

SENATE No. 1133

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. Moore

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>Richard T. Moore</i>	
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Sonia Chang-Diaz</i>	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>James B. Eldridge</i>	
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>
<i>Michael R. Knapik</i>	
<i>Michael F. Rush</i>	<i>Norfolk and Suffolk</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Bruce E. Tarr</i>	

SENATE No. 1133

By Mr. Moore, a petition (accompanied by bill, Senate, No. 1133) of Richard T. Moore, Robert M. Koczera, Jennifer E. Benson, Sonia Chang-Diaz and other members of the General Court for legislation relative to certified professional midwives. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 2341 OF 2009-2010.]

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, as appearing in the 2008
2 Official Edition, is hereby amended by adding the following new sections:-

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

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

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

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

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

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

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

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

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

Section 261. (a) The board of registration in medicine shall form a committee on midwifery. Committee members shall be appointed as follows: 8 members shall be appointed

31 by the governor, 5 of whom shall be midwives who possess a valid Certified Professional
32 Midwife credential from the North American Registry of Midwives; 1 of whom shall be a
33 licensed physician who is an obstetrician certified by the American Congress of Obstetrics and
34 Gynecology and who has been actively involved with the practice of midwifery for at least 2
35 years, 1 of whom shall be a certified nurse-midwife chosen from a list of nominees provided by
36 the Massachusetts Chapter of the American College of Nurse-Midwives who has worked in an
37 out of hospital setting, and 1 of whom shall be from the general public who shall not be engaged
38 in or have a financial interest in the delivery of health services; 1 member shall be appointed by
39 the board.

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

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

51 (d) The committee shall meet not less than 4 times per calendar year. At its
52 first meeting and annually thereafter, the committee shall elect from among its members a

chairperson, a vice-chairperson and a secretary who shall each serve for 1 year and until a successor is appointed and qualified. Committee members shall serve without compensation but shall be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

Section 262. The committee shall make and publish such rules and regulations as it may deem necessary for the proper conduct of its duties. The commissioner may review and approve rules and regulations proposed by the committee. Such rules and regulations shall be deemed approved unless disapproved within 15 days of submission to the commissioner; provided, however, that any such disapproval shall be in writing setting forth the reasons for such disapproval.

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

Section 264. The committee shall:

- (1) examine applicants and issue licenses to those applicants it finds qualified;
- (2) adopt regulations establishing licensing and licensing renewal requirements;

- 75 (3) issue permits to apprentice midwives;
- 76 (4) investigate complaints against persons licensed under this chapter;
- 77 (5) hold hearings and order the disciplinary sanction of a person who violates
78 this chapter or a regulation of the committee;
- 79 (6) approve education and apprentice training that meet the requirements of
80 this chapter and of the committee and deny, revoke, or suspend approval of such programs for
81 failure to meet the requirements;
- 82 (7) adopt standards for approved midwifery education and training;
- 83 (8) adopt professional continuing education requirements for licensed
84 midwives;
- 85 (9) develop practice standards for licensed midwives that shall include, but
86 not be limited to:
- 87 i. adoption of ethical standards for licensed midwives and apprentice
88 midwives;
- 89 ii. maintenance of records of care, including client charts;
- 90 iii. participation in peer review; and
- 91 iv. development of standardized informed consent, reporting and
92 written emergency transport plan forms.

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

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

(b) The examination may consist of 2 parts:

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

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

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

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

- (1) be at least 21 years of age;
- (2) be of good moral character;
- (3) be a graduate of a high school or its equivalent;
- (4) possess a valid Certified Professional Midwife credential from the North American Registry of Midwives.

(5) Notwithstanding the provisions of section 172 of chapter 6, the committee shall obtain all available criminal offender record information from the criminal history systems board on an applicant by means of fingerprint checks, and from the Federal Bureau of Investigation for a national criminal history records check. The information obtained thereby may be used by the committee to determine the applicant's eligibility for licensing under this chapter. Receipt of criminal history record information by a private entity is prohibited. If the committee determines that such information has a direct bearing on the applicant's ability to serve as a midwife, such information may serve as a basis for the denial of the application;

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

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

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

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

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

(1) is at least 18 years of age;

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

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

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

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

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

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

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

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

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

178 (1) fraudulently procured licensure as a midwife;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

226 (1) consultation with other health care providers;

227 (2) emergency transfer; and

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

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

233 (b) A midwife shall provide an initial and ongoing screening to ensure that each
234 client receives safe and appropriate care. As part of the initial screening to determine whether

235 any contraindications are present, the midwife shall take a detailed health history as defined by
236 the committee.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 8. The committee of midwifery, established pursuant to section 261 of chapter 112, shall establish regulations for the licensure of individuals practicing midwifery prior to the date on which the committee commences issuing licenses, provided that the

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