

SECOND REGULAR SESSION

# HOUSE BILL NO. 2370

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES PORTWOOD (Sponsor), DAVIS, CHAPPELLE-NADAL, McGHEE, WILSON (119), NIEVES, HARRIS (110), WALTON, PARSON, WALLACE, VIEBROCK, SANDER, EMERY, KELLY, FISHER, MEINERS, EL-AMIN, DOUGHERTY, HUBBARD, HOSKINS, KOMO, FUNDERBURK, OXFORD, SCHAD, JONES (117), GRISAMORE, FRANZ, LOW (39), HUGHES, SELF, JETTON AND DIXON (Co-sponsors).

Read 1st time March 6, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5314L.011

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### AN ACT

To repeal sections 334.010, 334.120, 334.260, and 376.1753, RSMo, and to enact in lieu thereof nine new sections relating to the practice of midwifery, with penalty provisions and an emergency clause.

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

- Section A. Sections 334.010, 334.120, 334.260, and 376.1753, RSMo, are repealed and  
2 nine new sections enacted in lieu thereof, to be known as sections 324.1230, 324.1233,  
3 324.1236, 324.1239, 324.1242, 324.1243, 324.1245, 334.010, and 334.120, to read as follows:
- 324.1230. 1. As used in sections 324.1230 to 324.1245, the following terms shall**  
2 **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 midwife;
  - 6 (4) "Direct-entry midwife", any person who is certified by the North American  
7 Registry of Midwives (NARM) as a certified professional midwife (CPM) and provides for  
8 compensation those skills relevant to the care of women and infants in the antepartum,  
9 intrapartum, and postpartum period;
  - 10 (5) "Division", the division of professional registration;

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.

11           (6) "Intrapartum", during birth;

12           (7) "Postpartum", after birth.

13           (8) "Practice of direct-entry midwifery", the science and art of examination,  
14 evaluation, assessment, counseling and treatment of women and infants in the antepartum,  
15 intrapartum and postpartum period by those methods commonly taught in any midwifery  
16 school, college or midwifery program in a university which has been accredited by the  
17 Midwifery Education Accreditation Council, its successor entity or approved by the board;  
18 including identifying and referring women who require obstetrical or other professional  
19 care. It shall not include the use of operative surgery, nor the prescribing of drugs. The  
20 practice of direct-entry midwifery is not the practice of medicine or osteopathy within the  
21 meaning of chapter 334, RSMo, and not subject to the provisions of the chapter. The  
22 practice of direct-entry midwifery is not the practice of nurse-midwifery or nursing within  
23 the meaning of chapter 335, RSMo, and not subject to the provisions of the chapter.

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

26           3. No later than December 31, 2008, the governor shall appoint members to the  
27 board with the advice and consent of the senate. The board shall consist of five members,  
28 each of whom is a United States citizen and who has been a resident of this state for at least  
29 one year immediately preceding their appointment. Of these five members, one member  
30 shall be a public member, four members shall be licensed direct-entry midwives who attend  
31 births in homes or other out-of-hospital settings, provided that the first midwife members  
32 appointed need not be licensed at the time of appointment if they are actively working  
33 toward licensure under the provisions of sections 324.1230 to 324.1245.

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

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

45           6. The board may sue and be sued in its own name and its members need not be  
46 named parties. Members of the board shall not be personally liable, either jointly or

47 severally, for any act or acts committed in the performance of their official duties as board  
48 members. No board member shall be personally liable for any court costs which accrue  
49 in any action by or against the board.

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

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

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

62 10. No licensing activity or other statutory requirements shall become effective until  
63 expenditures or personnel are specifically appropriated for the purpose of conducting the  
64 business as required to administer the provisions of sections 324.1230 to 324.1245 and the  
65 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 American Registry of  
3 Midwives (NARM) as a certified professional midwife (CPM);

4 (2) Present evidence of current certification in basic life support (BLS) for  
5 healthcare providers, and either infant cardiopulmonary resuscitation (CPR) or neonatal  
6 resuscitation;

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

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

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

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

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

15 (3) Present evidence of current certification in basic life support (BLS) for  
16 healthcare providers, and either infant cardiopulmonary resuscitation (CPR) or neonatal  
17 resuscitation; and

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

19           3. The board shall develop practice guidelines consistent with standards regarding  
20 the practice of midwifery established by the National Association of Certified Professional  
21 Midwives or a successor organization whose essential documents include without limitation  
22 subject matter concerning scope of practice, standards of practice, informed consent,  
23 appropriate consultation, collaboration or referral, including the development of  
24 collaborative relationships with other healthcare practitioners who can provide care  
25 outside the scope of midwifery practice when necessary.

