HB316

182300-1

By Representatives Johnson (K), Pettus, Martin, Moore (B), Crawford, Harbison, Hanes, Whorton (R), Fridy, Johnson (R), Greer, Sanderford, Henry, Ball, Holmes (M), Givan, Williams (JW), Whorton (I), Williams (P), Warren, Alexander, Drake, England, Forte, Drummond, Daniels, Hall, Jackson, Brown, Ingram, Butler, Blackshear, Wilcox, Patterson, Wadsworth, Wingo and McCutcheon

RFD: Boards, Agencies and Commissions

First Read: 23-FEB-17
SYNOPSIS: Under existing law, certified nurse midwives are licensed by the State Board of Nursing and the Board of Medical Examiners to practice nurse midwifery.

This bill would establish a State Board of Midwifery to license and regulate the practice of certified professional midwifery.

This bill would provide for the composition of the board and function of the board; specify requirements for the licensing of midwives; provide for licensing fees; and establish guidelines for the practice of midwifery.

This bill also would provide for penalties for violations.

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from
becoming effective with regard to a local
governmental entity without enactment by a 2/3 vote
unless: it comes within one of a number of
specified exceptions; it is approved by the
affected entity; or the Legislature appropriates
funds, or provides a local source of revenue, to
the entity for the purpose.

The purpose or effect of this bill would be
to require a new or increased expenditure of local
funds within the meaning of the amendment. However,
the bill does not require approval of a local
governmental entity or enactment by a 2/3 vote to
become effective because it comes within one of the
specified exceptions contained in the amendment.

A BILL
TO BE ENTITLED
AN ACT

Licensing the practice of midwifery by adding
Sections 34-19-11 to 34-19-19, inclusive, to the Code of
Alabama 1975; to establish a State Board of Midwifery to
license and regulate the practice of certified professional
midwifery; to provide for the composition of the board and
function of the board; to specify requirements for the
licensing of midwives and provide for licensing fees; to
establish guidelines for the practice of midwifery; to provide
for penalties for violations; to amend Section 22-9A-7, Code of Alabama 1975, relating to registration of births; to amend Section 34-43-3, Code of Alabama 1975, relating to the definition of therapeutic massage; to repeal Sections 34-19-2 through 34-19-10, inclusive, Code of Alabama 1975; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 34-19-11 to 34-19-19, inclusive, are added to the Code of Alabama 1975, to read as follows:

$34-19-11.
The following words and phrases shall have the following meanings, unless the context clearly indicates otherwise:

(1) BOARD. The State Board of Midwifery.

(2) LICENSED MIDWIFE. A practitioner who holds a certified professional midwife credential and is licensed by the board to practice midwifery.

(3) MIDWIFERY. The provision of primary maternity care during the antepartum, intrapartum, and postpartum periods.

$34-19-12.
(a) There is created and established a State Board of Midwifery to implement and administer this chapter.

(b) The board shall consist of seven members appointed by the Governor and subject to confirmation by the Senate, from a list of qualified individuals nominated by the designated organization. Each list shall contain the names of at least two individuals for each position to be filled.

(c) The members of the board shall be appointed for staggered initial terms and subsequent terms shall be for a minimum of four years or until his or her successor has been appointed and qualified.

(d) The board shall meet at least twice each year, conducting its business in person or by electronic methods.

(e) The board shall elect one of its members to serve as chair for a two-year term. The chair may not serve consecutive terms.

(f) The composition of the board shall be as follows:

(1) Four members shall hold a valid certified professional midwife credential from the North American Registry of Midwives. These members shall be appointed from a list of names submitted by the Alabama Birth Coalition or its successor organization. One of these members shall be appointed to an initial term of four years, one to a term of three years, and two to a term of two years.

(2) One member shall be a licensed physician. This member shall be appointed from a list of names submitted by
the Medical Association of the State of Alabama. This member shall be appointed to an initial term of four years.

(3) One member shall be a licensed certified nurse midwife or registered nurse licensed under Article 5 of Chapter 21. This member shall be appointed from a list submitted by the Alabama Board of Nursing. This member shall be appointed to an initial term of three years.

(4) One member shall have used midwifery services in the state. This member shall be appointed from a list of names submitted by the Alabama Birth Coalition. This member shall be appointed to an initial term of three years.

