

1 SB238
2 126764-1
3 By Senator Sanders
4 RFD: Health
5 First Read: 22-MAR-11

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8 SYNOPSIS: This bill would establish a State Board of
9 Midwifery to grant licensure to practice midwifery;
10 would provide for the composition of the board
11 members; would provide for a licensing fee; would
12 provide for the functions of the board; would
13 specify requirements for rules for licensed
14 midwives, especially requiring that clients be
15 provided an informed consent form prior to having
16 services performed; and would provide for penalties
17 for violating this bill.

18 Amendment 621 of the Constitution of Alabama
19 of 1901, now appearing as Section 111.05 of the
20 Official Recompilation of the Constitution of
21 Alabama of 1901, as amended, prohibits a general
22 law whose purpose or effect would be to require a
23 new or increased expenditure of local funds from
24 becoming effective with regard to a local
25 governmental entity without enactment by a 2/3 vote
26 unless: it comes within one of a number of
27 specified exceptions; it is approved by the

1 affected entity; or the Legislature appropriates
2 funds, or provides a local source of revenue, to
3 the entity for the purpose.

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

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT
15

16 Permitting the practice of midwifery by adding
17 Sections 34-19-11 to 34-19-19, inclusive, to the Code of
18 Alabama 1975; to establish a State Board of Midwifery; to
19 provide for a license to practice midwifery; to provide for a
20 licensing fee; to repeal Sections 34-19-2 through 34-19-10,
21 inclusive, Code of Alabama 1975; and in connection therewith
22 would have as its purpose or effect the requirement of a new
23 or increased expenditure of local funds within the meaning of
24 Amendment 621 of the Constitution of Alabama of 1901, now
25 appearing as Section 111.05 of the Official Recompilation of
26 the Constitution of Alabama of 1901, as amended.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. The following sections are added to the
2 Code of Alabama 1975, to read as follows:

3 §34-19-11.

4 The following words and phrases shall have the
5 following meanings, unless the context clearly indicates
6 otherwise:

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

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

10 (3) MIDWIFERY. The provision of primary maternity
11 care that is consistent with a licensed midwife's training,
12 education, and experience to women and their newborn children
13 throughout the childbearing cycle, in circumstances under
14 which a licensed midwife has determined that the client is at
15 a low risk of developing complications. Midwifery is not the
16 practice of medicine.

17 §34-19-12.

18 (a) There is created and established a State Board
19 of Midwifery to implement and administer this act.

20 (b) The board shall consist of seven members
21 appointed by the Governor from a list of qualified persons
22 nominated by the designated organization.

23 (c) The members of the board shall be appointed for
24 staggered initial terms and subsequent terms shall be for a
25 minimum of four years or until his or her successor is
26 appointed.

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

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

7 (f) The composition of the board shall be as
8 follows:

9 (1) Four members who hold a valid certified
10 professional midwife credential from the North American
11 Registry of Midwives (NARM), or its equivalent organization.
12 These members shall be appointed by the Governor from a list
13 of names submitted by the Alabama Midwives Alliance (ALMA), or
14 its equivalent organization. Two of these members shall be
15 appointed to initial four-year terms, one to a three-year
16 term, and one to a two-year term.

17 (2) One member who shall be a physician. This member
18 shall be appointed by the Governor from a list of names
19 submitted by the Medical Association of the State of Alabama,
20 or its equivalent organization. This member shall serve an
21 initial term of three years.

22 (3) Two members who shall be potential consumers of
23 midwifery services provided according to this chapter. These
24 members shall be appointed by the Governor from a list of
25 names submitted by the Alabama Birth Coalition (ABC), or its
26 equivalent organization. These members shall serve an initial
27 term of two years and one year, respectively.

1 (g) Vacancies shall be filled by the Governor in the
2 same manner as other appointments are made. In the case of a
3 vacancy, the new appointee shall serve for the remainder of
4 the unexpired term.

5 (h) Members of the board shall serve without
6 compensation, but shall be allowed travel and per diem
7 expenses at the same rate paid to state employees, to be paid
8 from the funds collected for the administration of this
9 chapter, as funds are available.

10 (i) The board may employ, subject to the State Merit
11 System, investigators, inspectors, attorneys, and any other
12 agents, employees, and assistants as may from time to time be
13 necessary, and may use any other means necessary to enforce
14 the provisions of this chapter.

15 (j) The board shall be subject to the Alabama Sunset
16 Law, as provided in Chapter 20, Title 41, as an enumerated
17 agency as provided in Section 41-20-3, and shall have a
18 termination date of October 1, 2014, and every four years
19 thereafter, unless continued pursuant to the Alabama Sunset
20 Law.

