

SECOND REGULAR SESSION

HOUSE BILL NO. 2284

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE TALBOY.

5316L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 334.010 and 334.260, RSMo, and to enact in lieu thereof seventeen new sections relating to 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Section A. Sections 334.010 and 334.260, RSMo, are repealed and seventeen new sections enacted in lieu thereof, to be known as sections 334.010, 334.1200, 334.1202, 334.1204, 334.1206, 334.1208, 334.1210, 334.1212, 334.1214, 334.1216, 334.1218, 334.1220, 334.1222, 334.1224, 334.1226, 334.1228, and 334.1230, to read as follows:

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

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

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

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

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

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.

- 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.

**334.1200. 1. As used in sections 334.1200 to 334.1230, the following terms shall
2 mean:**

- 3 (1) "Antepartum", before birth;
4 (2) "Board", state board of registration for the healing arts;
5 (3) "Certified professional midwife", any person who is certified by the North
6 American Registry of Midwives as a certified professional midwife and licensed under this
7 chapter to provide midwife services;
8 (4) "Client", a person who retains the services of a licensed certified professional
9 midwife;
10 (5) "Consultation", communication between a licensed certified professional
11 midwife and a licensed physician for the purpose of receiving and implementing advice
12 regarding the care of a pregnant woman or infant;
13 (6) "Committee", the advisory committee for certified midwives;
14 (7) "Intrapartum", during birth;
15 (8) "Midwife services", the management and care of women in the antepartum,
16 intrapartum, and postpartum period of the maternity cycle;
17 (9) "Postpartum", after birth, but no longer than one hundred twenty days after
18 birth;
19 (10) "Protocol", a defined response to a specific clinical situation providing
20 suggested pathways to be followed by the licensed certified professional midwife for
21 managing a particular issue or complication. The protocol shall be developed
22 collaboratively by the licensed certified professional midwife and a physician licensed
23 under this chapter, and shall be written, signed, and dated by the physician prior to its
24 implementation;
25 (11) "Referral", the process by which the licensed certified professional midwife
26 directs the client to a licensed physician. The client and the physician shall determine
27 whether subsequent care shall be provided by the physician, the midwife, or through a
28 collaboration between the physician and the midwife;

29 (12) "Transfer of care", the transfer of care of the client to a medical facility or a
30 physician who then assumes the responsibility for the direct care of the client;

31 (13) "Written collaboration agreement", a written jointly agreed upon plan of care
32 whereby a physician delegates professional responsibilities to a licensed certified
33 professional midwife who is qualified by training, competency, experience, or licensure to
34 perform such responsibilities.

 334.1202. 1. There is hereby established under the state board of registration for
2 the healing arts the "Advisory Committee for Certified Professional Midwives", which
3 shall guide, advise, make recommendations to, and assist the board in carrying out the
4 provisions of sections 334.1200 to 334.1230.

5 2. No later than December 31, 2010, the governor shall appoint members to the
6 committee with the advice and consent of the senate. The committee shall consist of five
7 members, each of whom are United States citizens and who have been residents of this state
8 for at least one year immediately preceding their appointment. Of these five members, one
9 member shall be a public member and four members shall be licensed certified midwives
10 who attend births in homes or other out-of-hospital settings; provided that the first
11 midwife members appointed need not be licensed at the time of appointment if they are
12 actively working toward licensure under sections 334.1200 to 334.1230.

13 3. The initial appointments to the committee shall be one member for a term of one
14 year, two members for a term of two years, and two members for a term of three years.
15 After the initial terms, each member shall serve a three-year term. No member of the
16 committee shall serve more than two consecutive three-year terms. The organization of the
17 committee shall be established by members of the committee. Upon the death, resignation,
18 or removal from office of any member of the committee, the appointment to fill the vacancy
19 shall be for the unexpired portion of the term so vacated and shall be made within sixty
20 days after the vacancy occurs.

21 4. The public member of the committee shall not be a member of any profession
22 regulated by chapter 334 or 335 or the spouse of any such person. The public member is
23 subject to the provisions of section 620.132.

