings, public information, administrative procedure, and
 3-31 conflicts of interest; and

3-32 (4) any applicable ethics policies adopted by the
 3-33 midwifery board or the Texas Ethics Commission.

3-34 (c) A person appointed to the midwifery board is entitled to
 3-35 reimbursement, as provided by the General Appropriations Act, for
 3-36 the travel expenses incurred in attending the training program
 3-37 regardless of whether the attendance at the program occurs before
 3-38 or after the person qualifies for office.

3-39 SECTION 12. Section 203.101, Occupations Code, is amended
 3-40 to read as follows:

3-41 Sec. 203.101. PROGRAM COORDINATOR. The department shall,
 3-42 ~~[with the approval of the board and]~~ after consultation with the
 3-43 midwifery board, employ a coordinator for the midwifery program and
 3-44 the staff necessary to administer the program.

3-45 SECTION 13. Section 203.102, Occupations Code, is amended
 3-46 to read as follows:

3-47 Sec. 203.102. DUTIES OF PROGRAM COORDINATOR. The program
 3-48 coordinator shall supervise the staff in the performance of
 3-49 administrative duties, including:

3-50 (1) keeping the minutes of midwifery board meetings;
 3-51 and

3-52 (2) maintaining:
 3-53 (A) records about basic midwifery education
 3-54 courses and continuing midwifery education courses;

3-55 (B) a roster of midwives licensed ~~[documented]~~
 3-56 under Section 203.251; and

3-57 (C) a record of each person who is licensed
 3-58 [receives documentation] under this chapter.

3-59 SECTION 14. The heading to Subchapter D, Chapter 203,
 3-60 Occupations Code, is amended to read as follows:

3-61 SUBCHAPTER D. POWERS AND DUTIES OF MIDWIFERY BOARD,
 3-62 EXECUTIVE COMMISSIONER ~~[BOARD]~~, AND DEPARTMENT

3-63 SECTION 15. Section 203.151, Occupations Code, is amended
 3-64 to read as follows:

3-65 Sec. 203.151. RULEMAKING AUTHORITY OF MIDWIFERY BOARD. (a)
 3-66 Subject to the approval of the executive commissioner ~~[board]~~, the
 3-67 midwifery board shall:

3-68 (1) adopt substantive and procedural rules necessary
 3-69 for the licensing ~~[documentation]~~ of midwives;

4-1 (2) adopt rules prescribing the standards for the
 4-2 practice of midwifery in this state, including standards for:

4-3 (A) the delineation of findings that preclude a
 4-4 woman or newborn from being classified as having a normal
 4-5 pregnancy, labor, delivery, postpartum period, or newborn period;
 4-6 and

4-7 (B) administration of oxygen by a midwife to a
 4-8 mother or newborn;

4-9 (3) adopt rules prescribing:

4-10 (A) the type of courses and number of hours
 4-11 required to meet the basic midwifery education course and
 4-12 continuing midwifery education course requirements; and

4-13 (B) minimum standards for the approval and
 4-14 revocation of approval of:

4-15 (i) basic midwifery education courses and
 4-16 continuing midwifery education courses; and

4-17 (ii) instructors or facilities used in
 4-18 basic midwifery education courses and continuing midwifery
 4-19 education courses;

4-20 (4) adopt rules prescribing a procedure for reporting
 4-21 and processing complaints relating to the practice of midwifery in
 4-22 this state;

4-23 (5) adopt and implement substantive and procedural
 4-24 rules as necessary to discipline midwives determined to be in
 4-25 violation of this chapter or otherwise a threat to the public health
 4-26 and safety;

4-27 (6) adopt rules as necessary to establish eligibility
 4-28 for reciprocity for initial licensing [~~documentation~~] under this
 4-29 chapter; and

4-30 (7) adopt other rules necessary to implement a duty
 4-31 imposed on the executive commissioner [~~board~~] or the department
 4-32 under this chapter.

4-33 (b) The rules adopted under Subsection (a)(5) must include
 4-34 rules relating to:

4-35 (1) warnings provided to midwives for a violation of
 4-36 this chapter or rules adopted under this chapter;

4-37 (2) agreed orders for additional education by
 4-38 midwives;

4-39 (3) recommendations or requirements for medical or
 4-40 psychological treatment, including treatment related to substance
 4-41 abuse by a midwife; and

4-42 (4) restrictions on the practice of a midwife,
 4-43 including practice limitations and the suspension and revocation of
 4-44 a license [~~documentation~~], and placement of a midwife on probation.

