

By: Shapleigh

S.B. No. 416

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the continuation and functions of the Texas Midwifery
3 Board.

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

5 SECTION 1. Section 203.002, Occupations Code, is amended by
6 amending Subdivisions (3), (4), and (6) and adding Subdivisions
7 (3-a) and (4-a) to read as follows:

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

10 (3-a) "Council" means the State Health Services
11 Council. A reference in this chapter to the board means the
12 council.

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

15 (4-a) "Executive commissioner" means the executive
16 commissioner of the Health and Human Services Commission.

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

20 SECTION 2. Section 203.006, Occupations Code, is amended to
21 read as follows:

22 Sec. 203.006. APPLICATION OF SUNSET ACT. The midwifery
23 board is subject to Chapter 325, Government Code (Texas Sunset
24 Act). Unless continued in existence as provided by that chapter,

1 the midwifery board is abolished and this chapter expires September
2 1, 2017 [~~2005~~].

3 SECTION 3. Section 203.051, Occupations Code, is amended to
4 read as follows:

5 Sec. 203.051. MIDWIFERY BOARD. The council [~~board~~] shall
6 appoint a midwifery board that reports directly to the council
7 [~~board~~].

8 SECTION 4. Section 203.052(a), Occupations Code, is amended
9 to read as follows:

10 (a) The midwifery board consists of nine members appointed
11 as follows:

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

16 (2) [~~one certified nurse-midwife member,~~
17 [~~3~~] one physician member who is certified by a
18 national professional organization of physicians that certifies
19 obstetricians and gynecologists;

20 (3) [~~4~~] one physician member who is certified by a
21 national professional organization of physicians that certifies
22 family practitioners or pediatricians; and

23 (4) two [~~5~~ ~~three~~] members who represent the public
24 and who are not practicing or trained in a health care profession,
25 one of whom is a parent with at least one child born with the
26 assistance of a midwife.

27 SECTION 5. Section 203.054, Occupations Code, is amended to

1 read as follows:

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

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

17 (1) the person is an officer, employee, or paid
18 consultant of a Texas trade association in the field of health care;
19 or

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

26 (c) [~~A person who is the spouse of an officer, manager, or~~
27 ~~paid consultant of a Texas trade association in the field of~~

1 ~~midwifery may not be a midwifery board member and may not be an~~
2 ~~employee of the midwifery board who is exempt from the state's~~
3 ~~position classification plan or is compensated at or above the~~
4 ~~amount prescribed by the General Appropriations Act for step 1,~~
5 ~~salary group A17, of the position classification salary schedule.~~

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

12 SECTION 6. Section 203.056, Occupations Code, is amended to
13 read as follows:

14 Sec. 203.056. OFFICERS. The council shall designate a
15 public member of the midwifery board as the presiding officer of the
16 midwifery board to serve in that capacity at the pleasure of the
17 council. The midwifery board shall elect ~~[one of the public members~~
18 ~~of the midwifery board as presiding officer and]~~ one of the other
19 members of the midwifery board as vice presiding officer.

20 SECTION 7. Sections 203.057(a) and (c), Occupations Code,
21 are amended to read as follows:

22 (a) It is a ground for removal from the midwifery board that
23 a member:

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

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

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

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

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

10 (c) If the program coordinator has knowledge that a
11 potential ground for removal exists, the program coordinator shall
12 notify the presiding officer of the midwifery board of the
13 potential ground. The presiding officer shall then notify the
14 council that a potential ground for removal exists. If the
15 potential ground for removal involves the presiding officer, the
16 program coordinator shall notify the next highest ranking member of
17 the midwifery board, who shall then notify the council [~~The program~~
18 ~~coordinator and presiding officer of the midwifery board shall then~~
19 ~~notify the board~~] that a potential ground for removal exists.

20 SECTION 8. Section 203.058, Occupations Code, is amended to
21 read as follows:

22 Sec. 203.058. [~~COMPENSATION,~~] REIMBURSEMENT. A midwifery
23 board member may receive reimbursement for travel expenses as
24 provided by the General Appropriations Act. [A member may not
25 ~~receive compensation for service on the midwifery board. Each~~
26 ~~member is entitled to receive \$50 for each meeting the member~~
27 ~~attends and the per diem and travel allowance authorized for state~~

1 ~~employees.]~~

2 SECTION 9. Subchapter B, Chapter 203, Occupations Code, is
3 amended by adding Section 203.060 to read as follows:

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

9 (b) The training program must provide the person with
10 information regarding:

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

13 (2) the results of the most recent formal audit of the
14 midwifery board;

15 (3) the requirements of laws relating to open
16 meetings, public information, administrative procedure, and
17 conflicts of interest; and

18 (4) any applicable ethics policies adopted by the
19 midwifery board or the Texas Ethics Commission.