24 5. Members of the committee shall not be personally liable, either jointly or
25 severally, for any act or acts committed in the performance of their official duties as
26 committee members. No committee member shall be personally liable for any court costs
27 which accrue in any action by or against the committee.

28 6. Notwithstanding any other provision of law to the contrary, any appointed
29 member of the committee shall receive as compensation an amount established by the
30 director of the division of professional registration not to exceed fifty dollars per day for

31 committee business plus actual and necessary expenses. The director of the division of
32 professional registration shall establish by rule guidelines for payment. All staff for the
33 committee shall be provided by the board.

34 7. The committee shall hold an open annual meeting at which time it shall elect
35 from its membership a chair and secretary. The committee may hold such additional
36 meetings as may be required in the performance of its duties, provided that notice of every
37 meeting shall be given to each member at least ten days prior to the date of the meeting.
38 A quorum of the committee shall consist of a majority of its members.

39 8. No licensing activity or other statutory requirements shall become effective until
40 expenditures or personnel are specifically appropriated for the purpose of conducting the
41 business as required to administer sections 334.1200 to 334.1230, and the initial rules have
42 become effective.

334.1204. 1. No person shall hold himself or herself out as a midwife or certified
2 professional midwife in this state unless such person is licensed under sections 334.1200 to
3 334.1230.

4 2. Nothing in sections 334.1200 to 334.1230 shall be construed to prohibit
5 physicians licensed under this chapter or certified nurse midwives licensed under chapter
6 335 from providing midwife services, so long as such services are lawfully performed under
7 such individual's scope of practice as authorized by law and regulation.

334.1206. 1. The board shall issue licenses to applicants who:

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

4 (2) Present documentation verifying that the applicant has the following practical
5 experience through an apprenticeship or other supervisory setting:

6 (a) The provision of seventy-five prenatal examinations, including twenty initial
7 examinations;

8 (b) Supervised participation as a primary caregiver in at least fifty births, at least
9 twenty of which shall be in a home setting;

10 (c) Twenty newborn examinations; and

11 (d) Thirty postpartum examinations;

12 (3) Present evidence of current certification in adult and neonatal cardiopulmonary
13 resuscitation;

14 (4) Agree to comply with the informed consent requirement under subsection 1 of
15 section 334.1220;

16 (5) Pay a licensure fee set by the board; and

17 (6) Meet other requirements established by the board.

- 18 **2. The board shall renew licenses to applicants who:**
19 **(1) Present evidence of the continuing education required in section 334.1214;**
20 **(2) Present evidence of attendance at a minimum of three hours per year of peer**
21 **review;**
22 **(3) Present evidence of current certification in adult and neonatal cardiopulmonary**
23 **resuscitation;**
24 **(4) Present evidence of a written collaboration agreement;**
25 **(5) Pay a renewal fee set by the board; and**
26 **(6) Submit the following data on a form to be promulgated by rule and made**
27 **available by the department of health and senior services:**
28 **(a) The number of women to whom care was provided since the date of the**
29 **previously issued license;**
30 **(b) The number of deliveries performed;**
31 **(c) The number of perinatal transfers;**
32 **(d) The number of transfers during labor, delivery, and immediately following**
33 **birth; and**
34 **(e) The number of perinatal deaths.**
35 **3. Any license issued under sections 334.1200 to 334.1230 shall expire one year after**
36 **the date of its issuance. The board may refuse to issue or renew any license under this**
37 **chapter for one or any combination of causes stated in subsection 2 of section 334.1210.**
38 **The board shall notify the applicant in writing of the reasons for the refusal and shall**
39 **advise the applicant of the applicant's right to file a complaint with the administrative**
40 **hearing commission as provided by chapter 621. As an alternative to a refusal to issue or**
41 **renew any license, the board may, at its discretion, issue a license which is subject to**
42 **probation, restriction, or limitation to an applicant for licensure for any one or any**
43 **combination of causes stated in subsection 2 of section 334.1210. The board's order of**
44 **probation, limitation, or restriction shall contain a statement of the discipline imposed, the**
45 **basis therefore, the date such action shall become effective, and a statement that the**
46 **applicant has thirty days to request in writing a hearing before the administrative hearing**
47 **commission. If the board issues a probationary, limited, or restricted license to an**
48 **applicant for licensure, either party may file a written petition with the administrative**
49 **hearing commission within thirty days of the effective date of the probationary, limited,**
50 **or restricted license seeking review of the board's determination. If no written request for**
51 **a hearing is received by the administrative hearing commission within the thirty-day**
52 **period, the right to seek review of the board's decision shall be considered waived.**