4-45 SECTION 16. Subchapter D, Chapter 203, Occupations Code, is
 4-46 amended by adding Section 203.1515 to read as follows:

4-47 Sec. 203.1515. RULES ON CONSEQUENCES OF CRIMINAL
 4-48 CONVICTION. (a) Subject to the approval of the executive
 4-49 commissioner, the midwifery board shall adopt rules necessary to
 4-50 comply with Chapter 53.

4-51 (b) In its proposed rules under this section, the midwifery
 4-52 board shall list the specific offenses for which a conviction would
 4-53 constitute grounds for the midwifery board to take action under
 4-54 Section 53.021.

4-55 SECTION 17. Section 203.152(a), Occupations Code, is
 4-56 amended to read as follows:

4-57 (a) Subject to the approval of the executive commissioner
 4-58 [~~board~~], the midwifery board by rule shall establish reasonable and
 4-59 necessary fees that, in the aggregate, produce sufficient revenue
 4-60 to cover the costs of administering this chapter.

4-61 SECTION 18. Sections 203.153(a)-(c), Occupations Code, are
 4-62 amended to read as follows:

4-63 (a) Subject to the approval of the department [~~board~~], the
 4-64 midwifery board shall issue basic information manuals for the
 4-65 practice of midwifery. The midwifery board shall approve the basic
 4-66 information manuals and instructor manuals that may be used in
 4-67 basic midwifery education courses.

4-68 (b) The department shall provide the manuals to each
 4-69 licensed [~~documented~~] midwife and to any other person on request.

5-1 (c) A basic information manual must include information
 5-2 about:
 5-3 (1) the knowledge necessary to practice as a midwife;
 5-4 (2) the basic education and continuing education
 5-5 requirements for a midwife;
 5-6 (3) the legal requirements and procedures relating to
 5-7 midwifery;
 5-8 (4) the standards of practice as a midwife; and
 5-9 (5) other information or procedures required by the
 5-10 midwifery board or the department [board].

5-11 SECTION 19. Section 203.154(c), Occupations Code, is
 5-12 amended to read as follows:

5-13 (c) The [Subject to the approval of the board, the]
 5-14 midwifery board shall prepare and publish reports on the practice
 5-15 of midwifery in this state, including statistical reporting of
 5-16 infant fetal morbidity and mortality.

5-17 SECTION 20. The heading to Section 203.156, Occupations
 5-18 Code, is amended to read as follows:

5-19 Sec. 203.156. DUTIES OF MIDWIFERY BOARD AND DEPARTMENT.

5-20 SECTION 21. Section 203.156(c), Occupations Code, is
 5-21 amended to read as follows:

5-22 (c) The department shall:

- 5-23 (1) establish a program for licensure [documentation]
 5-24 as a midwife as prescribed by midwifery board rules;
- 5-25 (2) pay the salaries of the program coordinator and
 5-26 any additional staff the department determines to be necessary; and
- 5-27 (3) provide office space and supplies for the program
 5-28 coordinator and other staff.

5-29 SECTION 22. Sections 203.157(a) and (b), Occupations Code,
 5-30 are amended to read as follows:

5-31 (a) The department shall maintain a roster of each person
 5-32 licensed [documented] as a midwife in this state.

5-33 (b) The roster shall contain for each person the information
 5-34 required on the licensure [documentation] form under this chapter
 5-35 and other information the department determines necessary to
 5-36 accurately identify each licensed [documented] midwife. The
 5-37 information is public information as defined by Chapter 552,
 5-38 Government Code.

5-39 SECTION 23. Subchapter D, Chapter 203, Occupations Code, is
 5-40 amended by adding Sections 203.158, 203.159, 203.160, and 203.161
 5-41 to read as follows:

5-42 Sec. 203.158. RULES RESTRICTING ADVERTISING OR COMPETITIVE
 5-43 BIDDING. (a) The midwifery board may not propose rules restricting
 5-44 advertising or competitive bidding by a licensed midwife except to
 5-45 prohibit false, misleading, or deceptive practices.

5-46 (b) The midwifery board may not include in its proposed
 5-47 rules to prohibit false, misleading, or deceptive practices by a
 5-48 licensed midwife a rule that:

- 5-49 (1) restricts the licensed midwife's use of any
 5-50 advertising medium;
- 5-51 (2) restricts the licensed midwife's personal
 5-52 appearance or use of the licensed midwife's voice in an
 5-53 advertisement;
- 5-54 (3) relates to the size or duration of an
 5-55 advertisement by the licensed midwife; or
- 5-56 (4) restricts the licensed midwife's advertisement
 5-57 under a trade name.

