

SENATE BILL 477 (LRB -4193)

An Act to amend 441.15 (2) (intro.) and 448.03 (2) (a); and to create 440.08 (2) (a) 46w., subchapter XI of chapter 440 [precedes 440.980] and 441.15 (2m) of the statutes; relating to: licensing midwives, granting rule-making authority, and providing a penalty. (FE)

2005

- 01-04. S. Introduced by Senators **Grothman, Roessler, Darling, Lassa, Reynolds, Coggs, Erpenbach and Olsen**; cosponsored by Representatives **Underheim, Lamb, Hahn, Hines, Townsend, Musser, Pope-Roberts, Pettis, Owens, Molepske, Seidel, Montgomery and Young**.
- 12-15. S. Read first time and referred to committee on Health, Children, Families, Aging and Long Term Care 499
- 12-29. S. Fiscal estimate received.
- 12-29. S. Fiscal estimate received.
- 12-29. S. Fiscal estimate received.

2006

- 01-04. S. Fiscal estimate received.
- 01-12. S. Public hearing held.
- 01-18. S. Executive action taken.
- 01-20. S. Report introduction and adoption of Senate Amendment 1 recommended by committee on Health, Children, Families, Aging and Long Term Care, Ayes 5, Noes 0 (**LRB a2095**) 544
- 01-20. S. Report introduction and adoption of Senate Amendment 2 recommended by committee on Health, Children, Families, Aging and Long Term Care, Ayes 5, Noes 0 (**LRB a2096**) 544
- 01-20. S. Report introduction and adoption of Senate Amendment 3 recommended by committee on Health, Children, Families, Aging and Long Term Care, Ayes 5, Noes 0 (**LRB a2097**) 544
- 01-20. S. Report passage as amended recommended by committee on Health, Children, Families, Aging and Long Term Care, Ayes 4, Noes 1 544
- 01-20. S. Available for scheduling.
- 01-20. S. Withdrawn from committee on Senate Organization and rereferred to joint committee on Finance, pursuant to Senate Rule 46 (2)(c) 545
- 01-25. S. Executive action taken.
- 01-26. S. Report adoption of Senate Amendment 1 recommended by joint committee on Finance, Ayes 15, Noes 1 .. 556
- 01-26. S. Report adoption of Senate Amendment 2 recommended by joint committee on Finance, Ayes 15, Noes 1 .. 556
- 01-26. S. Report adoption of Senate Amendment 3 recommended by joint committee on Finance, Ayes 15, Noes 1 .. 556
- 01-26. S. Report introduction and adoption of Senate Amendment 4 recommended by joint committee on Finance, Ayes 15, Noes 1 (**LRB a2053**) 556
- 01-26. S. Report passage as amended recommended by joint committee on Finance, Ayes 15, Noes 1 556
- 01-26. S. Available for scheduling.
- 01-26. S. Placed on calendar 1-31-2006 by committee on Senate Organization.
- 01-31. S. Read a second time.
- 01-31. S. Senate amendment 1 **adopted**.
- 01-31. S. Senate amendment 2 **adopted**.
- 01-31. S. Senate amendment 3 **adopted**.
- 01-31. S. Senate amendment 4 **adopted**.
- 01-31. S. Senate amendment 5 offered by Senators Robson and Carpenter (**LRB a2206**).
- 01-31. S. Senate amendment 5 rejected.
- 01-31. S. Senate amendment 6 offered by Senators Robson, Carpenter and Miller (**LRB a2207**).
- 01-31. S. Senate amendment 6 rejected, Ayes 26, Noes 7.
- 01-31. S. Ordered to a third reading.
- 01-31. S. Rules suspended.
- 01-31. S. Read a third time and **passed**, Ayes 29, Noes 4.
- 01-31. S. Ordered immediately messaged.
- 01-31. A. Received from Senate 776
- 01-31. A. Read 776
- 01-31. A. Rules suspended and taken up 776
- 01-31. A. Read a second time 776
- 01-31. A. Ordered to a third reading 776
- 01-31. A. Rules suspended 776
- 01-31. A. Refused to lay on the table, Ayes 28, Noes 69 776
- 01-31. A. Refused to refer to committee on Health, Ayes 30, Noes 67 776
- 01-31. A. Read a third time and **concurred in** 777
- 01-31. A. Ordered immediately messaged 777
- 02-01. S. Received from Assembly concurred in.

