

1 HB284
2 173517-1
3 By Representatives Johnson (K), Ball, Pettus and McCutcheon
4 RFD: Health
5 First Read: 23-FEB-16

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8 SYNOPSIS: Under existing law, certified nurse
9 midwives are licensed by the State Board of Nursing
10 and the Board of Medical Examiners to practice
11 nurse midwifery.

12 This bill would establish a State Board of
13 Midwifery to license and regulate the practice of
14 midwifery.

15 This bill would: provide for the composition
16 of the board members and function of the board;
17 specify requirements for the licensing of midwives;
18 provide for licensing fees; and establish
19 guidelines for the practice of midwifery.

20 This bill also would provide for penalties
21 for violations.

22 Amendment 621 of the Constitution of Alabama
23 of 1901, now appearing as Section 111.05 of the
24 Official Recompilation of the Constitution of
25 Alabama of 1901, as amended, prohibits a general
26 law whose purpose or effect would be to require a
27 new or increased expenditure of local funds from

1 becoming effective with regard to a local
2 governmental entity without enactment by a 2/3 vote
3 unless: it comes within one of a number of
4 specified exceptions; it is approved by the
5 affected entity; or the Legislature appropriates
6 funds, or provides a local source of revenue, to
7 the entity for the purpose.

8 The purpose or effect of this bill would be
9 to require a new or increased expenditure of local
10 funds within the meaning of the amendment. However,
11 the bill does not require approval of a local
12 governmental entity or enactment by a 2/3 vote to
13 become effective because it comes within one of the
14 specified exceptions contained in the amendment.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT
19

20 Licensing the practice of midwifery by adding
21 Sections 34-19-11 to 34-19-19, inclusive, to the Code of
22 Alabama 1975; to establish a State Board of Midwifery to
23 license and regulate the practice of midwifery; to provide for
24 the composition of the board members and function of the
25 board; to specify requirements for the licensing of midwives
26 and provide for licensing fees; to establish guidelines for
27 the practice of midwifery; to provide for penalties for

1 violations; to amend Section 22-9A-7, Code of Alabama 1975,
2 relating to registration of births; to amend Section 34-43-3,
3 Code of Alabama 1975, relating to the definition of
4 therapeutic massage; to repeal Sections 34-19-2 through
5 34-19-10, inclusive, Code of Alabama 1975; and in connection
6 therewith would have as its purpose or effect the requirement
7 of a new or increased expenditure of local funds within the
8 meaning of Amendment 621 of the Constitution of Alabama of
9 1901, now appearing as Section 111.05 of the Official
10 Recompilation of the Constitution of Alabama of 1901, as
11 amended.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 34-19-11 to 34-19-19, inclusive,
14 are added to the Code of Alabama 1975, to read as follows:

15 §34-19-11.

16 The following words and phrases shall have the
17 following meanings, unless the context clearly indicates
18 otherwise:

19 (1) BOARD. The State Board of Midwifery.

20 (2) LICENSED MIDWIFE. An independent practitioner
21 who is licensed by the board to practice midwifery.

22 (3) MIDWIFERY. The provision of primary maternity
23 care that is consistent with a licensed midwife's training,
24 education, and experience to women and their newborn children
25 throughout the childbearing cycle, in circumstances under
26 which a licensed midwife has determined that the client is at

1 a low risk of developing complications. Midwifery is not the
2 practice of medicine.

3 §34-19-12.

4 (a) There is created and established a State Board
5 of Midwifery to implement and administer this chapter.

6 (b) The board shall consist of seven members
7 appointed by the Governor and subject to confirmation by the
8 Senate, from a list of qualified individuals nominated by the
9 designated organization. Each list shall contain the names of
10 at least two individuals for each position to be filled.

11 (c) The members of the board shall be appointed for
12 staggered initial terms and subsequent terms shall be for a
13 minimum of four years or until his or her successor has been
14 appointed and qualified.

