

## House Substitute for SENATE BILL No. 402

By Committee on Health and Human Services

3-16

1 AN ACT concerning certified nurse-midwives; relating to scope of  
2 practice; licensure; amending K.S.A. 2015 Supp. 65-1130 and repealing  
3 the existing section.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. The provisions of sections 1 through 9, and  
7 amendments thereto, shall be known and may be cited as the independent  
8 practice of midwifery act.

9 New Sec. 2. As used in this act:

10 (a) "Board" means the state board of healing arts.

11 (b) "Certified nurse-midwife" means an individual who:

12 (1) Is educated in the two disciplines of nursing and midwifery;

13 (2) is currently certified by a certifying board approved by the state  
14 board of nursing; and

15 (3) is currently licensed under the Kansas nurse practice act.

16 (c) "Independent practice of midwifery" means the provision of  
17 clinical services by a certified nurse-midwife without the requirement of a  
18 collaborative practice agreement with a person licensed to practice  
19 medicine and surgery when such clinical services are limited to those  
20 associated with a normal, uncomplicated pregnancy and delivery,  
21 including:

22 (1) The prescription of drugs and diagnostic tests;

23 (2) the performance of episiotomy or repair of a minor vaginal  
24 laceration;

25 (3) the initial care of the normal newborn; and

26 (4) family planning services, including treatment or referral of male  
27 partners for sexually transmitted infections.

28 New Sec. 3. (a) In order to obtain authorization to engage in the  
29 independent practice of midwifery, a certified nurse-midwife must meet  
30 the following requirements:

31 (1) Be licensed to practice professional nursing under the Kansas  
32 nurse practice act;

33 (2) has successfully completed a course of study in nurse-midwifery  
34 in a school of nurse-midwifery approved by the board;

35 (3) has successfully completed a national certification approved by  
36 the board;

1 (4) has successfully completed a refresher course as defined by rules  
2 and regulations of the board, if the individual has not been in active  
3 midwifery practice for five years immediately preceding the application;

4 (5) be authorized to perform the duties of a certified nurse-midwife  
5 by the state board of nursing;

6 (6) be licensed as an advanced practice registered nurse by the state  
7 board of nursing; and

8 (7) has paid all fees for licensure prescribed in this act.

9 (b) Upon application to the board by any certified nurse-midwife and  
10 upon satisfaction of the standards and requirements established under this  
11 act, the board shall grant an authorization to the applicant to engage in the  
12 independent practice of midwifery.

13 (c) A person whose licensure has been revoked may make written  
14 application to the board requesting reinstatement of the license in a manner  
15 prescribed by the board, which application shall be accompanied by the  
16 fee provided for in section 5, and amendments thereto.

17 New Sec. 4. (a) Licenses issued under this act shall expire on the date  
18 of expiration established by rules and regulations of the board, unless  
19 renewed in the manner prescribed by the board. The request for renewal  
20 shall be accompanied by the fee provided for in section 5, and  
21 amendments thereto.

22 (b) At least 30 days before the expiration of a licensee's license, the  
23 board shall notify the licensee of the expiration, by mail, addressed to the  
24 licensee's last mailing address. If the licensee fails to submit an application  
25 for renewal on a form provided by the board, or fails to pay the renewal  
26 fee by the date of expiration, the board shall give a second notice to the  
27 licensee that the license has expired and the license may be renewed only  
28 if the application for renewal, the renewal fee, and the late renewal fee are  
29 received by the board within the 30-day period following the date of  
30 expiration and that, if both fees are not received within the 30-day period,  
31 the license shall be deemed canceled by operation of law and without  
32 further proceedings.

33 (c) The board may require any licensee, as a condition of renewal, to  
34 submit with the application of renewal, evidence of satisfactory  
35 completion of a program of continuing education as required by rules and  
36 regulations of the board.