**2005
ENROLLED BILL**

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ADOPTED DOCUMENTS:

Orig **Engr** **SubAmdt**

05-41931 ✓

Amendments to above (if none, write "NONE"): _____

SA1 = a20951,

SA2 = a20961, ✓

SA3 = a20971,

SA4 = a20531, ✓

Corrections - show date (if none, write "NONE"): None ✓

Topic _____

Relating

2-3-06

Date

JR Miller

Enrolling Drafter

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SB

2005 SENATE BILL 477

December 15, 2005 - Introduced by Senators GROTHMAN, ROESSLER, DARLING, LASSA, REYNOLDS, COGGS, ERPENBACH and OLSEN, cosponsored by Representatives UNDERHEIM, LAMB, HAHN, HINES, TOWNSEND, MUSSER, POPE-ROBERTS, PETTIS, OWENS, MOLEPSKE, SEIDEL, MONTGOMERY and YOUNG. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT** *to amend* 441.15 (2) (intro.) and 448.03 (2) (a); and *to create* 440.08 (2)
2 (a) 46w., subchapter XI of chapter 440 [precedes 440.980] and 441.15 (2m) of the
3 statutes; **relating to:** licensing midwives, granting rule-making authority,
4 and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law establishes the requirements for licensed registered nurses to obtain from the Board of Nursing a license to practice nurse-midwifery. This bill establishes requirements for the licensure by the Department of Regulation and Licensing (DRL) of midwives who are not licensed nurses. The bill does not otherwise affect the requirements under current law that apply to licenses to practice nurse-midwifery.

Under the bill, the practice of midwifery is defined as providing maternity care during the antepartum, intrapartum, and postpartum periods. The bill prohibits a person who is not a licensed midwife or licensed nurse-midwife from using a title that represents or implies that he or she is a midwife.

The bill regulates licensed midwives as follows:

1. The bill permits DRL to grant a license only to an applicant who holds a valid certified professional midwife credential from the North American Registry of Midwives or who holds a valid certified nurse-midwife credential granted by the American College of Nurse Midwives and attends births in out-of-hospital settings. The bill prohibits DRL from granting a license to a person who has been convicted of a sex offense.

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2. The bill allows DRL to discipline a licensed midwife who has violated any requirement under the bill or engaged in certain conduct.

3. The bill requires that a licensed midwife disclose to a client in writing at an initial consultation his or her qualifications, whether he or she has malpractice insurance, and a client-specific emergency protocol.

4. The bill requires DRL to promulgate rules necessary to administer the regulation of midwives. The rules must be consistent with standards regarding the practice of midwifery established by the National Association of Certified Professional Midwives and must allow licensed midwives to administer oxygen. The bill allows DRL to promulgate rules that authorize licensed midwives to administer oxytocin (Pitocin) as a postpartum antihemorrhagic agent, intravenous fluids for stabilization, vitamin K, eye prophylactics, and other drugs or procedures as DRL determines. The bill prohibits DRL from promulgating rules that do any of the following: 1) require a licensed midwife to have a nursing degree or diploma; 2) require a licensed midwife to practice midwifery under the supervision of, or in collaboration with, another health care provider; 3) limit where a licensed midwife may practice; or 4) permit a licensed midwife to use forceps or vacuum extraction.

The bill provides that a health care provider is not liable for an injury resulting from an act or omission by a licensed midwife, even if the health care provider has consulted with or accepted a referral from the licensed midwife.

