

**As Reported by the House Health Committee**

**127th General Assembly**

**Regular Session**

**2007-2008**

**Sub. H. B. No. 331**

**Representative Wagoner**

**Cosponsors: Representatives McGregor, J., Schindel, Fende, Goodwin,**

**Stewart, J., Seitz, Brown, Sears**

**—**

**A B I L L**

To amend sections 3701.83, 3702.11, 3702.55, and 1  
3709.09; to enact sections 3711.14, 3711.16, 2  
3711.20, 3711.21, and 3711.22; to enact new 3  
sections 3711.01, 3711.02, 3711.04, 3711.06, 4  
3711.08, 3711.10, and 3711.12; and to repeal 5  
sections 3711.01, 3711.02, 3711.021, 3711.03, 6  
3711.04, 3711.05, 3711.06, 3711.07, 3711.08, 7  
3711.09, 3711.10, 3711.11, 3711.12, 3711.13, and 8  
3711.99 of the Revised Code regarding the 9  
licensure of maternity homes and obstetric or 10  
newborn care facilities. 11

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3701.83, 3702.11, 3702.55, and 12  
3709.09 be amended and new sections 3711.01, 3711.02, 3711.04, 13  
3711.06, 3711.08, 3711.10, and 3711.12 and sections 3711.14, 14  
3711.16, 3711.20, 3711.21, and 3711.22 of the Revised Code be 15  
enacted to read as follows: 16

**Sec. 3701.83.** (A) There is hereby created in the state 17  
treasury the general operations fund. Moneys in the fund shall be 18

used for the purposes specified in sections 3701.04, 3701.344, 19  
3702.20, 3710.15, ~~3711.02~~ 3711.16, 3717.45, 3718.06, 3721.02, 20  
3722.04, 3729.07, 3733.04, 3733.25, 3733.43, 3748.04, 3748.05, 21  
3748.07, 3748.12, 3748.13, 3749.04, 3749.07, 4747.04, 4751.04, and 22  
4769.09 of the Revised Code. 23

(B) The alcohol testing program fund is hereby created in the 24  
state treasury. The director of health shall use the fund to 25  
administer and enforce the alcohol testing and permit program 26  
authorized by section 3701.143 of the Revised Code. 27

The fund shall receive transfers from the liquor control fund 28  
created under section 4301.12 of the Revised Code. All investment 29  
earnings of the alcohol testing program fund shall be credited to 30  
the fund. 31

**Sec. 3702.11.** The director of health shall adopt rules 32  
establishing safety standards and quality-of-care standards for 33  
each of the following: 34

- (A) Solid organ and bone marrow transplantation; 35
- (B) Stem cell harvesting and reinfusion; 36
- (C) Cardiac catheterization; 37
- (D) Open-heart surgery; 38
- (E) ~~Obstetric and newborn care;~~ 39
- ~~(F)~~ Pediatric intensive care; 40
- ~~(G)~~ (F) Operation of linear accelerators; 41
- ~~(H)~~ (G) Operation of cobalt radiation therapy units; 42
- ~~(I)~~ (H) Operation of gamma knives. 43

**Sec. 3702.55.** Except as provided in section 3702.542 of the 44  
Revised Code, a person that the director of health determines has 45  
violated section 3702.53 of the Revised Code shall cease 46

conducting the activity that constitutes the violation or 47  
utilizing the equipment or facility resulting from the violation 48  
not later than thirty days after the person receives the notice 49  
mailed under section 3702.532 of the Revised Code or, if the 50  
person appeals the director's determination under section 3702.60 51  
of the Revised Code, thirty days after the person receives an 52  
order upholding the director's determination that is not subject 53  
to further appeal. A person that applies for a certificate of need 54  
as described in section 3702.542 of the Revised Code shall cease 55  
conducting the activity or using the equipment or facility in 56  
accordance with the timetable established by the director of 57  
health under that section. 58

If any person determined to have violated section 3702.53 of 59  
the Revised Code fails to cease conducting an activity or using 60  
equipment or a facility as required by this section or a timetable 61  
established under section 3702.542 of the Revised Code, or if the 62  
person continues to seek payment or reimbursement for services 63  
rendered or costs incurred in conducting the activity as 64  
prohibited by section 3702.56 of the Revised Code, in addition to 65  
the penalties imposed under section 3702.54, 3702.541, or 3702.542 66  
or former section 3702.543 of the Revised Code: 67