5-58 Sec. 203.159. BOARD COMMITTEES. (a) The midwifery board
 5-59 may appoint committees to assist the midwifery board with its
 5-60 functions under this chapter.

5-61 (b) Only a member of the midwifery board may serve as a
 5-62 member of a midwifery board committee.

5-63 Sec. 203.160. USE OF TECHNOLOGY. Subject to the approval
 5-64 of the executive commissioner, the midwifery board shall implement
 5-65 a policy requiring the midwifery board to use appropriate
 5-66 technological solutions to improve the midwifery board's ability to
 5-67 perform its functions. The policy must ensure that the public is
 5-68 able to interact with the midwifery board on the Internet.

5-69 Sec. 203.161. NEGOTIATED RULEMAKING AND ALTERNATIVE

6-1 DISPUTE RESOLUTION POLICY. (a) Subject to the approval of the
6-2 executive commissioner, the midwifery board shall develop and
6-3 implement a policy to encourage the use of:

6-4 (1) negotiated rulemaking procedures under Chapter
6-5 2008, Government Code, for the adoption of midwifery board rules;
6-6 and

6-7 (2) appropriate alternative dispute resolution
6-8 procedures under Chapter 2009, Government Code, to assist in the
6-9 resolution of internal and external disputes under the midwifery
6-10 board's jurisdiction.

6-11 (b) The midwifery board's procedures relating to
6-12 alternative dispute resolution must conform, to the extent
6-13 possible, to any model guidelines issued by the State Office of
6-14 Administrative Hearings for the use of alternative dispute
6-15 resolution by state agencies.

6-16 (c) The department shall designate a trained person to:

6-17 (1) coordinate the implementation of the policy
6-18 adopted under Subsection (a);

6-19 (2) serve as a resource for any training needed to
6-20 implement the procedures for negotiated rulemaking or alternative
6-21 dispute resolution; and

6-22 (3) collect data concerning the effectiveness of those
6-23 procedures, as implemented by the midwifery board.

6-24 SECTION 24. Section 203.202, Occupations Code, is amended
6-25 by amending Subsections (c) and (d) and adding Subsection (e) to
6-26 read as follows:

6-27 (c) The midwifery board shall maintain a system to promptly
6-28 and efficiently act on complaints filed with the midwifery board.
6-29 The midwifery board shall maintain:

6-30 (1) information about the parties to the complaint and
6-31 the subject matter of the complaint;

6-32 (2) a summary of the results of the review or
6-33 investigation of the complaint; and

6-34 (3) information about the disposition of the complaint
6-35 [~~keep an information file about each complaint filed with the~~
6-36 ~~midwifery board~~].

6-37 (d) The midwifery board shall make information available
6-38 describing its procedures for complaint investigation and
6-39 resolution [~~board's information file shall be kept current and~~
6-40 ~~contain a record for each complaint of:~~

6-41 [~~(1) each person contacted in relation to the~~
6-42 ~~complaint;~~

6-43 [~~(2) a summary of findings made at each step of the~~
6-44 ~~complaint process; and~~

6-45 [~~(3) other relevant information~~].

6-46 (e) The midwifery board shall periodically notify the
6-47 parties of the status of the complaint until final disposition of
6-48 the complaint.

6-49 SECTION 25. Subchapter E, Chapter 203, Occupations Code, is
6-50 amended by adding Section 203.2021 to read as follows:

6-51 Sec. 203.2021. COMPLAINT COMMITTEE. The midwifery board
6-52 shall appoint at least one public member of the midwifery board to
6-53 any midwifery board committee established to review a complaint
6-54 filed with the midwifery board or review an enforcement action
6-55 against a licensed midwife related to a complaint filed with the
6-56 midwifery board.

6-57 SECTION 26. The heading to Subchapter F, Chapter 203,
6-58 Occupations Code, is amended to read as follows:

6-59 SUBCHAPTER F. LICENSURE [DOCUMENTATION] REQUIREMENTS

6-60 SECTION 27. Section 203.251, Occupations Code, is amended
6-61 to read as follows:

6-62 Sec. 203.251. LICENSE [DOCUMENTATION] REQUIRED. (a) A
6-63 person may not practice midwifery unless the person holds a license
6-64 [~~documentation letter~~] issued under this chapter.

6-65 (b) The department shall provide a license [~~documentation~~
6-66 ~~letter~~] to each person who fulfills the licensing [~~documentation~~]
6-67 requirements.

