

FIRST REGULAR SESSION

HOUSE BILL NO. 503

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PORTWOOD (Sponsor), DEMPSEY, BEARDEN, WILSON (119), PARSON, NIEVES, DAVIS, CHAPPELLE-NADAL, SANDER, LOW (39), HARRIS (110), OXFORD, MEINERS, DIXON, MOORE, EMERY, LEMBKE, VIEBROCK, KELLY, SCHAD, DOUGHERTY, FISHER, McGHEE, LOEHNER, FAITH, JETTON, KOMO, DETHROW, HUBBARD, SELF, VOGT, WALTON, WELLS, KINGERY, JONES (117), DEEKEN, HOSKINS, EL-AMIN AND WALLACE (Co-sponsors).

Read 1st time January 22, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1207L.01I

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Section A. Sections 334.010 and 334.260, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 324.1245, 324.1250, 324.1255, 324.1260, 324.1263, 324.1265, and 334.010, to read as follows:

324.1245. 1. As used in sections 324.1245 to 324.1265, the following terms shall mean:

- (1) "Antepartum", before birth;**
- (2) "Board", board of direct-entry midwives;**
- (3) "Client", a person who retains the services of a direct-entry midwife;**
- (4) "Direct-entry midwife", any person who is certified by the North American Registry of Midwives (NARM) as a certified professional midwife (CPM) and provides for compensation those skills relevant to the care of women and infants in the antepartum, intrapartum, and postpartum period;**
- (5) "Division", division of professional registration;**
- (6) "Intrapartum", during birth;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 (7) "Postpartum", after birth.

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

15 3. No later than December 31, 2007, the governor shall appoint members to the
16 board with the advice and consent of the senate. The board shall consist of five members
17 each of whom are United States citizens and who have been residents of this state for at
18 least one year immediately preceding their appointment. Of these five members, one
19 member shall be a physician licensed under chapter 334, RSMo, who has provided
20 out—of—hospital birth services, one member shall be a public member, three members
21 shall be licensed direct-entry midwives who attend births in homes or other out-of-hospital
22 settings, provided that the first midwife members appointed need not be licensed at the
23 time of appointment if they are actively working toward licensure under the provisions of
24 sections 324.1245 to 324.1265.

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

33 5. The public member shall not be a member of any profession regulated by
34 chapter 334 or 335, RSMo, or under sections 324.1245 to 324.1265, or the spouse of such
35 person. The public member is subject to the provisions of section 620.132, RSMo.

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

41 7. Notwithstanding any other provision of law, any appointed member of the board
42 shall receive as compensation an amount established by the director of the division of
43 professional registration not to exceed fifty dollars per day for board business plus actual
44 and necessary expenses. The director of the division of professional registration shall
45 establish by rule the guidelines for payment.

46 8. The board shall employ administrative and clerical personnel necessary to
47 enforce the provisions of sections 324.1245 to 324.1265.

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

53 **10. No licensing activity or other statutory requirements shall become effective until**
54 **expenditures or personnel are specifically appropriated for the purpose of conducting the**
55 **business as required to administer the provisions of sections 324.1245 to 324.1265 and the**
56 **initial rules filed have become effective.**

324.1250. 1. The board shall issue licenses to applicants who:

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

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

6 **(3) Agree to comply with the written disclosure requirement under subsection 1 of**
7 **section 324.1260; and**

8 **(4) Pay a licensure fee set by the board.**

9 **2. The board shall renew licenses to applicants who:**

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

12 **(2) Present evidence of attendance at a minimum of three hours per year of peer**
13 **review;**

14 **(3) Present evidence of current certification in adult and infant cardiopulmonary**
15 **resuscitation (CPR), and either infant CPR or neonatal resuscitation; and**

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

17 **3. Any license issued under sections 324.1245 to 324.1265 shall expire three years**
18 **after the date of its issuance. The board may refuse to issue or renew any certificate of**
19 **registration or authority, permit or license required under this chapter for one or any**
20 **combination of causes stated in subsection 4 of this section. The board shall notify the**
21 **applicant in writing of the reasons for the refusal and shall advise the applicant of the**
22 **applicant's right to file a complaint with the administrative hearing commission as**
23 **provided by chapter 621, RSMo. As an alternative to a refusal to issue or renew any**
24 **certificate, registration, or authority, the board may, at its discretion, issue a license which**
25 **is subject to probation, restriction, or limitation to an applicant for licensure for any one**
26 **or any combination of causes stated in subsection 4 of this section. The board's order of**
27 **probation, limitation, or restriction shall contain a statement of the discipline imposed, the**
28 **basis therefor, the date such action shall become effective, and a statement that the**

29 applicant has thirty days to request in writing a hearing before the administrative hearing
30 commission. If the board issues a probationary, limited, or restricted license to an
31 applicant for licensure, either party may file a written petition with the administrative
32 hearing commission within thirty days of the effective date of the probationary, limited,
33 or restricted license seeking review of the board's determination. If no written request for
34 a hearing is received by the administrative hearing commission within the thirty-day
35 period, the right to seek review of the board's decision shall be considered waived.