15 (d) The board shall meet at least twice each year,
16 conducting its business in person or by electronic methods,
17 including proxy voting.

18 (e) The board shall elect one of its members to
19 serve as chair for a two-year term. The chair may not serve
20 consecutive terms.

21 (f) The composition of the board shall be as
22 follows:

23 (1) Four members shall hold a valid certified
24 professional midwife credential from the North American
25 Registry of Midwives (NARM). These members shall be appointed
26 from a list of names submitted by the Alabama Midwives
27 Alliance (ALMA). Two of these members shall be appointed to

1 initial terms of four years, one to a term of three years, and
2 one to a term of two years.

3 (2) One member shall be a physician. This member
4 shall be appointed from a list of names submitted by the
5 Medical Association of the State of Alabama. This member shall
6 be appointed to an initial term of three years.

7 (3) Two members shall have used midwifery services
8 in the state. These members shall be appointed from a list of
9 names submitted by the Alabama Birth Coalition. One of these
10 members shall be appointed to an initial term of two years and
11 one to an initial term of one year.

12 (g) All members of the board shall be immune from
13 individual civil liability while acting within the scope of
14 their duties as board members.

15 (h) Vacancies shall be filled by the Governor and
16 confirmed by the Senate in the same manner as other
17 appointments are made. In the case of a vacancy, the new
18 appointee shall serve for the remainder of the unexpired term.

19 (i) Members of the board shall serve without
20 compensation but shall be allowed travel and per diem expenses
21 at the same rate paid to state employees, to be paid from the
22 funds collected for the administration of this chapter, as
23 funds are available.

24 (j) The board may employ, subject to the State Merit
25 System, investigators, inspectors, attorneys, and any other
26 agents, employees, and assistants as may from time to time be

1 necessary, and may use any other means necessary to enforce
2 the provisions of this chapter.

3 (k) The board shall be subject to the Alabama Sunset
4 Law, Chapter 20, Title 41, as an enumerated agency as provided
5 in Section 41-20-3, and shall have a termination date of
6 October 1, 2020, and every four years thereafter, unless
7 continued pursuant to the Alabama Sunset Law.

8 §34-19-13.

9 All funds received by the board under this chapter
10 shall be deposited in the State Treasury to the credit of the
11 State Board of Midwifery and all such funds are to be
12 appropriated to the board to defray the expenses incurred in
13 carrying out this chapter. The expenses shall include
14 printing, stamps, stationery, clerical help, travel, and other
15 necessary expenditures. In all cases, any fee that is received
16 by the board shall not be refunded, and no applicant shall
17 have the right to recover any part of a fee accompanying his
18 or her application for licensure or otherwise paid to the
19 board except on the death, disability, or retirement from
20 practice of any applicant or licensee between payment of any
21 fee and the expiration of his or her current renewal or the
22 issuance of the initial license. The books and records of the
23 board shall be subject to audit in the same manner and to the
24 same extent as any other state agency. The board shall keep a
25 true and accurate account of all funds received by the board
26 and all expenditures made by the board.

27 §34-19-14.

1 The board shall have the authority to do all of the
2 following consistent with this chapter:

3 (1) Approve, renew, suspend, or revoke licenses for
4 the practice of midwifery.

5 (2) Investigate and conduct hearings regarding
6 complaints against a licensed midwife in order to determine if
7 disciplinary action is warranted.

8 (3) Establish reasonable licensure fees, including,
9 but not limited to, initial application, renewal, and
10 reinstatement fees, set in a manner and at a financial level
11 that does not effectively prohibit or deter the practice of
12 midwifery.

13 (4) Impose administrative fines, not to exceed one
14 thousand dollars (\$1,000) per violation, for violating this
15 chapter, a board rule, or a condition of a license.

16 (b) The board shall adopt rules to carry out this
17 chapter in a manner consistent with the most current North
18 American Registry of Midwives Job Analysis and with essential
19 documents developed and published by the Midwives Alliance of
20 North America. The rules shall include, but not be limited to,
21 all of the following:

22 (1) Licensing procedures and requirements.

