

1 HB178
2 148031-2
3 By Representative Ball
4 RFD: Health
5 First Read: 06-FEB-13

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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, particularly requiring that clients be
15 provided an informed consent form prior to having
16 services performed; would provide for midwives to
17 file certificates of birth; and would provide for
18 penalties for violating this bill.

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

1 specified exceptions; it is approved by the
2 affected entity; or the Legislature appropriates
3 funds, or provides a local source of revenue, to
4 the entity for the purpose.

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

12
13 A BILL
14 TO BE ENTITLED
15 AN ACT
16

17 Permitting the practice of midwifery by adding
18 Sections 34-19-11 to 34-19-19, inclusive, to the Code of
19 Alabama 1975; to establish a State Board of Midwifery; to
20 provide for a license to practice midwifery; to provide for a
21 licensing fee; to amend Section 22-9A-7, Code of Alabama 1975,
22 relating to registration of births; to amend Section 34-43-3,
23 Code of Alabama 1975, relating to the definition of
24 therapeutic message; to repeal Sections 34-19-2 through
25 34-19-10, inclusive, Code of Alabama 1975; and in connection
26 therewith would have as its purpose or effect the requirement
27 of a new or increased expenditure of local funds within the

1 meaning of Amendment 621 of the Constitution of Alabama of
2 1901, now appearing as Section 111.05 of the Official
3 Recompilation of the Constitution of Alabama of 1901, as
4 amended.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

8 §34-19-11.

9 The following words and phrases shall have the
10 following meanings, unless the context clearly indicates
11 otherwise:

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

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

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

22 §34-19-12.

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

25 (b) The board shall consist of seven members
26 appointed by the Governor from a list of qualified persons
27 nominated by the designated organization.

1 (c) The members of the board shall be appointed for
2 staggered initial terms and subsequent terms shall be for a
3 minimum of four years or until his or her successor is
4 appointed.

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

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

11 (f) The composition of the board shall be as
12 follows:

13 (1) Four members shall hold a valid certified
14 professional midwife credential from the North American
15 Registry of Midwives (NARM). These members shall be appointed
16 by the Governor from a list of names submitted by the Alabama
17 Midwives Alliance (ALMA). Two of these members shall be
18 appointed to initial terms of four years, one to a term of
19 three years, and one to a term of two years.

20 (2) One member shall be a physician. This member
21 shall be appointed by the Governor from a list of names
22 submitted by the Medical Association of the State of Alabama.
23 This member shall be appointed to an initial term of three
24 years.

25 (3) Two members shall have used midwifery services
26 in the state. These members shall be appointed by the Governor
27 from a list of names submitted by the Alabama Birth Coalition.

1 One of these members shall be appointed to an initial term of
2 two years and one to an initial term of one year.

3 (g) All members of the board shall be immune from
4 individual civil liability while acting within the scope of
5 their duties as board members.

6 (h) Vacancies shall be filled by the Governor in the
7 same manner as other appointments are made. In the case of a
8 vacancy, the new appointee shall serve for the remainder of
9 the unexpired term.

10 (i) Members of the board shall serve without
11 compensation but shall be allowed travel and per diem expenses
12 at the same rate paid to state employees, to be paid from the
13 funds collected for the administration of this chapter, as
14 funds are available.

15 (j) The board may employ, subject to the State Merit
16 System, investigators, inspectors, attorneys, and any other
17 agents, employees, and assistants as may from time to time be
18 necessary, and may use any other means necessary to enforce
19 the provisions of this chapter.

20 (k) The board shall be subject to the Alabama Sunset
21 Law, Title 41, Chapter 20, as an enumerated agency as provided
22 in Section 41-20-3, and shall have a termination date of
23 October 1, 2017, and every four years thereafter, unless
24 continued pursuant to the Alabama Sunset Law.

25 §34-19-13.

26 All funds received by the board under the provisions
27 of this chapter shall be deposited in the State Treasury to

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

18 §34-19-14.

