

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 637
93RD GENERAL ASSEMBLY

Reported from the Committee on Pensions, Veterans' Affairs and General Laws, March 2, 2006, with recommendation that the Senate Committee Substitute do pass.

3351S.07C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 334.010 and 334.260, RSMo, and to enact in lieu thereof seven new sections relating to the practice of midwifery, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 334.010 and 334.260, RSMo, are repealed and seven
2 new sections enacted in lieu thereof, to be known as sections 324.1225, 324.1230,
3 324.1235, 324.1240, 324.1243, 324.1245, and 334.010, to read as follows:

**324.1225. 1. As used in sections 324.1225 to 324.1245, the
2 following terms shall mean:**

- 3 **(1) "Antepartum", before birth;**
4 **(2) "Client", a person who retains the services of a direct-entry
5 midwife;**
6 **(3) "Direct-entry midwife", any person who is certified by the
7 North American Registry of Midwives (NARM) as a certified
8 professional midwife (CPM) and provides for compensation those skills
9 relevant to the care of women and infants in the antepartum,
10 intrapartum, and postpartum period;**
11 **(4) "Intrapartum", during birth;**
12 **(5) "Postpartum", six-week period following birth.**

13 **2. There is hereby created and established within the division of
14 professional registration a "Board of Direct-Entry Midwives" for the
15 purpose of licensing all persons engaged in the practice of direct-entry
16 midwifery.**

17 **3. No later than December 31, 2006, the governor shall appoint**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 members to the board with the advice and consent of the senate. The
19 board shall consist of seven members each of whom are United States
20 citizens and who have been residents of this state for at least one year
21 immediately preceding their appointment. Of these seven members,
22 two members shall be a physician licensed under chapter 334, RSMo,
23 with one of the physicians having experience in out-of-hospital births,
24 one member shall be a public member, four members shall be licensed
25 direct-entry midwives who attend births in homes or other out-of-
26 hospital settings, provided that the first midwife members appointed
27 need not be licensed at the time of appointment if they are actively
28 working toward licensure under the provisions of sections 324.1225 to
29 324.1245.

30 4. One of the initial direct-entry midwife members shall be
31 appointed for a four-year term, one direct-entry midwife member and
32 the physician with home-birth experience member shall be appointed
33 for a three-year term, one direct-entry midwife member and the public
34 member shall be appointed for a two-year term, and one direct-entry
35 midwife member and the physician member shall be appointed for a
36 one-year term. Thereafter, each member shall serve a four-year term.
37 No member of the board shall serve more than two consecutive four-
38 year terms. The organization of the board shall be established by
39 members of the board. Upon the death, resignation, or removal from
40 office of any member of the board, the appointment to fill the vacancy
41 shall be for the unexpired portion of the term so vacated and shall be
42 made within sixty days after the vacancy occurs.

43 5. The public member shall not be a member of any profession
44 regulated by chapter 334 or 335, RSMo, or under sections 324.1225 to
45 324.1245, or the spouse of such person. The public member shall not
46 have nor have had a material or financial interest in either the
47 providing of direct-entry midwifery services regulated by this section
48 or an organization directly related to the licensed direct-entry
49 midwives regulated under sections 324.1225 to 324.1245. The public
50 member is subject to the provisions of section 620.132, RSMo.

51 6. The board may sue and be sued in its own name and its
52 members need not be named parties. Members of the board shall not
53 be personally liable, either jointly or severally, for any act or acts
54 committed in the performance of their official duties as board

55 members. No board member shall be personally liable for any court
56 costs which accrue in any action by or against the board.

57 7. Notwithstanding any other provision of law to the contrary,
58 any appointed member of the board shall receive as compensation an
59 amount established by the director of the division of professional
60 registration not to exceed seventy dollars per day for board business
61 plus actual and necessary expenses. The director of the division of
62 professional registration shall establish by rule the guidelines for
63 payment.

64 8. The board shall employ administrative and clerical personnel
65 necessary to enforce the provisions of sections 324.1225 to 324.1245.

66 9. The board shall hold an open annual meeting at which time it
67 shall elect from its membership a chairman and secretary. The board
68 may hold such additional meetings as may be required in the
69 performance of its duties, provided that notice of every meeting shall
70 be given to each member at least ten days prior to the date of the
71 meeting. A quorum of the board shall consist of a majority of its
72 members.