(A) The director of health may refuse to include any beds 68  
involved in the activity in the bed capacity of a hospital for 69  
purposes of registration under section 3701.07 of the Revised 70  
Code; 71

(B) The director of health may refuse to license, or may 72  
revoke a license or reduce bed capacity previously granted to, a 73  
~~maternity boardinghouse or lying in hospital under section 3711.02~~ 74  
~~of the Revised Code;~~ a hospice care program under section 3712.04 75  
of the Revised Code; a nursing home, rest home, or home for the 76  
aging under section 3721.02 of the Revised Code; or any beds 77  
within any of those facilities that are involved in the activity; 78

(C) A political subdivision certified under section 3721.09 79  
of the Revised Code may refuse to license, or may revoke a license 80  
or reduce bed capacity previously granted to, a nursing home, rest 81  
home, or home for the aging, or any beds within any of those 82  
facilities that are involved in the activity; 83

(D) The director of mental health may refuse to license under 84  
section 5119.20 of the Revised Code, or may revoke a license or 85  
reduce bed capacity previously granted to, a hospital receiving 86  
mentally ill persons or beds within such a hospital that are 87  
involved in the activity; 88

(E) The department of job and family services may refuse to 89  
enter into a provider agreement that includes a facility, beds, or 90  
services that result from the activity. 91

**Sec. 3709.09.** (A) The board of health of a city or general 92  
health district may, by rule, establish a uniform system of fees 93  
to pay the costs of any services provided by the board. 94

The fee for issuance of a certified copy of a vital record or 95  
a certification of birth shall not be less than the fee prescribed 96  
for the same service under division (A)(1) of section 3705.24 of 97  
the Revised Code and shall include the fees required by division 98  
(B) of section 3705.24 and section 3109.14 of the Revised Code. 99

Fees for services provided by the board for purposes 100  
specified in sections 3701.344, ~~3711.05~~, 3718.06, 3729.07, 101  
3730.03, 3733.04, 3733.25, and 3749.04 of the Revised Code shall 102  
be established in accordance with rules adopted under division (B) 103  
of this section. The district advisory council, in the case of a 104  
general health district, and the legislative authority of the 105  
city, in the case of a city health district, may disapprove any 106  
fee established by the board of health under this division, and 107  
any such fee, as disapproved, shall not be charged by the board of 108  
health. 109

(B) The public health council shall adopt rules under section 110  
111.15 of the Revised Code that establish fee categories and 111  
uniform methodologies for use in calculating the costs of services 112  
provided for purposes specified in sections 3701.344, ~~3711.05~~, 113  
3718.06, 3729.07, 3730.03, 3733.04, 3733.25, and 3749.04 of the 114  
Revised Code. In adopting the rules, the public health council 115  
shall consider recommendations it receives from advisory boards 116  
established either by statute or the director of health for 117  
entities subject to the fees. 118

(C) At least thirty days prior to establishing a fee for a 119  
service provided by the board for a purpose specified in section 120  
3701.344, ~~3711.05~~, 3718.06, 3729.07, 3730.03, 3733.04, 3733.25, or 121  
3749.04 of the Revised Code, a board of health shall notify any 122  
entity that would be affected by the proposed fee of the amount of 123  
the proposed fee. 124

**Sec. 3711.01. As used in this chapter:** 125

(A) "Facility in which obstetric or newborn care is offered" 126  
means either of the following: 127

(1) A maternity unit; 128

(2) The portion of a hospital that provides inpatient care as 129  
a level III newborn care service intensive care nursery, as 130  
reported by the hospital pursuant to section 3701.07 of the 131  
Revised Code. 132

(B) "Maternity home" means a facility for pregnant girls and 133  
women where accommodations, medical care, and social services are 134  
provided during the prenatal and postpartal periods. "Maternity 135  
home" does not include a private residence where obstetric or 136  
newborn services are received by a resident of the home. 137

(C) "Maternity unit" means any unit or place in a hospital 138  
where women are regularly received and provided care during all or 139

part of the maternity cycle, except that "maternity unit" does not 140  
include an emergency department or similar place dedicated to 141  
providing emergency health care. 142