A person who violates the provisions of the bill is subject to a \$250 fine, three months' imprisonment, or both. In addition, if DRL exercises its power under current law to appoint an advisory committee on licensed midwives, the bill creates requirements for the membership of the committee.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 ~~SECTION 1. 440.08 (2) (a) 46w. of the statutes is created to read:~~

2 440.08 (2) (a) 46w. Midwife, licensed: July 1 of each even-numbered year; \$56.

3 SECTION 2. Subchapter XI of chapter 440 [precedes 440.980] of the statutes is
4 created to read:

5 **CHAPTER 440**

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SUBCHAPTER XI

LICENSED MIDWIVES

440.980 Definitions. In this subchapter:

(1) "Health care provider" means a health care provider, as defined in s. 146.81 (1), a person licensed or issued a training permit as an emergency medical technician under s. 146.50, or a person certified as a first responder under s. 146.50 (8).

(2) "Licensed midwife" means a person who has been granted a license under this subchapter to engage in the practice of midwifery.

(3) "Practice of midwifery" means providing maternity care during the antepartum, intrapartum, and postpartum periods.

440.981 Use of title; penalty. (1) No person may use the title "licensed midwife," describe or imply that he or she is a licensed midwife, or represent himself or herself as a licensed midwife unless the person is granted a license under this subchapter or is licensed as a nurse-midwife under s. 441.15.

(2) Any person who violates sub. (1) may be fined not more than \$250, imprisoned not more than 3 months, or both.

~~**440.982 Licensure.** (1) Except as provided in sub. (2), the department may grant a license to a person under this subchapter if all of the following apply:~~

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(a) The person submits an application for the license to the department on a form provided by the department.

(b) The person pays the fee specified in s. 440.05 (1).

(c) The person submits evidence satisfactory to the department of one of the following:

1. The person holds a valid certified professional midwife credential granted by the North American Registry of Midwives or a successor organization.

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SECTION 2

1 2. The person holds a valid certified nurse–midwife credential granted by the
 2 American College of Nurse Midwives or a successor organization, and he or she
 3 attends births in out-of-hospital settings.

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SAI-1
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4 (2) The department may not grant a license under this subchapter to any
 5 person who has been convicted of an offense under s. 940.22, 940.225, 944.06, 944.15,
 6 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.06, 948.07,
 7 948.075, 948.08, 948.09, 948.095, 948.10, 948.11, or 948.12.

8 **440.983 Renewal of licensure.** (1) The renewal date for licenses granted
 9 under this subchapter is specified in s. 440.08 (2) (a). Renewal applications shall be
 10 submitted to the department on a form provided by the department and shall include
 11 the renewal fee specified in s. 440.08 (2) (a).

12 (2) A licensed midwife shall, at the time that he or she applies for renewal of
 13 a license under sub. (1), submit proof satisfactory to the department that he or she
 14 holds a valid certified professional midwife credential from the North American
 15 Registry of Midwives or a successor organization or a valid certified nurse–midwife
 16 credential from the American College of Nurse Midwives or a successor organization.

17 **440.984 Rule making.** (1) The department shall promulgate rules necessary
 18 to administer this subchapter. Except as provided in subs. (2) and (3), any rules
 19 regarding the practice of midwifery shall be consistent with standards regarding the
 20 practice of midwifery established by the National Association of Certified
 21 Professional Midwives or a successor organization.

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SA2-2

22 (2) The rules shall allow a licensed midwife to administer oxygen during the
 23 practice of midwifery.

INSERT SA2-3 ✓

24 (3) The rules may allow a midwife to administer, during the practice of
 25 midwifery, oxytocin (Pitocin) as a postpartum antihemorrhagic agent, intravenous

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1 fluids for stabilization, vitamin K, eye prophylactics, and other drugs or procedures
2 as determined by the department.

3 (4) The rules may not do any of the following:

4 (a) Require a licensed midwife to have a nursing degree or diploma.