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

25 SECTION 10. Section 203.102, Occupations Code, is amended
26 to read as follows:

27 Sec. 203.102. DUTIES OF PROGRAM COORDINATOR. The program

1 coordinator shall supervise the staff in the performance of
2 administrative duties, including:

3 (1) keeping the minutes of midwifery board meetings;
4 and

5 (2) maintaining:

6 (A) records about basic midwifery education
7 courses and continuing midwifery education courses;

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

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

12 SECTION 11. Section 203.151, Occupations Code, is amended
13 to read as follows:

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

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

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

21 (A) the delineation of findings that preclude a
22 woman or newborn from being classified as having a normal
23 pregnancy, labor, delivery, postpartum period, or newborn period;
24 and

25 (B) administration of oxygen by a midwife to a
26 mother or newborn;

27 (3) adopt rules prescribing:

1 (A) the type of courses and number of hours
2 required to meet the basic midwifery education course and
3 continuing midwifery education course requirements; and

4 (B) minimum standards for the approval and
5 revocation of approval of:

6 (i) basic midwifery education courses and
7 continuing midwifery education courses; and

8 (ii) instructors or facilities used in
9 basic midwifery education courses and continuing midwifery
10 education courses;

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

14 (5) adopt and implement substantive and procedural
15 rules as necessary to discipline midwives determined to be in
16 violation of this chapter or otherwise a threat to the public health
17 and safety;

18 (6) adopt rules as necessary to establish eligibility
19 for reciprocity for initial licensing [~~documentation~~] under this
20 chapter; and

21 (7) adopt other rules necessary to implement a duty
22 imposed on the board or the department under this chapter.

23 (b) The rules adopted under Subsection (a)(5) must include
24 rules relating to:

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

27 (2) agreed orders for additional education by

1 midwives;

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

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

8 SECTION 12. Subchapter D, Chapter 203, Occupations Code, is
9 amended by adding Section 203.1515 to read as follows:

10 Sec. 203.1515. RULES ON CONSEQUENCES OF CRIMINAL
11 CONVICTION. (a) Subject to the approval of the executive
12 commissioner, the midwifery board shall adopt rules necessary to
13 comply with Chapter 53.

14 (b) In its proposed rules under this section, the midwifery
15 board shall list the specific offenses for which a conviction would
16 constitute grounds for the midwifery board to take action under
17 Section 53.021.

18 SECTION 13. Section 203.153(b), Occupations Code, is
19 amended to read as follows:

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

22 SECTION 14. Section 203.156(c), Occupations Code, is
23 amended to read as follows:

24 (c) The department shall:

25 (1) establish a program for licensure [~~documentation~~]
26 as a midwife as prescribed by board rules;

27 (2) pay the salaries of the program coordinator and

1 any additional staff the department determines to be necessary; and

2 (3) provide office space and supplies for the program
3 coordinator and other staff.

4 SECTION 15. Sections 203.157(a) and (b), Occupations Code,
5 are amended to read as follows:

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

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

14 SECTION 16. Subchapter D, Chapter 203, Occupations Code, is
15 amended by adding Sections 203.158, 203.159, 203.160, and 203.161
16 to read as follows:

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

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

24 (1) restricts the licensed midwife's use of any
25 advertising medium;

26 (2) restricts the licensed midwife's personal
27 appearance or use of the licensed midwife's voice in an

1 advertisement;

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

4 (4) restricts the licensed midwife's advertisement
5 under a trade name.

6 Sec. 203.159. BOARD COMMITTEES. (a) The midwifery board
7 may appoint committees to assist the midwifery board with its
8 functions under this chapter.

9 (b) Only a member of the midwifery board may serve as a
10 member of a midwifery board committee.