73 10. No licensing activity or other statutory requirements shall
74 become effective until expenditures or personnel are specifically
75 appropriated for the purpose of conducting the business as required to
76 administer the provisions of sections 324.1225 to 324.1245 and the
77 initial rules filed have become effective.

324.1230. 1. The board shall have power to issue licenses to
2 applicants who:

3 (1) Present evidence of current certification by the North
4 American Registry of Midwives (NARM) as a certified professional
5 midwife (CPM);

6 (2) Pay a licensure fee, not to exceed one hundred dollars per
7 year of licensure; and

8 (3) Comply with the written disclosure requirement under
9 subsection 1 of section 324.1240.

10 2. The board shall renew a license for a period of three years
11 upon payment of the renewal fee set by the board.

12 3. Any license issued under sections 324.1225 to 324.1245 shall
13 expire three years after the date of its issuance. The board may refuse
14 to issue or renew any certificate of registration or authority, permit or

15 license required pursuant to this chapter for one or any combination
16 of causes stated in subsection 4 of this section. The board shall notify
17 the applicant in writing of the reasons for the refusal and shall advise
18 the applicant of the applicant's right to file a complaint with the
19 administrative hearing commission as provided by chapter 621, RSMo.
20 As an alternative to a refusal to issue or renew any certificate,
21 registration, or authority, the board may, at its discretion, issue a
22 license which is subject to probation, restriction, or limitation to an
23 applicant for licensure for any one or any combination of causes stated
24 in subsection 4 of this section. The board's order of probation,
25 limitation, or restriction shall contain a statement of the discipline
26 imposed, the basis therefor, the date such action shall become effective,
27 and a statement that the applicant has thirty days to request in writing
28 a hearing before the administrative hearing commission. If the board
29 issues a probationary, limited, or restricted license to an applicant for
30 licensure, either party may file a written petition with the
31 administrative hearing commission within thirty days of the effective
32 date of the probationary, limited, or restricted license seeking review
33 of the board's determination. If no written request for a hearing is
34 received by the administrative hearing commission within the
35 thirty-day period, the right to seek review of the board's decision shall
36 be considered as waived.

37 4. The board may cause a complaint to be filed with the
38 administrative hearing commission as provided by chapter 621, RSMo,
39 against any holder of any certificate of registration or authority,
40 permit, or license required by this chapter or any person who has
41 failed to renew or has surrendered the person's certificate of
42 registration or authority, permit, or license for any one or any
43 combination of the following causes:

44 (1) Violates any provision of sections 324.1225 to 324.1245 or the
45 rules adopted thereafter;

46 (2) Engages in conduct detrimental to the health or safety of
47 either the mother or infant, or both as determined by the board; or

48 (3) Has an unpaid judgment resulting from providing direct-
49 entry midwifery services.

50 5. After the filing of such complaint before the administrative
51 hearing commission, the proceedings shall be conducted in accordance

52 with the provisions of chapter 621, RSMo. Upon a finding by the
53 administrative hearing commission that the grounds, provided in
54 subsection 4 of this section, for disciplinary action are met, the board
55 may, singly or in combination, warn, censure or place the person named
56 in the complaint on probation on such terms and conditions as the
57 board deems appropriate for a period not to exceed ten years, or may
58 suspend the person's license, certificate or permit for a period not to
59 exceed three years, or restrict or limit the person's license, certificate
60 or permit for an indefinite period of time, or revoke the person's
61 license, certificate, or permit, or administer a public or private
62 reprimand, or deny the person's application for a license, or
63 permanently withhold issuance of a license or require the person to
64 submit to the care, counseling or treatment of physicians designated by
65 the board at the expense of the individual to be examined, or require
66 the person to attend such continuing educational courses and pass such
67 examinations as the board may direct.

68 6. The division may promulgate rules necessary to implement the
69 administration of the licensure system established under sections
70 324.1225 to 324.1245. Any rule or portion of a rule, as that term is
71 defined in section 536.010, RSMo, that is created under the authority
72 delegated in this section shall become effective only if it complies with
73 and is subject to all of the provisions of chapter 536, RSMo, and, if
74 applicable, section 536.028, RSMo. This section and chapter 536, RSMo,
75 are nonseverable and if any of the powers vested with the general
76 assembly pursuant to chapter 536, RSMo, to review, to delay the
77 effective date, or to disapprove and annul a rule are subsequently held
78 unconstitutional, then the grant of rulemaking authority and any rule
79 proposed or adopted after August 28, 2006, shall be invalid and void.