5 (b) Require a licensed midwife to practice midwifery under the supervision of,
6 or in collaboration with, another health care provider.

7 (c) Require a licensed midwife to enter into an agreement, written or otherwise,
8 with another health care provider.

9 (d) Limit the location where a licensed midwife may practice midwifery.

10 (e) Permit a licensed midwife to use forceps or vacuum extraction.

11 **440.985 Informed consent.** A licensed midwife shall, at an initial
12 consultation with a client, provide a copy of the rules promulgated by the department
13 under this subchapter and disclose to the client in writing all of the following:

14 (1) The licensed midwife's experience and training.

15 (2) Whether the licensed midwife has malpractice liability insurance coverage
16 and the policy limits of any such coverage.

17 (3) A protocol for medical emergencies, including transportation to a hospital,
18 particular to each client.

19 (4) Any other information required by department rule.

20 **440.986 Disciplinary proceedings and actions.** (1) Subject to the rules
21 promulgated under s. 440.03 (1), the department may conduct investigations and
22 hearings to determine whether a violation of this subchapter or any rule
23 promulgated under this subchapter has occurred.

24 (2) Subject to the rules promulgated under s. 440.03 (1), the department may
25 reprimand a licensed midwife or deny, limit, suspend, or revoke a license granted

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SENATE BILL 477**SECTION 2**

1 under this subchapter if the department finds that the applicant or the licensed
2 midwife has done any of the following:

3 (a) Intentionally made a material misstatement in an application for a license
4 or for renewal of a license.

5 (b) Subject to ss. 111.321, 111.322, and 111.34, practiced midwifery while his
6 or her ability to engage in the practice was impaired by alcohol or other drugs.

7 (c) Advertised in a manner that is false or misleading.

8 (d) In the course of the practice of midwifery, made a substantial
9 misrepresentation that was relied upon by a client.

10 (e) In the course of the practice of midwifery, engaged in conduct that evidences
11 an inability to apply the principles or skills of midwifery.

12 (f) Obtained or attempted to obtain compensation through fraud or deceit.

13 (g) Allowed another person to use a license granted under this subchapter.

14 (h) Violated any law of this state or federal law that substantially relates to the
15 practice of midwifery, violated this subchapter, or violated any rule promulgated
16 under this subchapter.

17 (3) Subject to the rules promulgated under s. 440.03 (1), the department shall
18 revoke a license granted under this subchapter if the licensed midwife is convicted
19 of any of the offenses specified in 440.982 (2).

20 **440.987 Advisory committee.** If the department appoints an advisory
21 committee under s. 440.042 to advise the department on matters relating to the
22 regulation of licensed midwives, the committee shall consist of only the following:

23 (1) Two members who are licensed midwives.

24 (2) One member who is licensed as a nurse–midwife under s. 441.15 and who
25 practices in an out–of–hospital setting.

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1 (3) One member who is a physician specializing in obstetrics and gynecology.

2 (4) One public member who has received midwifery care in an out-of-hospital
3 setting.

4 **440.988 Vicarious liability.** No health care provider shall be liable for an
5 injury resulting from an act or omission by a licensed midwife, even if the health care
6 provider has consulted with or accepted a referral from the licensed midwife.

7 **SECTION 3.** 441.15 (2) (intro.) of the statutes is amended to read:

8 441.15 (2) (intro.) No Except as provided in sub. (2m), no person may engage
9 in the practice of nurse-midwifery unless each of the following conditions is satisfied:

10 **SECTION 4.** 441.15 (2m) of the statutes is created to read:

11 441.15 (2m) Subsection (2) does not apply to a person granted a license to
12 practice midwifery under subch. XI of ch. 440.