(g) When choosing individuals to be considered by the Governor for appointment to the board, the nominating authorities shall strive to assure membership is inclusive and reflects the racial, gender, geographic, urban, rural, and economic diversity of the state.

(h) All members of the board shall be immune from individual civil liability while acting within the scope of their duties as board members.

(i) Vacancies shall be filled by the Governor and confirmed by the Senate in the same manner as other appointments are made. In the case of a vacancy, the new appointee shall serve for the remainder of the unexpired term.

(j) Members of the board shall serve without compensation but shall be allowed travel and per diem expenses at the same rate paid to state employees, to be paid from the
funds collected for the administration of this chapter, as
funds are available.

(k) The board may employ, subject to the State Merit
System, investigators, inspectors, attorneys, and any other
agents, employees, and assistants as may from time to time be
necessary, and may use any other means necessary to enforce
the provisions of this chapter.

(l) The board shall be subject to the Alabama Sunset
Law, Chapter 20, Title 41, as an enumerated agency as provided
in Section 41-20-3, and shall have a termination date of
October 1, 2021, and every four years thereafter, unless
continued pursuant to the Alabama Sunset Law.

All funds received by the board under this chapter
shall be deposited in the State Treasury to the credit of the
board and all such funds are to be appropriated to the board
to defray the expenses incurred in carrying out this chapter.
The expenses shall include printing, stamps, stationery,
clerical help, travel, and other necessary expenditures. In
all cases, any fee that is received by the board shall not be
refunded, and no applicant shall have the right to recover any
part of a fee accompanying his or her application for
licensure or otherwise paid to the board except on the death,
disability, or retirement from practice of any applicant or
licensee between payment of any fee and the expiration of his
or her current renewal or the issuance of the initial license.
The books and records of the board shall be subject to audit
in the same manner and to the same extent as any other state agency. The board shall keep a true and accurate account of all funds received by the board and all expenditures made by the board.

§34-19-14.

(a) The board shall do all of the following consistent with this chapter:

(1) Approve, renew, suspend, or revoke licenses for the practice of midwifery.

(2) Investigate and conduct hearings regarding complaints against a licensed midwife in order to determine if disciplinary action is warranted.

(3) Establish reasonable licensure fees, including, but not limited to, initial application, renewal, and reinstatement fees.

(4) Develop standardized forms including, but not limited to, a midwife disclosure form, informed consent form, emergency care form, and applications for licensure and renewal.

(5) Impose administrative fines, not to exceed one thousand dollars ($1,000) per violation, for violating this chapter, a board rule, or a condition of a license.

(6) Once a determination is made by the board that professional liability insurance is affordable and available, establish reasonable professional liability insurance requirements for licensed midwives.
(b)(1) The board shall adopt rules pursuant to the Administrative Procedure Act to implement this chapter in a manner consistent with the most current North American Registry of Midwives Job Analysis and with essential documents developed and published by the Midwives Alliance of North America. The rules shall include, but not be limited to, provision for all of the following:

a. Licensing procedures and requirements.

b. Minimum initial and continuing education requirements for licensure.

c. The allowable scope of midwifery practice regarding use of equipment, procedures, and administration of medication necessary for the safe practice of midwifery.

d. Standards by which a licensed midwife shall conduct risk assessment.

e. Standards for professional conduct.

f. A standard procedure for investigating complaints.

g. Requirements for clinical internships for individuals seeking midwifery training.

h. Standards regarding professional liability insurance.

(2) The rules shall ensure independent practice. The rules shall encourage and facilitate consultation and collaboration with other health care professionals and facilities, but shall not require any agreement, written or
otherwise, with any other health care professional or
facility.

(3) The rules shall prohibit a licensed midwife from
administering or performing any of the following obstetric
procedures which are outside of the scope of the licensed
practice of midwifery:

a. An epidural, spinal, or caudal anesthetic.
b. Any type of narcotic analgesia.
c. Forceps or a vacuum extractor-assisted delivery.
d. Abortion.
e. Cesarean section.

(4) The rules shall prohibit a licensed midwife from
performing either of the following:

a. Delivery of a diagnosed multiple pregnancy.
b. Delivery of a baby whose position is diagnosed as
   non-cephalic at the onset of labor.


