

HOUSE No. 2368

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to certified professional midwives.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>William N. Brownsberger</i>	
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>
<i>Timothy R. Madden</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>James B. Eldridge</i>	
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Cynthia S. Creem</i>	
<i>Viriato Manuel deMacedo</i>	<i>1st Plymouth</i>

<i>Cleon H. Turner</i>	<i>1st Barnstable</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Mark C. Montigny</i>	
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Kathi-Anne Reinstein</i>	<i>16th Suffolk</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>

HOUSE No. 2368

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 2368) of Kay Khan and others relative to certified professional midwives. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to certified professional midwives.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 112 of the General Laws is hereby amended by adding the
2 following 20 sections:-

3 Section 259. As used in sections 260 to 277, inclusive of this chapter, the following
4 words shall, unless the context requires otherwise, have the following meanings:-

5 “Board”, the board of registration in medicine, established under section 10 of chapter 13.

6 “Certified Professional Midwife”, a professional independent practitioner who has been
7 certified as an expert in normal and out of hospital birth and has met the standards of
8 certification by North American Registry of Midwives.

9 “Certified nurse-midwife”, a nurse with advanced training who is authorized to practice
10 by the board of registration in nursing as a nurse midwife and who is certified by the American
11 Midwifery Certification Board.

12 “Client”, a woman under the care of a midwife and her fetus or newborn.

13 “Committee”, the committee on midwifery, established under section 261.

14 “Licensed midwife”, a person licensed under sections 260 to 277 to practice midwifery
15 and who holds a valid Certified Professional Midwife credential from the North American
16 Registry of Midwives.

17 “Midwifery” the practice of providing the necessary supervision, care and advice to a
18 client during normal pregnancy, labor, and the postpartum periods and conducting deliveries on
19 the midwife’s own responsibility consistent with the provisions of sections 260 to 277; including
20 preventative measures, the identification of physical, social and emotional needs of the client.

21 Section 260. Nothing in sections 259 through 277 inclusive, shall limit or regulate the
22 practice of a licensed physician, certified nurse-midwife, or licensed basic or advanced
23 emergency medical technician. The practice of midwifery shall not constitute the practice of
24 medicine, certified nurse-midwifery, or emergency medical care to the extent that a midwife
25 advises, attends, or assists a woman during pregnancy, labor, natural childbirth, or the
26 postpartum period.

27 Section 261. (a) The board of registration in medicine shall form a committee on
28 midwifery. Committee members shall be appointed as follows: 8 members shall be appointed by
29 the governor, 5 of whom shall be midwives who possess a valid Certified Professional Midwife
30 credential from the North American Registry of Midwives; 1 of whom shall be a licensed
31 physician who is an obstetrician certified by the American Congress of Obstetrics and
32 Gynecology and who has been actively involved with the practice of midwifery for at least 2
33 years, 1 of whom shall be a certified nurse-midwife chosen from a list of nominees provided by
34 the Massachusetts Chapter of the American College of Nurse-Midwives who has worked in an

35 out of hospital setting, and 1 of whom shall be from the general public who shall not be engaged
36 in or have a financial interest in the delivery of health services; 1 member shall be appointed by
37 the board.

38 (b) Members of the committee shall be appointed for a term of 3 years, except that of the
39 members of the first committee, 4 members shall be appointed for terms of 3 years, and 3
40 members shall be appointed for terms of 2 years. No member may be appointed to more than 2
41 consecutive full terms, provided, however, that a member appointed for less than a full term may
42 serve 2 full terms in addition to such of a part of a full term, and a former member shall again be
43 eligible for appointment after a lapse of 1 or more years.

44 (c) Any member of the committee may be removed by the governor for neglect of duty,
45 misconduct or malfeasance or misfeasance in office after being given a written statement of the
46 charges against him and sufficient opportunity to be heard thereon. Upon the death or removal
47 for cause of a member of the committee, the governor shall fill the vacancy for the remainder of
48 that member's term.