19 (a) The board shall approve and renew licensure of
20 duly qualified applicants. An applicant shall be at least 21
21 years of age and demonstrate to the board that he or she is a
22 citizen of the United States or, if not a citizen of the
23 United States, a person who is legally present in the United
24 States with appropriate documentation from the federal
25 government. An applicant shall hold a valid credential as a
26 Certified Professional Midwife as established and administered
27 by the North American Registry of Midwives or be duly licensed

1 as a midwife under the laws of another state, territory, or
2 foreign country, provided the midwife meets the requirements
3 for licensure by endorsement set by the board.

4 (b) The board shall investigate and conduct hearings
5 regarding complaints against a licensed midwife in order to
6 determine if disciplinary action is warranted.

7 (c) Following the contested case provisions of the
8 Administrative Procedure Act, the board may suspend or revoke
9 the license of a licensed midwife, or it may refuse to grant a
10 license to an applicant for licensure, if the licensee or
11 applicant:

12 (1) Does not hold a valid certified professional
13 midwife credential granted by the North American Registry of
14 Midwives.

15 (2) Holds a license as a midwife under the laws of
16 another state, territory, or foreign country but does not meet
17 the requirements of licensure by endorsement set by the board.

18 (3) Has performed an act that exceeds the scope of
19 practice granted to the licensed midwife.

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

1 the name of the person, the date and the cause of action, the
2 penalty incurred, and the length of the penalty.

3 (e) The board shall set licensure fees for licensed
4 midwives, including, but not limited to, application, initial,
5 renewal, endorsement, and reinstatement fees. Licenses shall
6 be valid for a period of 24 months. Fees may not be set in a
7 manner or at a financial level that effectively prohibits or
8 deters the practice of midwifery.

9 (f) The board shall grant continuing education
10 credit for available educational opportunities, or provide
11 quality continuing education programs, seminars, and workshops
12 to acquaint and educate licensed midwives in the most current
13 evidence-based practices with respect to midwifery, women's
14 health, or the evaluation and care of the newborn.

15 §34-19-15.

16 (a) The board shall promulgate and publish rules in
17 accordance with the Administrative Procedure Act to administer
18 this chapter. Rules promulgated by the board shall be
19 consistent with current job analyses developed by the North
20 American Registry of Midwives and with essential documents
21 developed and published by the National Association of
22 Certified Professional Midwives.

23 (b) Rules shall include, but not be limited to:

24 (1) Licensing procedures.

25 (2) Minimum initial and continuing educational
26 requirements for licensure in accordance with subsection (c).

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

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

6 (5) A standard procedure for investigating
7 complaints.

8 (6) Requirements for clinical internships for
9 persons seeking midwifery training.

10 (7) Standards regarding professional liability
11 insurance.

12 (c) The rules shall require an applicant to submit
13 to the board proof that the applicant obtained a high school
14 diploma, or a general equivalency diploma, and completion of a
15 midwifery education program accredited by the Midwifery
16 Educational Accreditation Council or accredited by another
17 accrediting agency recognized by the United States Department
18 of Education, or proof of analogous competency approved by the
19 board.

20 (d) The rules shall ensure independent practice and
21 shall not require any agreement, written or otherwise, with
22 any other health care professional or facility.

23 (e) The rules shall not require a woman who is
24 seeking midwifery services to be assessed or examined or
25 otherwise approved for midwifery care by another health care
26 professional.

1 (f) The rules shall prohibit a licensed midwife
2 from:

3 (1) Administering any type of epidural, spinal, or
4 caudal anesthetic.

5 (2) Administering any type of narcotic analgesia.

6 (3) Using forceps or a vacuum extractor.

7 (4) Inducing an abortion.

8 (5) Performing a cesarean section.

9 (g) The board may impose an administrative fine not
10 to exceed one thousand dollars (\$1,000) per violation of the
11 promulgated rules.