23 (2) Minimum initial and continuing education
24 requirements for licensure.

25 (3) The allowable scope of midwifery practice
26 regarding use of equipment, procedures, and administration of
27 medication necessary for the safe practice of midwifery.

1 (4) Standards by which a midwife shall conduct risk
2 assessment.

3 (5) A standard procedure for investigating
4 complaints.

5 (6) Requirements for clinical internships for
6 individuals seeking midwifery training.

7 (7) Standards regarding professional liability
8 insurance.

9 (c) The rules shall ensure independent practice and
10 shall not require any agreement, written or otherwise, with
11 any other health care professional or facility.

12 (d) The rules shall not require a woman who is
13 seeking midwifery services to be assessed or examined or
14 otherwise approved for midwifery care by another health care
15 professional.

16 §34-19-15.

17 (a) An individual desiring to be licensed as a
18 midwife shall apply to the board on forms provided by the
19 board. Applicants for licensure shall submit evidence
20 satisfactory to the board that he or she has met all of the
21 following requirements:

22 (1) Is at least 21 years of age.

23 (2) Is a citizen of the United States or, if not a
24 citizen of the United States, is legally present in the United
25 States with appropriate documentation from the federal
26 government.

1 (3) Has obtained a certified professional midwife
2 credential through an education program or pathway accredited
3 by the Midwifery Educational Accreditation Council or by
4 another accrediting agency recognized by the United States
5 Department of Education.

6 (b) Notwithstanding subdivision (3) of subsection
7 (a), the board may license the following:

8 (1) An applicant who has obtained a certified
9 professional midwife credential prior to January 1, 2020,
10 through a non-accredited pathway, provided the applicant
11 obtains the Midwifery Bridge Certificate or completes an
12 educational program or pathway accredited by the Midwifery
13 Educational Accreditation Council or by another accrediting
14 agency recognized by the United States Department of
15 Education.

16 (2) An applicant who has maintained licensure in a
17 state that does not require an accredited education, provided
18 the applicant obtains the Midwifery Bridge Certificate or
19 completes an educational program or pathway accredited by the
20 Midwifery Educational Accreditation Council or by another
21 accrediting agency recognized by the United States Department
22 of Education.

23 (c) Licenses shall be valid for a period of 24
24 months.

25 (d) Following the contested case provisions of the
26 Administrative Procedure Act, the board may suspend or revoke

1 a license, or it may refuse to grant a license to an applicant
2 for licensure, if the licensee or applicant:

3 (1) Has obtained a license by means of fraud,
4 misrepresentation, or concealment of material facts, including
5 making a false statement on an application or any other
6 document required by the board for licensure.

7 (2) Has engaged in unprofessional conduct that
8 endangered or was likely to endanger the health, safety, and
9 welfare of a client.

10 (3) Has been convicted of a felony or any crime
11 arising out of or connected with the practice of midwifery.

12 (4) Has performed an act that exceeds the scope of
13 practice granted to the licensed midwife.

14 (5) Has had his or her license revoked, suspended,
15 or denied in any other territory or jurisdiction of the United
16 States for any act described in this subsection.

17 (e) The board shall maintain an up-to-date list of
18 every individual licensed to practice midwifery pursuant to
19 this chapter and individuals whose licenses have been
20 suspended, revoked, or denied. The information on the list
21 shall be available for public inspection during reasonable
22 business hours and the information may be shared with others
23 as deemed necessary and acceptable by the board. The list
24 shall include the name of the individual, the date and the
25 cause of action, the penalty incurred, and the length of the
26 penalty.

1 (f) The board shall grant continuing education
2 credit for available educational opportunities, or make
3 available quality continuing education programs, seminars, and
4 workshops to acquaint and educate licensed midwives in the
5 most current evidence-based practices with respect to
6 midwifery, women's health, or the evaluation and care of the
7 newborn.

