

1 SB387
2 113844-3
3 By Senator Sanders
4 RFD: Health
5 First Read: 09-FEB-10

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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 receive
15 information concerning risks associated with
16 midwifery care along with a consent form from each
17 client; and would provide for penalties for
18 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 repeal Sections 34-19-2 through 34-19-10,
22 inclusive, Code of Alabama 1975; and in connection therewith
23 would have as its purpose or effect the requirement of a new
24 or increased expenditure of local funds within the meaning of
25 Amendment 621 of the Constitution of Alabama of 1901, now
26 appearing as Section 111.05 of the Official Recompilation of
27 the Constitution of Alabama of 1901, as amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

4 §34-19-11.

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

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

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

11 (3) MIDWIFERY. The provision on a continuing basis
12 of the primary care and education to women and infants during
13 the parturient cycle; because pregnancy is a normal
14 physiologic state, midwifery is not the practice of medicine.

15 §34-19-12.

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

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

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

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

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

4 (f) The composition of the board shall be as
5 follows:

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

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

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

25 (g) Vacancies shall be filled by the Governor in the
26 same manner as other appointments are made. In the case of a

1 vacancy, the new appointee shall serve for the remainder of
2 the unexpired term.

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

8 (i) The board may employ investigators, inspectors,
9 attorneys, and any other agents, employees, and assistants as
10 may from time to time be necessary, and may use any other
11 means necessary to enforce the provisions of this chapter.

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

18 §34-19-13.

19 All funds received by the board under the provisions
20 of this chapter shall be deposited in the State Treasury to
21 the credit of the State Board of Midwifery and all such funds
22 are to be appropriated to the board to defray the expenses
23 incurred in carrying out the provisions of this chapter. The
24 expenses shall include printing, stamps, stationery, clerical
25 help, travel, and other necessary expenditures. In all cases,
26 any fee which is received by the board shall not be refunded,
27 and no applicant shall have the right to recover any part of a

1 fee accompanying his or her application for licensure or
2 otherwise paid to the board except on the death, disability,
3 or retirement from practice of any applicant or licensee
4 between payment of any fee and the expiration of his or her
5 current renewal or the issuance of the initial license. The
6 books and records of the board shall be subject to state audit
7 in the same manner and to the same extent as any other state
8 agency. The board shall keep a true and accurate account of
9 all funds received by the board and all expenditures made by
10 the board.

11 §34-19-14.

12 In the manner provided in this section, the board
13 shall perform the following functions:

14 (1) Promulgate and publish rules in accordance with
15 the Administrative Procedure Act to administer this chapter.
16 The board shall promulgate the rules to be consistent with the
17 North American Registry of Midwives current job description
18 and the Essential Documents of the National Association of
19 Certified Professional Midwives (NACPM), or its successor
20 organization.

21 (2) Set licensure fees for licensed midwives,
22 including, but not limited to, application, initial, renewal,
23 and reinstatement fees. Licenses shall be valid for a period
24 of 24 months. Fees may not be set in a manner that prohibits
25 or deters the practice of midwifery.

26 (3) Approve and renew licensure of duly qualified
27 applicants.

1 (4) Investigate and conduct hearings regarding
2 complaints against a licensed midwife in order to determine if
3 disciplinary action is warranted.

4 (5) Following the contested case provisions of the
5 Administrative Procedure Act, the board may suspend or revoke
6 the license of a licensed midwife, or it may refuse to grant a
7 license to an applicant for licensure at any time that any of
8 the following circumstances are determined to exist with
9 respect to the licensee or applicant:

10 a. The person does not hold a valid certified
11 professional midwife credential granted by the North American
12 Registry of Midwives (NARM), or its successor organization, or
13 if such credential is revoked as a result of the NARM
14 grievance mechanism.

15 b. The person is guilty of misconduct as defined by
16 the board's rules or otherwise commits a violation of this
17 chapter.