26           4. Any license issued under sections 324.1230 to 324.1245 shall expire three years  
27 after the date of its issuance. The board may refuse to issue or renew any certificate of  
28 registration or authority, permit, or license required pursuant to this chapter for one or  
29 any combination of causes stated in subsection 5 of this section. The board shall notify the  
30 applicant in writing of the reasons for the refusal and shall advise the applicant of the  
31 applicant's right to file a complaint with the administrative hearing commission as  
32 provided by chapter 621, RSMo. As an alternative to a refusal to issue or renew any  
33 certificate, registration, or authority, the board may, at its discretion, issue a license which  
34 is subject to probation, restriction, or limitation to an applicant for licensure for any one  
35 or any combination of causes stated in subsection 5 of this section. The board's order of  
36 probation, limitation, or restriction shall contain a statement of the discipline imposed, the  
37 basis therefore, the date such action shall become effective, and a statement that the  
38 applicant has thirty days to request in writing a hearing before the administrative hearing  
39 commission. If the board issues a probationary, limited, or restricted license to an  
40 applicant for licensure, either party may file a written petition with the administrative  
41 hearing commission within thirty days of the effective date of the probationary, limited,  
42 or restricted license seeking review of the board's determination. If no written request for  
43 a hearing is received by the administrative hearing commission within the thirty-day  
44 period, the right to seek review of the board's decision shall be considered as waived.

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

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

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

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

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

70           7. The division may promulgate rules necessary to implement the administration  
71 of the licensure system established under sections 324.1230 to 324.1245. Any rule or  
72 portion of a rule, as that term is defined in section 536.010, RSMo, that is created under  
73 the authority delegated in this section shall become effective only if it complies with and  
74 is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,  
75 RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers  
76 vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the  
77 effective date, or to disapprove and annul a rule are subsequently held unconstitutional,  
78 then the grant of rulemaking authority and any rule proposed or adopted after August 28,  
79 2008, shall be invalid and void.

          324.1236. 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 **324.1230 to 324.1245. 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.**

**324.1239. 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, when necessary.**

11           **2. Notwithstanding any other provision of the 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 or healing practice.**

14           **3. Nothing in sections 324.1230 to 324.1245 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 per year;**  
19           **(3) Accept 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. 1397jj, shall not be subject to the**  
27 **provisions of sections 324.1230 to 324.1245.**

28           **5. The provisions of sections 324.1230 to 324.1245 shall be remedial and curative**  
29 **in nature.**

30           **6. Nothing in sections 324.1230 to 324.1245 shall be construed to prohibit the**  
31 **attendance at birth of the mother's choice of family, friends, or other uncompensated labor**  
32 **support attendants.**

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

40           **8. A licensed health care provider or facility shall not be disciplined for assisting,**  
41 **enabling, aiding, procuring, advising or encouraging any person licensed to practice direct-**  
42 **entry midwifery who is practicing within the confines of this chapter.**

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

2           **(1) Prescribe drugs;**

3           **(2) Perform medical inductions or cesarean 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.**

**324.1243. A licensed direct-entry midwife shall not administer prescription drugs,**  
2 **with exceptions limited to:**

3           **(1) Neonatal use of prophylactic ophthalmic medications, vitamin K and oxygen;**

4           **(2) Maternal use of Rho (D) immune globulin, oxygen, postpartum**  
5 **antihemorrhagics, and local anesthetic; and**

6           **(3) Any other prescription drug the Board of Direct-Entry Midwifery has deemed**  
7 **to be integral to pregnancy, birth, postpartum, resuscitation or newborn care.**

**324.1245. Any person who violates the provisions of sections 324.1230 to 324.1245,**  
2 **or any rule or order made under sections 324.1230 to 324.1245 is guilty of a class A**  
3 **misdemeanor.**

          334.010. 1. It shall be unlawful for any person not now a registered physician within the  
2 meaning of the law to practice medicine or surgery in any of its departments, to engage in the  
3 practice of medicine across state lines or to profess to cure and attempt to treat the sick and  
4 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.

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



20 the Missouri Association of Osteopathic Physicians and Surgeons, for all osteopathic physician  
21 appointments, in office at the time shall, at least ninety days prior to the expiration of the term  
22 of the respective board member, other than the public member, or as soon as feasible after the  
23 appropriate vacancy on the board otherwise occurs, submit to the director of the division of  
24 professional registration a list of five physicians and surgeons qualified and willing to fill the  
25 vacancy in question, with the request and recommendation that the governor appoint one of the  
26 five persons so listed, and with the list so submitted, the president of the Missouri State Medical  
27 Association or the Missouri Association of Osteopathic Physicians and Surgeons, as appropriate,  
28 shall include in his or her letter of transmittal a description of the method by which the names  
29 were chosen by that association.

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

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  
4 midwives under this chapter and subject to all the provisions of this chapter.]

2 [376.1753. Notwithstanding any law to the contrary, any person who  
3 holds current ministerial or tocological certification by an organization accredited  
4 by the National Organization for Competency Assurance (NOCA) may provide  
5 services as defined in 42 U.S.C. 1396 r-6(b)(4)(E)(ii)(I).]

2 Section B. Because of the need to provide clarity on the issue of the practice of  
3 midwifery, section A of this act is deemed necessary for the immediate preservation of the public  
4 health, welfare, peace and safety, and is hereby declared to be an emergency act within the  
5 meaning of the constitution, and section A of this act shall be in full force and effect upon its  
passage and approval.

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