49 (d) The committee shall meet not less than 4 times per calendar year. At its first meeting
50 and annually thereafter, the committee shall elect from among its members a chairperson, a vice-
51 chairperson and a secretary who shall each serve for 1 year and until a successor is appointed and
52 qualified. Committee members shall serve without compensation but shall be reimbursed for
53 actual and reasonable expenses incurred in the performance of their duties.

54 Section 262. The committee shall make and publish such rules and regulations as it may
55 deem necessary for the proper conduct of its duties. The commissioner may review and approve
56 rules and regulations proposed by the committee. Such rules and regulations shall be deemed

57 approved unless disapproved within 15 days of submission to the commissioner; provided,
58 however, that any such disapproval shall be in writing setting forth the reasons for such
59 disapproval.

60 Section 263. The committee shall keep a full record of its proceedings and keep a register
61 of all persons registered and licensed by it, which shall be available for public inspection. The
62 register shall contain the name of every living registrant, the registrant's last known place of
63 business and last known place of residence, and the date and number of the registrant's
64 registration and certificate as a licensed midwife. The committee shall make an annual report
65 containing a full and complete account of all its official acts during the preceding year, including
66 a statement of the condition of midwifery in the commonwealth.

67 Section 264. The committee shall:

- 68 (1) examine applicants and issue licenses to those applicants it finds qualified;
- 69 (2) adopt regulations establishing licensing and licensing renewal requirements;
- 70 (3) issue permits to apprentice midwives;
- 71 (4) investigate complaints against persons licensed under this chapter;
- 72 (5) hold hearings and order the disciplinary sanction of a person who violates this
73 chapter or a regulation of the committee;
- 74 (6) approve education and apprentice training that meet the requirements of this chapter
75 and of the committee and deny, revoke, or suspend approval of such programs for failure to meet
76 the requirements;

- 77 (7) adopt standards for approved midwifery education and training;
- 78 (8) adopt professional continuing education requirements for licensed midwives;
- 79 (9) develop practice standards for licensed midwives that shall include, but not be
80 limited to:

- 81 i. adoption of ethical standards for licensed midwives and apprentice midwives;
- 82 ii. maintenance of records of care, including client charts;
- 83 iii. participation in peer review; and
- 84 iv. development of standardized informed consent, reporting and written emergency
85 transport plan forms.

86 Section 265. A person who desires to be licensed and registered as a midwife shall apply
87 to the committee in writing on an application form prescribed and furnished by the committee.
88 The applicant shall include in the application statements under oath satisfactory to the committee
89 showing that the applicant possesses the qualifications required by section 267 preliminary to the
90 examination required by section 266. At the time of filing the application, an applicant shall pay
91 to the board a fee which shall be set by the secretary of administration and finance.

92 Section 266. (a) The committee may adopt an exam for applicants for licensure, and
93 may conduct up to two examinations in each calendar year. The committee may establish
94 examination and testing procedures to enable it to determine the competency of persons applying
95 for licensure as a midwife.

96 (b) The examination may consist of 2 parts:

97 (1) a written examination designed to test knowledge of theory regarding pregnancy
98 and childbirth and to test clinical judgment in midwifery management; and

99 (2) a practical examination designed to demonstrate the mastery of skills necessary for
100 the practice of midwifery.

101 (c) An applicant who has failed the examination shall not retake the examination for a
102 period of 6 months. An applicant who has failed the examination more than 1 time may not
103 retake the examination unless the applicant has participated in or successfully completed further
104 education and training programs as prescribed by the committee.

105 Section 267. (a) To be eligible for examination, registration and licensure by the
106 committee as a midwife, an applicant shall:

107 (1) be at least 21 years of age;

108 (2) be of good moral character;

109 (3) be a graduate of a high school or its equivalent;

110 (4) possess a valid Certified Professional Midwife credential from the North American
111 Registry of Midwives.

