

1 ENGROSSED SENATE
2 BILL NO. 1823

By: Stanley and Hicks of the
Senate

3 and

4 Roe of the House
5
6

7 An Act relating to midwifery; creating Shepherd's
8 Law; providing short title; defining terms; providing
9 exceptions to act; authorizing State Commissioner of
10 Health to promulgate certain rules; providing certain
11 powers and duties of the Commissioner; creating the
12 Advisory Committee on Midwifery; providing for
13 membership, terms, vacancies, officers, meetings and
14 quorum; requiring Committee to meet under the
15 Oklahoma Open Meeting Act; authorizing Committee to
16 advise the Commissioner on certain matters pertaining
17 to midwifery; authorizing Committee to review
18 applications and make certain recommendations to the
19 Commissioner; authorizing Committee to assist and
20 advise the Commissioner in certain hearings;
21 authorizing the Commissioner to establish
22 qualifications for certain licensure; prohibiting
23 certain practice of midwifery and certain
24 representation without certain licensure; providing
for application for licensure; providing term of
license and certain fee; requiring documentary
evidence of certain requirements; providing for
issuance of initial license; establishing certain
prohibited acts or practices; prohibiting certain
representations and advertisements relating to the
practice of midwifery; prohibiting certain use of
title; providing for certain violation and
administrative fine; requiring licensed and
unlicensed midwives to provide certain verbal and
written informed choice and disclosure statements;
providing for form and information to be included in
such statements; requiring disclosure of procedure
for reporting certain complaints; requiring licensed
midwives to encourage certain medical care and call
for certain assistance in certain situation;
providing certain immunity; providing for certain

1 roster, information to be contained in roster and
2 distribution of roster; providing for codification;
3 and providing an effective date.

4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 3040.1 of Title 59, unless there
7 is created a duplication in numbering, reads as follows:

8 This act shall be known and may be cited as "Shepherd's Law".

9 SECTION 2. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 3040.2 of Title 59, unless there
11 is created a duplication in numbering, reads as follows:

12 As used in Shepherd's Law:

13 1. "Certified Nurse-Midwife" or "nurse-midwife" shall have the
14 same meaning as provided by Section 567.3a of Title 59 of the
15 Oklahoma Statutes;

16 2. "Commissioner" means the State Commissioner of Health;

17 3. "Committee" means the Advisory Committee on Midwifery;

18 4. "Department" means the State Department of Health;

19 5. "Licensed midwife" means a person who practices midwifery
20 and is licensed under this act;

21 6. "Midwifery" means the practice of:

- 22 a. providing the necessary supervision, care and advice
23 to a woman during normal pregnancy, labor and the
24 postpartum period,

- b. conducting a normal delivery of a child,
- c. providing normal newborn care, and
- d. providing routine well-woman care and screenings;

7. "Newborn" means an infant from birth through the first six weeks of life;

8. "Normal" means, as applied to pregnancy, labor, delivery, the postpartum period and the newborn period, and as defined by rules of the State Commissioner of Health, circumstances under which a midwife has determined that a client does not have a condition that requires medical intervention;

9. "Postpartum period" means the first six weeks after a woman has given birth; and

10. "Unlicensed midwife" means a person who offers midwifery services or holds himself or herself out to be a midwife who is not licensed under this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3040.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

Shepherd's Law does not apply to:

1. A Certified Nurse-Midwife, a physician or another health care professional licensed by the state and operating within the scope of the person's license;

2. A student midwife who is providing midwifery care under the direct supervision of a qualified, licensed midwife preceptor;

1 3. A natural childbirth educator; or

2 4. A person other than a midwife who assists childbirth in an
3 emergency.

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 3040.4 of Title 59, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The State Commissioner of Health is hereby authorized to
8 promulgate rules, pursuant to the Administrative Procedures Act,
9 that the Commissioner deems necessary for the implementation and
10 enforcement of Shepherd's Law including, but not limited to:

11 1. Scope of practice;

12 2. A formulary of prescription drugs that a licensed midwife
13 may obtain, transport and administer when providing midwifery
14 services;

15 3. A list of routine tests and procedures for which informed
16 consent or refusal must be obtained;

17 4. Qualifications for licensure;

18 5. Renewals and reinstatements;

19 6. Fees;

20 7. Continuing education requirements;

21 8. Complaints;

22 9. Violations; and

23 10. Penalties.
24

1 In so doing, the Commissioner shall give utmost consideration to
2 the recommendations of the Advisory Committee on Midwifery as
3 created in Section 5 of this act.

4 B. The Commissioner shall have the power to, for good cause and
5 in accordance with the Administrative Procedures Act:

- 6 1. Deny, revoke or suspend any license to practice midwifery;
- 7 2. Develop a schedule of fines and penalties not to exceed Five
8 Thousand Dollars (\$5,000.00); and
- 9 3. Otherwise discipline a licensee.

10 C. As used in this section, good cause shall include, but not
11 be limited to:

- 12 1. Violation of Shepherd's Law; or
- 13 2. Denial, revocation or suspension of the midwife's
14 certification, assessment of a penalty or imposition of other
15 disciplinary action by the North American Registry of Midwives, the
16 American Midwifery Certification Board or a successor organization
17 approved by the Commissioner.

