

SENATE BILL NO. 2315

Introduced by

Senators J. Lee, Krebsbach, Robinson

Representatives Delmore, Klemin, Maragos

1 A BILL for an Act to create and enact a new chapter to title 43 of the North Dakota Century
2 Code, relating to licensing and regulating direct entry or lay midwifery services and to preserve
3 the right of women and families to home delivery of infants; to amend and reenact section
4 43-12.1-05 of the North Dakota Century Code, relating to members of the state board of
5 nursing; and to provide a penalty.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 43-12.1-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **43-12.1-05. Board of nursing - Composition - Term of office.**

10 There is a state board of nursing whose members must be appointed by the governor which
11 must consist of five registered nurses, three licensed practical nurses, ~~and one public member,~~
12 and a certified nurse midwife appointed to the midwife advisory board, who may participate only
13 in matters relating to the licensure and practice of licensed midwives. Each board member must
14 be appointed for a term of four years. No appointee may be appointed for more than two
15 consecutive terms. An appointment for an unexpired term of more than eighteen months will
16 constitute a full term. Terms of nurse board members must be evenly distributed to allow two
17 licensed nurse board members to be appointed or reappointed each year.

18 **SECTION 2.** A new chapter to title 43 of the North Dakota Century Code is created and
19 enacted as follows:

20 **Definitions.**

21 As used in this chapter:

22 1. "Advisory board" means the advisory board on midwifery established to assist the
23 board in formulating regulations pertaining to the practice of midwifery and to assist in
24 such other matters relating to the practice of midwifery as the board may require.

- 1 2. "Board" means the state board of nursing.
- 2 3. "Licensed midwife" means an individual who is not licensed as a physician or nurse
- 3 and who holds a current license issued by the board pursuant to the provisions of this
- 4 chapter to engage in the practice of midwifery, who must be designated "L.M."
- 5 4. "Midwifery" or the "practice of midwifery" means providing primary maternity care
- 6 outside a hospital or clinical setting which is consistent with the midwife's training,
- 7 education, and experience to women and their newborn children throughout the
- 8 childbearing cycle, and includes identifying and referring women or their newborn
- 9 children who require health care to a qualified health care professional.

10 **Licensure requirements.**

- 11 1. A person providing midwifery services in this state, regardless of whether for
- 12 consideration, must be licensed under this chapter.
- 13 2. An individual is eligible to be licensed as a midwife if the individual:
- 14 a. Files a board-approved application for licensure and pays the required fees;
- 15 b. Submits an official transcript from an approved education program or submits
- 16 evidence of having completed an apprenticeship approved by the board;
- 17 c. Provides proof of current certification as a certified professional midwife or "CPM"
- 18 by North American registry of midwives;
- 19 d. Provides documentation of current certification from the American heart
- 20 association or the American red cross for adult and infant cardiopulmonary
- 21 resuscitation;
- 22 e. Provides documentation of successful completion of a board-approved midwifery
- 23 education accreditation council accredited courses in pharmacology, treatment of
- 24 shock, and suturing specific to midwives. The board may accept graduation from
- 25 an accredited midwifery program as satisfying this requirement if the program
- 26 adequately covered these subjects;
- 27 f. Submits a copy of the applicant's medical consultation plan; and
- 28 g. Completes a criminal history record background check, which demonstrates that
- 29 the applicant has not been convicted of a crime that in the judgment of the board
- 30 renders the individual unfit to practice midwifery.

- 1 2. For any midwife who has been continuously practicing midwifery in the state for at
2 least five years before July 31, 2011, the qualifications for initial licensure in
3 subdivisions b and d of subsection 1 may be waived for a period of two years if such
4 midwife provides the following documentation to the board:
- 5 a. Primary attendance at seventy-five births within the past ten years, ten of which
6 births occurred in the two years immediately preceding the application for
7 licensure.
- 8 b. Complete practice data for the two years preceding the application for licensure,
9 on a form provided by the board.
- 10 c. A plan to successfully complete within two years of the date of initial licensure the
11 North American registry of midwives portfolio evaluation program for the
12 "experienced midwife" to become a certified professional midwife and a
13 board-approved midwifery education accreditation council accredited courses in
14 pharmacology, treatment of shock, and suturing specific to midwives within the
15 two-year initial licensure period.
- 16 d. Any midwife who wishes to qualify for the waiver provided in subsection 2 shall
17 apply for initial licensure and provide the required documentation before July 31,
18 2012.
- 19 e. If the plan identified in subdivision c is not completed within the two-year
20 licensure period, the midwife must obtain a new license by fulfilling the
21 requirements in existence for obtaining an initial license as a licensed midwife to
22 continue to practice in this state.
- 23 3. The board may by endorsement license any individual as a midwife who applies in the
24 manner prescribed by the board who:
- 25 a. Files a board-approved application for licensure and pays the required fees;
26 b. Provides evidence of current licensure or certification by another state with
27 requirements at least as stringent as this state and in good standing in that state;
28 c. Has provided the board fingerprints and other information necessary for a
29 criminal history record background check, and the background check
30 demonstrates that the applicant has not been convicted of a crime that in the
31 judgment of the board renders the individual unfit to practice midwifery; and