324.1235. 1. There is hereby established in the treasury a fund
2 to be known as the "Board of Direct-Entry Midwives Fund". All fees of
3 any kind and character authorized to be charged by the board shall be
4 collected by the director of the division of professional registration and
5 shall be transmitted to the department of revenue for deposit in the
6 state treasury for credit to this fund, to be disbursed only in payment
7 of expenses of maintaining the board and for the enforcement of the
8 provisions of law concerning professions regulated by the board; and
9 no other money shall be paid out of the state treasury for carrying out

10 these provisions. Warrants shall be issued on the state treasurer for
11 payment out of said fund.

12 2. The state treasurer shall be custodian of the fund. In
13 accordance with sections 30.170 and 30.180, RSMo, the state treasurer
14 may approve disbursements. Upon appropriation, money in the fund
15 shall be used solely for the administration of sections 324.1225 to
16 324.1245. Notwithstanding the provisions of section 33.080, RSMo, to
17 the contrary, any moneys remaining in the fund at the end of the
18 biennium shall not revert to the credit of the general revenue
19 fund. The state treasurer shall invest moneys in the fund in the same
20 manner as other funds are invested. Any interest and moneys earned
21 on such investments shall be credited to the fund.

324.1240. 1. Every licensed direct-entry midwife shall present a
2 written disclosure statement, updated annually, to each client, which
3 shall include but not be limited to, the following:

4 (1) A description of direct-entry midwifery education and related
5 training;

6 (2) Licensure as a direct-entry midwife, including the effective
7 dates of the licensure and the address and telephone number of the
8 board;

9 (3) A statement verifying the attendance of the licensed direct-
10 entry midwife at a minimum of forty births in homes or other out-of-
11 hospital settings, including the provision of antepartum, intrapartum
12 and postpartum care;

13 (4) Completion of at least ten hours per year of continuing
14 education in midwifery or related fields;

15 (5) Completion of at least three hours per year of peer review;

16 (6) Current certification in adult and infant cardiopulmonary
17 resuscitation (CPR), and either infant CPR or neonatal resuscitation;

18 (7) The number of years of experience as a licensed direct-entry
19 midwife;

20 (8) The number of women assisted in childbirth as a licensed
21 direct-entry midwife;

22 (9) The benefits and risks associated with childbirth in the
23 setting selected by the client;

24 (10) A statement concerning the licensed direct-entry midwife's
25 malpractice or liability insurance coverage;

26 **(11) A plan, specific to the client, for transfer to medical care, if**
27 **needed.**

28 **2. Notwithstanding any other provision of the law, a licensed**
29 **direct-entry midwife providing a service of direct-entry midwifery shall**
30 **not be deemed to be engaged in the practice of medicine, nursing,**
31 **nurse-midwifery, or any other medical or healing practice.**

32 **3. Nothing in sections 324.1225 to 324.1245 shall prevent or**
33 **prohibit:**

34 **(1) Any licensed direct-entry midwife from delegating to an**
35 **apprentice under the direct supervision of a direct-entry midwife or**
36 **personnel in his or her personal employ and supervised by the midwife**
37 **such activities or functions that are nondiscretionary and that do not**
38 **require the exercise of professional judgment for their performance, if**
39 **such activities or functions are authorized by and performed for the**
40 **licensed direct-entry midwife and responsibility for such activities or**
41 **functions is assumed by the licensed direct-entry midwife; or**

42 **(2) Any person from performing tasks related to the practice of**
43 **direct-entry midwifery under the direct and immediate supervision of**
44 **a licensed doctor of medicine or osteopathy, a certified nurse midwife,**
45 **or a licensed direct-entry midwife during completion of the North**
46 **American Registry of Midwives' Portfolio Evaluation Process Program.**

47 **4. Nothing in sections 324.1225 to 324.1245 shall be construed to**
48 **apply to a person who provides information and support in preparation**
49 **for a normal labor and delivery and assists in the delivery of an infant**
50 **if that person does not do the following:**

51 **(1) Advertise as a midwife or as a provider of midwife services;**

52 **(2) Assist, as primary attendant, in more than six births a year;**

53 **(3) Accept any form of compensation for midwife services; and**

54 **(4) Use any words, letters, signs, or figures to indicate that the**
55 **person is a midwife.**