Sec. 3711.02. (A) Except as provided in division (B) of this 143  
section, no person shall operate a maternity home or a facility in 144  
which obstetric or newborn care is offered unless that person has 145  
a valid license issued under section 3711.04 of the Revised Code. 146

(B) Division (A) of this section does not apply to a health 147  
care facility as defined in division (A)(4) of section 3702.30 of 148  
the Revised Code. 149

Sec. 3711.04. Each person seeking licensure to operate a 150  
maternity home or facility in which obstetric or newborn care is 151  
offered subject to section 3711.02 of the Revised Code shall apply 152  
to the department of health for a license. The application shall 153  
be submitted in the form and manner prescribed by the public 154  
health council in rules adopted under section 3711.12 of the 155  
Revised Code. 156

The department shall review all applications received. If an 157  
applicant meets the standards specified in rules adopted under 158  
section 3711.12 of the Revised Code and passes the inspection 159  
required by section 3711.06 of the Revised Code, the department 160  
shall issue a license to the applicant. 161

Sec. 3711.06. The director of health shall inspect each 162  
maternity home or facility in which obstetric or newborn care is 163  
offered for which a person has applied for an initial license 164  
under section 3711.04 of the Revised Code prior to issuing a 165  
license. Inspections shall be conducted in accordance with 166  
inspection criteria, procedures, and guidelines adopted by the 167  
public health council under section 3711.12 of the Revised Code. 168

Sec. 3711.08. A license issued under section 3711.04 of the 169  
Revised Code is valid for three years, unless earlier revoked or 170  
suspended under section 3711.14 of the Revised Code. The license 171  
may be renewed in the manner prescribed by the public health 172  
council in rules adopted under section 3711.12 of the Revised 173  
Code. The license renewal fee specified in the rules shall be paid 174  
not later than sixty days after the department of health mails an 175  
invoice for the fee to the license holder. A penalty of ten per 176  
cent of the amount of the renewal fee shall be assessed for each 177  
month the fee is overdue. 178

Sec. 3711.10. The director of health shall monitor compliance 179  
with this chapter and the rules adopted under it. The director may 180  
conduct scheduled or random inspections of facilities as the 181  
director considers necessary to adequately monitor compliance. 182  
183

Sec. 3711.12. (A) The public health council shall adopt rules 184  
in accordance with Chapter 119. of the Revised Code as the council 185  
considers necessary to implement the requirements of this chapter 186  
for licensure and operation of maternity homes and facilities in 187  
which obstetric or newborn care is offered. The rules shall 188  
include provisions for the following: 189

(1) Licensure application forms and procedures; 190

(2) Application renewal procedures, including rules that 191  
address the right of the director, at the director's sole 192  
discretion, to inspect a home or facility prior to renewal of a 193  
license; 194

(3) Application and renewal fees, including rules on fees for 195  
the inspections required by section 3711.10 of the Revised Code; 196

(4) Safety standards, quality-of-care standards, and 197

<u>quality-of-care data reporting requirements;</u>	198
<u>(5) Reporting and auditing requirements;</u>	199
<u>(6) Inspection criteria, procedures, and guidelines;</u>	200
<u>(7) Any other rules necessary to implement this chapter.</u>	201
<u>(B) When adopting rules under this section, the public health</u>	202
<u>council shall give consideration to recommendations regarding</u>	203
<u>obstetric and newborn care issued by the American college of</u>	204
<u>obstetricians and gynecologists; American academy of pediatrics;</u>	205
<u>American academy of family physicians; American society of</u>	206
<u>anesthesiologists; American college of nurse midwives; U.S.</u>	207
<u>centers for disease control and prevention; association of women's</u>	208
<u>health, obstetrics, and neonatal nurses; and the association of</u>	209
<u>operating room nurses, or their successor organizations. The</u>	210
<u>council shall also consider the recommendations of the maternity</u>	211
<u>and newborn advisory council established in section 3711.20 of the</u>	212
<u>Revised Code.</u>	213
<u><b>Sec. 3711.14.</b> (A) In accordance with Chapter 119. of the</u>	214
<u>Revised Code, the director of health may take the following</u>	215
<u>actions for failure to comply with this chapter or the rules</u>	216
<u>adopted under it:</u>	217
<u>(1) Impose a civil penalty of not less than one thousand</u>	218
<u>dollars and not more than two hundred fifty thousand dollars on a</u>	219
<u>person who violates a provision of this chapter or the rules</u>	220
<u>adopted under it;</u>	221
<u>(2) Summarily suspend, in accordance with division (B) of</u>	222
<u>this section, a license issued under section 3711.04 of the</u>	223
<u>Revised Code if the director believes there is clear and</u>	224
<u>convincing evidence that the continued operation of a maternity</u>	225
<u>home or facility in which obstetric or newborn care is offered</u>	226
<u>presents a danger of immediate and serious harm to the public;</u>	227