(a) An individual desiring to be licensed as a
midwife shall apply to the board on forms provided by the
board. Applicants for licensure shall submit evidence
satisfactory to the board that he or she has met all of the
following requirements:

(1) Is at least 21 years of age.

(2) Is a citizen of the United States or, if not a
citizen of the United States, is legally present in the United
States with appropriate documentation from the federal
government.
(3) Has obtained a certified professional midwife credential through an education program or pathway accredited by the Midwifery Educational Accreditation Council or by another accrediting agency recognized by the United States Department of Education.

(b) Notwithstanding subdivision (3) of subsection (a), the board may license the following:

(1) An applicant who has obtained a certified professional midwife credential prior to January 1, 2020, through a nonaccredited pathway, provided the applicant obtains the Midwifery Bridge Certificate or completes an educational program or pathway accredited by the Midwifery Educational Accreditation Council or by another accrediting agency recognized by the United States Department of Education.

(2) An applicant who has maintained licensure in a state that does not require an accredited education, provided the applicant obtains the Midwifery Bridge Certificate or completes an educational program or pathway accredited by the Midwifery Educational Accreditation Council or by another accrediting agency recognized by the United States Department of Education.

(c) Licenses shall be valid for a period of 24 months.

(d) Following the contested case provisions of the Administrative Procedure Act, the board may suspend or revoke
a license, or it may refuse to grant a license to an applicant
for licensure, if the licensee or applicant:

(1) Has obtained a license by means of fraud,
    misrepresentation, or concealment of material facts, including
    making a false statement on an application or any other
document required by the board for licensure.

(2) Has engaged in unprofessional conduct pursuant
to rules adopted by the board.

(3) Has been convicted of a felony arising out of or
connected with the practice of midwifery.

(4) Has performed an act that exceeds the scope of
practice granted by the board to the licensed midwife.

(5) Has had his or her license revoked, suspended,
or denied in any other territory or jurisdiction of the United
States for any act described in this subsection.

(e) The board shall maintain an up-to-date list of
every individual licensed to practice midwifery pursuant to
this chapter and individuals whose licenses have been
suspended, revoked, or denied. The information on the list
shall be available for public inspection during reasonable
business hours and the information may be shared with others
as deemed necessary and acceptable by the board. The list
shall include the name of the individual, the date and the
cause of action, the penalty incurred, and the length of the
penalty.

§34-19-16.
(a) A licensed midwife may provide midwifery care in
the setting of the client's choice.

(b) A licensed midwife shall ensure that the client
has signed a midwife disclosure form provided by the board
indicating receipt of a written statement that includes all of
the following information:

(1) A description of the licensed midwife's
education, training, and experience in midwifery.

(2) Antepartum, intrapartum, and postpartum
conditions requiring medical consultation, transfer of care,
and transport to a hospital.

(3) A plan for medical consultation, transfer of
care, and transport of the client or newborn or both when
indicated by specific antepartum, intrapartum, or postpartum
conditions.

(4) Instructions for filing a complaint against a
licensed midwife.

(5) A statement that the licensed midwife must
comply with the federal Health Insurance Portability and
Accountability Act.

(6) The status of a licensed midwife's professional
liability insurance coverage.

(7) References to current evidence regarding the
safety of midwifery care in out-of-hospital settings,
including a copy of the most recent statement by the American
Congress of Obstetricians and Gynecologists on home birth.
(c) A licensed midwife shall ensure that the client has signed an informed consent form provided by the board.

(d) For screening purposes only, a licensed midwife may order routine antepartum and postpartum laboratory analyses to be performed by a licensed laboratory.

(e) After a client has secured the services of a licensed midwife, the licensed midwife shall document an emergency care plan on a form provided by the board.

(f) A licensed midwife shall determine the progress of labor and, when birth is imminent, shall be available until delivery is accomplished.

(g) A licensed midwife shall remain with the client during the postpartal period until the conditions of the client and newborn are stabilized.

(h) A licensed midwife shall instruct the client regarding the requirements of the administration of eye ointment ordered by the Department of Public Health pursuant to Section 22-20-2.

(i) A licensed midwife shall instruct the client regarding the requirements of administration of newborn health screening ordered by the Department of Public Health pursuant to Section 22-20-3.