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

41 (1) Violates any provision of sections 324.1245 to 324.1265 or the rules adopted
42 thereafter;

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

45 (3) Has an unpaid judgment resulting from providing direct-entry midwife services.

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

60 6. The division may promulgate rules necessary to implement the system
61 established under sections 324.1245 to 324.1265. Any rule or portion of a rule, as that term
62 is defined in section 536.010, RSMo, that is created under the authority delegated in this
63 section shall become effective only if it complies with and is subject to all of the provisions
64 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter
65 536, RSMo, are nonseverable and if any of the powers vested with the general assembly

66 pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and
67 annul a rule are subsequently held unconstitutional, then the grant of rulemaking
68 authority and any rule proposed or adopted after August 28, 2007, shall be invalid and
69 void.

324.1255. 1. There is hereby established in the treasury a fund to be known as the
2 "Board of Direct-Entry Midwives Fund". All fees of any kind and character authorized
3 to be charged by the board shall be collected by the director of the division of professional
4 registration and shall be transmitted to the department of revenue for deposit in the state
5 treasury for credit to this fund, to be disbursed only in payment of expenses of maintaining
6 the board and for the enforcement of the provisions of law concerning professions
7 regulated by the board; and no other money shall be paid out of the state treasury for
8 carrying out these provisions. Warrants shall be issued on the state treasurer for payment
9 out of said fund.

10 2. The state treasurer shall be custodian of the fund. In accordance with sections
11 30.170 and 30.180, RSMo, the state treasurer may approve disbursements. Upon
12 appropriation, money in the fund shall be used solely for the administration of sections
13 324.1245 to 324.1265. Notwithstanding the provisions of section 33.080, RSMo, to the
14 contrary, any moneys remaining in the fund at the end of the biennium shall not revert to
15 the credit of the general revenue fund. The state treasurer shall invest moneys in the fund
16 in the same manner as other funds are invested. Any interest and moneys earned on such
17 investments shall be credited to the fund.

324.1260. 1. Every licensed direct-entry midwife shall present a written disclosure
2 statement to each client, which shall include but not be limited to, the following:

- 3 (1) A description of direct-entry midwifery education and related training;
- 4 (2) Licensure as a direct-entry midwife, including the effective dates of the
5 licensure;
- 6 (3) The benefits and risks associated with childbirth in the setting selected by the
7 client;
- 8 (4) A statement concerning the licensed direct-entry midwife's malpractice or
9 liability insurance coverage; and
- 10 (5) A plan, specific to the client, for transfer to medical care, if needed.

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

14 3. Nothing in sections 324.1245 to 324.1265 shall be construed to apply to a person
15 who provides information and support in preparation for labor and delivery and assists
16 in the delivery of an infant if that person does not do the following:

- 17 (1) Advertise as a midwife or as a provider of midwife services;
18 (2) Assist, as primary attendant, in more than six births a year;
19 (3) Accept any form of compensation for midwife services; and
20 (4) Use any words, letters, signs, or figures to indicate that the person is a midwife.

21 4. A person who is a member of a recognized religious sect or division, as defined
22 in 26 U.S.C. 1402(g), by reason of which they are conscientiously opposed to acceptance of
23 benefits of any public or private insurance which makes payments in the event of death,
24 disability, old age, or retirement, or makes payments toward the cost of, or provides
25 services for, medical bills, including benefits of any insurance system established under the
26 Federal Social Security Act, 42 U.S.C. 301 to 42 U.S.C. 1397, shall not be subject to the
27 provisions of sections 324.1245 to 324.1265.

28 5. A person shall not be subject to the licensure provisions of subsection 1 of this
29 section if said person:

- 30 (1) Is a resident of this state;
31 (2) Is at least twenty-one years of age;
32 (3) Has passed the North American Registry of Midwives Skills Assessment;
33 (4) Has provided a service of midwifery for at least twenty of the last thirty years
34 before August 28, 2007; and
35 (5) Has requested and received an exemption from the Board of Direct-Entry
36 Midwives.

37 6. No person other than the licensed direct-entry midwife who provided care to the
38 client shall be liable for the direct-entry midwife's negligent or willful and wanton acts or
39 omissions. Except as otherwise provided by law, no other licensed physician, licensed
40 doctor of osteopathy, certified nurse midwife, licensed nurse, hospital, emergency medical
41 technicians licensed under chapter 190, RSMo, or agents thereof, shall be exempt from
42 liability for their own subsequent and independent negligent, grossly negligent, or willful
43 and wanton acts or omissions.

44 7. The provisions of sections 324.1245 to 324.1265 shall be remedial and curative
45 in nature.

46 8. Nothing in sections 324.1245 to 324.1265 shall be construed to prohibit the
47 attendance at birth of the mother's choice of family, friends, or other uncompensated labor
48 support attendants.

 324.1263. No licensed direct-entry midwife shall be permitted to:

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

6 **(4) Perform vacuum delivery of an infant.**

2 **324.1265. Any person who violates the provisions of sections 324.1245 to 324.1265,**
3 **or any rule or order made under sections 324.1245 to 324.1265 may be charged with a class**
3 **A misdemeanor.**

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

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

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

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

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

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

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

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

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

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

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