112 (5) Notwithstanding the provisions of section 172 of chapter 6, the committee shall
113 obtain all available criminal offender record information from the criminal history systems board
114 on an applicant by means of fingerprint checks, and from the Federal Bureau of Investigation for
115 a national criminal history records check. The information obtained thereby may be used by the
116 committee to determine the applicant's eligibility for licensing under this chapter. Receipt of
117 criminal history record information by a private entity is prohibited. If the committee determines

118 that such information has a direct bearing on the applicant's ability to serve as a midwife, such
119 information may serve as a basis for the denial of the application;

120 (6) meet minimum educational requirements which shall include studying obstetrics;
121 neonatal pediatrics; basic sciences; female reproductive anatomy and physiology; behavioral
122 sciences; childbirth education; community care; obstetrical pharmacology; epidemiology;
123 gynecology; family planning; genetics; embryology; neonatology; the medical and legal aspects
124 of midwifery; nutrition during pregnancy and lactation; breast feeding; and such other
125 requirements prescribed by the committee;

126 (7) meet practical experience requirements prescribed by the committee, including
127 specific numbers of prenatal visits, post-partum follow-up exams, attendance at live births as an
128 observer and primary birth attendant under supervision, performance of newborn examinations,
129 performance of laceration repairs, performance of postpartum visits, and observation of in-
130 hospital births.

131 The training required under this section shall include training in either hospitals,
132 alternative birth settings or both. The Department of Public Health shall assist the committee in
133 facilitating access to hospital training for approved midwifery programs.

134 Section 268. The committee shall annually administer an examination designed to
135 measure the qualifications necessary in order to safely utilize the pharmaceutical agents provided
136 for in section 275. Such examination shall be open upon application to any midwife licensed
137 under the provisions of this chapter and to any person who meets the qualifications for
138 examination under section 267; provided, however, that each applicant shall furnish to the
139 committee satisfactory evidence of the completion of a qualifying course of study relating to the

140 safe and proper administration of approved pharmaceutical agents as determined by the
141 committee.

142 Section 269. (a) The committee shall issue a permit to practice as an apprentice midwife
143 to a person who:

144 (1) is at least 18 years of age;

145 (2) is a graduate of a high school or its equivalent; and

146 (3) has been accepted into a program of education, training, and apprenticeship
147 approved by the committee under section 264.

148 (b) A permit application under this section shall include information the committee may
149 require. The permit shall be valid for a term of 2 years and may be renewed in accordance with
150 regulations adopted by the committee.

151 (c) An apprentice midwife may perform all the activities of a licensed midwife if
152 supervised in a manner prescribed by the committee by:

153 (1) a licensed midwife who has practiced in this state for at least 2 years and who meets
154 the standards for qualification as a midwifery instructor approved by the committee under
155 section 264;

156 (2) a physician licensed in this state with an obstetrical practice at the time of
157 undertaking the apprenticeship; or

158 (3) a certified nurse-midwife licensed by the board of registration in nursing in this
159 state with an obstetrical practice at the time of undertaking the apprenticeship.

160 Section 270. The committee may enter into agreements with medical or midwifery
161 examination boards of other states and territories of the United States, the District of Columbia,
162 and Puerto Rico, having qualifications and standards at least as high as those of the
163 commonwealth, providing for reciprocal licensing in this state, without further examination, of
164 persons who hold a valid license granted by written examination in the other state or territory,
165 who have been licensed to practice for at least 5 years, and who apply and remit fees as provided
166 for in section 265.