13 **SECTION 5.** 448.03 (2) (a) of the statutes is amended to read:

14 448.03 (2) (a) Any person lawfully practicing within the scope of a license,
15 permit, registration, certificate or certification granted to practice midwifery under
16 subch. XI of ch. 440, to practice professional or practical nursing or nurse-midwifery
17 under ch. 441, to practice chiropractic under ch. 446, to practice dentistry or dental
18 hygiene under ch. 447, to practice optometry under ch. 449, to practice acupuncture
19 under ch. 451 or under any other statutory provision, or as otherwise provided by
20 statute.

21 **SECTION 6. Nonstatutory provisions.**

22 (1) Notwithstanding section 440.987 (1) of the statutes, as created by this act,
23 an initial member of an advisory committee appointed under section 440.987 (1) of
24 the statutes is not required to be a licensed midwife under section 440.982 of the
25 statutes, as created by this act, if the appointment occurs before the first day of the

SENATE BILL 477**SECTION 6**

1 13th month beginning after publication and at the time of the appointment the
2 individual holds a valid certified professional midwife credential granted by the
3 North American Registry of Midwives or a successor organization.

4 **SECTION 7. Effective dates.** This act takes effect on the first day of the 13th
5 month beginning after publication, except as follows:

6 (1) The treatment of section 440.987 of the statutes and SECTION 6 of this act
7 take effect on the day after publication.

8 (END)

**SENATE AMENDMENT 1,
TO 2005 SENATE BILL 477**

January 20, 2006 - Offered by COMMITTEE ON HEALTH, CHILDREN, FAMILIES, AGING
AND LONG TERM CARE.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 4, line 2: delete the material beginning with “, and” and ending with
3 “settings” on line 3.

4 (END)

SA1-1



**SENATE AMENDMENT 2,
TO 2005 SENATE BILL 477**

January 20, 2006 - Offered by COMMITTEE ON HEALTH, CHILDREN, FAMILIES, AGING
AND LONG TERM CARE.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 3, line 17: delete lines 17 to 18 and substitute:

3 **“440.982 Licensure. (1)** No person may engage in the practice of midwifery
4 unless the person is granted a license under this subchapter, is granted a temporary
5 permit pursuant to a rule promulgated under s. 440.984 (2m), or is licensed as a
6 nurse-midwife under s. 441.15.

7 **(1m)** Except as provided in sub. (2), the department may grant a license to a
8 person under this subchapter if all of the following apply:”.

9 **2.** Page 4, line 18: after “(2)” insert “, (2m)”,.

10 **3.** Page 4, line 23: after that line insert:

11 **“(2m)** The rules shall provide for the granting of temporary permits to practice
12 midwifery pending qualification for licensure.”.

13 (END)

SA2-1 ✓

SA2-2 ✓

SA2-3 ✓

**SENATE AMENDMENT 3,
TO 2005 SENATE BILL 477**

January 20, 2006 - Offered by COMMITTEE ON HEALTH, CHILDREN, FAMILIES, AGING
AND LONG TERM CARE.

1 At the locations indicated, amend the bill as follows:

2 1. Page 5, line 13: after "client" insert "orally and".

3 (END)

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SA3-1

**SENATE AMENDMENT 4,
TO 2005 SENATE BILL 477**

January 26, 2006 - Offered by JOINT COMMITTEE ON FINANCE.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 1: delete that line and substitute:

3 **"SECTION 1.** 440.042 (1) of the statutes is amended to read:

4 440.042 (1) The secretary may appoint persons or advisory committees to
5 advise the department and the boards, examining boards, and affiliated
6 credentialing boards in the department on matters relating to the regulation of
7 credential holders. The secretary shall appoint an advisory committee to advise the
8 department on matters relating to ~~carrying out the duties specified in s. 440.982 and~~
9 making investigations, conducting hearings, and taking disciplinary action under s.
10 440.986. A person or an advisory committee member appointed under this
11 subsection shall serve without compensation, but may be reimbursed for his or her
12 actual and necessary expenses incurred in the performance of his or her duties.

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SA4-1

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SECTION 1m. 440.08 (2) (a) 46w. of the statutes is created to read:?"

2

(END)

SA4-1