

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

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HOUSE BILL NO. 1162

Introduced by: Representatives Langer, Brunner, Campbell, Craig, Deutsch, DiSanto, Feickert, Gosch, Greenfield (Lana), Haggar (Don), Harrison, Haugaard, Heinemann (Leslie), Holmes, Hunt, Klumb, Latterell, May, Munsterman, Novstrup (Al), Qualm, Rasmussen, Rozum, Russell, Schaefer, Schoenfish, Sly, Tulson, Verchio, Wiik, Wollmann, and Zikmund and Senators Greenfield (Brock), Bradford, Haggar (Jenna), Heinert, Jensen (Phil), Monroe, Novstrup (David), Olson, Rampelberg, and Shorma

1 FOR AN ACT ENTITLED, An Act to provide for the practice and regulation of midwives.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That the code be amended by adding a NEW SECTION to read:

4 Terms used in this Act mean:

5 (1) "Advisory committee," the midwife advisory committee established pursuant to
6 section 6 of this Act;

7 (2) "Approved program," an educational program of study leading to eligibility for
8 certification as a midwife that is approved or accredited by the midwifery education
9 accreditation council (MEAC) or a national accrediting organization approved by the
10 board;

11 (3) "Board," the South Dakota Board of Nursing;

12 (4) "Certified professional midwife" or "CPM," a practitioner who has met the standards



1 of certification set by the North American Registry of Midwives (NARM) and is
2 qualified to provide the midwives model of care;

3 (5) "Client," a woman under the care of a licensed midwife;

4 (6) "Licensed midwife" or "LM," a provider authorized to practice as a midwife pursuant
5 to this Act.

6 Section 2. That the code be amended by adding a NEW SECTION to read:

7 No person may practice or offer to practice as a licensed midwife in this state unless the
8 person is currently licensed to practice by the board.

9 Section 3. That the code be amended by adding a NEW SECTION to read:

10 This Act does not prohibit the performance of the functions of a licensed midwife if
11 performed:

12 (1) In an emergency situation;

13 (2) By a certified nurse midwife authorized to practice in South Dakota;

14 (3) By a student midwife enrolled in an approved program who is under the direct
15 supervision of a preceptor approved by NARM which could include a licensed
16 physician, a certified nurse midwife, or a certified professional midwife; or

17 (4) By any person exempt pursuant to § 36-2-20.

18 Section 4. That the code be amended by adding a NEW SECTION to read:

19 No person may be licensed to practice as a licensed midwife unless the person has:

20 (1) Obtained the certified professional midwife (CPM) credential; and

21 (2) Graduated from an approved program or has been licensed or certified as a midwife
22 by another jurisdiction for the previous five years.

23 Section 5. That the code be amended by adding a NEW SECTION to read:

24 The practice in this state as a licensed midwife is subject to the control and regulation of the

1 South Dakota Board of Nursing. The board may license, supervise the practice, and revoke or
2 suspend licenses or otherwise discipline any person applying for or practicing as a licensed
3 midwife.

4 Section 6. That the code be amended by adding a NEW SECTION to read:

5 The Board of Nursing shall appoint a midwife advisory committee composed of three
6 certified professional midwives, one certified nurse midwife, and one South Dakota citizen who
7 has received midwifery care in an out-of-hospital setting. The Board of Nursing shall select
8 committee members from a list of applicants. Each committee member shall serve a term of
9 three years. However, the terms of initial appointees shall be staggered so that no more than two
10 members' terms expire in any one year. No committee member may be appointed to more than
11 three consecutive full terms. If a vacancy occurs, the board shall appoint a person to fill the
12 unexpired term. The appointment of a member to an unexpired term is not considered a full
13 term. The committee shall meet at least annually and as necessary to conduct business. The
14 advisory committee shall assist the board in the regulation of licensed midwives pursuant to this
15 Act. The committee shall make recommendations to the board regarding rules promulgated
16 pursuant to this Act. Appointments to the advisory committee may include certified professional
17 midwives licensed in other states who are not living in South Dakota.

18 Section 7. That the code be amended by adding a NEW SECTION to read:

19 An applicant for licensure as a licensed midwife shall file with the board an application,
20 verified by oath, on a form prescribed by the board and accompanied by the prescribed fee. If
21 the board finds that the applicant satisfies the requirements for licensure in section 4 of this Act
22 and passes a background check required by section 8 of this Act, the board shall issue to the
23 applicant a license to practice as a licensed midwife.