8 §34-19-16.

9 (a) A licensed midwife may provide midwifery care in
10 the setting of the client's choice.

11 (b) A licensed midwife shall ensure that the client
12 has signed an informed consent form. This form shall include
13 information to inform the client of the qualifications of the
14 licensed midwife.

15 (c) For screening purposes only, a licensed midwife
16 may order routine antepartum and postpartum laboratory
17 analyses to be performed by a licensed laboratory.

18 (d) After a client has secured the services of a
19 licensed midwife, a licensed midwife shall document an
20 emergency care plan particular to each client, which shall
21 include referral and transfer plans in the event of an
22 emergency.

23 (e) A licensed midwife shall determine the progress
24 of labor and, when birth is imminent, shall be available until
25 delivery is accomplished.

1 (f) A licensed midwife shall remain with the client
2 during the postpartal period until the conditions of the
3 client and newborn are stabilized.

4 (g) A licensed midwife shall instruct the client
5 regarding the requirements of the administration of eye
6 ointment ordered by the Department of Public Health pursuant
7 to Section 22-20-2.

8 (h) A licensed midwife shall instruct the client
9 regarding the requirements of administration of newborn health
10 screening ordered by the Department of Public Health pursuant
11 to Section 22-20-3.

12 (i) A licensed midwife shall file a birth
13 certificate for each birth in accordance with the requirements
14 of Section 22-9A-7.

15 §34-19-17.

16 (a) Except as provided in this section, it shall be
17 unlawful for an individual other than a licensed midwife to
18 practice midwifery in this state for economic remuneration or
19 to hold himself or herself out to be a licensed midwife unless
20 he or she is a licensed midwife as defined in this chapter. An
21 individual violating this section shall be guilty of a Class C
22 misdemeanor.

23 (b) An individual does not violate subsection (a) in
24 any of the following circumstances:

25 (1) The individual is a certified nurse midwife
26 acting in accordance with Sections 34-21-80 to 34-21-93,
27 inclusive.

1 (2) The individual is training under a licensed
2 midwife and is assisting the licensed midwife in the practice
3 of midwifery.

4 (3) The individual is providing gratuitous
5 assistance at childbirth.

6 (c) Nothing in this section shall be construed to
7 repeal, abridge, or modify Section 6-5-332, or any other Good
8 Samaritan statute.

9 §34-19-18.

10 (a) Nothing in this chapter shall be construed to
11 establish a standard of care for physicians or otherwise
12 modify, amend, or supersede any provision of the Alabama
13 Medical Liability Act of 1987 or the Alabama Medical Liability
14 Act of 1996, commencing with Section 6-5-540, et seq., or any
15 amendment thereto, or any judicial interpretation thereof.

16 (b) The decisions, opinions, actions, and
17 proceedings discussed, rendered, entered, or acted upon in
18 good faith and without malice and on the basis of facts
19 reasonably known or reasonably believed to exist of any peer
20 review or North American Registry of Midwives Disciplinary
21 Process shall be privileged and confidential, and no member
22 thereof shall be liable for the decision, opinion, action, or
23 proceeding.

24 §34-19-19.

25 Individuals licensed as midwives as set forth in
26 this chapter shall be designated Licensed Midwives (LM).

1 Section 2. Sections 22-9A-7 and 34-43-3, Code of
2 Alabama 1975, are amended to read as follows:

3 "§22-9A-7.

4 "(a) A certificate of birth for each live birth
5 ~~which~~ that occurs in this state shall be filed with the Office
6 of Vital Statistics, or as otherwise directed by the State
7 Registrar, within five days after the birth and shall be
8 registered if it has been completed and filed in accordance
9 with this section.