167 Section 271. (a) The committee may, after a hearing pursuant to chapter 30A, revoke,
168 suspend, or cancel the license of a midwife, or reprimand or censure a midwife if it finds upon
169 proof satisfactory to the committee that such midwife:

170 (1) fraudulently procured licensure as a midwife;

171 (2) violated any provision of law relating to the practice of medicine or midwifery, or
172 any rule or regulation adopted thereunder ;

173 (3) acted with gross misconduct in the practice of midwifery or of practicing midwifery
174 fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross
175 negligence on a particular occasion or negligence on repeated occasions;

176 (4) practiced midwifery while the ability to practice is impaired by alcohol, drugs,
177 physical disability or mental instability;

178 (5) was habitually drunk or being or having been addicted to, dependent on, or a
179 habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having
180 similar effects;

181 (6) knowingly permitted, aided or abetted an unlicensed person to perform activities
182 requiring a license for purposes of fraud, deception or personal gain;

183 (7) has been convicted of a criminal offense which reasonably calls into question the
184 ability to practice midwifery;

185 (8) violated any rule or regulation of the committee;

186 (9) acted in a manner which is professionally unethical according to ethical standards of
187 the profession of midwifery; or

188 (10) violated any provision of sections 260 to 278.

189 (b) No person filing a complaint or reporting information pursuant to this section or
190 assisting the committee or board at its request in any manner in discharging its duties and
191 functions shall be liable in any cause of action arising out of receiving such information or
192 assistance, providing the person making the complaint or reporting or providing such
193 information or assistance does so in good faith and without malice.

194 Section 272. When accepting a client for care, a midwife shall obtain the client's
195 informed consent, which shall be evidenced by a written statement in a form prescribed by the
196 committee and signed by both the midwife and the client. The form shall certify that full
197 disclosure has been made and acknowledged by the client as to each of the following items, with
198 the client's acknowledgement evidenced by a separate signature adjacent to each item in addition
199 to the client's signature and the date at the end of the form:

200 (1) the name, address, telephone number, and license number of the licensed midwife;

201 (2) a description of the midwife's education, training, and experience in midwifery;

202 (3) the nature and scope of the care to be given, including a description of the ante
203 partum, intrapartum , and postpartum conditions requiring consultation, transfer of care, or
204 transport to a hospital;

205 (4) a copy of the medical emergency or transfer plan particular to each client; the right
206 of the client to file a complaint with the committee and instructions on how to file a complaint
207 with the committee;

208 (5) a statement indicating that the client's records and any transaction with the license
209 midwife are confidential;

210 (6) a disclosure of whether the licensed midwife carries malpractice or liability
211 insurance; and

212 (7) any further information as required by the committee.

213 Section 273. A midwife shall prepare, in a form prescribed by the committee, a written
214 plan for the appropriate delivery of emergency care. The plan shall address the following:

215 (1) consultation with other health care providers;

216 (2) emergency transfer; and

217 (3) access to neonatal intensive care units and obstetrical units or other patient care
218 areas.

219 Section 274. (a) The midwife shall only accept and provide care to those women who are
220 expected to have a normal pregnancy, labor, and delivery, as defined by the committee.

221 (b) A midwife shall provide an initial and ongoing screening to ensure that each client
222 receives safe and appropriate care. As part of the initial screening to determine whether any
223 contraindications are present, the midwife shall take a detailed health history as defined by the
224 committee.

225 (c) The midwife must be able at all times to recognize the warning signs of abnormal or
226 potentially abnormal conditions necessitating referral to a physician. If a midwife determines at
227 any time during the course of the pregnancy that a woman's condition may preclude attendance
228 by the midwife, the client shall be referred to an appropriate licensed health care provider.

229 (d) As part of the initial screening and ongoing screening, a midwife may order and
230 interpret clinical tests for the client as required by the committee. The midwife shall include
231 these results in the client's record.

232 (f) If the client is delivering at home, the midwife shall ensure that the home is safe and
233 hygienic and meets standards set forth by the committee.

234 (g) A midwife shall not perform any operative or surgical procedures except for
235 episiotomy or suture repair of episiotomy or first or second degree perineal lacerations.