(j) A licensed midwife shall file a birth certificate for each birth in accordance with the requirements of Section 22-9A-7.

(k) A licensed midwife shall collect clinical data under the Midwives Alliance of North America Statistics.
Project for each client who initiates care and shall submit a copy of the clinical data collected for each consenting client to the board upon request.

§34-19-17.

(a) Except as provided in this section, it shall be unlawful for an individual other than a licensed midwife to practice midwifery in this state for economic remuneration or to hold himself or herself out to be a licensed midwife unless he or she is a licensed midwife as defined in this chapter. An individual violating this section shall be guilty of a Class C misdemeanor.

(b) An individual does not violate subsection (a) in any of the following circumstances:

(1) The individual is a certified nurse midwife acting in accordance with Sections 34-21-80 to 34-21-93, inclusive.

(2) The individual is training under a licensed midwife and is assisting the licensed midwife in the practice of midwifery.

(3) The individual is providing gratuitous assistance at childbirth.

(c) Nothing in this section shall be construed to repeal, abridge, or modify Section 6-5-332, or any other Good Samaritan statute.

§34-19-18.

(a) Nothing in this chapter shall be construed to establish a standard of care for physicians or otherwise
modify, amend, or supersede any provision of the Alabama
Medical Liability Act of 1987 or the Alabama Medical Liability
Act of 1996, commencing with Section 6-5-540, et seq., or any
amendment thereto, or any judicial interpretation thereof.

(b) The decisions, opinions, actions, and
proceedings discussed, rendered, entered, or acted upon in
good faith and without malice and on the basis of facts
reasonably known or reasonably believed to exist of any peer
review or North American Registry of Midwives Disciplinary
Process shall be privileged and confidential, and no member
thereof shall be liable for the decision, opinion, action, or
proceeding.

§34-19-19.

Individuals licensed as midwives as set forth in
this chapter shall be designated Licensed Midwives.

Section 2. Sections 22-9A-7 and 34-43-3, Code of
Alabama 1975, are amended to read as follows:


"(a) A certificate of birth for each live birth
which that occurs in this state shall be filed with the Office
of Vital Statistics, or as otherwise directed by the State
Registrar, within five days after the birth and shall be
registered if it has been completed and filed in accordance
with this section.

"(b)(1) When a birth occurs in an institution or en
route to the institution, the person in charge of the
institution or his or her designated representative shall
obtain the personal data, prepare the certificate, secure the signatures required, and file the certificate as directed in subsection (a) or as directed by the State Registrar within the required five days. The physician or other person in attendance shall provide the medical information required by the certificate and certify to the facts of birth within 72 hours after the birth. If the physician, or other person in attendance, does not certify to the facts of birth within the 72-hour period, the person in charge of the institution or his or her designee shall complete and sign the certificate.

"(2) In all cases where a birth occurs in an institution, the person in charge of the institution shall provide a procedure for collection of the normal fee for a certified copy of the birth certificate from the mother or father. The fee shall be forwarded to the State Registrar when a complete record of the birth is obtained, and the State Registrar shall issue a certified copy of the birth certificate to the mother or father of the child. The issuance of a certified copy of the birth certificate by the State Registrar shall not apply to births where the death of the infant occurred a short time following the birth, unless the certificate is requested by the father or mother, or where adoption is indicated.

"(c) When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority:
"(1) The physician or licensed midwife in attendance at the birth or who sees the child within three days after the birth.

"(2) Any other person in attendance at or immediately after the birth.

"(3) The father, the mother, or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

"(d) When a birth occurs in a moving conveyance within the United States and the child is first removed from the conveyance in this state, the birth shall be registered in this state and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth shall be registered in this state, but the certificate shall show the actual place of birth as can be determined.

"(e) For the purposes of birth registration, the mother is deemed to be the woman who gives birth to the child, unless otherwise determined by law.

"(f)(1) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the husband shall be entered on the certificate as the father of the child, unless it is established by law that he is not the father of the child.
"(2) If the mother was not married at the time of either conception or birth or between conception and birth, the name of the father shall not be entered on the certificate unless paternity has been determined by a court of competent jurisdiction or unless the legitimation process specified in Sections 26-11-1 through 26-11-3, inclusive, or otherwise provided by law has been completed.