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

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

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

1 acceptable by the board. The list shall include the following
2 information:

- 3 a. The name of the person.
- 4 b. The date and the cause of action.
- 5 c. The penalty incurred.
- 6 d. The length of the penalty.

7 §34-19-15.

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

10 (1) Licensing procedures.

11 (2) Minimum initial and continuing educational
12 requirements.

13 (3) The allowable scope of midwifery practice
14 regarding use of equipment, procedures, and administration of
15 medication as prescribed by a physician.

16 (4) A standard procedure for investigating
17 complaints.

18 (5) Ethical standards to be observed by licensed
19 midwives.

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

23 (c) The rules shall not require the assessment of a
24 woman who is seeking midwifery services by another health care
25 professional.

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

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

2 (2) Any type of narcotic analgesia.

3 (3) Use forceps or a vacuum extractor.

4 (4) Induce abortion.

5 (5) Perform cesarean section.

6 §34-19-16.

7 (a) A licensed midwife shall disclose the following
8 information to the client:

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

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

12 (3) Upon request, separate documents describing the
13 rules governing licensed midwives.

14 (4) A description of the services provided to the
15 client by the licensed midwife.

16 (5) The process for filing a grievance against a
17 licensed midwife.

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

20 (7) A copy of the following notice for clients
21 planning an out-of-hospital birth: "We understand that there
22 are risks associated with birth, including the risk of death
23 or disability of either mother or child. We understand that a
24 situation may arise in a planned out-of-hospital birth which
25 requires emergency medical care, and that it may not be
26 possible to transport the mother, baby, or both to the
27 hospital in time to benefit from such care. We fully accept

1 the outcome and consequences of our decision to have a
2 licensed midwife attend us during pregnancy and at our child's
3 birth. We understand that our licensed midwife is not licensed
4 to practice medicine. We understand that our licensed midwife
5 shall inform us of any observed signs or symptoms of disease
6 or complication, which may require evaluation, care, or
7 treatment by a medical practitioner. We agree that we are
8 totally responsible for obtaining qualified medical assistance
9 for the care of any disease or pathological condition. In the
10 event of a transport, we understand that no licensed
11 physician, nurse, pre-hospital emergency medical personnel,
12 health care institution, or any of its employees can be held
13 liable for the actions of our licensed midwife or for our
14 personal health care decisions."

15 (b) Prior to providing any services, a licensed
16 midwife shall obtain an informed consent from a client,
17 indicating receipt of the informed disclosure. The consent
18 shall include the following:

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

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

23 (3) A copy of the notice required by this section
24 and the date of signing and signatures of the client, the
25 licensed midwife, and the father of the baby, if available.

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

4 (d) After the initial visit for each client, the
5 licensed midwife shall document a medical backup or transport
6 plan particular to each client, which shall include referral
7 and transfer plans in the event of an emergency.

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

9 (1) Determine the progress of labor.

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

13 (3) Remain with the mother and newborn during the
14 postpartum period until the conditions of the mother and
15 newborn are stabilized, or care of the clients is transferred
16 to another health care provider.

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

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

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

25 §34-19-17.

26 (a) Except as provided in this section, it shall be
27 unlawful for a person other than a licensed midwife to

1 practice midwifery in this state for economic remuneration or
2 to hold himself or herself out to be a licensed midwife unless
3 he or she is a licensed midwife as defined in this chapter.

4 (b) A person violating this section shall be guilty
5 of a Class C misdemeanor, with the exception of any of the
6 following:

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

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

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

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

16 §34-19-18.

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

21 §34-19-19.

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

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

26 Section 3. Although this bill would have as its
27 purpose or effect the requirement of a new or increased

1 expenditure of local funds, the bill is excluded from further
2 requirements and application under Amendment 621, now
3 appearing as Section 111.05 of the Official Recompilation of
4 the Constitution of Alabama of 1901, as amended, because the
5 bill defines a new crime or amends the definition of an
6 existing crime.

7 Section 4. This act shall become effective
8 immediately following its passage and approval by the
9 Governor, or its otherwise becoming law.