24 Section 8. That the code be amended by adding a NEW SECTION to read:

1 Each applicant for licensure as a licensed midwife in this state shall submit to a state and
2 federal criminal background investigation by means of fingerprint checks by the Division of
3 Criminal Investigation and the Federal Bureau of Investigation. Upon application, the board
4 shall submit completed fingerprint cards to the Division of Criminal Investigation. Upon
5 completion of the criminal background check, the Division of Criminal Investigation shall
6 forward to the board all information obtained as a result of the criminal background check. This
7 information shall be obtained prior to permanent licensure of the applicant. Failure to submit
8 or cooperate with the criminal background investigation is grounds for denial of an application.
9 The applicant shall pay for any fees charged for the cost of fingerprinting or the criminal
10 background investigation.

11 Section 9. That the code be amended by adding a NEW SECTION to read:

12 A person licensed to practice as a licensed midwife in this state may use the title, licensed
13 midwife abbreviated, LM.

14 Section 10. That the code be amended by adding a NEW SECTION to read:

15 For the purposes of this Act, the practice of a licensed midwife is the management and care
16 of the low-risk mother-baby unit in an out-of-hospital setting during pregnancy, labor, delivery,
17 and postpartum periods in accordance with national professional midwifery standards,
18 including:

- 19 (1) Initial and ongoing assessment for suitability of midwifery care;
- 20 (2) Providing prenatal education and coordinating with a licensed health care provider
21 as necessary to provide comprehensive prenatal care, including the routine
22 monitoring of vital signs, indicators of fetal development, and laboratory tests, as
23 needed, with attention to the physical, nutritional, and emotional needs of the mother
24 and her family;

- 1 (3) Providing informed consent pursuant to section 32 of this Act;
- 2 (4) Attending and supporting the natural process of labor and birth in an out of hospital
- 3 setting, including in a licensed birth center;
- 4 (5) Postpartum care of the mother and an initial assessment of the newborn;
- 5 (6) Providing information and referrals to community resources on childbirth
- 6 preparation, breastfeeding, exercise, nutrition, parenting, and care of the newborn;
- 7 and
- 8 (7) Limited prescriptive authority to administer:
 - 9 (a) Vitamin K to the baby either orally or through intramuscular injection;
 - 10 (b) Postpartum antihemorrhagic medication under an emergency situation;
 - 11 (c) Local anesthetic for repair of a first or second degree perineal laceration;
 - 12 (d) Oxygen;
 - 13 (e) Eye prophylaxis; and
 - 14 (f) Other medications approved by the board;.

15 Section 11. That the code be amended by adding a NEW SECTION to read:

16 For the purposes of this Act, the practice of a licensed midwife does not include:

- 17 (1) The use of any surgical instrument at a childbirth, except as necessary to sever the
- 18 umbilical cord or repair a first or second degree perineal laceration;
- 19 (2) Prescribing prescription medications including controlled drugs, except as permitted
- 20 pursuant to subdivision 7 of section 10 of this Act;
- 21 (3) The assisting of childbirth by artificial or mechanical means including forceps,
- 22 vacuum delivery, or cesarean delivery; or
- 23 (4) Performing or assisting in an abortion.

24 Section 12. That the code be amended by adding a NEW SECTION to read:

1 Upon application for renewal by a licensee, the board shall renew the license biennially, if
2 the applicant:

3 (1) Provides evidence of meeting the recertification requirements for CPM recertification
4 by the North American Registry of Midwives (NARM);

5 (2) Provides evidence that the licensee has a minimum of 140 hours in a 12 month
6 period, or 480 hours in a six year period, of patient care, employment, or volunteer
7 work in midwifery;

8 (3) Submits an affidavit that the licensee has committed no act of misconduct as set forth
9 by section 19 of this Act; and

10 (4) Submits the application for renewal and pays renewal fees, as required by sections
11 13 and 16 of this Act .

12 The board shall establish an expiration date for the renewal license.

13 Section 13. That the code be amended by adding a NEW SECTION to read:

14 The license of any person licensed pursuant to this Act shall be renewed biennially, except
15 as provided in section 15 of this Act. The board shall mail a notice for renewal of license to each
16 license holder at least ninety days prior to the expiration date of the person's license. The license
17 holder shall, before the expiration date, return to the board the notice and the prescribed fee.
18 Upon receipt of the notice and fee, the board shall issue to the license holder a certificate of
19 renewal if the licensee meets the criteria in section 12 of this Act. The certificate of renewal
20 must indicate the effective period of the certificate of renewal.

21 Section 14. That the code be amended by adding a NEW SECTION to read:

22 A license holder who fails to renew the license pursuant to sections 12 and 13 of this Act
23 may be reinstated upon the terms and conditions prescribed by the board and upon payment of
24 the prescribed fee.