10 "(b) (1) When a birth occurs in an institution or en
11 route to the institution, the person in charge of the
12 institution or his or her designated representative shall
13 obtain the personal data, prepare the certificate, secure the
14 signatures required, and file the certificate as directed in
15 subsection (a) or as directed by the State Registrar within
16 the required five days. The physician or other person in
17 attendance shall provide the medical information required by
18 the certificate and certify to the facts of birth within 72
19 hours after the birth. If the physician, or other person in
20 attendance, does not certify to the facts of birth within the
21 72-hour period, the person in charge of the institution or his
22 or her designee shall complete and sign the certificate.

23 "(2) In all cases where a birth occurs in an
24 institution, the person in charge of the institution shall
25 provide a procedure for collection of the normal fee for a
26 certified copy of the birth certificate from the mother or
27 father. The fee shall be forwarded to the State Registrar when

1 a complete record of the birth is obtained, and the State
2 Registrar shall issue a certified copy of the birth
3 certificate to the mother or father of the child. The issuance
4 of a certified copy of the birth certificate by the State
5 Registrar shall not apply to births where the death of the
6 infant occurred a short time following the birth, unless the
7 certificate is requested by the father or mother, or where
8 adoption is indicated.

9 "(c) When a birth occurs outside an institution, the
10 certificate shall be prepared and filed by one of the
11 following in the indicated order of priority:

12 "(1) The physician or licensed midwife in attendance
13 at the birth or who sees the child within three days after the
14 birth.

15 "(2) Any other person in attendance at or
16 immediately after the birth.

17 "(3) The father, the mother, or in the absence of
18 the father and the inability of the mother, the person in
19 charge of the premises where the birth occurred.

20 "(d) When a birth occurs in a moving conveyance
21 within the United States and the child is first removed from
22 the conveyance in this state, the birth shall be registered in
23 this state and the place where it is first removed shall be
24 considered the place of birth. When a birth occurs on a moving
25 conveyance while in international waters or air space or in a
26 foreign country or its air space and the child is first
27 removed from the conveyance in this state, the birth shall be

1 registered in this state, but the certificate shall show the
2 actual place of birth as can be determined.

3 "(e) For the purposes of birth registration, the
4 mother is deemed to be the woman who gives birth to the child,
5 unless otherwise determined by law.

6 "(f) (1) If the mother was married at the time of
7 either conception or birth, or between conception and birth,
8 the name of the husband shall be entered on the certificate as
9 the father of the child, unless it is established by law that
10 he is not the father of the child.

11 "(2) If the mother was not married at the time of
12 either conception or birth or between conception and birth,
13 the name of the father shall not be entered on the certificate
14 unless paternity has been determined by a court of competent
15 jurisdiction or unless the legitimation process specified in
16 Sections 26-11-1 through 26-11-3, inclusive, or otherwise
17 provided by law has been completed.

18 "(3) If the father is not named on the certificate
19 of birth, no other information about the father shall be
20 entered on the certificate.

21 "(g) The birth certificate of a child born to a
22 married woman as a result of artificial insemination, with
23 consent of her husband, shall be completed in accordance with
24 subdivision (1) of subsection (f).

25 "(h) Either of the parents of the child shall attest
26 to the accuracy of the personal data entered on the

1 certificate in time to permit the filing of the certificate
2 within the five days prescribed in subsection (a).

3 "§34-43-3.

4 "For purposes of this chapter, the following terms
5 shall have the following meanings:

6 "(1) ADVERTISE. Distributing a card, flier, sign, or
7 device to any person or organization, or allowing any sign or
8 marking on any building, radio, television, or by advertising
9 by any other means designed to attract public attention.

10 "(2) BOARD. The Alabama Board of Massage Therapy
11 created pursuant to this chapter.

12 "(3) BOARD-APPROVED MASSAGE THERAPY SCHOOL. A school
13 where massage therapy is taught which is one of the following:

14 "a. If located in Alabama is approved by the board
15 as meeting the minimum established standards of training and
16 curriculum as determined by the board.

17 "b. If located outside of Alabama is recognized by
18 the board and by a regionally recognized professional
19 accrediting body.