334.1208. Any complaint received by the board concerning a person who is licensed under sections 334.1200 to 334.1230 shall be recorded as received and the date received.

The board:

(1) Shall investigate all complaints concerning alleged violations of sections 334.1200 to 334.1230 or if there are grounds for the suspension, revocation, or refusal to issue a license. The board may employ investigators who shall investigate complaints and make inspections and any inquiries as, in the judgment of the board, are appropriate to enforce sections 334.1200 to 334.1230;

(2) May issue subpoenas and subpoena duces tecum in order to cause any licensee or any other person to produce records or to appear as a witness under any investigation or proceeding conducted under sections 334.1200 to 334.1230;

(3) May, in lieu of or in addition to any remedy provided in this section, file a petition in the name of the state asking a court to issue a restraining order, an injunction or a writ of mandamus against any person who is or has been violating any of the provisions of sections 334.1200 to 334.1230 or any lawful rule, order or subpoena of the board; and

(4) May, if the evidence supports such action, cause a complaint to be filed with the administrative hearing commission as provided in chapter 621 against any holder of any license issued under sections 334.1200 to 334.1230.

334.1210. 1. The board may refuse to issue or renew any license required under sections 334.1200 to 334.1230 for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of a license required by sections 334.1200 to 334.1230, or any person who has failed to renew or has surrendered his or her license for any one or any combination of the following causes:

(1) Use or unlawful possession of any controlled substance, as defined in chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform midwife services;

(2) The person has been finally adjudicated and found guilty or entered a plea of guilty or nolo contendere in a criminal prosecution under the laws of any state or of the United States for any offense reasonably related to the qualifications, functions, or duties of a certified professional midwife, for any offense an essential element is fraud, dishonesty,

17 or an act of violence, or for any offense involving moral turpitude, whether or not sentence
18 is imposed;

19 (3) Use of fraud, deception, misrepresentation, or bribery in securing a license
20 issued under sections 334.1200 to 334.1230;

21 (4) Obtaining or attempting to obtain any fee, charge, tuition, or other
22 compensation by fraud, deception, or misrepresentation;

23 (5) Incompetence, misconduct, gross negligence, fraud, misrepresentation, or
24 dishonesty in the performance of the functions and duties of a certified professional
25 midwife;

26 (6) Violation of or assisting or enabling any person to violate any provision of
27 sections 334.1200 to 334.1230 or any lawful regulation adopted under sections 334.1200 to
28 334.1230;

29 (7) Impersonation of any person holding a license or allowing any person to use his
30 or her license;

31 (8) Disciplinary action against the holder of a license granted by another state,
32 territory, federal agency, or country upon grounds for which revocation or suspension is
33 authorized in this state;

34 (9) The person has been adjudged insane or incompetent by a court of competent
35 jurisdiction;

36 (10) Assisting or enabling any person to practice or offer to practice as a certified
37 professional midwife who is not licensed and currently eligible to practice under sections
38 334.1200 to 334.1230;

39 (11) Issuance of a license based upon a material mistake of fact;

40 (12) Violation of any professional trust or confidence;

41 (13) Use of any advertisement or solicitation which is false, misleading, or deceptive
42 to the general public or persons to whom the advertisement or solicitation is primarily
43 directed;

44 (14) Committing unethical conduct as defined by the board;

45 (15) Engaging in conduct detrimental to the health or safety of either the mother
46 or infant, or both, as determined by the board; or

47 (16) Violation of the drug laws or regulations of this state, any other state, or the
48 federal government.