6-68 SECTION 28. Section 203.252, Occupations Code, is amended
6-69 to read as follows:

7-1 Sec. 203.252. QUALIFICATIONS FOR INITIAL LICENSE
 7-2 [DOCUMENTATION]. (a) A person qualifies to become a licensed
 7-3 midwife under this chapter if the person provides [At the time of
 7-4 initial documentation, an applicant for documentation must
 7-5 provide] the program coordinator with documentary evidence that the
 7-6 person has:

7-7 (1) satisfied each requirement for basic midwifery
 7-8 education; and

7-9 (2) passed the comprehensive midwifery examination
 7-10 and jurisprudence examination required by this chapter.

7-11 (b) The initial license [documentation] must be issued
 7-12 before the midwife begins to practice midwifery and may be issued at
 7-13 any time during the year.

7-14 (c) The term of the initial license [documentation] begins
 7-15 on the date the requirements are met and extends through December 31
 7-16 of the year in which the initial license [documentation] is issued.

7-17 SECTION 29. Section 203.253, Occupations Code, is amended
 7-18 to read as follows:

7-19 Sec. 203.253. LICENSE [DOCUMENTATION] APPLICATION. A
 7-20 person who practices midwifery must apply to the department to be
 7-21 licensed [documented] as a midwife. The application must:

7-22 (1) be accompanied by a nonrefundable application fee;
 7-23 and

7-24 (2) include information required by midwifery board
 7-25 rules.

7-26 SECTION 30. Section 203.254, Occupations Code, is amended
 7-27 to read as follows:

7-28 Sec. 203.254. BASIC MIDWIFERY EDUCATION. Subject to the
 7-29 approval of the executive commissioner [board], the midwifery board
 7-30 shall establish requirements for basic midwifery education.

7-31 SECTION 31. Section 203.255(a), Occupations Code, is
 7-32 amended to read as follows:

7-33 (a) The midwifery board, with the approval of the executive
 7-34 commissioner [board], shall:

7-35 (1) adopt a comprehensive midwifery examination for
 7-36 persons regulated under this chapter that must be passed before the
 7-37 initial license may be issued [documentation]; and

7-38 (2) establish eligibility requirements for persons
 7-39 taking a comprehensive midwifery examination.

7-40 SECTION 32. Subchapter F, Chapter 203, Occupations Code, is
 7-41 amended by adding Sections 203.2555 and 203.2556 to read as
 7-42 follows:

7-43 Sec. 203.2555. JURISPRUDENCE EXAMINATION. (a) The
 7-44 midwifery board shall develop and administer at least twice each
 7-45 calendar year a jurisprudence examination to determine an
 7-46 applicant's knowledge of this chapter, midwifery board rules, and
 7-47 any other applicable laws of this state affecting the applicant's
 7-48 midwifery practice.

7-49 (b) Subject to the approval of the executive commissioner,
 7-50 the midwifery board shall adopt rules to implement this section,
 7-51 including rules related to the development and administration of
 7-52 the examination, examination fees, guidelines for reexamination,
 7-53 grading the examination, and providing notice of examination
 7-54 results.

7-55 Sec. 203.2556. EXAMINATION RESULTS. (a) The midwifery
 7-56 board shall notify each examinee of the examination results not
 7-57 later than the 30th day after the date on which the examination is
 7-58 administered. If an examination is graded or reviewed by a national
 7-59 testing service, the midwifery board shall notify each examinee of
 7-60 the examination results not later than the 14th day after the date
 7-61 the midwifery board receives the results from the testing service.

7-62 (b) If the notice of the examination results graded or
 7-63 reviewed by a national testing service will be delayed for more than
 7-64 90 days after the examination date, the midwifery board shall
 7-65 notify the examinee of the reason for the delay before the 90th day.

7-66 (c) The midwifery board may require a testing service to
 7-67 notify an examinee of the examination results.

7-68 (d) If requested in writing by a person who fails an
 7-69 examination administered under this chapter, the midwifery board

8-1 shall furnish the person with an analysis of the person's
8-2 performance on the examination.

8-3 SECTION 33. The heading to Subchapter G, Chapter 203,
8-4 Occupations Code, is amended to read as follows:

8-5 SUBCHAPTER G. LICENSE [~~DOCUMENTATION~~] RENEWAL

8-6 SECTION 34. Section 203.301, Occupations Code, is amended
8-7 to read as follows:

8-8 Sec. 203.301. APPLICATION FOR LICENSE [~~DOCUMENTATION~~]
8-9 RENEWAL. An applicant for renewal of a license under this chapter
8-10 [~~documentation~~] must apply biennially [~~annually~~] as provided in
8-11 Section 203.253.