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

17 Sec. 203.161. NEGOTIATED RULEMAKING AND ALTERNATIVE
18 DISPUTE RESOLUTION POLICY. (a) Subject to the approval of the
19 executive commissioner, the midwifery board shall develop and
20 implement a policy to encourage the use of:

21 (1) negotiated rulemaking procedures under Chapter
22 2008, Government Code, for the adoption of midwifery board rules;
23 and

24 (2) appropriate alternative dispute resolution
25 procedures under Chapter 2009, Government Code, to assist in the
26 resolution of internal and external disputes under the midwifery
27 board's jurisdiction.

1 (b) The midwifery board's procedures relating to
2 alternative dispute resolution must conform, to the extent
3 possible, to any model guidelines issued by the State Office of
4 Administrative Hearings for the use of alternative dispute
5 resolution by state agencies.

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

7 (1) coordinate the implementation of the policy
8 adopted under Subsection (a);

9 (2) serve as a resource for any training needed to
10 implement the procedures for negotiated rulemaking or alternative
11 dispute resolution; and

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

14 SECTION 17. Section 203.202, Occupations Code, is amended
15 by amending Subsections (c) and (d) and adding Subsection (e) to
16 read as follows:

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

19 The midwifery board shall maintain:

20 (1) information about the parties to the complaint and
21 the subject matter of the complaint;

22 (2) a summary of the results of the review or
23 investigation of the complaint; and

24 (3) information about the disposition of the complaint
25 [~~keep an information file about each complaint filed with the~~
26 midwifery board].

27 (d) The midwifery board shall make information available

1 describing its procedures for complaint investigation and
2 resolution [~~board's information file shall be kept current and~~
3 ~~contain a record for each complaint of:~~

4 [~~(1) each person contacted in relation to the~~
5 ~~complaint;~~

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

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

9 (e) The midwifery board shall periodically notify the
10 parties of the status of the complaint until final disposition of
11 the complaint.

12 SECTION 18. Subchapter E, Chapter 203, Occupations Code, is
13 amended by adding Section 203.2021 to read as follows:

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

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

22 SUBCHAPTER F. LICENSURE [~~DOCUMENTATION~~]

23 REQUIREMENTS

24 SECTION 20. Section 203.251, Occupations Code, is amended
25 to read as follows:

26 Sec. 203.251. LICENSE [~~DOCUMENTATION~~] REQUIRED. (a) A
27 person may not practice midwifery unless the person holds a license

1 ~~[documentation letter]~~ issued under this chapter.

2 (b) The department shall provide a license ~~[documentation~~
3 ~~letter]~~ to each person who fulfills the licensing ~~[documentation]~~
4 requirements.

5 SECTION 21. Section 203.252, Occupations Code, is amended
6 to read as follows:

7 Sec. 203.252. QUALIFICATIONS FOR INITIAL LICENSE

8 ~~[DOCUMENTATION]~~. (a) A person qualifies to become a licensed
9 midwife under this chapter if the person provides ~~[At the time of~~
10 ~~initial documentation, an applicant for documentation must~~
11 ~~provide]~~ the program coordinator with documentary evidence that the
12 person has:

13 (1) satisfied each requirement for basic midwifery
14 education; and

15 (2) passed the comprehensive midwifery examination
16 and jurisprudence examination required by this chapter.

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

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

23 SECTION 22. Section 203.253, Occupations Code, is amended
24 to read as follows:

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

- 1 (1) be accompanied by a nonrefundable application fee;
2 and
3 (2) include information required by board rules.

4 SECTION 23. Section 203.255(a), Occupations Code, is
5 amended to read as follows:

6 (a) The midwifery board, with the approval of the board,
7 shall:

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

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

13 SECTION 24. Subchapter F, Chapter 203, Occupations Code, is
14 amended by adding Sections 203.2555 and 203.2556 to read as
15 follows:

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

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

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

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

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

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

18 SECTION 25. The heading to Subchapter G, Chapter 203,
19 Occupations Code, is amended to read as follows:

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

21 SECTION 26. Section 203.301, Occupations Code, is amended
22 to read as follows:

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

27 SECTION 27. Section 203.302, Occupations Code, is amended

1 to read as follows:

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

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

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

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

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

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

26 (f) Not later than the 30th day before the date a person's
27 license is scheduled to expire, the midwifery board shall send

1 written notice of the impending expiration to the person at the
2 person's last known address according to the records of the
3 midwifery board.