(3) Revoke a license issued under section 3711.04 of the 228  
Revised Code for a person who violates a provision of this chapter 229  
or the rules adopted under it in such a manner as to pose an 230  
imminent threat of serious physical or life-threatening danger as 231  
determined by the director. 232

(B) If the director decides to suspend a license under 233  
division (A)(2) of this section, the director shall issue a 234  
written order of suspension and cause it to be delivered by 235  
certified mail or in person in accordance with section 119.07 of 236  
the Revised Code. The order shall not be subject to suspension by 237  
the court while an appeal filed under section 119.12 of the 238  
Revised Code is pending. If the individual subject to the 239  
suspension requests an adjudication, the date set for the 240  
adjudication shall be within fifteen days but not earlier than 241  
seven days after the individual makes the request, unless another 242  
date is agreed to by both the individual and the director. The 243  
summary suspension shall remain in effect, unless reversed by the 244  
director, until a final adjudication order issued by the director 245  
pursuant to this section and Chapter 119. of the Revised Code 246  
becomes effective. 247

The director shall issue a final adjudication order within 248  
ninety days after completion of the adjudication. If the director 249  
does not issue a final order within the ninety-day period, the 250  
summary suspension shall be void, but any final adjudication order 251  
issued subsequent to the ninety-day period shall not be affected. 252

(C) If the director issues an order revoking or suspending a 253  
license issued under section 3711.04 of the Revised Code and the 254  
license holder continues to operate a maternity home or facility 255  
in which obstetric or newborn care is offered, the director may 256  
ask the attorney general to apply to the court of common pleas of 257  
the county in which the person is located for an order enjoining 258  
the person from operating the home or facility. The court shall 259

grant the order on a showing that the person is operating the home 260  
or facility. 261

Sec. 3711.16. All license application fees, renewal fees, 262  
late renewal penalties, and civil penalties collected under this 263  
chapter shall be deposited in the state treasury to the credit of 264  
the general operations fund created under section 3701.83 of the 265  
Revised Code. The moneys shall be used solely for the purposes of 266  
administering and enforcing this chapter and the rules adopted 267  
under it. 268

Sec. 3711.20. (A) There is hereby created the maternity and 269  
newborn advisory council within the department of health. The 270  
governor, with the advice and consent of the senate, shall appoint 271  
the following members: 272

(1) A board-certified obstetrician; 273

(2) A board-certified pediatrician; 274

(3) A nurse manager or administrator responsible for the 275  
organization and supervision of nursing services in a level I 276  
obstetric care service; 277

(4) A nurse manager or administrator responsible for the 278  
organization and supervision of nursing services in a level I 279  
newborn care service; 280

(5) A nurse manager or administrator responsible for the 281  
organization and supervision of nursing services in a level II 282  
obstetric care service; 283

(6) A nurse manager or administrator responsible for the 284  
organization and supervision of nursing services in a level II 285  
newborn care service; 286

(7) A nurse manager or administrator responsible for the 287  
organization and supervision of nursing services in a level III 288