8-12 SECTION 35. Section 203.302, Occupations Code, is amended
8-13 to read as follows:

8-14 Sec. 203.302. PROCEDURE [~~LATE APPLICATION~~] FOR RENEWAL.

8-15 (a) A licensed midwife is responsible for renewing a license before
8-16 the expiration date of the license. A person whose license has
8-17 expired may not engage in activities that require a license until
8-18 the license has been renewed. [~~The department may accept an~~
8-19 ~~application for documentation renewal that is filed not later than~~
8-20 ~~the expiration date of a grace period established by board rule.~~
8-21 ~~The grace period may not exceed the 60th day after the expiration~~
8-22 ~~date of a person's documentation.]~~

8-23 (b) A person may renew an unexpired license by paying the
8-24 required renewal fee to the midwifery board before the expiration
8-25 date of the license [~~The department may charge a late filing fee~~
8-26 ~~that must be paid in addition to the application fee].~~

8-27 (c) A person whose license has been expired for 90 days or
8-28 less may renew the license by paying to the midwifery board a fee
8-29 that is equal to 1-1/4 times the amount of the renewal fee.

8-30 (d) If a person's license has been expired for more than 90
8-31 days but less than one year, the person may renew the license by
8-32 paying to the midwifery board a fee that is equal to 1-1/2 times the
8-33 amount of the renewal fee.

8-34 (e) A person whose license has been expired for one year or
8-35 more may not renew the license. The person may obtain a new license
8-36 by submitting to reexamination and complying with the requirements
8-37 and procedures for obtaining an initial license.

8-38 (f) Not later than the 30th day before the date a person's
8-39 license is scheduled to expire, the midwifery board shall send
8-40 written notice of the impending expiration to the person at the
8-41 person's last known address according to the records of the
8-42 midwifery board.

8-43 SECTION 36. Section 203.303, Occupations Code, is amended
8-44 to read as follows:

8-45 Sec. 203.303. STAGGERED RENEWAL DATES. (a) The midwifery
8-46 board by rule may adopt a system under which licenses
8-47 [~~documentations~~] expire on various dates during the year.

8-48 (b) For the year in which the license [~~documentation~~]
8-49 expiration date is changed, license [~~documentation~~] fees payable on
8-50 the original expiration date shall be prorated on a monthly basis so
8-51 that each licensed [~~documented~~] midwife pays only that portion of
8-52 the license [~~documentation~~] fee that is allocable to the number of
8-53 months during which the license [~~documentation~~] is valid.

8-54 (c) On renewal of the license [~~documentation~~] on the new
8-55 expiration date, the total license [~~documentation~~] renewal fee is
8-56 payable.

8-57 SECTION 37. Sections 203.304(a) and (b), Occupations Code,
8-58 are amended to read as follows:

8-59 (a) Subject to the approval of the executive commissioner
8-60 [~~board~~], the midwifery board shall establish requirements for
8-61 continuing midwifery education, including a minimum number of hours
8-62 of continuing education required to renew a license [~~documentation~~]
8-63 under this chapter.

8-64 (b) On renewal of the license [~~documentation~~], a midwife
8-65 must provide the program coordinator with evidence, acceptable
8-66 under midwifery board rules, of completion of continuing midwifery
8-67 education as prescribed by the midwifery board.

8-68 SECTION 38. Section 203.305, Occupations Code, is amended
8-69 to read as follows:

9-1 Sec. 203.305. REQUIRED ATTENDANCE AT SPECIFIC MIDWIFERY
 9-2 EDUCATION COURSES. The midwifery board may assess the continuing
 9-3 education needs of licensed [~~documented~~] midwives and may require
 9-4 licensed [~~documented~~] midwives to attend continuing midwifery
 9-5 education courses specified by the midwifery board.

9-6 SECTION 39. Subchapter G, Chapter 203, Occupations Code, is
 9-7 amended by adding Section 203.306 to read as follows:

9-8 Sec. 203.306. GROUNDS FOR REFUSING RENEWAL. The midwifery
 9-9 board may refuse to renew the license of a person who fails to pay an
 9-10 administrative penalty imposed under Subchapter J, unless
 9-11 enforcement of the penalty is stayed or a court has ordered that the
 9-12 administrative penalty is not owed.

