

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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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:

(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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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.

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.

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

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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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

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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)