

1 SB314  
2 136246-1  
3 By Senators Bussman and Holtzclaw  
4 RFD: Health  
5 First Read: 14-FEB-12

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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 repeal Sections 34-19-2  
23 through 34-19-10, inclusive, Code of Alabama 1975; and in  
24 connection therewith would have as its purpose or effect the  
25 requirement of a new or increased expenditure of local funds  
26 within the meaning of Amendment 621 of the Constitution of  
27 Alabama of 1901, now appearing as Section 111.05 of the

1 Official ReCompilation of the Constitution of Alabama of 1901,  
2 as amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 §34-19-11.

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

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

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

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

20 §34-19-12.

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

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

26 (c) The members of the board shall be appointed for  
27 staggered initial terms and subsequent terms shall be for a

1 minimum of four years or until his or her successor is  
2 appointed.

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

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

9 (f) The composition of the board shall be as  
10 follows:

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

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

24 (3) Two members who shall be potential consumers of  
25 midwifery services provided according to this chapter. These  
26 members shall be appointed by the Governor from a list of  
27 names submitted by the Alabama Birth Coalition (ABC), or its

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

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

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

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

18 (j) The board shall be subject to the Alabama Sunset  
19 Law, as provided in Chapter 20, Title 41, as an enumerated  
20 agency as provided in Section 41-20-3, and shall have a  
21 termination date of October 1, 2016, and every four years  
22 thereafter, unless continued pursuant to the Alabama Sunset  
23 Law.

24 §34-19-13.

25 All funds received by the board under the provisions  
26 of this chapter shall be deposited in the State Treasury to  
27 the credit of the State Board of Midwifery and all such funds

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

17 §34-19-14.

18 In the manner provided in this section, the board  
19 shall perform the following functions:

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

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

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

13           (4) Investigate and conduct hearings regarding  
14 complaints against a licensed midwife in order to determine if  
15 disciplinary action is warranted.

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

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

1           b. The person is guilty of misconduct as defined by  
2 the board's rules or otherwise commits a violation of this  
3 chapter.

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

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

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

16           a. The name of the person.

17           b. The date and the cause of action.

18           c. The penalty incurred.

19           d. The length of the penalty.

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

26           §34-19-15.

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

3 (1) Licensing procedures.

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

7 a. Be a high school graduate, or possess a general  
8 equivalency diploma.

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

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

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

25 (4) The standards by which a midwife shall conduct  
26 risk assessment.

1 (5) A standard procedure for investigating  
2 complaints.

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

6 (c) The rules shall not require a woman who is  
7 seeking midwifery services to be assessed or examined or  
8 otherwise approved for midwifery care by another health care  
9 professional.

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

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

13 (2) Any type of narcotic analgesia.

14 (3) Use forceps or a vacuum extractor.

15 (4) Induce abortion.

16 (5) Perform cesarean section.

17 §34-19-16.

18 (a) A licensed midwife shall disclose the following  
19 information to the client:

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

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

23 (3) Upon request, separate documents describing the  
24 rules governing licensed midwives.

25 (4) A description of the services provided to the  
26 client by the licensed midwife.

1           (5) The process for filing a grievance against a  
2 licensed midwife.

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

5           (b) Prior to providing any services, a licensed  
6 midwife shall obtain an informed consent from a client,  
7 indicating receipt of the informed disclosure. The consent  
8 shall include the following:

9           (1) The client's name, address, and telephone  
10 number.

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

13           (3) The date of signing and signatures of the  
14 client, the licensed midwife, and the father of the baby, if  
15 available.

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

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

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

25           (1) Determine the progress of labor.

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

4           (3) Remain with the client and newborn during the  
5 postpartum period until the conditions of the client and  
6 newborn are stabilized, or care is transferred to another  
7 health care provider.

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

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

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

16           §34-19-17.