9-13 SECTION 40. Section 203.351(b), Occupations Code, is
 9-14 amended to read as follows:

9-15 (b) The midwifery board shall prescribe the form of the
 9-16 informed choice and disclosure statement required to be used by a
 9-17 midwife under this chapter. The form must include:

9-18 (1) statistics of the midwife's experience as a
 9-19 midwife;

9-20 (2) the date the midwife's license [~~documentation~~]
 9-21 expires;

9-22 (3) the date the midwife's cardiopulmonary
 9-23 resuscitation certification expires;

9-24 (4) the midwife's compliance with continuing education
 9-25 requirements;

9-26 (5) a description of medical backup arrangements; and

9-27 (6) the legal responsibilities of a midwife, including
 9-28 statements concerning newborn blood screening, ophthalmia
 9-29 neonatorum prevention, and prohibited acts under Sections
 9-30 203.401-203.403.

9-31 SECTION 41. Section 203.354(b), Occupations Code, is
 9-32 amended to read as follows:

9-33 (b) A midwife may collect blood specimens for the newborn
 9-34 screening tests if the midwife has been approved by the department
 9-35 to collect the specimen. Subject to the approval of the executive
 9-36 commissioner, the midwifery [~~The~~] board shall adopt rules
 9-37 establishing the standards for approval. The standards must
 9-38 recognize completion of a course of instruction that includes the
 9-39 blood specimen collection procedure or verification by
 9-40 appropriately trained health care providers that the midwife has
 9-41 been instructed in the blood collection procedures.

9-42 SECTION 42. Section 203.355(e), Occupations Code, is
 9-43 amended to read as follows:

9-44 (e) If available, appropriately trained personnel from
 9-45 local health departments, public health districts, and local health
 9-46 units shall instruct licensed [~~documented~~] midwives in the approved
 9-47 techniques for collecting blood specimens to be used to perform
 9-48 newborn screening tests.

9-49 SECTION 43. Section 203.356(b), Occupations Code, is
 9-50 amended to read as follows:

9-51 (b) A physician who issues an order directing or instructing
 9-52 a midwife is immune from liability arising out of the failure or
 9-53 refusal of the midwife to comply with the order if, before the
 9-54 issuance of the order, the midwife provided the physician with
 9-55 evidence satisfactory to the department [~~board~~] of compliance with
 9-56 this chapter.

9-57 SECTION 44. Section 203.401, Occupations Code, is amended
 9-58 to read as follows:

9-59 Sec. 203.401. PROHIBITED PRACTICES. A midwife may not:

9-60 (1) provide midwifery care in violation of midwifery
 9-61 board rule, except in an emergency that poses an immediate threat to
 9-62 the life of a woman or newborn;

9-63 (2) administer a prescription drug to a client other
 9-64 than:

9-65 (A) a drug administered under the supervision of
 9-66 a licensed physician in accordance with state law;

9-67 (B) prophylaxis approved by the department
 9-68 [~~board~~] to prevent ophthalmia neonatorum; or

9-69 (C) oxygen administered in accordance with

10-1 midwifery board rule;

10-2 (3) use forceps or a surgical instrument for a
10-3 procedure other than cutting the umbilical cord or providing
10-4 emergency first aid during delivery;

10-5 (4) remove placenta by invasive techniques;

10-6 (5) use a mechanical device or medicine to advance or
10-7 retard labor or delivery; or

10-8 (6) make on a birth certificate a false statement or
10-9 false record in violation of Section 195.003, Health and Safety
10-10 Code.

10-11 SECTION 45. Section 203.402, Occupations Code, is amended
10-12 to read as follows:

10-13 Sec. 203.402. PROHIBITED REPRESENTATION. A midwife may
10-14 not:

10-15 (1) except as provided by Section 203.403, use in
10-16 connection with the midwife's name a title, abbreviation, or
10-17 designation tending to imply that the midwife is a "registered" or
10-18 "certified" midwife as opposed to one who is licensed [~~documented~~]
10-19 under this chapter;

10-20 (2) advertise or represent that the midwife is a
10-21 physician or a graduate of a medical school unless the midwife is
10-22 licensed to practice medicine by the Texas State Board of Medical
10-23 Examiners;

10-24 (3) use advertising or an identification statement
10-25 that is false, misleading, or deceptive; or

10-26 (4) except as authorized by rules adopted by the Board
10-27 of Nurse Examiners, use in combination with the term "midwife" the
10-28 term "nurse" or another title, initial, or designation that implies
10-29 that the midwife is licensed as a registered nurse or vocational
10-30 nurse.