20 "c. Is a postgraduate training institute accredited
21 by the Commission on Accreditation for Massage Therapy.

22 "(4) ESTABLISHMENT. A site, premises, or business
23 where massage therapy is practiced by a licensed massage
24 therapist.

25 "(5) EXAMINATION. A National Certification For
26 Therapeutic Massage and Bodywork Examination administered by
27 an independent agency or another nationally or internationally

1 accredited exam administered by an independent agency per
2 approval of the board. The examination will be accredited by
3 the National Committee for Certifying Agencies. The board
4 retains the right to administer a written, oral, or practical
5 examination.

6 "(6) LICENSE. The credential issued by the board
7 which allows the licensee to engage in the safe and ethical
8 practice of massage therapy.

9 "(7) MASSAGE THERAPIST. A person licensed pursuant
10 to this chapter who practices or administers massage therapy
11 or touch therapy modalities to a patron for compensation.

12 "(8) MASSAGE THERAPY INSTRUCTOR. A licensed massage
13 therapist approved by the board to teach the practice of
14 massage therapy.

15 "(9) PERSON. Any individual, firm, corporation,
16 partnership, organization, association, or other legal entity.

17 "(10) SEXUALLY ORIENTED BUSINESS. A sex parlor,
18 massage parlor, nude studio, modeling studio, love parlor,
19 adult bookstore, adult movie theater, adult video arcade,
20 adult motel, or other commercial enterprise which has as its
21 primary business the offering for sale, rent, or exhibit, or
22 the exhibit of, items or services intended to provide sexual
23 stimulation or sexual gratification to the customer.

24 "(11) STUDENT OF MASSAGE THERAPY. Any person
25 currently enrolled in an Alabama massage therapy school
26 program approved by the board.

1 "(12) TEMPORARY PERMIT. A temporary permit issued at
2 the request of a massage therapist who is qualified according
3 to the Alabama massage therapy law prior to approval by the
4 board and not to exceed six months.

5 "(13) THERAPEUTIC MASSAGE AND RELATED TOUCH THERAPY
6 MODALITIES. The mobilization of the soft tissue which may
7 include skin, fascia, tendons, ligaments, and muscles, for the
8 purpose of establishing and maintaining good physical
9 condition. The term shall include effleurage, petrissage,
10 tapotement, compression, vibration, stretching, heliotherapy,
11 superficial hot and cold applications, topical applications,
12 or other therapy which involves movement either by hand,
13 forearm, elbow, or foot, for the purpose of therapeutic
14 massage. Massage therapy may include the external application
15 and use of herbal or chemical preparations and lubricants such
16 as salts, powders, liquids, nonprescription creams, mechanical
17 devices such as T-bars, thumpers, body support systems, heat
18 lamps, hot and cold packs, salt glow, steam cabinet baths or
19 hydrotherapy. The term includes any massage, movement therapy,
20 massage technology, myotherapy, massotherapy, oriental massage
21 techniques, structural integration, or polarity therapy. The
22 term shall not include laser therapy, microwave, injection
23 therapy, manipulation of the joints, or any diagnosis or
24 treatment of an illness that normally involves the practice of
25 medicine, chiropractic, physical therapy, podiatry, nursing,
26 midwifery, occupational therapy, veterinary, acupuncture,
27 osteopathy, orthopedics, hypnosis, or naturopathics."

1 Section 3. Sections 34-19-2 to 34-19-10, inclusive,
2 Code of Alabama 1975, are repealed.

3 Section 4. Although this bill would have as its
4 purpose or effect the requirement of a new or increased
5 expenditure of local funds, the bill is excluded from further
6 requirements and application under Amendment 621, now
7 appearing as Section 111.05 of the Official Recompilation of
8 the Constitution of Alabama of 1901, as amended, because the
9 bill defines a new crime or amends the definition of an
10 existing crime.

11 Section 5. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.