49 3. After the filing of such complaint before the administrative hearing commission,
50 the proceedings shall be conducted in accordance with the provisions of chapter 621. Upon
51 a finding by the administrative hearing commission that the grounds provided in

52 subsection 2 of this section for disciplinary action are met, the board may, singly or in
53 combination:

54 (1) Warn, censure, or place the person named in the complaint on probation on
55 such terms and conditions as the board deems appropriate for a period not to exceed ten
56 years;

57 (2) Suspend the person's license for a period not to exceed three years;

58 (3) Restrict or limit the person's license for an indefinite period of time;

59 (4) Revoke the person's license;

60 (5) Administer a public or private reprimand;

61 (6) Deny the person's application for a license;

62 (7) Permanently withhold issuance of a license; or

63 (8) Require the person to attend such continuing educational courses and pass such
64 examinations as the board may direct.

65 4. An individual whose license has been revoked shall wait at least one year from
66 the date of revocation to apply for renewal of the license. Renewal shall be at the discretion
67 of the board after compliance with all requirements of sections 334.1200 to 334.1230
68 relative to the licensing of the applicant for the first time.

334.1212. The board may promulgate rules necessary to implement and administer
2 the provisions of sections 334.1200 to 334.1230. Any rule or portion of a rule, as that term
3 is defined in section 536.010, that is created under the authority delegated in this section
4 shall become effective only if it complies with and is subject to all of the provisions of
5 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
6 nonseverable and if any of the powers vested with the general assembly under chapter 536
7 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
8 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
9 adopted after August 28, 2010, shall be invalid and void.

334.1214. 1. All fees payable under sections 334.1200 to 334.1230 shall be set by the
2 board at a level to produce revenue sufficient to cover but not substantially exceed the cost
3 and expense of administering said sections. All such fees shall be collected by the division
4 of professional registration, which shall transmit them to the department of revenue for
5 deposit in the state treasury to the credit of the board of registration for the healing arts
6 fund.

7 2. Upon appropriation by the general assembly, the money in the fund shall be used
8 to administer the provisions of sections 334.1200 to 334.1230.

334.1216. 1. Each person licensed under sections 334.1200 to 334.1230 shall accumulate thirty hours of continuing education every two years to be eligible for renewal of the license, as follows:

(1) Continuing education shall be obtained through courses recommended by the committee and approved by the board;

(2) Adherence to the continuing education requirement shall be reviewed for licensure renewal in each even-numbered year and shall include all approved continuing education courses taken during the previous two years.

334.1218. Any person licensed as a certified professional midwife and providing midwife services shall, as a condition of licensure, furnish satisfactory evidence of a malpractice insurance policy of at least five hundred thousand dollars.

334.1220. 1. Every licensed certified professional midwife shall present an informed consent document to each client, which shall include but not be limited to, the following:

(1) A description of the licensed certified professional midwife's education, training, and qualifications;

(2) Licensure as a certified professional midwife, including the effective dates of the license;

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

(4) The name, address, and telephone number of the physician who is collaborating with the licensed certified professional midwife;

(5) A health history sheet including preexisting conditions or surgeries, previous pregnancies, physical examination, nutritional status, and a written assessment of risk factors;

(6) A statement notifying the client of complications that would require transfer of the client's care to a licensed physician;

(7) A statement advising the client to see a licensed physician for the purpose of prenatal testing;

(8) A statement concerning the licensed certified professional midwife's malpractice or liability insurance coverage; and

(9) A written care plan specific to the client to ensure the continuity of care throughout the antepartum, intrapartum, and postpartum periods. The written care plan must incorporate the conditions under which consultation, including the transfer of care or transport of the client, may be implemented.

