

BILL ANALYSIS

Senate Research Center
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The 68th Legislature, Regular Session, 1983, established the regulation of midwifery with the Lay Midwifery Board, and created the current Texas Midwifery Board (midwifery board) in 1991 to ensure that safe and quality midwifery services are provided to the citizens of Texas. The midwifery board has three primary functions: license qualified individuals to practice midwifery in Texas; set standards relating to the practice of midwifery; and enforce the Texas Midwifery Act, including investigating and resolving complaints.

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

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Midwifery Board in SECTION 16 (Section 203.1515, Occupations Code) and SECTION 32 (Section 203.2555, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Board of Health is transferred to the executive commissioner of the Health and Human Services Commission and modified in SECTION 15 (Section 203.151, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 203.002, Occupations Code, by amending Subdivisions (3), (4), and (6), and adding Subdivision (4-a), to redefine "commissioner," "department," and "midwife" and to define "executive commissioner."

SECTION 2. Amends Section 203.005, Occupations Code, to provide that 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 Texas Midwifery Board (midwifery board) rules.

SECTION 3. Amends Section 203.006, Occupations Code, to extend the sunset date for the midwifery board from September 1, 2005, to September 1, 2017.

SECTION 4. Amends Section 203.051, Occupations Code, to require the commissioner of state health services (commissioner), rather than the Texas Board of Health, to appoint a midwifery board that reports directly to the commissioner. Makes a conforming change.

SECTION 5. Amends Section 203.052(a), Occupations Code, to amend the list relating to the appointment of members of the midwifery board.

SECTION 6. Amends Section 203.054, Occupations Code, as follows:

Sec. 203.054. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) Redefines "Texas trade association."

(b) Prohibits a person, rather than certain specified persons, from being a midwifery board member, an employee of the midwifery board, or a department

employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if the person meets certain criteria.

(c) Prohibits a person from being a midwifery board member or acting as the general counsel to the midwifery board or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the midwifery board. Deletes text relating to the prohibition of persons who are the spouses of certain individuals from serving as a midwifery board member or being an employee of the midwifery board.

SECTION 7. Amends Section 203.056, Occupations Code, to require the commissioner to designate a public member of the midwifery board as the presiding officer of the midwifery board to serve in that capacity at the pleasure of the commissioner, rather than to require the midwifery board to elect one of the public members of the midwifery board as presiding officer.

SECTION 8. Amends Section 203.057(a) and (c), Occupations Code, as follows:

(a) Amends the specific grounds for removal from membership on the midwifery board.

(c) Requires the presiding officer, if a potential ground for removal exists, to notify the commissioner of the existence of the potential ground for removal. Requires the program coordinator, if the potential ground for removal involves the presiding officer, to notify the next highest ranking member of the midwifery board, who is required to notify the commissioner. Deletes existing notification requirements for the program coordinator and presiding officer.

SECTION 9. Amends Section 203.058, Occupations Code, as follows:

Sec. 203.058. New heading: REIMBURSEMENT. Authorizes a midwifery board member to receive reimbursement for travel expenses as provided by the General Appropriations Act. Deletes existing text relating to compensation for service on the midwifery board.

SECTION 10. Amends Section 203.059(b), Occupations Code, to make a conforming change.

SECTION 11. Amends Subchapter B, Chapter 203, Occupations Code, by adding Section 203.060, as follows:

Sec. 203.060. TRAINING. Prohibits a person who is appointed to and qualifies for office as a member of the midwifery board from voting, deliberating, or being counted as a member in attendance at a meeting of the midwifery board until the person completes a training program that complies with this section. Sets forth specific information which is required to be provided to a person by the training program. Provides that a person appointed to the midwifery board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 12. Amends Section 203.101, Occupations Code, to make a conforming change.

SECTION 13. Amends Section 203.102, Occupations Code, to amend the specific duties of the program coordinator in supervising the staff in the performance of administrative duties.

