

FIRST REGULAR SESSION

SENATE BILL NO. 303

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS LOUDON, BRAY, SCOTT, DAYS,
GROSS, BARNITZ AND PURGASON.

Read 1st time January 17, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1258S.02I

AN ACT

To repeal sections 334.010, 334.120, and 334.260, RSMo, and to enact in lieu thereof eight 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Section A. Sections 334.010, 334.120, and 334.260, RSMo, are repealed
2 and eight new sections enacted in lieu thereof, to be known as sections 324.1230,
3 324.1233, 324.1236, 324.1239, 324.1242, 324.1245, 334.010, and 334.120 to read
4 as follows:

324.1230. 1. As used in sections 324.1230 to 324.1245, the
2 following terms shall mean:

3 (1) "Antepartum", before birth;

4 (2) "Board", the board of direct-entry midwives;

5 (3) "Client", a person who retains the services of a direct-entry
6 midwife;

7 (4) "Direct-entry midwife", any person who is certified by the
8 North American Registry of Midwives (NARM) as a certified
9 professional midwife (CPM) and provides for compensation those skills
10 relevant to the care of women and infants in the antepartum,
11 intrapartum, and postpartum period;

12 (5) "Division", the division of professional registration;

13 (6) "Intrapartum", during birth;

14 (7) "Postpartum", after birth.

15 2. There is hereby created and established within the division of
16 professional registration a "Board of Direct-Entry Midwives".

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

17 3. No later than December 31, 2007, the governor shall appoint
18 members to the board with the advice and consent of the senate. The
19 board shall consist of five members each of whom is a United States
20 citizen and who has been a resident of this state for at least one year
21 immediately preceding their appointment. Of these five members, one
22 member shall be a physician licensed under chapter 334, RSMo, who
23 has provided out-of-hospital birth services, one member shall be a
24 public member, three members shall be licensed direct-entry midwives
25 who attend births in homes or other out-of-hospital settings, provided
26 that the first midwife members appointed need not be licensed at the
27 time of appointment if they are actively working toward licensure
28 under the provisions of sections 324.1230 to 324.1245.

29 4. The initial appointments to the board shall be one member for
30 a term of one year, one member for a term of two years, one member for
31 a term of three years, one member for a term of four years and one
32 member for a term of five years. After the initial terms, each member
33 shall serve a five-year term. No member of the board shall serve more
34 than two consecutive five-year terms. The organization of the board
35 shall be established by members of the board. Upon the death,
36 resignation, or removal from office of any member of the board, the
37 appointment to fill the vacancy shall be for the unexpired portion of
38 the term so vacated and shall be made within sixty days after the
39 vacancy occurs.

40 5. The public member shall not be a member of any profession
41 regulated by chapter 334 or 335, RSMo, or under sections 324.1230 to
42 324.1245, or the spouse of such person. The public member is subject
43 to the provisions of section 620.132, RSMo.

44 6. The board may sue and be sued in its own name and its
45 members need not be named parties. Members of the board shall not
46 be personally liable, either jointly or severally, for any act or acts
47 committed in the performance of their official duties as board
48 members. No board member shall be personally liable for any court
49 costs which accrue in any action by or against the board.

50 7. Notwithstanding any other provision of law to the contrary,
51 any appointed member of the board shall receive as compensation an
52 amount established by the director of the division of professional
53 registration not to exceed fifty dollars per day for board business plus

54 actual and necessary expenses. The director of the division of
55 professional registration shall establish by rule the guidelines for
56 payment.

57 8. The board shall employ administrative and clerical personnel
58 necessary to enforce the provisions of sections 324.1230 to 324.1245.

59 9. The board shall hold an annual meeting at which time it shall
60 elect from its membership a chairman and secretary. The board may
61 hold such additional meetings as may be required in the performance
62 of its duties, provided that notice of every meeting shall be given to
63 each member at least ten days prior to the date of the meeting. A
64 quorum of the board shall consist of a majority of its members.

65 10. No licensing activity or other statutory requirements shall
66 become effective until expenditures or personnel are specifically
67 appropriated for the purpose of conducting the business as required to
68 administer the provisions of sections 324.1230 to 324.1245 and the
69 initial rules filed have become effective.