18 D. The Commissioner is hereby empowered to perform
19 investigations, require the production of records and other
20 documents relating to practices regulated by Shepherd's Law, and
21 seek injunctive relief.

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3040.5 of Title 59, unless there
24 is created a duplication in numbering, reads as follows:

1 A. There is hereby created, to continue until July 1, 2026, in
2 accordance with the provisions of the Oklahoma Sunset Law, an
3 Advisory Committee on Midwifery, which shall consist of seven (7)
4 voting members to be appointed by the State Commissioner of Health
5 as follows:

6 1. Three licensed midwives, each of whom has at least three (3)
7 years of experience in the practice of midwifery;

8 2. One Certified Nurse-Midwife;

9 3. One physician who is certified by a national professional
10 organization of physicians that certifies obstetricians and
11 gynecologists and supports the practice of midwifery;

12 4. One physician who is certified by a national professional
13 organization of physicians that certifies family practitioners or
14 pediatricians and supports the practice of midwifery; and

15 5. One member of the general public who is not practicing or
16 trained in a health care profession, and who is a parent with at
17 least one child born with the assistance of a licensed midwife or a
18 Certified Nurse-Midwife.

19 B. Members of the Committee shall serve for staggered terms of
20 six (6) years. The terms of three members shall expire on January
21 31 of each odd-numbered year. Members shall serve until a qualified
22 successor has been duly appointed. The Commissioner shall fill a
23 vacancy no later than sixty (60) days from the date the vacancy
24

1 occurs. No person shall be appointed to serve more than two (2)
2 consecutive terms.

3 C. The Committee shall annually elect a chair and vice-chair
4 from among its members.

5 D. The Committee shall meet at least semiannually and at any
6 other time at the call of the chair or the Commissioner.

7 E. The Committee shall meet in accordance with the Oklahoma
8 Open Meeting Act.

9 F. A majority of the members of the Committee including at
10 least two licensed midwives, shall constitute a quorum for the
11 conduct of Committee business.

12 G. 1. The Committee shall advise the Commissioner on all
13 matters pertaining to midwifery including but not limited to:

- 14 a. scope and standards of practice,
- 15 b. licensure requirements, examination requirements,
16 exceptions thereto, renewal requirements, temporary
17 licensure and endorsement or reciprocity requirements,
- 18 c. methods and requirements for ensuring the continued
19 competence of licensed and registered persons,
20 including the type of courses and number of hours
21 required to meet the basic midwifery education course
22 and continuing midwifery education course
23 requirements, and instructors or facilities used in
24 the basic and continuing education requirements,

- d. procedures for reporting of outcomes including, but not limited to, live births and fetal, newborn or maternal deaths,
- e. grounds for reporting and processing complaints, violations, probation, revocation or suspension of license or reinstatement provisions, and
- f. all other matters which may pertain to the practice of midwifery.

2. The Committee shall review and make recommendations to the Commissioner on all applications for licensure.

3. The Committee shall assist and advise the Commissioner in all hearings related to the enforcement of Shepherd's Law. The Committee shall review all complaints and make recommendations to the Commissioner on appropriate disciplinary action including, but not limited to, administrative fines, license revocation and license suspension.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3040.6 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The State Commissioner of Health shall, with the assistance of the Advisory Committee on Midwifery, establish qualifications for licensure under Shepherd's Law.

B. No person who is certified as, or holds himself or herself out to be, a Certified Professional Midwife or a Certified Midwife

1 shall practice midwifery in this state without first applying for
2 and obtaining a license from the State Commissioner of Health.

3 C. Application shall be made to the Commissioner on a form
4 created by the Department and posted on the website of the
5 Department. The application shall be accompanied by a nonrefundable
6 application fee of One Thousand Dollars (\$1,000.00) and such other
7 information required by the Committee as established by rule. The
8 license shall be valid for three (3) years from the date of
9 issuance.

10 D. An applicant for an initial license shall provide the
11 Committee with documentary evidence that the person has been
12 certified by the North American Registry of Midwives, the American
13 Midwifery Certification Board or a successor organization approved
14 by the Commissioner.

15 SECTION 7. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 3040.7 of Title 59, unless there
17 is created a duplication in numbering, reads as follows:

18 A licensed midwife shall not:

19 1. Provide midwifery care in violation of the rules of the
20 State Commissioner of Health, except in an emergency that poses an
21 immediate threat to the life of a woman or newborn;

22 2. Administer a prescription drug to a client other than as
23 provided by the formulary or as ordered by a physician;

24

1 3. Use forceps, a vacuum extractor or any prescription drug to
2 advance or retard labor or delivery; or

3 4. Make on a birth certificate a false or misleading statement
4 or record.