"(3) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

"(g) The birth certificate of a child born to a married woman as a result of artificial insemination, with consent of her husband, shall be completed in accordance with subdivision (1) of subsection (f).

"(h) Either of the parents of the child shall attest to the accuracy of the personal data entered on the certificate in time to permit the filing of the certificate within the five days prescribed in subsection (a).

"§34-43-3.

"For purposes of this chapter, the following terms shall have the following meanings:

"(1) ADVERTISE. Distributing a card, flier, sign, or device to any person or organization, or allowing any sign or marking on any building, radio, television, or by advertising by any other means designed to attract public attention.

"(2) BOARD. The Alabama Board of Massage Therapy created pursuant to this chapter.
"(3) BOARD-APPROVED MASSAGE THERAPY SCHOOL. A school where massage therapy is taught which is one of the following:

"a. If located in Alabama is approved by the board as meeting the minimum established standards of training and curriculum as determined by the board.

"b. If located outside of Alabama is recognized by the board and by a regionally recognized professional accrediting body.

"c. Is a postgraduate training institute accredited by the Commission on Accreditation for Massage Therapy.

"(4) ESTABLISHMENT. A site, premises, or business where massage therapy is practiced by a licensed massage therapist.

"(5) EXAMINATION. A National Certification For Therapeutic Massage and Bodywork Examination administered by an independent agency or another nationally or internationally accredited exam administered by an independent agency per approval of the board. The examination will be accredited by the National Committee for Certifying Agencies. The board retains the right to administer a written, oral, or practical examination.

"(6) LICENSE. The credential issued by the board which allows the licensee to engage in the safe and ethical practice of massage therapy.

"(7) MASSAGE THERAPIST. A person licensed pursuant to this chapter who practices or administers massage therapy or touch therapy modalities to a patron for compensation.
"(8) MASSAGE THERAPY INSTRUCTOR. A licensed massage therapist approved by the board to teach the practice of massage therapy.

"(9) PERSON. Any individual, firm, corporation, partnership, organization, association, or other legal entity.

"(10) SEXUALLY ORIENTED BUSINESS. A sex parlor, massage parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult motel, or other commercial enterprise which has as its primary business the offering for sale, rent, or exhibit, or the exhibit of, items or services intended to provide sexual stimulation or sexual gratification to the customer.

"(11) STUDENT OF MASSAGE THERAPY. Any person currently enrolled in an Alabama massage therapy school program approved by the board.

"(12) TEMPORARY PERMIT. A temporary permit issued at the request of a massage therapist who is qualified according to the Alabama massage therapy law prior to approval by the board and not to exceed six months.

"(13) THERAPEUTIC MASSAGE AND RELATED TOUCH THERAPY MODALITIES. The mobilization of the soft tissue which may include skin, fascia, tendons, ligaments, and muscles, for the purpose of establishing and maintaining good physical condition. The term shall include effleurage, petrissage, tapotement, compression, vibration, stretching, heliotherapy, superficial hot and cold applications, topical applications, or other therapy which involves movement either by hand,
forearm, elbow, or foot, for the purpose of therapeutic
massage. Massage therapy may include the external application
and use of herbal or chemical preparations and lubricants such
as salts, powders, liquids, nonprescription creams, mechanical
devices such as T-bars, thumpers, body support systems, heat
lamps, hot and cold packs, salt glow, steam cabinet baths or
hydrotherapy. The term includes any massage, movement therapy,
massage technology, myotherapy, masotherapy, oriental massage
techniques, structural integration, or polarity therapy. The
term shall not include laser therapy, microwave, injection
therapy, manipulation of the joints, or any diagnosis or
treatment of an illness that normally involves the practice of
medicine, chiropractic, physical therapy, podiatry, nursing,
midwifery, occupational therapy, veterinary, acupuncture,
osteopathy, orthopedics, hypnosis, or naturopathics."

Section 3. Sections 34-19-2 to 34-19-10, inclusive,
Code of Alabama 1975, are repealed.

Section 4. Although this bill would have as its
purpose or effect the requirement of a new or increased
expenditure of local funds, the bill is excluded from further
requirements and application under Amendment 621, now
appearing as Section 111.05 of the Official Recompilation of
the Constitution of Alabama of 1901, as amended, because the
bill defines a new crime or amends the definition of an
existing crime.
Section 5. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.