17           (a) Except as provided in this section, it shall be  
18 unlawful for a person other than a licensed midwife to  
19 practice midwifery in this state for economic remuneration or  
20 to hold himself or herself out to be a licensed midwife unless  
21 he or she is a licensed midwife as defined in this chapter.

22           (b) A person violating this section shall be guilty  
23 of a Class C misdemeanor, with the exception of any of the  
24 following:

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

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

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

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

8           §34-19-18.

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

13          §34-19-19.

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

16          Section 2. Section 22-9A-7, Code of Alabama 1975, is  
17 amended to read as follows:

18          "§22-9A-7.

19          "(a) A certificate of birth for each live birth  
20 which occurs in this state shall be filed with the Office of  
21 Vital Statistics, or as otherwise directed by the State  
22 Registrar, within five days after the birth and shall be  
23 registered if it has been completed and filed in accordance  
24 with this section.

25          "(b) (1) When a birth occurs in an institution or en  
26 route to the institution, the person in charge of the  
27 institution or his or her designated representative shall

1 obtain the personal data, prepare the certificate, secure the  
2 signatures required, and file the certificate as directed in  
3 subsection (a) or as directed by the State Registrar within  
4 the required five days. The physician or other person in  
5 attendance shall provide the medical information required by  
6 the certificate and certify to the facts of birth within 72  
7 hours after the birth. If the physician, or other person in  
8 attendance, does not certify to the facts of birth within the  
9 72-hour period, the person in charge of the institution or his  
10 or her designee shall complete and sign the certificate.

11 "(2) In all cases where a birth occurs in an  
12 institution, the person in charge of the institution shall  
13 provide a procedure for collection of the normal fee for a  
14 certified copy of the birth certificate from the mother or  
15 father. The fee shall be forwarded to the State Registrar when  
16 a complete record of the birth is obtained, and the State  
17 Registrar shall issue a certified copy of the birth  
18 certificate to the mother or father of the child. The issuance  
19 of a certified copy of the birth certificate by the State  
20 Registrar shall not apply to births where the death of the  
21 infant occurred a short time following the birth, unless the  
22 certificate is requested by the father or mother, or where  
23 adoption is indicated.

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

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

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

5           "(3) The father, the mother, or in the absence of  
6 the father and the inability of the mother, the person in  
7 charge of the premises where the birth occurred.

8           "(d) When a birth occurs in a moving conveyance  
9 within the United States and the child is first removed from  
10 the conveyance in this state, the birth shall be registered in  
11 this state and the place where it is first removed shall be  
12 considered the place of birth. When a birth occurs on a moving  
13 conveyance while in international waters or air space or in a  
14 foreign country or its air space and the child is first  
15 removed from the conveyance in this state, the birth shall be  
16 registered in this state, but the certificate shall show the  
17 actual place of birth as can be determined.

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

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

26           "(2) If the mother was not married at the time of  
27 either conception or birth or between conception and birth,

1 the name of the father shall not be entered on the certificate  
2 unless paternity has been determined by a court of competent  
3 jurisdiction or unless the legitimation process specified in  
4 Sections 26-11-1 through 26-11-3, inclusive, or otherwise  
5 provided by law has been completed.

6 "(3) If the father is not named on the certificate  
7 of birth, no other information about the father shall be  
8 entered on the certificate.

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

13 "(h) Either of the parents of the child shall attest  
14 to the accuracy of the personal data entered on the  
15 certificate in time to permit the filing of the certificate  
16 within the five days prescribed in subsection (a)."

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

19 Section 4. Although this bill would have as its  
20 purpose or effect the requirement of a new or increased  
21 expenditure of local funds, the bill is excluded from further  
22 requirements and application under Amendment 621, now  
23 appearing as Section 111.05 of the Official Recompilation of  
24 the Constitution of Alabama of 1901, as amended, because the  
25 bill defines a new crime or amends the definition of an  
26 existing crime.

1                   Section 5. This act shall become effective  
2 immediately following its passage and approval by the  
3 Governor, or its otherwise becoming law.