5 SECTION 8. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 3040.8 of Title 59, unless there
7 is created a duplication in numbering, reads as follows:

8 A. A licensed or unlicensed midwife shall not:

9 1. Advertise or represent that the midwife is a physician or a
10 graduate of a medical school unless the midwife is licensed to
11 practice medicine by the State Board of Medical Licensure and
12 Supervision or the State Board of Osteopathic Examiners or can show
13 proof of graduation from a medical school;

14 2. Use advertising or an identification statement that is
15 false, misleading or deceptive; or

16 3. Except as authorized by rules adopted by the Oklahoma Board
17 of Nursing, use in combination with the term "midwife" the term
18 "nurse" or another title, initial or designation that implies that
19 the midwife is licensed as a Registered Nurse or vocational nurse.

20 B. An unlicensed midwife shall not use a title in an
21 identification statement or advertisement that would lead a
22 reasonable person to believe that the midwife is certified.

23 C. All midwives licensed pursuant to Shepherd's Law shall
24 include in any title, identification statement or advertisement that

1 the midwife is licensed in this state and the credential the midwife
2 possesses.

3 SECTION 9. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3040.9 of Title 59, unless there
5 is created a duplication in numbering, reads as follows:

6 Effective July 1, 2021, any person who holds himself or herself
7 out to be, represents himself or herself to be or uses the title of
8 Certified Professional Midwife or Certified Midwife, without holding
9 a license issued by the State Commissioner of Health, or who is in
10 violation of any provision of Shepherd's Law shall be subject to an
11 administrative fine for each day found to be in violation. The
12 amount of any fine shall be determined by the Commissioner within
13 limits set by the Commissioner pursuant to rules adopted and
14 promulgated by the Commissioner and may be in addition to any other
15 penalty provided by the Commissioner or otherwise provided by law.

16 SECTION 10. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 3040.10 of Title 59, unless
18 there is created a duplication in numbering, reads as follows:

19 A. A licensed or unlicensed midwife shall disclose verbally and
20 in written form to a prospective client at the outset of the
21 professional relationship:

- 22 1. Which credential the midwife possesses, if any;
- 23 2. The limitations of the skills and practices of a midwife;
- 24 3. Whether the midwife carries malpractice insurance; and

1 4. A plan for emergencies and complications to include
2 selection of a hospital in case of emergency.

3 B. The Advisory Committee on Midwifery shall prescribe the form
4 of the informed choice and disclosure statement required to be used
5 by a licensed or unlicensed midwife under this act. The form shall
6 be posted on the website of the Department and shall include:

7 1. Credential of the midwife, if any;

8 2. Disclosure of experience as a midwife;

9 3. The date the license expires, if the midwife is licensed;

10 4. Documentation of compliance with continuing education
11 requirements, if the midwife is licensed;

12 5. A description of the transfer or referral strategy;

13 6. Direction on where to find the scope of practice standards
14 of a licensed midwife, as provided by rules of the State
15 Commissioner of Health; and

16 7. Additional informed choice and disclosure statements
17 approved by the Committee and provided by rule specific to vaginal
18 birth after Caesarean (VBAC), vaginal breech birth and vaginal
19 multiple birth.

20 C. The informed choice and disclosure statement shall include a
21 notification that state law requires a newborn to be tested for
22 certain heritable disorders and hypothyroidism, in the absence of a
23 signed parental waiver from the State Department of Health.

1 D. A licensed midwife shall disclose to a prospective or actual
2 client the procedure for reporting complaints to the Department.

3 SECTION 11. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3040.11 of Title 59, unless
5 there is created a duplication in numbering, reads as follows:

6 A. A licensed midwife shall advise a client in writing to seek
7 medical care through consultation or referral, as specified by rules
8 of the State Commissioner of Health, if the midwife determines that
9 the pregnancy, labor, delivery, postpartum period or newborn period
10 of a woman or newborn may not be within the scope of practice of the
11 midwife.

12 B. A licensed midwife shall call for emergency assistance in an
13 emergency situation that is outside of the licensed midwife's scope
14 of practice.

15 SECTION 12. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 3040.12 of Title 59, unless
17 there is created a duplication in numbering, reads as follows:

18 A physician or Certified Nurse-Midwife who issues an order
19 directing or instructing a midwife is immune from liability arising
20 out of the inability, failure or refusal of the midwife to comply
21 with the order.

22 SECTION 13. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3040.13 of Title 59, unless
24 there is created a duplication in numbering, reads as follows:

1 A. The State Department of Health shall maintain a roster of
2 each person licensed as a midwife in this state. The roster shall
3 contain for each licensed midwife the information required on the
4 informed choice and disclosure statement under Section 10 of this
5 act and other information the Department determines necessary to
6 accurately identify each licensed midwife. The roster shall be a
7 public document available under the Oklahoma Open Records Act.

8 B. The Department shall provide each county clerk and each
9 local registrar of births in a county with the name of each midwife
10 practicing in the county.

11 SECTION 14. This act shall become effective November 1, 2020.

12 Passed the Senate the 4th day of March, 2020.

13

14

Presiding Officer of the Senate

15

16 Passed the House of Representatives the ____ day of _____,
17 2020.

18

19

Presiding Officer of the House
of Representatives

20

21

22

23

24