21 §34-19-13.

22 All funds received by the board under the provisions
23 of this chapter shall be deposited in the State Treasury to
24 the credit of the State Board of Midwifery and all such funds
25 are to be appropriated to the board to defray the expenses
26 incurred in carrying out the provisions of this chapter. The
27 expenses shall include printing, stamps, stationery, clerical

1 help, travel, and other necessary expenditures. In all cases,
2 any fee which is received by the board shall not be refunded,
3 and no applicant shall have the right to recover any part of a
4 fee accompanying his or her application for licensure or
5 otherwise paid to the board except on the death, disability,
6 or retirement from practice of any applicant or licensee
7 between payment of any fee and the expiration of his or her
8 current renewal or the issuance of the initial license. The
9 books and records of the board shall be subject to state audit
10 in the same manner and to the same extent as any other state
11 agency. The board shall keep a true and accurate account of
12 all funds received by the board and all expenditures made by
13 the board.

14 §34-19-14.

15 In the manner provided in this section, the board
16 shall perform the following functions:

17 (1) Promulgate and publish rules in accordance with
18 the Administrative Procedure Act to administer this chapter.
19 Rules promulgated by the board shall be consistent with
20 current job analysis developed by the North American Registry
21 of Midwives, or its equivalent organization, and the essential
22 documents developed and published by the National Association
23 of Certified Professional Midwives (NACPM), or its equivalent
24 organization.

25 (2) Set licensure fees for licensed midwives,
26 including, but not limited to, application, initial, renewal,
27 and reinstatement fees. Licenses shall be valid for a period

1 of 24 months. Fees may not be set in a manner or at a
2 financial level that effectively prohibits or deters the
3 practice of midwifery.

4 (3) Approve and renew licensure of duly qualified
5 applicants. An applicant shall be at least 19 years of age and
6 demonstrate to the board that he or she is a citizen of the
7 United States or, if not a citizen of the United States, a
8 person who is legally present in the United States with
9 appropriate documentation from the federal government.

10 (4) Investigate and conduct hearings regarding
11 complaints against a licensed midwife in order to determine if
12 disciplinary action is warranted.

13 (5) Following the contested case provisions of the
14 Administrative Procedure Act, the board may suspend or revoke
15 the license of a licensed midwife, or it may refuse to grant a
16 license to an applicant for licensure at any time that any of
17 the following circumstances are determined to exist with
18 respect to the licensee or applicant:

19 a. The person does not hold a valid certified
20 professional midwife credential granted by the North American
21 Registry of Midwives (NARM), or its equivalent organization,
22 or if such credential is revoked as a result of the NARM
23 grievance mechanism.

24 b. The person is guilty of misconduct as defined by
25 the board's rules or otherwise commits a violation of this
26 chapter.

1 c. The person has performed any act which exceeds
2 the scope of practice granted to the licensed midwife.

3 (6) Impose an administrative fine not to exceed five
4 hundred dollars (\$500) per violation of the promulgated rules.

5 (7) Maintain an up-to-date list of every person
6 licensed to practice midwifery pursuant to this chapter and
7 persons whose licenses have been suspended, revoked, or
8 denied. The information on the list shall be available for
9 public inspection during reasonable business hours and the
10 information may be shared with others as deemed necessary and
11 acceptable by the board. The list shall include the following
12 information:

13 a. The name of the person.

14 b. The date and the cause of action.

15 c. The penalty incurred.

16 d. The length of the penalty.

17 (8) Grant continuing education credit for available
18 educational opportunities, or provide quality continuing
19 education programs, seminars, and workshops to acquaint and
20 educate licensed midwives in the most current evidence-based
21 practices with respect to midwifery, women's health, or the
22 evaluation and care of the newborn.

23 §34-19-15.

24 (a) The rules promulgated by the board shall
25 include, but not be limited to, the following:

26 (1) Licensing procedures.

1 (2) Minimum initial and continuing educational
2 requirements which shall be consistent with the following
3 criteria in which an applicant shall:

4 a. Be a high school graduate, or possess a general
5 equivalency diploma.

6 b. Have obtained a midwifery education through
7 graduation from an accredited midwifery educational program
8 approved by the Midwifery Education and Accreditation Council
9 (MEAC) or equivalent accreditation body; or completion of a
10 substantially equivalent education as determined by the board.
11 Midwives who received their certified professional midwife
12 (CPM) credential prior to the effective date of this act are
13 exempt from this requirement.

14 c. Hold a valid credential as a certified
15 professional midwife (CPM) as established and administered by
16 the North American Registry of Midwives (NARM), or its
17 equivalent organization.