- 1 d. Has not been sanctioned in another state without resolution satisfactory to the
2 board.
- 3 4. The period of licensure may not exceed two years. Licensure renewal includes:
- 4 a. Completion and filing a board-approved application for licensure renewal and
5 payment of the required fees;
- 6 b. Submission of a copy of the applicant's current certification as a certified
7 professional midwife through the North American registry of midwives with the
8 applicant's application for renewal; and
- 9 c. Verification of completion of the continuing education requirements for continued
10 certification through the North American registry of midwives as a certified
11 professional midwife.
- 12 5. Other information may be required for initial licensure, endorsement of licensure from
13 another state, licensure renewal, temporary licensure, or changes that have occurred
14 in the information submitted for licensure pursuant to regulations adopted by the
15 board.

16 **Regulation of the practice of midwifery.**

17 The board may adopt rules governing the practice of midwifery, upon consultation with the
18 advisory board. The rules may:

- 19 1. Impose any additional reasonable and necessary requirements for licensure to
20 practice midwifery;
- 21 2. Be consistent with the North American registry of midwives' current job description and
22 the national association of certified professional midwives' standards of practice;
- 23 3. Require an appropriate license fee not to exceed one hundred dollars every two years;
- 24 4. Impose additional requirements for license renewal and continuing education; and
- 25 5. Require the reporting and discipline of licensed midwives authorized by chapter
26 43-12.1.

27 **Education grants.**

28 The board shall establish a grant program for midwives who have been continuously
29 practicing midwifery in North Dakota for at least five years before to July 31, 2011, and are
30 licensed before July 31, 2012, who were not certified as a certified professional midwives
31 through the North American registry of midwives at the time of initial licensure. A qualified

1 applicant may be eligible for a one-time educational grant up to two thousand five hundred
2 dollars. The purpose of this grant is to help cover the costs related to successful completion of
3 the North American registry of midwives portfolio evaluation program for the experienced
4 midwife to become a certified professional midwife and of the board-approved midwifery
5 education accreditation council accredited courses in pharmacology, treatment of shock, and
6 suturing specific to midwives within the two-year initial licensure period. The board shall
7 establish eligibility, disbursement, and other criteria for the administration of the grant program.

8 **Advisory board on midwifery.**

- 9 1. The advisory board on midwifery shall consist of five members appointed by the
10 governor, two of whom will be licensed midwives consistent with the chapter; one of
11 whom is a licensed physician who is board-certified in either obstetrics and
12 gynecology or family practice, maintains hospital privileges, and has provided
13 maternity care for at least twenty births in the twelve months prior to appointment; one
14 of whom is a certified nurse midwife; and one of whom is a member of the public with
15 an interest in the rights of consumers of midwifery practice.
- 16 2. A board term is four years, except initial appointments shall provide for staggered
17 terms with two members being appointed for a two-year term, two members being
18 appointed for a three-year term, and one member being appointed for a four-year
19 term. Appointments to fill vacancies, other than expiration of the term, must be for the
20 unexpired terms. All members may be reappointed. Vacancies must be filled in the
21 same manner as the original appointments.
- 22 3. The advisory board shall elect a chairman and vice chairman from among the advisory
23 board's membership. A majority of the members constitutes a quorum. The meetings
24 of the advisory board are held at the call of the chairman or whenever the majority of
25 the members so request.
- 26 4. The certified nurse midwife member of the advisory board is a member of the board
27 for discussion and decisions related to the licensure and practice of licensed
28 midwives.

29 **Requirements for disclosure and written agreement.**

- 30 1. Before initiating care, a licensed midwife shall obtain a signed written agreement from
31 each client that the client has received the following written documents, at a minimum:

- 1 a. A description of the midwife's qualifications, experience, and training;
- 2 b. A written protocol for medical emergencies, including hospital transport particular
- 3 to each client, including both mother and infant;
- 4 c. A description of the midwife's model of care, including a description of the
- 5 procedures, benefits, and risks of home birth, primarily those conditions that may
- 6 arise for the mother and infant during the delivery;
- 7 d. A copy of the regulations governing the practice of midwifery;
- 8 e. A statement concerning the licensed midwife's malpractice or liability insurance
- 9 coverage or lack of insurance coverage;
- 10 f. A description of the right to file a complaint with the board;
- 11 g. Such other information as the board determines is appropriate to allow the client
- 12 to make an informed choice to select midwifery care; and
- 13 h. The following statement of informed consent: "I realize that there are risks
- 14 associated with birth, including the risk of death or disability of either mother or
- 15 child. I understand that a situation may arise, which requires emergency medical
- 16 care and that it may not be possible to transport the mother, the baby, or both to
- 17 the hospital in time to benefit from any such care. I fully accept the outcome and
- 18 consequences of our decision to have a licensed midwife attend us during
- 19 pregnancy and at our birth. I realize that our licensed midwife is not licensed to
- 20 practice medicine. I am not seeking a licensed physician or certified nurse
- 21 midwife as the primary caregiver for this pregnancy, and I understand that our
- 22 licensed midwife must inform me of any observed signs or symptoms of disease,
- 23 which may require evaluation, care, or treatment by a qualified health care
- 24 practitioner. I agree that I am totally responsible for obtaining qualified care of any
- 25 disease or pathological condition."
- 26 2. The licensed midwife must have a signed written agreement form on file for each
- 27 client. Upon request, the licensed midwife must provide a copy of the written
- 28 agreement form to the board.

1 **Limitations of practice.**

- 2 1. A licensed midwife may not prescribe, dispense, or administer prescription drugs,
3 except as permitted by the board specific to the maternity care, labor, delivery, and
4 post partum for the care of the mother and newborn infant.
- 5 a. A licensed midwife with prescriptive authority may prescribe drugs as defined by
6 chapter 43-15, pursuant to applicable state and federal laws.
- 7 b. Notice of the prescriptive authority granted must be forwarded to the state board
8 of pharmacy.
- 9 c. A prescriptive authority license does not include drug enforcement administration
10 authority for prescribing controlled substances.
- 11 d. A licensed midwife may not prescribe, administer, sign for, dispense, or procure
12 pharmaceutical samples following state and federal regulations.
- 13 e. The signature on documents related to prescriptive practices must clearly
14 indicate that the licensee is a licensed midwife.
- 15 f. A licensed midwife with prescriptive authority may not prescribe, sell, administer,
16 distribute, give to oneself, or give to the midwife's spouse or family member any
17 drug.
- 18 2. A licensed midwife may not perform any operative or surgical procedures except for
19 suture repair of first-degree or second-degree perineal lacerations.

20 **Immunity.**

21 A physician, nurse, hospital, emergency medical technician, or ambulance personnel is not
22 liable in any civil action for damages for any injury resulting from an act or omission of a
23 licensed midwife in the treatment of a mother or infant, or a pregnant woman whose delivery
24 was attempted under the care of a licensed midwife, even if the health care provider has
25 consulted with or accepted a referral from the licensed midwife. A physician, nurse, emergency
26 medical technician, ambulance personnel, or hospital is liable for the provider's own subsequent
27 or independent negligent acts or omissions, or if the provider has a business relationship with
28 the licensed midwife who provided care to the patient. A physician, nurse, hospital, emergency
29 medical technician, or ambulance personnel is not considered to have established a business
30 relationship or relationship of agency, employment, partnership, or joint venture with the

1 licensed midwife solely by providing consultation to or accepting a referral from the licensed
2 midwife.

3 **Reporting.**

4 1. A licensed midwife shall complete a record of birth in accordance with section
5 23-02.1-13.

6 2. A licensed midwife shall compile a summary report on each client. The board may
7 review these reports at any time upon request. The report must include the following:

8 a. Vital statistics;

9 b. Scope of care administered;

10 c. Whether the medical consultation plan was implemented; and

11 d. Any physician or other health care provider referrals made.

12 3. A licensed midwife shall promptly report to the board any maternal, fetal, or neonatal
13 mortality or morbidity.

14 4. A licensed midwife must report to the board termination, revocation, or suspension of
15 the licensed midwife's certification or any disciplinary action taken against the licensed
16 midwife by the North American registry of midwives or by any other jurisdiction.

17 **Protected titles and licensure - Penalty.**

18 1. It is unlawful for any person to assume or use the title or designation "licensed
19 midwife", "L.M.", or any other titles, words, letters, abbreviations, sign, card, or device
20 to indicate to the public that the person is authorized to practice midwifery unless the
21 person is licensed under this chapter or is exempt from the requirement to be licensed
22 until July 31, 2012.

23 2. After July 31, 2012, it is unlawful for any person to engage in the practice of midwifery
24 without a license.

25 3. An individual whose license under this chapter has been revoked by the board is
26 prohibited from practicing midwifery.

27 4. A person that violates this section is guilty of a class A misdemeanor.