SECTION 14. Amends the heading to Subchapter D, Chapter 203, Occupations Code, to read as follows:

SUBCHAPTER D. POWERS AND DUTIES OF MIDWIFERY BOARD, EXECUTIVE
COMMISSIONER, AND DEPARTMENT

SECTION 15. Amends Section 203.151, Occupations Code, to require the midwifery board, subject to the approval of the executive commissioner of the Health and Human Services Commission (executive commissioner), rather than the board, to perform certain duties. Amends the specific duties required to be performed.

SECTION 16. Amends Subchapter D, Chapter 203, Occupations Code, by adding Section 203.1515, as follows:

Sec. 203.1515. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. Requires the midwifery board, subject to the approval of the executive commissioner, to adopt rules necessary to comply with Chapter 53 (Consequences of Criminal Conviction). Requires the midwifery board, in its proposed rules under this section, to list the specific offenses for which a conviction would constitute grounds for the midwifery board to take an action under Section 53.021.

SECTION 17. Amends Section 203.152(a), Occupations Code, to make a conforming change.

SECTION 18. Amends Sections 203.153(a)-(c), Occupations Code, as follows:

(a) Requires the midwifery board, subject to the approval of the Department of State Health Services (department), rather than the board, to issue basic information manuals for the practice of midwifery.

(b) Requires the department to provide the manuals to each licensed, rather than documented, midwife.

(c) Makes a conforming change.

SECTION 19. Amends Section 203.154(c), Occupations Code, to make a conforming change.

SECTION 20. Amends the heading to Section 203.156, Occupations Code, to read as follows:

Sec. 203.156. DUTIES OF MIDWIFERY BOARD AND DEPARTMENT.

SECTION 21. Amends Section 203.156(c), Occupations Code, to make conforming changes.

SECTION 22. Amends Sections 203.157(a) and (b), Occupations Code, to make conforming changes.

SECTION 23. Amends Subchapter D, Chapter 203, Occupations Code, by adding Sections 203.158, 203.159, 203.160, and 203.161, as follows:

Sec. 203.158. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. Prohibits the midwifery board from proposing rules restricting advertising or competitive bidding by a licensed midwife except to prohibit false, misleading, or deceptive practices. Prohibits the midwifery board from including certain rules and restrictions in its proposed rules to prohibit false, misleading, or deceptive practices by a licensed midwife.

Sec. 203.159. BOARD COMMITTEES. Authorizes the midwifery board to appoint committees to assist the midwifery board with its functions under this chapter. Authorizes only a member of the midwifery board to serve as a member of a midwifery board committee.

Sec. 203.160. USE OF TECHNOLOGY. Requires the midwifery board, subject to the approval of the executive commissioner, to implement a policy requiring the midwifery board to use appropriate technological solutions to improve the midwifery board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the board on the Internet.

Sec. 203.161. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. Requires the midwifery board, subject to the approval of the executive commissioner, to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of midwifery board rules, and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution For Use By Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under the midwifery board's jurisdiction. Requires the midwifery board's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution procedures. Requires the department to designate a trained person to perform certain functions under this section.

SECTION 24. Amends Section 203.202, Occupations Code, by amending Subsection (c) and (d) and adding Subsection (e), as follows:

(c) Requires the midwifery board to maintain a system to promptly and efficiently act on complaints filed with the midwifery board, rather than to keep an information file about each complaint filed with the midwifery board. Requires the midwifery board to maintain certain information regarding such complaints.

(d) Requires the midwifery board to make information available describing its procedures for complaint investigation and resolution, rather than requiring the board's information file to be kept current and contain certain records for each complaint.

(e) Requires the midwifery board to periodically notify the parties of the status of the complaint until final disposition of the complaint.

SECTION 25. Amends Subchapter E, Chapter 203, Occupations Code, by adding Section 203.2021, as follows:

Sec. 203.2021. COMPLAINT COMMITTEE. Requires the midwifery board to appoint at least one public member of the midwifery board to any midwifery board committee established to review a complaint filed with the midwifery board or review an enforcement action against a licensed midwife related to a complaint filed with the midwifery board.