12 §34-19-16.

13 (a) A licensed midwife shall disclose the following
14 information to the client at the time the midwife-client
15 relationship is established:

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

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

19 (3) Separate documents describing the rules
20 governing licensed midwives.

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

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

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

1 (7) A copy of Section 32-5-222, relating to
2 requirements for child passenger restraints, and the location
3 of the nearest child car seat inspection stations as
4 identified by the National Highway Traffic Safety
5 Administration.

6 (8) The fact that any licensed physician, nurse,
7 hospital, or health care institution, including any employee
8 of a hospital or other health care institution who, following
9 the creation of the midwife-client relationship, attends to
10 the client or the client's newborn in emergency circumstances
11 arising out of or related in any way to the client's pregnancy
12 or delivery, is immune from civil liability for any act or
13 omission occurring in connection therewith, unless the act or
14 omission is the result of willful or wanton misconduct.

15 (b) Prior to providing any services, a licensed
16 midwife shall obtain a written informed consent from a client,
17 indicating receipt of the information to be provided pursuant
18 to subsection (a). The written informed consent shall include
19 the following:

20 (1) The client's name, address, and telephone
21 number.

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

24 (3) The date of signing and signatures of the client
25 and the licensed midwife.

1 (c) For screening purposes only, the licensed
2 midwife may order routine antepartum and postpartum laboratory
3 analyses to be performed by a licensed laboratory.

4 (d) After each client has secured the services of a
5 licensed midwife for her upcoming birth, the licensed midwife
6 shall document an emergency care plan particular to each
7 client, which shall include referral and transfer plans in the
8 event of an emergency. The existence of an emergency care plan
9 may not be used as evidence in any civil action or proceeding
10 to impose liability upon any licensed physician for any
11 injuries or death suffered by the client or the client's
12 newborn.

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

14 (1) Determine the progress of labor.

15 (2) When birth is imminent, be available until
16 delivery is accomplished or care of the client is transferred
17 to another health care provider.

18 (3) Remain with the client and newborn during the
19 postpartum period until the conditions of the client and
20 newborn are stabilized or care is transferred to another
21 health care provider.

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

25 (5) Instruct the client regarding the requirements
26 of administration of newborn health screening ordered by the
27 Department of Public Health pursuant to Section 22-20-3.

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

3 §34-19-17.

4 (a) Except as provided in this section, it shall be
5 unlawful for a person other than a licensed midwife to
6 practice midwifery in this state for economic remuneration or
7 to hold himself or herself out to be a licensed midwife unless
8 he or she is a licensed midwife as defined in this chapter. A
9 person violating this section shall be guilty of a Class C
10 misdemeanor.

11 (b) A person is not violating subsection (a) if the
12 person:

13 (1) Is a certified nurse midwife acting in
14 accordance with Sections 34-21-80 to 34-21-93, inclusive.

15 (2) Is training under a licensed midwife and is
16 assisting the licensed midwife in the practice of midwifery.

17 (3) Is providing gratuitous assistance at childbirth
18 to a family member or a friend.

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

22 §34-19-18.

23 (a) No licensed physician, nurse, hospital, or other
24 health care institution, including the employee of a hospital
25 or other health care institution, shall be liable for civil
26 damages for any act or omission resulting from the

1 administration of services or advice given to a client by a
2 licensed midwife.

3 (b) In any civil action against a licensed midwife
4 based upon any negligent act or omission of the licensed
5 midwife, proof of such act or omission shall not create or
6 establish the responsibility of any licensed physician, nurse,
7 hospital, or other health care institution, including any
8 employee of a hospital or other health care institution, under
9 the doctrine of "respondent superior."

10 (c) Any licensed physician, nurse, hospital, or
11 other health care institution, including any employee of a
12 hospital or other health care institution who, following the
13 creation of the midwife-client relationship, attends to the
14 client of a licensed midwife or the client's newborn in
15 emergency circumstances arising out of or related in any way
16 to the client's pregnancy or delivery shall be immune from
17 liability for any act or omission occurring in connection
18 therewith, unless the act or omission is the result of willful
19 or wanton misconduct.