4 SECTION 28. Section 203.303, Occupations Code, is amended
5 to read as follows:

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

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

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

18 SECTION 29. Sections 203.304(a) and (b), Occupations Code,
19 are amended to read as follows:

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

25 (b) On renewal of the license ~~[documentation]~~, a midwife
26 must provide the program coordinator with evidence, acceptable
27 under board rules, of completion of continuing midwifery education

1 as prescribed by the midwifery board.

2 SECTION 30. Section 203.305, Occupations Code, is amended
3 to read as follows:

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

9 SECTION 31. Subchapter G, Chapter 203, Occupations Code, is
10 amended by adding Section 203.306 to read as follows:

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

16 SECTION 32. Section 203.351(b), Occupations Code, is
17 amended to read as follows:

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

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

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

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

27 (4) the midwife's compliance with continuing education

1 requirements;

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

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

7 SECTION 33. Section 203.355(e), Occupations Code, is
8 amended to read as follows:

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

14 SECTION 34. Section 203.402, Occupations Code, is amended
15 to read as follows:

16 Sec. 203.402. PROHIBITED REPRESENTATION. A midwife may
17 not:

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

23 (2) advertise or represent that the midwife is a
24 physician or a graduate of a medical school unless the midwife is
25 licensed to practice medicine by the Texas State Board of Medical
26 Examiners;

27 (3) use advertising or an identification statement

1 that is false, misleading, or deceptive; or

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

7 SECTION 35. Section 203.404, Occupations Code, is amended
8 to read as follows:

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

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

16 (2) submits false or misleading information to the
17 midwifery board, the board, or the department;

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

20 (4) uses alcohol or drugs intemperately;

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

23 (6) is unable to practice midwifery with reasonable
24 skill and safety because of illness, disability, or psychological
25 impairment;

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

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

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

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

9 (b) The midwifery board may discipline a licensed
10 [~~documented~~] midwife and may refuse to issue a license [~~letter of~~
11 ~~documentation~~] to an applicant for a disciplinary action taken by
12 another jurisdiction that affects the person's authority to
13 practice midwifery, including a suspension, a revocation, or
14 another action.

15 SECTION 36. Sections 203.405(a) and (b), Occupations Code,
16 are amended to read as follows:

17 (a) The midwifery board or a three-member committee of
18 midwifery board members designated by the midwifery board shall
19 temporarily suspend the license [~~letter of documentation~~] of a
20 licensed [~~documented~~] midwife if the midwifery board or committee
21 determines from the evidence or information presented to it that
22 continued practice by the licensed [~~documented~~] midwife would
23 constitute a continuing and imminent threat to the public welfare.

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

26 (1) action is taken to initiate proceedings for a
27 hearing before the State Office of Administrative Hearings

1 simultaneously with the temporary suspension; and

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

4 SECTION 37. Subchapter I, Chapter 203, Occupations Code, is
5 amended by adding Section 203.406 to read as follows:

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

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

16 SECTION 38. Section 203.452(a), Occupations Code, is
17 amended to read as follows:

18 (a) The amount of the administrative penalty may not exceed
19 \$5,000 [~~\$1,000~~] for each violation. Each day a violation continues
20 is a separate violation.

21 SECTION 39. Section 203.501(a), Occupations Code, is
22 amended to read as follows:

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

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

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

2 SECTION 40. Section 203.504(a), Occupations Code, is
3 amended to read as follows:

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

7 SECTION 41. Subchapter K, Chapter 203, Occupations Code, is
8 amended by adding Section 203.505 to read as follows:

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

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

18 SECTION 42. Section 157.004(c), Occupations Code, is
19 amended to read as follows:

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

25 SECTION 43. Section 483.001, Health and Safety Code, is
26 amended by amending Subdivision (13) to read as follows:

27 (13) "Prescription" means an order from a

1 practitioner, or an agent of the practitioner designated in writing
2 as authorized to communicate prescriptions, or an order made in
3 accordance with Subchapter B, Chapter 157, Occupations Code, or
4 Section 203.353, Occupations Code, to a pharmacist for a dangerous
5 drug to be dispensed that states:

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

7 (B) the name and address of the patient;

8 (C) if the drug is prescribed for an animal, the
9 species of the animal;

10 (D) the name and quantity of the drug prescribed;

11 (E) the directions for the use of the drug;

12 (F) the intended use of the drug unless the
13 practitioner determines the furnishing of this information is not
14 in the best interest of the patient;

15 (G) the name, address, and telephone number of
16 the practitioner at the practitioner's usual place of business,
17 legibly printed or stamped; and

18 (H) the name, address, and telephone number of
19 the licensed [~~documented~~] midwife, registered nurse, or physician
20 assistant, legibly printed or stamped, if signed by a licensed
21 [~~documented~~] midwife, registered nurse, or physician assistant.