37 New Sec. 5. (a) The board shall charge and collect, in advance, fees  
38 for certified nurse-midwives, as established by the board, not to exceed:

|                                   |       |
|-----------------------------------|-------|
| 39 Application for license.....   | \$100 |
| 40 License renewal.....           | \$100 |
| 41 Late license renewal.....      | \$100 |
| 42 License reinstatement fee..... | \$100 |
| 43 Revoked license fee.....       | \$100 |

1 Certified copy of license.....\$50

2 Verified copy of license.....\$25

3 (b) The board shall remit all moneys received by or for the board  
4 from fees, charges or penalties to the state treasurer in accordance with the  
5 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of  
6 each such remittance, the state treasurer shall deposit the entire amount in  
7 the state treasury. Ten percent of each such amount shall be credited to the  
8 state general fund, and the balance shall be credited to the healing arts fee  
9 fund. All expenditures from the healing arts fee fund shall be made in  
10 accordance with appropriation acts upon warrants of the director of  
11 accounts and reports issued pursuant to vouchers approved by the  
12 president of the board or persons designated by the president.

13 New Sec. 6. It shall be unlawful for a person to engage in the  
14 independent practice of midwifery without a collaborative practice  
15 agreement with a person licensed to practice medicine and surgery, unless  
16 such certified nurse-midwife holds a license from the state board of  
17 nursing and the board.

18 New Sec. 7. (a) Rules and regulations pertaining to certified nurse-  
19 midwives engaging in the independent practice of midwifery and  
20 governing the ordering of tests, diagnostic services and prescribing of  
21 drugs and referral or transfer to physicians in the event of complications or  
22 emergencies shall be promulgated by the board in consultation with the  
23 state board of nursing. Such rules and regulations shall not be promulgated  
24 until the state board of nursing and the board have consulted and  
25 concurred on the content of each rule and regulation.

26 (b) A certified nurse midwife engaging in the independent practice of  
27 midwifery shall be subject to the provisions of the independent practice of  
28 midwifery act with respect to the ordering of tests, diagnostic services and  
29 prescribing of drugs and shall not be subject to the provisions of K.S.A.  
30 65-1130, and amendments thereto.

31 (c) The standards of care in the ordering of tests, diagnostic services  
32 and the prescribing of drugs, to which certified nurse-midwives engaging  
33 in the independent practice of midwifery shall be held, shall be those  
34 standards which protect patients and shall be standards comparable to  
35 persons licensed to practice medicine and surgery providing the same  
36 services.

37 (d) The board is hereby authorized to solely promulgate those rules  
38 and regulations necessary to effectuate the administrative provisions of  
39 this act.

40 New Sec. 8. (a) The board may deny, revoke, limit or suspend any  
41 license or authorization issued to a certified nurse-midwife to engage in  
42 the independent practice of midwifery that is issued by the board or  
43 applied for under this act, or may publicly censure a licensee or holder of a

1 temporary permit or authorization, if the applicant or licensee is found  
2 after hearing:

3 (1) To be guilty of fraud or deceit in practicing the independent  
4 practice of midwifery or in procuring or attempting to procure a license to  
5 engage in the independent practice of midwifery;

6 (2) to have been guilty of a felony or to have been guilty of a  
7 misdemeanor involving an illegal drug offense unless the applicant or  
8 licensee establishes sufficient rehabilitation to warrant the public trust,  
9 except that notwithstanding K.S.A. 74-120, and amendments thereto, no  
10 license or authorization to practice and engage in the independent practice  
11 of midwifery shall be granted to a person with a felony conviction for a  
12 crime against persons as specified in article 34 of chapter 21 of the Kansas  
13 Statutes Annotated, prior to its repeal, or article 54 of chapter 21 of the  
14 Kansas Statutes Annotated, and amendments thereto, or K.S.A. 2015 Supp.  
15 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto;

16 (3) to have committed an act of professional incompetence as defined  
17 in subsection (c);

18 (4) to be unable to practice the healing arts with reasonable skill and  
19 safety with patients by reason of impairment due to physical or mental  
20 illness or condition or use of alcohol, drugs or controlled substances. All  
21 information, reports, findings and other records relating to impairment  
22 shall be confidential and not subject to discovery or release to any person  
23 or entity outside of a board proceeding.