1 Section 15. That the code be amended by adding a NEW SECTION to read:

2 The holder of a current license may file with the board a written application, together with
3 the prescribed fee, requesting inactive status and stating the reasons for the request.

4 Section 16. That the code be amended by adding a NEW SECTION to read:

5 The board shall promulgate by rule, pursuant to chapter 1-26, and shall collect in advance
6 the following nonrefundable fees from applicant:

7 (1) For initial licensure or endorsement from another state, not more than one thousand
8 dollars;

9 (2) For biennial renewal of license, not more than seven hundred fifty dollars;

10 (3) For reinstatement of a lapsed license, the current renewal fee and not more than five
11 hundred dollars;

12 (4) For providing a transcript, not more than twenty-five dollars;

13 (5) For effecting a name change on the records of the license holder, not more than one
14 hundred dollars;

15 (6) For issuance of a duplicate license, not more than one hundred fifty dollars;

16 (7) For placing a license on inactive status, not more than one hundred dollars;

17 (8) For endorsement to another state, territory, or foreign country, not more than one
18 hundred fifty dollars.

19 Section 17. That the code be amended by adding a NEW SECTION to read:

20 All fees received by the board, and money collected under this chapter, shall be deposited
21 in a bank as authorized by the board. The funds are subject to withdrawal as authorized by the
22 board. A report of all receipts and expenditures of funds shall be made at the close of each fiscal
23 year and filed in the office of the state auditor.

24 Section 18. That the code be amended by adding a NEW SECTION to read:

1 Any balance of fees received by the board after payment of compensation and expenditures
2 shall be held by the board and may only be used in administering this Act.

3 Section 19. That the code be amended by adding a NEW SECTION to read:

4 The board may deny, revoke, or suspend any license or application for licensure to practice
5 as a licensed midwife in this state, and may take such other disciplinary or corrective action as
6 the board deems appropriate upon proof that the license holder or applicant has:

- 7 (1) Committed fraud, deceit, or misrepresentation in procuring or attempting to procure
8 a license;
- 9 (2) Aided or abetted an unlicensed person to practice as a licensed midwife;
- 10 (3) Engaged in practice as a licensed midwife under a false or assumed name and failed
11 to register that name pursuant to chapter 37-11, or impersonated another license
12 holder of a like or different name;
- 13 (4) Committed an alcohol or drug related act or offense that interferes with the ability to
14 practice midwifery safely;
- 15 (5) Negligently, willfully, or intentionally acted in a manner inconsistent with the health
16 and safety of those entrusted to the license holder's care;
- 17 (6) Had authorization to practice as a licensed midwife denied, revoked, or suspended
18 or had other disciplinary action taken in another state;
- 19 (7) Practiced as a licensed midwife without a valid license;
- 20 (8) Engaged in the performance of licensed midwifery or a medical function beyond the
21 scope of practice authorized by the board;
- 22 (9) Violated any provision of this Act or rule promulgated pursuant to this Act.

23 Section 20. That the code be amended by adding a NEW SECTION to read:

24 The board may initiate a proceeding for revocation or suspension of a license if the board

1 has information that any person may have been guilty of any misconduct as provided in section
2 19 of this Act, or is guilty of incompetence or unprofessional or dishonorable conduct.

3 Section 21. That the code be amended by adding a NEW SECTION to read:

4 Any proceeding related to the revocation or suspension of a license shall conform to the
5 procedures set forth in chapter 1-26. A license may be revoked or suspended only at a hearing
6 attended by a quorum of the members of the board.

7 Section 22. That the code be amended by adding a NEW SECTION to read:

8 The board may take action authorized by section 19 of this Act upon satisfactory showing
9 that the physical or mental condition of the license holder or applicant is determined by a
10 competent medical examiner to be such as to jeopardize or endanger the health of those
11 entrusted to the license holder's or applicant's care. The board may demand an examination of
12 a license holder or applicant by a competent medical examiner selected by the board at their
13 expense. If a license holder fails to submit to the examination, the failure constitutes immediate
14 grounds for suspension of the license holder's license.