22 SECTION 44. Section 483.041(c), Health and Safety Code, is
23 amended to read as follows:

24 (c) Subsection (a) does not apply to the possession of a
25 dangerous drug in the usual course of business or practice or in the
26 performance of official duties by the following persons or an agent
27 or employee of the person:

- 1 (1) a pharmacy licensed by the board;
- 2 (2) a practitioner;
- 3 (3) a person who obtains a dangerous drug for lawful
4 research, teaching, or testing, but not for resale;
- 5 (4) a hospital that obtains a dangerous drug for
6 lawful administration by a practitioner;
- 7 (5) an officer or employee of the federal, state, or
8 local government;
- 9 (6) a manufacturer or wholesaler licensed by the
10 commissioner of health under Chapter 431 (Texas Food, Drug, and
11 Cosmetic Act);
- 12 (7) a carrier or warehouseman;
- 13 (8) a home and community support services agency
14 licensed under and acting in accordance with Chapter 142;
- 15 (9) a licensed [~~documented~~] midwife who obtains oxygen
16 for administration to a mother or newborn or who obtains a dangerous
17 drug for the administration of prophylaxis to a newborn for the
18 prevention of ophthalmia neonatorum in accordance with Section
19 203.353, Occupations Code; or
- 20 (10) a salvage broker or salvage operator licensed
21 under Chapter 432.

22 SECTION 45. Section 203.002(1), Occupations Code, is
23 repealed.

24 SECTION 46. (a) Not later than January 1, 2006, the Texas
25 Midwifery Board shall:

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

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

3 (b) Not later than March 1, 2006, the Texas Midwifery Board
4 shall develop the jurisprudence examination required by Section
5 203.2555, Occupations Code, as added by this Act.

6 SECTION 47. (a) The changes in law made by Section 203.052,
7 Occupations Code, as amended by this Act, regarding the composition
8 of the Texas Midwifery Board do not affect the entitlement of a
9 member serving on the board immediately before September 1, 2005,
10 to continue to serve and function as a member of the board for the
11 remainder of the member's term. Members appointed to fill
12 vacancies on the board occurring on or after the effective date of
13 this Act must be appointed in accordance with Section 203.052(a),
14 Occupations Code, as amended by this Act.

15 (b) The changes in law made by Sections 203.052, 203.054,
16 and 203.057, Occupations Code, as amended by this Act, and Section
17 203.060, Occupations Code, as added by this Act, regarding the
18 prohibitions on or qualifications of members of the Texas Midwifery
19 Board do not affect the entitlement of a member serving on the board
20 immediately before September 1, 2005, to continue to serve and
21 function as a member of the board for the remainder of the member's
22 term. The changes in law made by those sections apply only to a
23 member appointed on or after September 1, 2005.

24 (c) The changes in law made by this Act related to the filing
25 or investigation of a complaint under Chapter 203, Occupations
26 Code, as amended by this Act, apply only to a complaint filed with
27 the Texas Midwifery Board on or after the effective date of this

1 Act. A complaint filed before the effective date of this Act is
2 governed by the law as it existed immediately before that date, and
3 the former law is continued in effect for that purpose.

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

13 (e) The change in law made by this Act with respect to
14 conduct that is grounds for imposition of a disciplinary sanction,
15 including a refund or cease and desist order, applies only to
16 conduct that occurs on or after the effective date of this Act.
17 Conduct that occurs before the effective date of this Act is
18 governed by the law in effect on the date the conduct occurred, and
19 the former law is continued in effect for that purpose.

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

26 SECTION 48. Notwithstanding Section 203.302, Occupations
27 Code, as amended by this Act, the fees for an applicant renewing an

1 expired license or documentation letter under Chapter 203,
2 Occupations Code, before September 1, 2007, is governed by the law
3 in effect immediately before the effective date of this Act, and the
4 former law is continued in effect for that purpose. An applicant
5 who renews an expired license or documentation letter under Chapter
6 203, Occupations Code, on or after September 1, 2007, is subject to
7 the fees provided by Section 203.302, Occupations Code, as amended
8 by this Act.

9 SECTION 49. This Act takes effect September 1, 2005.