324.1233. 1. The board shall issue licenses to applicants who:

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

5 (2) Present evidence of current certification in adult and infant
6 cardiopulmonary resuscitation (CPR), and either infant CPR or
7 neonatal resuscitation;

8 (3) Pay a licensure fee set by the board; and

9 (4) Comply with the written disclosure requirement under
10 subsection 1 of section 324.1239.

11 2. The board shall renew licenses to applicants who:

12 (1) Present evidence of attendance at a minimum of ten hours
13 per year of continuing education in midwifery or related fields;

14 (2) Present evidence of attendance at a minimum of three hours
15 per year of peer review;

16 (3) Present evidence of current certification in adult and infant
17 cardiopulmonary resuscitation (CPR), and either infant CPR or
18 neonatal resuscitation; and

19 (4) Pay a renewal fee set by the board.

20 3. Any license issued under sections 324.1230 to 324.1245 shall
21 expire three years after the date of its issuance. The board may refuse

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

45 4. The board may cause a complaint to be filed with the
46 administrative hearing commission as provided by chapter 621, RSMo,
47 against any holder of any certificate of registration or authority,
48 permit, or license required by this chapter or any person who has
49 failed to renew or has surrendered the person's certificate of
50 registration or authority, permit, or license for any one or any
51 combination of the following causes:

52 (1) Violates any provision of sections 324.1230 to 324.1245 or the
53 rules adopted thereafter;

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

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

58 5. After the filing of such complaint before the administrative

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

76 6. The division may promulgate rules necessary to implement the
77 administration of the licensure system established under sections
78 324.1230 to 324.1245. Any rule or portion of a rule, as that term is
79 defined in section 536.010, RSMo, that is created under the authority
80 delegated in this section shall become effective only if it complies with
81 and is subject to all of the provisions of chapter 536, RSMo, and, if
82 applicable, section 536.028, RSMo. This section and chapter 536, RSMo,
83 are nonseverable and if any of the powers vested with the general
84 assembly pursuant to chapter 536, RSMo, to review, to delay the
85 effective date, or to disapprove and annul a rule are subsequently held
86 unconstitutional, then the grant of rulemaking authority and any rule
87 proposed or adopted after August 28, 2007, shall be invalid and void.

324.1236. 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 324.1230 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.

324.1239. 1. Every licensed direct-entry midwife shall present a
2 written disclosure statement to each client, which shall include but not
3 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;
- 8 (3) The benefits and risks associated with childbirth in the
9 setting selected by the client;
- 10 (4) A statement concerning the licensed direct-entry midwife's
11 malpractice or liability insurance coverage; and
- 12 (5) A plan, specific to the client, for transfer to medical care, if
13 needed.

14 2. Notwithstanding any other provision of the law, a licensed
15 direct-entry midwife providing a service of direct-entry midwifery shall
16 not be deemed to be engaged in the practice of medicine, nursing,
17 nurse-midwifery, or any other medical or healing practice.

18 3. Nothing in sections 324.1230 to 324.1245 shall be construed to
19 apply to a person who provides information and support in preparation
20 for labor and delivery and assists in the delivery of an infant if that
21 person does not do the following:

- 22 (1) Advertise as a midwife or as a provider of midwife services;
- 23 (2) Assist, as primary attendant, in more than six births a year;
- 24 (3) Accept any form of compensation for midwife services; and

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

27 4. A person who is a member of a recognized religious sect or
28 division, as defined in 26 U.S.C. 1402(g), by reason of which they are
29 conscientiously opposed to acceptance of benefits of any public or
30 private insurance which makes payments in the event of death,
31 disability, old age, or retirement or makes payments toward the cost of,
32 or provides services for, medical bills, including benefits of any
33 insurance system established under the Federal Social Security Act, 42
34 U.S.C. 301 to 42 U.S.C. 1397jj, shall not be subject to the provisions of
35 sections 324.1230 to 324.1245.

36 5. A person shall not be subject to the licensure provisions of
37 section 324.1233 if said person:

38 (1) Is a resident of this state;

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

40 (3) Has passed the North American Registry of Midwives Skills
41 Assessment;

42 (4) Has provided a service of midwifery for at least twenty of the
43 last thirty years before August 28, 2007;

44 (5) Presents evidence of current certification in adult and infant
45 cardiopulmonary resuscitation (CPR) and either infant CPR or neonatal
46 resuscitation;

47 (6) Presents a written disclosure statement to each client as
48 provided under subsection 1 of this section, except such person shall
49 disclose evidence of the licensure exemption from the board required
50 under subdivision (7) of this subsection; and

51 (7) Has requested and received an exemption from the Board of
52 Direct-Entry Midwives.