236 Section 275. A midwife qualified by examination under the provisions of section 268
237 may obtain and administer prophylactic ophthalmic medication, anti-hemorrhagic medications,
238 vitamin K, Rho immune globulin, intravenous fluids, oxygen for fetal distress and infant
239 resuscitation, and local anesthetic and may administer such other drugs or medications as
240 prescribed by a physician or certified nurse-midwife. A pharmacist who dispenses such drugs to
241 a licensed midwife shall not be liable for any adverse reactions caused by any method of use by
242 the midwife.

243 Section 276. When a birth occurs with a licensed midwife in attendance, the midwife
244 shall prepare and file a birth certificate as required by chapter 46. Failure of a midwife to
245 prepare and file the birth certificate constitutes grounds for the suspension or revocation of a
246 license granted under this chapter.

247 Section 277. No physician duly registered under the provisions of sections 2, 2A, 9, 9A
248 or 9B, no physician assistant duly registered under the provisions of section 9I or the physician
249 assistant's employing or supervising physician, and no nurse duly registered or licensed under
250 the provisions of section 74, 74A or 76, providing medical treatment to a woman or infant due to
251 an emergency arising during the delivery or birth as a consequence of the care received by a
252 midwife licensed under chapter 112 shall be held liable for any civil damages as a result of such
253 medical care or treatment, other than gross negligence or willful or wanton misconduct, resulting
254 from the attempt to render such emergency care, nor shall he be liable to a hospital for its
255 expenses if, under such emergency conditions, he orders a person hospitalized or causes his
256 admission. No health care facility licensed under chapter 111, providing medical treatment to a
257 woman or infant due to an emergency arising during the delivery or birth as a consequence of the
258 care received by a midwife licensed under chapter 112, shall be held liable for any civil damages
259 as a result of such medical care or treatment resulting from the attempt to render such emergency
260 care.

261 Section 278. (a) Any person who practices midwifery in the commonwealth without a
262 license granted pursuant to sections 260 to 277, inclusive, shall be punished by a fine of not less
263 than \$100 nor more than \$ 1,000, or by imprisonment for not more than 3 months, or by both.
264 The committee may petition in any court of competent jurisdiction for an injunction against any
265 person practicing midwifery or any branch thereof without a license. Such injunction may be

266 issued without proof of damage sustained by any person. Such injunction shall not relieve such
267 person from criminal prosecution for practicing without a license.

268 (b) Nothing in this section shall be construed to prevent or restrict the practice, service or
269 activities of (1) any person licensed in the commonwealth from engaging in activities within the
270 scope of practice of the profession or occupation for which such person is licensed, provided that
271 such person does not represent to the public, directly or indirectly, that such person is licensed
272 under sections 260 to 277, inclusive, and that such person does not use any name, title or
273 designation indicating that such person is licensed under said sections 260 to 277, inclusive; (2)
274 any person employed as a midwife by the federal government or an agency thereof if that person
275 provides midwifery services solely under the direction and control of the organization by which
276 such person is employed.

277 SECTION 2. The committee shall adopt rules and regulations pursuant to section 264 of
278 chapter 112 within 180 days after the effective date of this act. Within 180 days after the board
279 adopts the rules and regulations pursuant to said section 264 of said chapter 112, the committee
280 may commence the issuing of licenses.

281 SECTION 3. Nothing in this act shall preclude any person who was practicing midwifery
282 before the effective date of this act from practicing midwifery in the commonwealth until the
283 committee establishes procedures for the licensure of midwives pursuant to sections 259 to 278,
284 inclusive, of chapter 112.

285 SECTION 4. The committee of midwifery, established pursuant to section 261 of chapter
286 112, shall establish regulations for the licensure of individuals practicing midwifery prior to the
287 date on which the committee commences issuing licenses, provided that the individuals shall

288 have 2 years from the date on which the committee commences issuing licenses to provide proof
289 of passage of a licensing examination recognized by the committee and proof of completion of
290 any continuing education requirements necessary for re-licensure.