18 (3) The allowable scope of midwifery practice
19 regarding use of equipment, procedures, and administration of
20 medication as prescribed by a licensed health care
21 professional.

22 (4) A standard procedure for investigating
23 complaints.

24 (b) The rules shall ensure independent practice and
25 shall not require any agreement, written or otherwise, with
26 any other health care professional or facility.

1 (c) The rules shall not require a woman who is
2 seeking midwifery services to be assessed or examined or
3 otherwise approved for midwifery care by another health care
4 professional.

5 (d) The rules shall not permit a licensed midwife to
6 administer any of the following:

7 (1) An epidural, spinal, or caudal anesthetic.

8 (2) Any type of narcotic analgesia.

9 (3) Use forceps or a vacuum extractor.

10 (4) Induce abortion.

11 (5) Perform cesarean section.

12 §34-19-16.

13 (a) A licensed midwife shall disclose the following
14 information to the client:

15 (1) The name and license status of the midwife.

16 (2) A description of the licensed midwife's
17 education, training, and experience in midwifery.

18 (3) Upon request, separate documents describing the
19 rules governing licensed midwives.

20 (4) A description of the services provided to the
21 client by the licensed midwife.

22 (5) The process for filing a grievance against a
23 licensed midwife.

24 (6) The status of a licensed midwife's professional
25 liability insurance coverage.

26 (b) Prior to providing any services, a licensed
27 midwife shall obtain an informed consent from a client,

1 indicating receipt of the informed disclosure. The consent
2 shall include the following:

3 (1) The client's name, address, and telephone
4 number.

5 (2) The name of the primary care provider, if the
6 client has one.

7 (3) The date of signing and signatures of the
8 client, the licensed midwife, and the father of the baby, if
9 available.

10 (c) For screening purposes only, the licensed
11 midwife may order routine antepartal and postpartum laboratory
12 analysis to be performed by a licensed laboratory.

13 (d) After each client has secured the services of a
14 licensed midwife for her upcoming birth, the licensed midwife
15 shall document an emergency care plan particular to each
16 client, which shall include referral and transfer plans in the
17 event of an emergency.

18 (e) The licensed midwife shall do the following:

19 (1) Determine the progress of labor.

20 (2) When birth is imminent, be available until
21 delivery is accomplished or care of the mother is transferred
22 to another health care provider.

23 (3) Remain with the mother and newborn during the
24 postpartum period until the conditions of the mother and
25 newborn are stabilized, or care of the clients is transferred
26 to another health care provider.

1 (4) Instruct the mother regarding the requirements
2 of the administration of eye ointment ordered by the
3 Department of Public Health pursuant to Section 22-20-2.

4 (5) Instruct the mother regarding the requirements
5 of administration of newborn health screening ordered by the
6 Department of Public Health pursuant to Section 22-20-3.

7 (6) File a birth certificate for each birth in
8 accordance with the requirements of Section 22-9A-7.

9 §34-19-17.

10 (a) Except as provided in this section, it shall be
11 unlawful for a person other than a licensed midwife to
12 practice midwifery in this state for economic remuneration or
13 to hold himself or herself out to be a licensed midwife unless
14 he or she is a licensed midwife as defined in this chapter.

15 (b) A person violating this section shall be guilty
16 of a Class C misdemeanor, with the exception of any of the
17 following:

18 (1) Nurse midwives governed under this chapter and
19 Sections 34-21-80 to 34-21-92, inclusive.

20 (2) A person training under a licensed midwife may
21 assist the licensed midwife in the practice of midwifery.

22 (3) Family members or friends may provide gratuitous
23 assistance at childbirth.

24 (c) Nothing in subsection (b) shall be construed to
25 repeal, abridge, or modify Section 6-5-332, or any other Good
26 Samaritan statute.

27 §34-19-18.

1 No licensed physician, nurse, pre-hospital emergency
2 medical personnel, or health care institution shall be liable
3 for any act or omission resulting from the administration of
4 services by a licensed midwife.

5 §34-19-19.

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

8 Section 2. Sections 34-19-2 to 34-19-10, inclusive,
9 Code of Alabama 1975, are hereby repealed.

10 Section 3. Although this bill would have as its
11 purpose or effect the requirement of a new or increased
12 expenditure of local funds, the bill is excluded from further
13 requirements and application under Amendment 621, now
14 appearing as Section 111.05 of the Official Recompilation of
15 the Constitution of Alabama of 1901, as amended, because the
16 bill defines a new crime or amends the definition of an
17 existing crime.

18 Section 4. This act shall become effective
19 immediately following its passage and approval by the
20 Governor, or its otherwise becoming law.