24 (5) to be a person who has been adjudged in need of a guardian or  
25 conservator, or both, under the act for obtaining a guardian or conservator,  
26 or both, and who has not been restored to capacity under that act;

27 (6) to be guilty of unprofessional conduct as defined by rules and  
28 regulations of the board;

29 (7) to have willfully or repeatedly violated the provisions of the  
30 Kansas nurse practice act or any rules and regulations adopted pursuant to  
31 that act, including K.S.A. 65-1114 and 65-1122, and amendments thereto;

32 (8) to have a license to practice nursing as a registered nurse, or as a  
33 practical nurse denied, revoked, limited or suspended, or to be publicly or  
34 privately censured, by a licensing authority of another state, agency of the  
35 United States government, territory of the United States or country, or to  
36 have other disciplinary action taken against the applicant or licensee by a  
37 licensing authority of another state, agency of the United States  
38 government, territory of the United States or country. A certified copy of  
39 the record or order of public or private censure, denial, suspension,  
40 limitation, revocation or other disciplinary action of the licensing authority  
41 of another state, agency of the United States government, territory of the  
42 United States or country shall constitute prima facie evidence of such a  
43 fact for purposes of this paragraph; or

1 (9) to have assisted suicide in violation of K.S.A. 21-3406, prior to its  
2 repeal, or K.S.A. 2015 Supp. 21-5407, and amendments thereto, as  
3 established by any of the following:

4 (A) A copy of the record of criminal conviction or plea of guilty for a  
5 felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2015  
6 Supp. 21-5407, and amendments thereto;

7 (B) a copy of the record of a judgment of contempt of court for  
8 violating an injunction issued under K.S.A. 60-4404, and amendments  
9 thereto; or

10 (C) a copy of the record of a judgment assessing damages under  
11 K.S.A. 60-4405, and amendments thereto.

12 (b) No person shall be excused from testifying in any proceedings  
13 before the board under this act or in any civil proceedings under this act  
14 before a court of competent jurisdiction on the ground that such testimony  
15 may incriminate the person testifying, but such testimony shall not be used  
16 against the person for the prosecution of any crime under the laws of this  
17 state, except the crime of perjury as defined in K.S.A. 2015 Supp. 21-  
18 5903, and amendments thereto.

19 (c) As used in this section, "professional incompetency" means:

20 (1) One or more instances involving failure to adhere to the  
21 applicable standard of care to a degree which constitutes gross negligence,  
22 as determined by the board;

23 (2) repeated instances involving failure to adhere to the applicable  
24 standard of care to a degree which constitutes ordinary negligence, as  
25 determined by the board; or

26 (3) a pattern of practice or other behavior which demonstrates a  
27 manifest incapacity or incompetence to engage in the independent practice  
28 of midwifery.

29 (d) The board upon request shall receive from the Kansas bureau of  
30 investigation such criminal history record information relating to arrests  
31 and criminal convictions, as necessary, for the purpose of determining  
32 initial and continuing qualifications of licensees and applicants for  
33 licensure by the board.

34 New Sec. 9. (a) There is hereby established a nurse-midwives council  
35 to advise the board in carrying out the provisions of this act. The council  
36 shall consist of seven members, all residents of the state of Kansas  
37 appointed as follows: Two members shall be licensees of the board,  
38 appointed by the board, who are licensed to practice medicine and surgery  
39 and whose specialty and customary practice includes obstetrics; one  
40 member shall be the president of the board or a board member designated  
41 by the president; and four members shall be certified nurse-midwives  
42 licensed and appointed by the board of nursing.

43 (b) If a vacancy occurs on the council, the appointing authority of the

1 position which has become vacant shall appoint a person of like  
2 qualifications to fill the vacant position for the unexpired term, if any.

3 Sec. 10. K.S.A. 2015 Supp. 65-1130 is hereby amended to read as  
4 follows: 65-1130. (a) No professional nurse shall announce or represent to  
5 the public that such person is an advanced practice registered nurse unless  
6 such professional nurse has complied with requirements established by the  
7 board and holds a valid license as an advanced practice registered nurse in  
8 accordance with the provisions of this section.

9 (b) The board shall establish standards and requirements for any  
10 professional nurse who desires to obtain licensure as an advanced practice  
11 registered nurse. Such standards and requirements shall include, but not be  
12 limited to, standards and requirements relating to the education of  
13 advanced practice registered nurses. The board may give such  
14 examinations and secure such assistance as it deems necessary to  
15 determine the qualifications of applicants.

16 (c) The board shall adopt rules and regulations applicable to advanced  
17 practice registered nurses which:

18 (1) Establish roles and identify titles and abbreviations of advanced  
19 practice registered nurses which are consistent with nursing practice  
20 specialties recognized by the nursing profession.

