An Act

ENROLLED SENATE
BILL NO. 1823

By: Stanley and Hicks of the Senate

and

Roe, Fugate, Luttrell and Stark of the House

An Act relating to midwifery; creating Shepherd's Law; providing short title; defining terms; providing exceptions to act; authorizing State Commissioner of Health to promulgate certain rules; providing certain powers and duties of the Commissioner; creating the Advisory Committee on Midwifery; providing for membership, terms, vacancies, officers, meetings and quorum; requiring Committee to meet under the Oklahoma Open Meeting Act; authorizing Committee to advise the Commissioner on certain matters pertaining to midwifery; authorizing Committee to review applications and make certain recommendations to the Commissioner; authorizing Committee to assist and advise the Commissioner in certain hearings; authorizing the Commissioner to establish qualifications for certain licensure; prohibiting certain practice of midwifery and certain 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 roster, information to be contained in roster and distribution of roster; providing for codification; and providing an effective date.

SUBJECT: Midwifery

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

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

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

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

As used in Shepherd's Law:

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

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

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

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

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

6. "Midwifery" means the practice of:

a. providing the necessary supervision, care and advice to a woman during normal pregnancy, labor and the 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;

3. A natural childbirth educator; or

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

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

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

1. Scope of practice;

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

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

4. Qualifications for licensure;

5. Renewals and reinstatements;

6. Fees;

7. Continuing education requirements;

8. Complaints;

9. Violations; and

10. Penalties.

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

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

1. Deny, revoke or suspend any license to practice midwifery;

2. Develop a schedule of fines and penalties not to exceed Five Thousand Dollars ($5,000.00); and

3. Otherwise discipline a licensee.

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

1. Violation of Shepherd's Law; or

2. Denial, revocation or suspension of the midwife's certification, assessment of a penalty or imposition of other disciplinary action by the North American Registry of Midwives, the American Midwifery Certification Board or a successor organization approved by the Commissioner.

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

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

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

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

2. One Certified Nurse-Midwife;

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

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

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

B. Members of the Committee shall serve for staggered terms of six (6) years. The terms of three members shall expire on January 31 of each odd-numbered year. Members shall serve until a qualified successor has been duly appointed. The Commissioner shall fill a vacancy no later than sixty (60) days from the date the vacancy occurs. No person shall be appointed to serve more than two (2) consecutive terms.

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

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

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

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

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

a. scope and standards of practice,

b. licensure requirements, examination requirements, exceptions thereto, renewal requirements, temporary licensure and endorsement or reciprocity requirements,

c. methods and requirements for ensuring the continued competence of licensed and registered persons, including the type of courses and number of hours

required to meet the basic midwifery education course and continuing midwifery education course requirements, and instructors or facilities used in 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 shall practice midwifery in this state without first applying for and obtaining a license from the State Commissioner of Health.

C. Application shall be made to the Commissioner on a form created by the Department and posted on the website of the Department. The application shall be accompanied by a nonrefundable

application fee of One Thousand Dollars ($1,000.00) and such other information required by the Committee as established by rule. The license shall be valid for three (3) years from the date of issuance.

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

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

A licensed midwife shall not:

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

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

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

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

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

A. A licensed or unlicensed midwife shall not:

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

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

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

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

C. All midwives licensed pursuant to Shepherd's Law shall include in any title, identification statement or advertisement that the midwife is licensed in this state and the credential the midwife possesses.

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

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

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

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

1. Which credential the midwife possesses, if any;

2. The limitations of the skills and practices of a midwife;

3. Whether the midwife carries malpractice insurance; and

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

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

1. Credential of the midwife, if any;

2. Disclosure of experience as a midwife;

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

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

5. A description of the transfer or referral strategy;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Brent Howard
Presiding Officer of the Senate

Passed the House of Representatives the 11th day of May, 2020.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 12th
day of May, 20 20, at 2:08 o'clock p. M.
By: Sumer Curry

Approved by the Governor of the State of Oklahoma this 18th
day of May, 20 20, at 9:08 o'clock a. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 18th
day of May, 20 20, at 3:25 o'clock P. M.
By: Nicole Rogers