53 6. No person other than the licensed direct-entry midwife who
54 provided care to the client shall be liable for the direct-entry midwife's
55 negligent or willful and wanton acts or omissions. Except as otherwise
56 provided by law, no other licensed physician, licensed doctor of
57 osteopathy, certified nurse midwife, licensed nurse, hospital,
58 emergency medical technicians licensed under chapter 190, RSMo, or
59 agents thereof, shall be exempt from liability for their own subsequent
60 and independent negligent, grossly negligent, or willful and wanton
61 acts or omissions.

62 **7. The provisions of sections 324.1230 to 324.1245 shall be**
63 **remedial and curative in nature.**

64 **8. Nothing in sections 324.1230 to 324.1245 shall be construed to**
65 **prohibit the attendance at birth of the mother's choice of family,**
66 **friends, or other uncompensated labor support attendants.**

324.1242. No licensed direct-entry midwife shall be permitted to:

- 2 **(1) Prescribe drugs or medications;**
- 3 **(2) Perform medical inductions or cesarean sections during the**
4 **delivery of an infant;**
- 5 **(3) Use forceps during the delivery of an infant; or**
- 6 **(4) Perform vacuum delivery of an infant.**

324.1245. Any person who violates the provisions of sections
2 **324.1230 to 324.1245, or any rule or order made under sections 324.1230**
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.

334.120. 1. There is hereby created and established a board to be known
2 as "The State Board of Registration for the Healing Arts" for the purpose of
3 registering, licensing and supervising all physicians and surgeons[, and
4 midwives] in this state. The board shall consist of nine members, including one
5 voting public member, to be appointed by the governor by and with the advice and
6 consent of the senate, five of whom shall be graduates of professional schools
7 approved and accredited as reputable by the American Medical Association or the
8 Liaison Committee on Medical Education and two of whom shall be graduates of
9 professional schools approved and accredited as reputable by the American
10 Osteopathic Association, and all of whom, except the public member, shall be duly
11 licensed and registered as physicians and surgeons pursuant to the laws of this
12 state. Each member must be a citizen of the United States and must have been
13 a resident of this state for a period of at least one year next preceding his or her
14 appointment and shall have been actively engaged in the lawful and ethical
15 practice of the profession of physician and surgeon for at least five years next
16 preceding his or her appointment. Not more than four members shall be
17 affiliated with the same political party. All members shall be appointed for a
18 term of four years. Each member of the board shall receive as compensation an
19 amount set by the board not to exceed fifty dollars for each day devoted to the
20 affairs of the board, and shall be entitled to reimbursement of his or her expenses
21 necessarily incurred in the discharge of his or her official duties. The president
22 of the Missouri State Medical Association, for all medical physician appointments,
23 or the president of the Missouri Association of Osteopathic Physicians and
24 Surgeons, for all osteopathic physician appointments, in office at the time shall,
25 at least ninety days prior to the expiration of the term of the respective board
26 member, other than the public member, or as soon as feasible after the
27 appropriate vacancy on the board otherwise occurs, submit to the director of the
28 division of professional registration a list of five physicians and surgeons

29 qualified and willing to fill the vacancy in question, with the request and
30 recommendation that the governor appoint one of the five persons so listed, and
31 with the list so submitted, the president of the Missouri State Medical
32 Association or the Missouri Association of Osteopathic Physicians and Surgeons,
33 as appropriate, shall include in his or her letter of transmittal a description of the
34 method by which the names were chosen by that association.

35 2. The public member shall be at the time of his or her appointment a
36 citizen of the United States; a resident of this state for a period of one year and
37 a registered voter; a person who is not and never was a member of any profession
38 licensed or regulated pursuant to this chapter or the spouse of such person; and
39 a person who does not have and never has had a material, financial interest in
40 either the providing of the professional services regulated by this chapter, or an
41 activity or organization directly related to any profession licensed or regulated
42 pursuant to this chapter. All members, including public members, shall be
43 chosen from lists submitted by the director of the division of professional
44 registration. The duties of the public member shall not include the determination
45 of the technical requirements to be met for licensure or whether any person meets
46 such technical requirements or of the technical competence or technical judgment
47 of a licensee or a candidate for licensure.

 [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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