56 **5. A person who is a member of a recognized religious sect or**
57 **division, as defined in 26 U.S.C. 1402(g), by reason of which they are**
58 **conscientiously opposed to acceptance of benefits of any public or**
59 **private insurance which makes payments in the event of death,**
60 **disability, old age, or retirement or makes payments toward the cost,**
61 **of, or provides services for, medical bills, including benefits of any**
62 **insurance system established under the Federal Social Security Act, 42**

63 U.S.C. 301 to 42 U.S.C. 1397jj, shall not be subject to the provisions of
64 sections 324.1225 to 324.1245.

65 6. A person shall not be subject to the licensure provisions of
66 subsection 1 of this section if said person:

67 (1) Is a resident of this state;

68 (2) Is at least twenty-one years of age;

69 (3) Has passed the North American Registry of Midwives Skills
70 Assessment;

71 (4) Has provided a service of midwifery for at least twenty of the
72 last thirty years before August 28, 2006; and

73 (5) Has requested and received an exemption from the Board of
74 Direct-Entry Midwives.

75 7. No person other than the licensed direct-entry midwife who
76 provided care to the client shall be liable for the direct-entry midwife's
77 negligent or willful and wanton acts or omissions. Except as otherwise
78 provided by law, no other licensed physician, licensed doctor of
79 osteopathy, certified nurse midwife, licensed nurse, hospital,
80 emergency medical technicians licensed under chapter 190, RSMo, or
81 agents thereof, shall be exempt from liability for their own subsequent
82 and independent negligent, grossly negligent, or willful and wanton
83 acts or omissions.

84 8. The provisions of sections 324.1225 to 324.1245 shall be
85 remedial and curative in nature.

86 9. Nothing in sections 324.1225 to 324.1245 shall be construed to
87 prohibit the attendance at birth of the mother's choice of family,
88 friends, or other uncompensated labor support attendants.

324.1243. No licensed direct-entry midwife shall be permitted to:

2 (1) Accept payment for services from this state under the medical
3 assistance provisions under chapter 208, RSMo;

4 (2) Prescribe drugs or medications;

5 (3) Perform medical inductions or cesarean sections during the
6 delivery of an infant;

7 (4) Use forceps during the delivery of an infant; or

8 (5) Perform vacuum delivery of an infant.

324.1245. Any person who violates the provisions of sections
2 324.1225 to 324.1245, or any rule or order made under sections 324.1225
3 to 324.1245 is guilty of a class A misdemeanor.

334.010. 1. It shall be unlawful for any person not now a registered
2 physician within the meaning of the law to practice medicine or surgery in any
3 of its departments, to engage in the practice of medicine across state lines or to
4 profess to cure and attempt to treat the sick and others afflicted with bodily or
5 mental infirmities, [or engage in the practice of midwifery in this state,] except
6 as herein provided.

7 2. For the purposes of this chapter, the "practice of medicine across state
8 lines" shall mean:

9 (1) The rendering of a written or otherwise documented medical opinion
10 concerning the diagnosis or treatment of a patient within this state by a
11 physician located outside this state as a result of transmission of individual
12 patient data by electronic or other means from within this state to such physician
13 or physician's agent; or

14 (2) The rendering of treatment to a patient within this state by a
15 physician located outside this state as a result of transmission of individual
16 patient data by electronic or other means from within this state to such physician
17 or physician's agent.

18 3. A physician located outside of this state shall not be required to obtain
19 a license when:

20 (1) In consultation with a physician licensed to practice medicine in this
21 state; and

22 (2) The physician licensed in this state retains ultimate authority and
23 responsibility for the diagnosis or diagnoses and treatment in the care of the
24 patient located within this state; or

25 (3) Evaluating a patient or rendering an oral, written or otherwise
26 documented medical opinion, or when providing testimony or records for the
27 purpose of any civil or criminal action before any judicial or administrative
28 proceeding of this state or other forum in this state; or

29 (4) Participating in a utilization review pursuant to section 376.1350,
30 RSMo.

[334.260. On August 29, 1959, all persons licensed under
2 the provisions of chapter 334, RSMo 1949, as midwives shall be
3 deemed to be licensed as midwives under this chapter and subject
4 to all the provisions of this chapter.]

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