

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3559

By: Roe of the House

and

7 **Stanley** of the Senate

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10 COMMITTEE SUBSTITUTE

11 An Act relating to midwifery; creating Shepherd's
12 Law; providing short title; defining terms; providing
13 exceptions to act; authorizing State Commissioner of
14 Health to promulgate certain rules; providing certain
15 powers and duties of the Commissioner; requiring
16 development of certain process; creating the Advisory
17 Committee on Midwifery; providing for membership,
18 terms, vacancies, officers, meetings and quorum;
19 requiring Committee to meet under the Oklahoma Open
20 Meeting Act; authorizing Committee to advise the
21 Commissioner on certain matters pertaining to
22 midwifery; authorizing Committee to review and make
23 certain recommendations to the Commissioner;
24 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

1 licensed and unlicensed midwives to provide certain
2 verbal and written informed choice and disclosure
3 statements; providing for form and information to be
4 included in such statements; requiring disclosure for
5 reporting certain complaints; requiring licensed
6 midwives to encourage certain medical care and call
7 for certain assistance in certain situation;
8 providing certain immunity; providing for certain
9 roster, information to be contained in roster and
10 distribution of roster; providing for codification;
11 and providing an effective date.

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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;

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

3 6. "Midwifery" means the practice of:

- 4 a. providing the necessary supervision, care and advice
- 5 to a woman during normal pregnancy, labor and the
- 6 postpartum period,
- 7 b. conducting a normal delivery of a child,
- 8 c. providing normal newborn care, and
- 9 d. providing routine well-woman care and screenings;

10 7. "Newborn" means an infant from birth through the first six
11 (6) weeks of life;

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

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

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

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

1 Shepherd's Law does not apply to:

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

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

7 3. A natural childbirth educator; or

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

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

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

17 1. Scope of practice;

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

21 3. Qualifications for licensure;

22 4. Renewals and reinstatements;

23 5. Fees;

24 6. Continuing education requirements;

1 7. Complaints;

2 8. Violations; and

3 9. Penalties.

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

7 B. The Commissioner shall develop a process by which a licensed
8 midwife shall, by the signature of the pregnant woman on a form
9 approved by the Commissioner and posted on the website of the
10 Department, obtain the informed consent of the pregnant woman or the
11 refusal of the pregnant woman to consent to each prenatal or newborn
12 screening required by state law individually including, but not
13 limited to, laboratory testing or ultrasound screening. In so
14 doing, the Commissioner shall give utmost consideration to the
15 recommendations of the Committee as created in Section 5 of this
16 act.

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

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

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

22 3. Otherwise discipline a licensee.

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

1 1. Violation of Shepherd's Law; or

2 2. Denial, revocation or suspension of the midwife's

3 certification, assessment of a penalty or imposition of other

4 disciplinary action by the North American Registry of Midwives, the

5 American Midwifery Certification Board or a successor organization

6 approved by the Commissioner.

7 E. The Commissioner is hereby empowered to perform

8 investigations, require the production of records and other

9 documents relating to practices regulated by Shepherd's Law, and

10 seek injunctive relief.

11 SECTION 5. NEW LAW A new section of law to be codified

12 in the Oklahoma Statutes as Section 3040.5 of Title 59, unless there

13 is created a duplication in numbering, reads as follows:

14 A. There is hereby created, to continue until July 1, 2026, in

15 accordance with the provisions of the Oklahoma Sunset Law, an

16 Advisory Committee on Midwifery, which shall consist of seven (7)

17 voting members to be appointed by the State Commissioner of Health

18 as follows:

19 1. Three licensed midwives, each of whom has at least three (3)

20 years of experience in the practice of midwifery;

21 2. One Certified Nurse-Midwife;

22 3. One physician who is certified by a national professional

23 organization of physicians that certifies obstetricians and

24 gynecologists and supports the practice of midwifery;

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

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

8 B. Members of the Committee shall serve for staggered terms of
9 six (6) years. The terms of three members shall expire on January
10 31 of each odd-numbered year. Members shall serve until a qualified
11 successor has been duly appointed. The Commissioner shall fill a
12 vacancy no later than sixty (60) days from the date the vacancy
13 occurs. No person shall be appointed to serve more than two (2)
14 consecutive terms.

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

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

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

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

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

- 3 a. scope and standards of practice,
- 4 b. licensure requirements, examination requirements,
5 exceptions thereto, renewal requirements, temporary
6 licensure and endorsement or reciprocity requirements,
- 7 c. methods and requirements for ensuring the continued
8 competence of licensed and registered persons,
9 including the type of courses and number of hours
10 required to meet the basic midwifery education course
11 and continuing midwifery education course
12 requirements, and instructors or facilities used in
13 the basic and continuing education requirements,
- 14 d. procedures for reporting of outcomes including, but
15 not limited to, live births and fetal, newborn or
16 maternal deaths,
- 17 e. grounds for reporting and processing complaints,
18 violations, probation, revocation or suspension of
19 license or reinstatement provisions, and
- 20 f. all other matters which may pertain to the practice of
21 midwifery.

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

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

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

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

13 B. No person who is certified as, or holds himself or herself
14 out to be, a Certified Professional Midwife or a Certified Midwife
15 shall practice midwifery in this state without first applying for
16 and obtaining a license from the State Commissioner of Health.

17 C. Application shall be made to the Commissioner on a form
18 created by the Department and posted on the website of the
19 Department. The application shall be accompanied by a nonrefundable
20 application fee of One Thousand Dollars (\$1,000.00) and such other
21 information required by the Committee as established by rule. The
22 license shall be valid for three (3) years from the date of
23 issuance.

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

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

9 A licensed midwife shall not:

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

13 2. Administer a prescription drug to a client other than as
14 provided by the formulary;

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

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

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

22 A. A licensed or unlicensed midwife shall not:

23 1. Advertise or represent that the midwife is a physician or a
24 graduate of a medical school unless the midwife is licensed to

1 practice medicine by the State Board of Medical Licensure and
2 Supervision or the State Board of Osteopathic Examiners;

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

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

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

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

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

19 Effective July 1, 2021, any person who holds himself or herself
20 out to be, represents himself or herself to be or uses the title of
21 Certified Professional Midwife or Certified Midwife, without holding
22 a license issued by the State Commissioner of Health, or who is in
23 violation of any provision of Shepherd's Law shall be subject to an
24 administrative fine for each day found to be in violation. The

1 amount of any fine shall be determined by the Commissioner within
2 limits set by the Commissioner pursuant to rules adopted and
3 promulgated by the Commissioner and may be in addition to any other
4 penalty provided by the Commissioner or otherwise provided by law.

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

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

- 11 1. Which credential the midwife possesses, if any;
- 12 2. The limitations of the skills and practices of a midwife;
- 13 3. Whether the midwife carries malpractice insurance; and
- 14 4. A plan for emergencies and complications to include
15 selection of a hospital in case of an emergency.

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

- 20 1. Credential of the midwife, if any;
- 21 2. Disclosure of experience as a midwife;
- 22 3. The date the license expires, if the midwife is licensed;
- 23 4. Documentation of compliance with continuing education
24 requirements, if the midwife is licensed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON CHILDREN, YOUTH AND FAMILY
SERVICES, dated 02/27/2020 - DO PASS, As Amended and Coauthored.