10-31 SECTION 46. Section 203.404, Occupations Code, is amended
10-32 to read as follows:

10-33 Sec. 203.404. GROUNDS FOR DISCIPLINARY ACTION. (a) The
10-34 midwifery board may discipline a licensed [~~documented~~] midwife,
10-35 refuse to renew a midwife's license, or [and may] refuse to issue a
10-36 license [letter of documentation] to an applicant if the person
10-37 [who]:

10-38 (1) violates this chapter or a rule adopted under this
10-39 chapter;

10-40 (2) submits false or misleading information to the
10-41 midwifery board [~~the board~~] or the department;

10-42 (3) is convicted of a misdemeanor involving moral
10-43 turpitude or a felony;

10-44 (4) uses alcohol or drugs intemperately;

10-45 (5) engages in unprofessional or dishonorable conduct
10-46 that may reasonably be determined to deceive or defraud the public;

10-47 (6) is unable to practice midwifery with reasonable
10-48 skill and safety because of illness, disability, or psychological
10-49 impairment;

10-50 (7) is determined by a court judgment to be mentally
10-51 impaired;

10-52 (8) submits a birth or death certificate known by the
10-53 person to be false or fraudulent or engages in another act that
10-54 violates Title 3, Health and Safety Code, or a rule adopted under
10-55 that title;

10-56 (9) violates Chapter 244, Health and Safety Code, or a
10-57 rule adopted under that chapter; or

10-58 (10) fails to practice midwifery in a manner
10-59 consistent with the public health and safety.

10-60 (b) The midwifery board may discipline a licensed
10-61 [~~documented~~] midwife and may refuse to issue a license [~~letter of~~
10-62 ~~documentation~~] to an applicant for a disciplinary action taken by
10-63 another jurisdiction that affects the person's authority to
10-64 practice midwifery, including a suspension, a revocation, or
10-65 another action.

10-66 SECTION 47. Sections 203.405(a) and (b), Occupations Code,
10-67 are amended to read as follows:

10-68 (a) The midwifery board or a three-member committee of
10-69 midwifery board members designated by the midwifery board shall

temporarily suspend the license [~~letter of documentation~~] of a licensed [~~documented~~] midwife if the midwifery board or committee determines from the evidence or information presented to it that continued practice by the licensed [~~documented~~] midwife would constitute a continuing and imminent threat to the public welfare.

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

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

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

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

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

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the licensed midwife for a service regulated by this chapter. The midwifery board may not require payment of other damages or estimate harm in a refund order.

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

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

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

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

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

(2) in violation of a midwifery board order.

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

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

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

Sec. 203.505. CEASE AND DESIST ORDER. (a) If it appears to the midwifery board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of midwifery, the midwifery board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

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

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

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

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

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

(A) the date of the order's issue;

- 12-1 (B) the name and address of the patient;
- 12-2 (C) if the drug is prescribed for an animal, the
- 12-3 species of the animal;
- 12-4 (D) the name and quantity of the drug prescribed;
- 12-5 (E) the directions for the use of the drug;
- 12-6 (F) the intended use of the drug unless the
- 12-7 practitioner determines the furnishing of this information is not
- 12-8 in the best interest of the patient;
- 12-9 (G) the name, address, and telephone number of
- 12-10 the practitioner at the practitioner's usual place of business,
- 12-11 legibly printed or stamped; and
- 12-12 (H) the name, address, and telephone number of
- 12-13 the licensed [~~documented~~] midwife, registered nurse, or physician
- 12-14 assistant, legibly printed or stamped, if signed by a licensed
- 12-15 [~~documented~~] midwife, registered nurse, or physician assistant.

12-16 SECTION 55. Section 483.041(c), Health and Safety Code, is

12-17 amended to read as follows:

12-18 (c) Subsection (a) does not apply to the possession of a

12-19 dangerous drug in the usual course of business or practice or in the

12-20 performance of official duties by the following persons or an agent

12-21 or employee of the person:

- 12-22 (1) a pharmacy licensed by the board;
- 12-23 (2) a practitioner;
- 12-24 (3) a person who obtains a dangerous drug for lawful
- 12-25 research, teaching, or testing, but not for resale;
- 12-26 (4) a hospital that obtains a dangerous drug for
- 12-27 lawful administration by a practitioner;
- 12-28 (5) an officer or employee of the federal, state, or
- 12-29 local government;
- 12-30 (6) a manufacturer or wholesaler licensed by the
- 12-31 Department of State Health Services [~~commissioner of health~~] under
- 12-32 Chapter 431 (Texas Food, Drug, and Cosmetic Act);
- 12-33 (7) a carrier or warehouseman;
- 12-34 (8) a home and community support services agency
- 12-35 licensed under and acting in accordance with Chapter 142;
- 12-36 (9) a licensed [~~documented~~] midwife who obtains oxygen
- 12-37 for administration to a mother or newborn or who obtains a dangerous
- 12-38 drug for the administration of prophylaxis to a newborn for the
- 12-39 prevention of ophthalmia neonatorum in accordance with Section
- 12-40 203.353, Occupations Code; or
- 12-41 (10) a salvage broker or salvage operator licensed
- 12-42 under Chapter 432.

