

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.

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

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

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

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

18 “Midwifery” the practice of providing the necessary supervision, care and
19 advice to a client during normal pregnancy, labor, and the postpartum periods and conducting
20 deliveries on the midwife’s own responsibility consistent with the provisions of sections 260 to
21 277; including preventative measures, the identification of physical, social and emotional needs
22 of the client.

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

29 Section 261. (a) The board of registration in medicine shall form a committee
30 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

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

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

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

70 Section 264. The committee shall:

71 (1) examine applicants and issue licenses to those applicants it finds
72 qualified;

73 (2) adopt regulations establishing licensing and licensing renewal
74 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.

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

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

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

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

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

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

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

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

116 (2) be of good moral character;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

168 Section 270. The committee may enter into agreements with medical or
169 midwifery examination boards of other states and territories of the United States, the District of
170 Columbia, and Puerto Rico, having qualifications and standards at least as high as those of the
171 commonwealth, providing for reciprocal licensing in this state, without further examination, of
172 persons who hold a valid license granted by written examination in the other state or territory,
173 who have been licensed to practice for at least 5 years, and who apply and remit fees as provided
174 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;

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

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

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

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

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

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

212 (3) the nature and scope of the care to be given, including a description of the
213 ante partum, intrapartum , and postpartum conditions requiring consultation, transfer of care, or
214 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.

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

260 Section 277. No physician duly registered under the provisions of sections 2,
261 2A, 9, 9A or 9B, no physician assistant duly registered under the provisions of section 9I or the
262 physician assistant's employing or supervising physician, and no nurse duly registered or
263 licensed under the provisions of section 74, 74A or 76, providing medical treatment to a woman
264 or infant due to an emergency arising during the delivery or birth as a consequence of the care
265 received by a midwife licensed under chapter 112 shall be held liable for any civil damages as a
266 result of such medical care or treatment, other than gross negligence or willful or wanton
267 misconduct, resulting from the attempt to render such emergency care, nor shall he be liable to a
268 hospital for its expenses if, under such emergency conditions, he orders a person hospitalized or
269 causes his admission. No health care facility licensed under chapter 111, providing medical
270 treatment to a woman or infant due to an emergency arising during the delivery or birth as a
271 consequence of the care received by a midwife licensed under chapter 112, shall be held liable
272 for any civil damages as a result of such medical care or treatment resulting from the attempt to
273 render such emergency care.

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

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

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

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

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

298 SECTION 8. The committee of midwifery, established pursuant to section 261
299 of chapter 112, shall establish regulations for the licensure of individuals practicing midwifery
300 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.