25 **2. The informed consent document shall be signed and dated by the client, as**
26 **evidence that the document has been received and explained, and kept by the midwife in**
27 **the client's permanent records.**

28 **3. Nothing in sections 334.1200 to 334.1230 shall be construed to apply to a person**
29 **who provides information and support in preparation for labor and delivery and assists**
30 **in the delivery of an infant if that person does not do the following:**

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

32 **(2) Accept any form of compensation for midwife services; and**

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

34 **3. No physician, nurse, emergency medical technician, hospital, or agents thereof**
35 **providing emergency medical care or treatment for a woman or infant arising during**
36 **childbirth as a consequence of the care received by a licensed certified professional midwife**
37 **shall be liable for any civil damages for any act or omission resulting from the rendering**
38 **of such services unless such act or omission was the result of gross negligence or willful**
39 **misconduct on the part of the physician, nurse, emergency medical technician, hospital, or**
40 **agents thereof.**

41 **4. Nothing in sections 334.1200 to 334.1230 shall be construed to prohibit the**
42 **attendance at birth of the mother's choice of family, friends, or other uncompensated labor**
43 **support attendants.**

334.1222. 1. Licensed certified professional midwives shall practice only under a
2 **written collaboration agreement with a physician who is licensed under this chapter and**
3 **who has obstetrical privileges at a nearby hospital. The written collaboration agreement**
4 **shall include appropriate protocols for consultation, referral, and transfer, and shall**
5 **specify the steps or actions that will be taken to ensure full compliance with the testing and**
6 **reporting requirements set forth in sections 191.331, 191.332, 191.925, 193.085, 210.050,**
7 **210.070, and 210.080.**

8 **2. The collaborating physician shall be immediately available for consultation to**
9 **the licensed certified professional midwife at all times.**

10 **3. No physician shall enter into a collaboration agreement with more than three**
11 **licensed certified professional midwives at any given time.**

12 **4. To facilitate the management of a mother or baby needing unexpected emergency**
13 **care, a licensed certified professional midwife shall, for every client, have a written**
14 **emergency transport arrangement with the nearest hospital capable of handling obstetrical**
15 **emergencies. In the event an emergency transport is needed, the licensed certified**
16 **professional midwife shall notify the hospital emergency department as soon as possible**
17 **and provide a copy of the medical record to the receiving physician.**

334.1224. No licensed certified professional midwife shall be permitted to:

- 2 **(1) Prescribe drugs or medications;**
- 3 **(2) Perform any surgical procedures;**
- 4 **(3) Perform medical inductions or cesarean sections during the delivery of an**
- 5 **infant;**
- 6 **(4) Use forceps during the delivery of an infant;**
- 7 **(5) Perform sonograms;**
- 8 **(6) Perform vacuum delivery of an infant; or**
- 9 **(7) Perform or induce an abortion.**

334.1226. 1. Every licensed certified professional midwife shall keep a record of
2 **each client served for a minimum of seven years after delivery. Such record shall contain:**

- 3 **(1) Name, address and telephone number of client;**
- 4 **(2) Informed consent document signed and dated by client and the licensed certified**
- 5 **professional midwife; and**
- 6 **(3) Documentation of all consultations, referrals, transfer of care, and emergency**
- 7 **transport and care rendered, and all subsequent updates.**

8 **2. When a birth or stillbirth occurs without a physician in attendance at or**
9 **immediately after the birth but with a licensed certified professional midwife in attendance**
10 **at or immediately after the birth, it shall be the responsibility of the licensed certified**
11 **professional midwife to fulfill the reporting requirements of section 210.050, and to**
12 **prepare and file the certificate of birth as required by section 193.085.**

13 **3. Every licensed certified professional midwife shall submit a client summary**
14 **report for each client to the department. Such summary reports shall be submitted on a**
15 **biannual basis.**

334.1228. Every licensed certified professional midwife who intends to provide
2 **midwife services for any client shall, within ten days of entering into any agreement to**
3 **provide such services, file with the department of health and senior services a notice of**
4 **intent to home deliver. The forms for filing the notice of intent to home deliver shall be**
5 **promulgated by rule and made available by the department of health and senior services.**
6 **The department shall maintain a permanent database, which shall be made available to the**
7 **public, of all home deliveries done under the care of a licensed certified professional**
8 **midwife.**

334.1230. Any person who violates the provisions of sections 334.1200 to 334.1230,
2 **or any rule or order under sections 334.1200 to 334.1230 is guilty of a class A misdemeanor.**

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

H.B. 2284

12