15 Section 23. That the code be amended by adding a NEW SECTION to read:

16 An aggrieved party may appeal a board's decision pursuant to chapter 1-26.

17 Section 24. That the code be amended by adding a NEW SECTION to read:

18 A revoked or suspended license may be reissued at the discretion of the board upon a finding
19 of good cause.

20 Section 25. That the code be amended by adding a NEW SECTION to read:

21 No person may:

22 (1) Practice or offer to practice as a licensed midwife without being licensed pursuant to
23 this Act;

24 (2) Sell or fraudulently obtain or furnish a diploma, license, renewal of license, or any

1 other record necessary to practice under this Act or aid or abet in such actions;

2 (3) Practice as a licensed midwife under cover of any diploma, license, renewal of
3 license, or other record necessary to practice under this chapter that was issued
4 unlawfully or under fraudulent representation;

5 (4) Use in connection with that person's name a sign, card, device or other designation
6 that implies that the person is a licensed midwife without being licensed pursuant to
7 this Act;

8 (5) Practice as a licensed midwife during the time that the person's license has lapsed or
9 has been revoked or suspended.

10 A violation of this section is a Class 1 misdemeanor.

11 Section 26. That the code be amended by adding a NEW SECTION to read:

12 It is necessary to prove in any prosecution only a single act prohibited by law, or a single
13 holding out, or a single attempt, without proving a general course of conduct in order to
14 constitute a violation of this Act.

15 Section 27. That the code be amended by adding a NEW SECTION to read:

16 The board may prosecute any person violating this Act and may incur the necessary
17 expenses.

18 Section 28. That the code be amended by adding a NEW SECTION to read:

19 The board may apply for an injunction in the circuit court for the county of the person's
20 residence to enjoin any person who:

21 (1) Is unlawfully practicing as a licensed midwife with a license issued by the board;

22 (2) Is practicing as a licensed midwife under a license that has lapsed or has been
23 suspended or revoked;

24 (3) Is engaging as a licensed midwife in the performance of medical functions beyond

1 the scope of practice authorized by section 10 and 11 of this Act;

2 (4) Is, by reason of a physical or mental condition, endangering, or threatening to
3 endanger, the health or safety of those entrusted to that person's care as a licensed
4 midwife.

5 Section 29. That the code be amended by adding a NEW SECTION to read:

6 Upon the filing of a verified complaint, the court, if satisfied by affidavit or otherwise, that
7 the person is or has been engaging in unlawful or dangerous practice as described in Section 28
8 of this Act, may issue a temporary injunction, without notice or bond, enjoining that person
9 from further practice as a licensed midwife.

10 Section 30. That the code be amended by adding a NEW SECTION to read:

11 An action for injunction is an alternative to criminal proceedings, and the commencement
12 of one proceeding by the board constitutes an election.

13 Section 31. That the code be amended by adding a NEW SECTION to read:

14 The board may promulgate rules pursuant to chapter 1-26 pertaining to:

- 15 (1) Licensing and licenses;
- 16 (2) The practice of midwifery;
- 17 (3) Scope of midwifery practice;
- 18 (4) Disciplinary proceedings;
- 19 (5) Fees; and
- 20 (6) Approval of midwifery education programs.

21 Section 32. That the code be amended by adding a NEW SECTION to read:

22 A licensed midwife shall, at an initial consultation with a client, provide a copy of an
23 informed consent document to be signed by the licensed midwife and the client that discloses
24 all of the following in writing:

- 1 (1) The name, address, telephone number, and license number of the licensed midwife;
- 2 (2) The licensed midwife's experience, qualifications, and training;
- 3 (3) The licensed midwife's fees and method of billing;
- 4 (4) The right of a client to file a complaint with the board and the procedures for filing
5 a complaint;
- 6 (5) Whether the licensed midwife has malpractice liability insurance;
- 7 (6) A plan for consultation, referral, and transport for medical emergencies specific to
8 each client, including identification of the closest hospital with an obstetrics
9 department and the closest hospital with an emergency department;
- 10 (7) A list of antepartum, intrapartum, and postpartum conditions that would require
11 consultation, transfer of care, or transport to a hospital;
- 12 (8) The scope of care and services the licensed midwife can provide to the client;
- 13 (9) A statement indicating that the client's records and any transaction with the licensed
14 midwife are confidential;
- 15 (10) The right of a client to refuse service unless otherwise provided by law;
- 16 (11) The client's and licensed midwife's signatures and date of signing.

17 Section 33. That the code be amended by adding a NEW SECTION to read:

18 No other licensed health care provider or hospital or agent thereof is liable for an injury
19 resulting from an act or omission by a licensed midwife, even if the health care provider has
20 consulted with or accepted a referral from the licensed midwife.

21 Section 34. That chapter 36-9A be amended by adding a NEW SECTION to read:

22 Nothing in this chapter restricts the right of a licensed midwife to practice in accordance
23 with this Act.

24 Section 35. That chapter 36-4 be amended by adding a NEW SECTION to read:

1 Nothing in this act restricts the right of a licensed midwife to practice in accordance with
2 this Act.