SECTION 26. Amends the heading to Subchapter F, Chapter 203, Occupations Code, to read as follows:

SUBCHAPTER F. LICENSURE REQUIREMENTS

SECTION 27. Amends Section 203.251, as follows:

Sec. 203.251. New heading: LICENSE REQUIRED. Prohibits a person from practicing midwifery unless the person holds a license, rather than documentation letter, issued under this chapter. Makes conforming changes.

SECTION 28. Amends Section 203.252, Occupations Code, as follows:

Sec. 203.252. New heading: QUALIFICATIONS FOR INITIAL LICENSE. Provides that a person qualifies to become a licensed midwife under this chapter if the person provides the program coordinator with certain documentary evidence, including that the person has passed the jurisprudence examination required by this chapter. Deletes existing text relating to the requirements for an applicant for documentation. Makes conforming changes.

SECTION 29. Amends Section 203.253, Occupations Code, as follows:

Sec. 203.253. New heading: LICENSE APPLICATION. Makes conforming changes.

SECTION 30. Amends Section 203.254, Occupations Code, to make a conforming change.

SECTION 31. Amends Section 203.255(a), Occupations Code, to require the midwifery board, with the approval of the executive commissioner, to adopt a comprehensive midwifery examination for persons regulated under this chapter that must be passed before the initial license may be issued, rather than before the initial documentation.

SECTION 32. Amends Subchapter F, Chapter 203, Occupations Code, by adding Sections 203.2555 and 203.556, as follows:

Sec. 203.2555. JURISPRUDENCE EXAMINATION. Requires the midwifery board to develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, midwifery board rules, and any other applicable laws of this state affecting the applicant's midwifery practice. Requires the midwifery board, subject to the approval of the executive commissioner, to adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

Sec. 203.2556. EXAMINATION RESULTS. Sets forth notification requirements for the midwifery board in notifying an examinee of the examination results. Sets forth additional notification requirements for the midwifery board if the examination is graded or reviewed by a national testing service. Requires the midwifery board, if the notice of the examination results graded or reviewed by a national testing service will be delayed for more than 90 days after the examination date, to notify an examinee of the examination results. Authorizes the midwifery board to require a testing service to notify an examinee of the examination results. Requires the midwifery board, if requested in writing by a person who fails an examination administered under this chapter, to furnish the person with an analysis of the person's performance on the examination.

SECTION 33. Amends the heading to Subchapter G, Chapter 203, Occupations Code, to read as follows:

SUBCHAPTER G. LICENSE RENEWAL

SECTION 34. Amends Section 203.301, Occupations Code, as follows:

Sec. 203.301. New heading: APPLICATION FOR LICENSE RENEWAL. Requires an applicant for renewal of a license under this chapter, rather than documentation, to apply biennially, rather than annually, as provided in Section 203.253.

SECTION 35. Amends Section 203.302, Occupations Code, as follows:

Sec. 203.202. New heading: PROCEDURE FOR RENEWAL. (a) Provides that a licensed midwife is responsible for renewing a license before the expiration date of the license. Prohibits a person whose license has expired from engaging in activities that require a license until the license has been renewed. Deletes existing text relating to the department accepting an application for documentation renewal.

(b) Authorizes a person to renew an unexpired license by paying the required renewal fee to the midwifery board before the expiration date of the license. Deletes existing text authorizing the department to charge a late filing fee.

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

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

(e) Prohibits a person whose license has been expired for one year or more from renewing the license. Authorizes the person to obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an initial license.

(f) Requires the midwifery board, not later than the 30th day before the date a person's license is scheduled to expire, to send written notice of the impending expiration to the person at the person's last known address according to the records of the midwifery board.

SECTION 36. Amends Section 203.303, Occupations Code, to make conforming changes.

SECTION 37. Amends Sections 203.304(a) and (b), Occupations Code, to make conforming changes.

SECTION 38. Amends Section 203.305, Occupations Code, to make conforming changes.

SECTION 39. Amends Subchapter G, Chapter 203, Occupations Code, by adding Section 203.306, as follows:

Sec. 203.306. **GROUND FOR REFUSING RENEWAL.** Authorizes the midwifery board to refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter J, unless the enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

SECTION 40. Amends Section 203.351(b), Occupations Code, to make a conforming change.