20 (d) It is the express intent of this section that no
21 licensed physician, nurse, hospital, or other health care
22 institution, including any employee of a hospital or health
23 care institution, shall be liable for civil damages as a
24 result of any advice given by a licensed midwife to a client
25 or any care or services provided to a client or the client's
26 newborn after the client accepts care, advice, or services
27 from the licensed midwife.

1 §34-19-19.

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

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

6 "§22-9A-7.

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

13 "(b) (1) When a birth occurs in an institution or en
14 route to the institution, the person in charge of the
15 institution or his or her designated representative shall
16 obtain the personal data, prepare the certificate, secure the
17 signatures required, and file the certificate as directed in
18 subsection (a) or as directed by the State Registrar within
19 the required five days. The physician or other person in
20 attendance shall provide the medical information required by
21 the certificate and certify to the facts of birth within 72
22 hours after the birth. If the physician, or other person in
23 attendance, does not certify to the facts of birth within the
24 72-hour period, the person in charge of the institution or his
25 or her designee shall complete and sign the certificate.

26 "(2) In all cases where a birth occurs in an
27 institution, the person in charge of the institution shall

1 provide a procedure for collection of the normal fee for a
2 certified copy of the birth certificate from the mother or
3 father. The fee shall be forwarded to the State Registrar when
4 a complete record of the birth is obtained, and the State
5 Registrar shall issue a certified copy of the birth
6 certificate to the mother or father of the child. The issuance
7 of a certified copy of the birth certificate by the State
8 Registrar shall not apply to births where the death of the
9 infant occurred a short time following the birth, unless the
10 certificate is requested by the father or mother, or where
11 adoption is indicated.

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

15 "(1) The physician or licensed midwife in attendance
16 at the birth or who sees the child within three days after the
17 birth.

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

20 "(3) The father, the mother, or in the absence of
21 the father and the inability of the mother, the person in
22 charge of the premises where the birth occurred.

23 "(d) When a birth occurs in a moving conveyance
24 within the United States and the child is first removed from
25 the conveyance in this state, the birth shall be registered in
26 this state and the place where it is first removed shall be
27 considered the place of birth. When a birth occurs on a moving

1 conveyance while in international waters or air space or in a
2 foreign country or its air space and the child is first
3 removed from the conveyance in this state, the birth shall be
4 registered in this state, but the certificate shall show the
5 actual place of birth as can be determined.

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

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

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

21 "(3) If the father is not named on the certificate
22 of birth, no other information about the father shall be
23 entered on the certificate.

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

1 "(h) Either of the parents of the child shall attest
2 to the accuracy of the personal data entered on the
3 certificate in time to permit the filing of the certificate
4 within the five days prescribed in subsection (a).

5 "§34-43-3.

6 "For purposes of this chapter, the following terms
7 shall have the following meanings:

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

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

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

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

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

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

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

1 "(5) EXAMINATION. A National Certification For
2 Therapeutic Massage and Bodywork Examination administered by
3 an independent agency or another nationally or internationally
4 accredited exam administered by an independent agency per
5 approval of the board. The examination will be accredited by
6 the National Committee for Certifying Agencies. The board
7 retains the right to administer a written, oral, or practical
8 examination.

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

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

15 "(8) MASSAGE THERAPY INSTRUCTOR. A licensed massage
16 therapist approved by the board to teach the practice of
17 massage therapy.

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

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

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

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

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

1 medicine, chiropractic, physical therapy, podiatry, nursing,
2 midwifery, occupational therapy, veterinary, acupuncture,
3 osteopathy, orthopedics, hypnosis, or naturopathics."

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

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

14 Section 5. This act shall become effective
15 immediately following its passage and approval by the
16 Governor, or its otherwise becoming law.