<u>obstetric care service;</u>	289
<u>(8) A nurse manager or administrator responsible for the</u>	290
<u>organization and supervision of nursing services in a level III</u>	291
<u>newborn care service;</u>	292
<u>(9) A licensed dietitian with knowledge of newborn nutrition;</u>	293
<u>(10) A licensed social worker with knowledge of newborn</u>	294
<u>psychosocial and family support services;</u>	295
<u>(11) A lactation consultant certified by the international</u>	296
<u>board of lactation consultant examiners;</u>	297
<u>(12) An individual to represent the public;</u>	298
<u>(13) A board-certified perinatologist;</u>	299
<u>(14) A board-certified neonatologist;</u>	300
<u>(15) A certified nurse-midwife, certified nurse practitioner,</u>	301
<u>clinical nurse specialist, or certified registered nurse</u>	302
<u>anesthetist;</u>	303
<u>(16) A board-certified anesthesiologist;</u>	304
<u>(17) A board-certified family practice physician who delivers</u>	305
<u>children or provides newborn care.</u>	306
<u>(B) The governor shall make the initial appointments to the</u>	307
<u>council not later than sixty days after the effective date of this</u>	308
<u>section. Of the initial appointments, six shall be for a term of</u>	309
<u>three years, six for a term of four years, and five for a term of</u>	310
<u>five years. Thereafter, terms of office shall be five years with</u>	311
<u>each term ending on the same day of the same month as the term it</u>	312
<u>succeeds. Each member shall hold office from the date of the</u>	313
<u>member's appointment until the end of the term for which the</u>	314
<u>member was appointed. Members may be reappointed. Vacancies shall</u>	315
<u>be filled in the manner provided for original appointment. Any</u>	316
<u>member appointed to fill a vacancy prior to the expiration of the</u>	317
<u>term for which the member's predecessor was appointed shall hold</u>	318

office for the remainder of that term. A member shall continue in 319  
office subsequent to the expiration of the member's term or until 320  
a period of sixty days has elapsed, whichever occurs first. 321

(C) The council shall hold four meetings in the first year 322  
after the initial appointments to the council are made under 323  
division (B) of this section. Thereafter, the council shall hold 324  
two meetings each year. Additional meetings may be held at the 325  
call of the chairperson or the director of health. 326

The chairperson shall be selected annually by members of the 327  
council. Following each meeting, the chairperson may submit a 328  
report to the director summarizing the activities, discussion, and 329  
recommendations of the council. Seven voting members of the 330  
council constitute a quorum. 331

(D) Members of the council shall be reimbursed for actual and 332  
necessary expenses incurred in the performance of their official 333  
duties. 334

(E) The department of health shall provide the council the 335  
administrative support necessary to execute its duties. 336

**Sec. 3711.21. The maternity and newborn advisory council** 337  
**shall do all of the following:** 338

(A) Advise and consult with the director of health in the 339  
development of rules to be presented to the public health council 340  
for proposed adoption under this chapter; 341

(B) Advise and consult with the director of health concerning 342  
the implementation and enforcement of this chapter; 343

(C) Advise and consult with the director in the development 344  
of inspection criteria, procedures, and guidelines to be used in 345  
enforcement of this chapter; 346

(D) Advise and consult with the director regarding 347  
recommendations to be presented to the public health council 348

regarding improving maternity and obstetric and newborn care in 349  
this state; 350

(E) Prepare and submit to the director an annual report 351  
evaluating the department's enforcement of this chapter. 352

**Sec. 3711.22.** The maternity and newborn advisory council may 353  
establish committees to focus on specific components of the 354  
enforcement of this chapter. Chairpersons of the committees shall 355  
be appointed by the chairperson of the council and shall be 356  
members of the council. Other members of the committees shall be 357  
appointed by the chairperson of the council and may include 358  
individuals who are not members of the council. 359

The membership and responsibilities of each committee 360  
established under this section shall be subject to the approval of 361  
the director of health. Members of the committees shall be 362  
reimbursed for actual and necessary expenses incurred in the 363  
performance of their official duties. 364

Committee reports shall be presented to the council at each 365  
regular meeting of the council. 366

**Section 2.** That existing sections 3701.83, 3702.11, 3702.55, 367  
and 3709.09 and sections 3711.01, 3711.02, 3711.021, 3711.03, 368  
3711.04, 3711.05, 3711.06, 3711.07, 3711.08, 3711.09, 3711.10, 369  
3711.11, 3711.12, 3711.13, and 3711.99 of the Revised Code are 370  
hereby repealed. 371

**Section 3.** Notwithstanding the provisions of Sections 1 and 2 372  
of this act, a person may continue to operate a maternity home or 373  
facility in which obstetric or newborn care is offered pursuant to 374  
a license issued under Chapter 3711. of the Revised Code, as that 375  
chapter existed immediately prior to the effective date of this 376  
act, until the person's license expires or is revoked. 377

Until the rules required by sections 3711.04 and 3711.10 of 378

the Revised Code as enacted by this act are adopted, the	379
Department of Health may renew licenses and issue new licenses	380
under the rules adopted under former Chapter 3711. of the Revised	381
Code.	382