SECTION 41. Amends Section 203.354(b), Occupations Code, to make a conforming change.

SECTION 42. Amends Section 203.355(e), Occupations Code, to make a conforming change.

SECTION 43. Amends Section 203.356(b), Occupations Code, to make a conforming change.

SECTION 44. Amends Section 203.401, Occupations Code, to make a conforming change.

SECTION 45. Amends Section 203.402, Occupations Code, to make a conforming change.

SECTION 46. Amends Section 203.404, Occupations Code, to make conforming changes.

SECTION 47. Amends Sections 203.405(a) and (b), Occupations Code, to make conforming changes.

SECTION 48. Amends Subchapter I, Chapter 203, Occupations Code, by adding Section 203.406, as follows:

Sec. 203.406. **REFUND.** Authorizes the midwifery board, subject to this section, to 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 subchapter. Prohibits the amount of a refund ordered as provided in an agreement resulting from an informal settlement conference from exceeding the amount the consumer paid to the licensed midwife for a service regulated by this chapter. Prohibits the midwifery board from requiring payment of other damages or estimating harm in a refund order.

SECTION 49. Amends Section 203.452(a), Occupations Code, to prohibit the amount of the administrative penalty from exceeding \$5,000, rather than \$1,000, for each violation.

SECTION 50. Amends Section 203.501(a), Occupations Code, to make conforming changes.

SECTION 51. Amends Section 203.504(a), Occupations Code, to make conforming changes.

SECTION 52. Amends Subchapter K, Chapter 203, Occupations Code, by adding Section 203.505, as follows:

Sec. 203.505. CEASE AND DESIST ORDER. Authorizes the midwifery board, 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, after notice and opportunity for a hearing, to issue a cease and desist order prohibiting the person from engaging in the activity. Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter J.

SECTION 53. Amends Section 157.004(c), Occupations Code, to make a conforming change.

SECTION 54. Amends Section 483.001(13), Health and Safety Code, to redefine "prescription."

SECTION 55. Amends Section 483.041(c), Health and Safety Code, to provide that Subsection (a) does not apply to the possession of a dangerous drug in the usual course of business or practice in the performance of official duties by a manufacturer or wholesaler licensed by the Department of State Health Services, rather than commissioner of health. Makes a conforming change.

SECTION 56. Repealer: Section 203.002(1) (defining "board") and 203.156(a) (Duties of Board and Department), Occupations Code.

SECTION 57. Requires the Texas Midwifery Board, not later than January 1, 2006, to adopt the policies required by Sections 203.160 and 203.161, Occupations Code, as added by this Act and adopt the rules required by Chapter 203, Occupations Code, as amended by this Act. Requires the Texas Midwifery Board, not later than March 1, 2006, to develop the jurisprudence examination required by Section 203.2555, Occupations Code, as added by this Act.

SECTION 58. (a) Makes application of the changes in law made by Section 203.052, Occupations Code, as amended by this Act, regarding the composition of the Texas Midwifery Board, prospective.

(b) Makes application of the changes in law made by Sections 203.052, 203.054, and 203.057, Occupations Code, as amended by this Act, and Section 203.060, Occupations Code, as added by this Act, regarding the prohibitions on or qualifications of members of the Texas Midwifery Board, prospective.

(c) Makes application of the changes in law made by this Act related to the filing or investigation of a complaint under Chapter 203, Occupations Code, as amended by this Act, prospective.

(d) Makes application of the changes in law made by this Act governing the eligibility of a person for a license under Chapter 203, Occupations Code, prospective.

(e) Makes application of the change in law made by this Act with respect to conduct that is grounds for imposition of a disciplinary sanction, including a refund or cease and desist order, prospective.

(f) Makes application of the changes in law made by Section 203.252(a), Occupations Code, as amended by this Act, and Section 203.2555, Occupations Code, as added by this Act, prospective to September 1, 2006.

SECTION 59. Makes application of Section 203.302, Occupations Code, as amended by this Act, prospective to September 1, 2007.

SECTION 60. Effective date: September 1, 2005.