12-43 SECTION 56. The following sections are repealed:

- 12-44 (1) Section 203.002(1), Occupations Code; and
- 12-45 (2) Section 203.156(a), Occupations Code.

12-46 SECTION 57. (a) Not later than January 1, 2006, the Texas

12-47 Midwifery Board shall:

- 12-48 (1) adopt the policies required by Sections 203.160
- 12-49 and 203.161, Occupations Code, as added by this Act; and
- 12-50 (2) adopt the rules required by Chapter 203,
- 12-51 Occupations Code, as amended by this Act.

12-52 (b) Not later than March 1, 2006, the Texas Midwifery Board

12-53 shall develop the jurisprudence examination required by Section

12-54 203.2555, Occupations Code, as added by this Act.

12-55 SECTION 58. (a) The changes in law made by Section 203.052,

12-56 Occupations Code, as amended by this Act, regarding the composition

12-57 of the Texas Midwifery Board do not affect the entitlement of a

12-58 member serving on the board immediately before September 1, 2005,

12-59 to continue to serve and function as a member of the board for the

12-60 remainder of the member's term. Members appointed to fill

12-61 vacancies on the board occurring on or after the effective date of

12-62 this Act must be appointed in accordance with Section 203.052(a),

12-63 Occupations Code, as amended by this Act.

12-64 (b) The changes in law made by Sections 203.052, 203.054,

12-65 and 203.057, Occupations Code, as amended by this Act, and Section

12-66 203.060, Occupations Code, as added by this Act, regarding the

12-67 prohibitions on or qualifications of members of the Texas Midwifery

12-68 Board do not affect the entitlement of a member serving on the board

12-69 immediately before September 1, 2005, to continue to serve and

13-1 function as a member of the board for the remainder of the member's
 13-2 term. The changes in law made by those sections apply only to a
 13-3 member appointed on or after September 1, 2005.

13-4 (c) The changes in law made by this Act related to the filing
 13-5 or investigation of a complaint under Chapter 203, Occupations
 13-6 Code, as amended by this Act, apply only to a complaint filed with
 13-7 the Texas Midwifery Board on or after the effective date of this
 13-8 Act. A complaint filed before the effective date of this Act is
 13-9 governed by the law as it existed immediately before that date, and
 13-10 the former law is continued in effect for that purpose.

13-11 (d) The changes in law made by this Act governing the
 13-12 eligibility of a person for a license under Chapter 203,
 13-13 Occupations Code, apply only to an application for a license filed
 13-14 with the Texas Midwifery Board under Chapter 203, Occupations Code,
 13-15 as amended by this Act, on or after the effective date of this Act.
 13-16 An application for documentation as a midwife filed before the
 13-17 effective date of this Act is governed by the law in effect at the
 13-18 time the application was filed, and the former law is continued in
 13-19 effect for that purpose.

13-20 (e) The change in law made by this Act with respect to
 13-21 conduct that is grounds for imposition of a disciplinary sanction,
 13-22 including a refund or cease and desist order, applies only to
 13-23 conduct that occurs on or after the effective date of this Act.
 13-24 Conduct that occurs before the effective date of this Act is
 13-25 governed by the law in effect on the date the conduct occurred, and
 13-26 the former law is continued in effect for that purpose.

13-27 (f) The changes in law made by Section 203.252(a),
 13-28 Occupations Code, as amended by this Act, and Section 203.2555,
 13-29 Occupations Code, as added by this Act, regarding the jurisprudence
 13-30 examination, apply only to an application for a license filed with
 13-31 the Texas Midwifery Board under Chapter 203, Occupations Code, as
 13-32 amended by this Act, on or after September 1, 2006.

13-33 SECTION 59. Notwithstanding Section 203.302, Occupations
 13-34 Code, as amended by this Act, the fees for an applicant renewing an
 13-35 expired license or documentation letter under Chapter 203,
 13-36 Occupations Code, before September 1, 2007, is governed by the law
 13-37 in effect immediately before the effective date of this Act, and the
 13-38 former law is continued in effect for that purpose. An applicant
 13-39 who renews an expired license or documentation letter under Chapter
 13-40 203, Occupations Code, on or after September 1, 2007, is subject to
 13-41 the fees provided by Section 203.302, Occupations Code, as amended
 13-42 by this Act.

13-43 SECTION 60. This Act takes effect September 1, 2005.

13-44 * * * * *