21 (2) Establish education and qualifications necessary for licensure for  
22 each role of advanced practice registered nurse established by the board at  
23 a level adequate to assure the competent performance by advanced  
24 practice registered nurses of functions and procedures which advanced  
25 practice registered nurses are authorized to perform. Advanced practice  
26 registered nursing is based on knowledge and skills acquired in basic  
27 nursing education, licensure as a registered nurse and graduation from or  
28 completion of a master's or higher degree in one of the advanced practice  
29 registered nurse roles approved by the board of nursing.

30 (3) Define the role of advanced practice registered nurses and  
31 establish limitations and restrictions on such role. The board shall adopt a  
32 definition of the role under this subsection (c)(3) which is consistent with  
33 the education and qualifications required to obtain a license as an  
34 advanced practice registered nurse, which protects the public from persons  
35 performing functions and procedures as advanced practice registered  
36 nurses for which they lack adequate education and qualifications and  
37 which authorizes advanced practice registered nurses to perform acts  
38 generally recognized by the profession of nursing as capable of being  
39 performed, in a manner consistent with the public health and safety, by  
40 persons with postbasic education in nursing. In defining such role the  
41 board shall consider: (A) The education required for a licensure as an  
42 advanced practice registered nurse; (B) the type of nursing practice and  
43 preparation in specialized advanced practice skills involved in each role of

1 advanced practice registered nurse established by the board; (C) the scope  
2 and limitations of advanced practice nursing prescribed by national  
3 advanced practice organizations; and (D) acts recognized by the nursing  
4 profession as appropriate to be performed by persons with postbasic  
5 education in nursing.

6 (d) An advanced practice registered nurse may prescribe drugs  
7 pursuant to a written protocol as authorized by a responsible physician.  
8 Each written protocol shall contain a precise and detailed medical plan of  
9 care for each classification of disease or injury for which the advanced  
10 practice registered nurse is authorized to prescribe and shall specify all  
11 drugs which may be prescribed by the advanced practice registered nurse.  
12 Any written prescription order shall include the name, address and  
13 telephone number of the responsible physician. The advanced practice  
14 registered nurse may not dispense drugs, but may request, receive and sign  
15 for professional samples and may distribute professional samples to  
16 patients pursuant to a written protocol as authorized by a responsible  
17 physician. In order to prescribe controlled substances, the advanced  
18 practice registered nurse shall: (1) Register with the federal drug  
19 enforcement administration; and (2) notify the board of the name and  
20 address of the responsible physician or physicians. In no case shall the  
21 scope of authority of the advanced practice registered nurse exceed the  
22 normal and customary practice of the responsible physician. An advanced  
23 practice registered nurse certified in the role of registered nurse anesthetist  
24 while functioning as a registered nurse anesthetist under K.S.A. 65-1151 ~~to~~  
25 *through* 65-1164, ~~inclusive~~; and amendments thereto, shall be subject to  
26 the provisions of K.S.A. 65-1151 ~~to~~ *through* 65-1164, ~~inclusive~~; and  
27 amendments thereto, with respect to drugs and anesthetic agents and shall  
28 not be subject to the provisions of this subsection. For the purposes of this  
29 subsection, "responsible physician" means a person licensed to practice  
30 medicine and surgery in Kansas who has accepted responsibility for the  
31 protocol and the actions of the advanced practice registered nurse when  
32 prescribing drugs.

33 (e) As used in this section, "drug" means those articles and substances  
34 defined as drugs in K.S.A. 65-1626 and 65-4101, and amendments thereto.

35 (f) A person registered to practice as an advanced registered nurse  
36 practitioner in the state of Kansas immediately prior to the effective date of  
37 this act shall be deemed to be licensed to practice as an advanced practice  
38 registered nurse under this act and such person shall not be required to file  
39 an original application for licensure under this act. Any application for  
40 registration filed which has not been granted prior to the effective date of  
41 this act shall be processed as an application for licensure under this act.

42 (g) *An advanced practice registered nurse certified in the role of*  
43 *certified nurse-midwife and engaging in the independent practice of*

1 *midwifery under the independent practice of midwifery act with respect to*  
2 *prescribing drugs shall be subject to the provisions of the independent*  
3 *practice of midwifery act and shall not be subject to the provisions of this*  
4 *section.*

5       Sec. 11. K.S.A. 2015 Supp. 65-1130 is hereby repealed.

6       Sec. 12. This act shall take effect and be in force from and after its  
7 publication in the statute book.