

HOUSE No. 1189

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 out-of-hospital birth access and safety.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Bradford R. Hill</i>	<i>4th Essex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Dylan Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Michael J. Moran</i>	<i>18th Suffolk</i>
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>

<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Bud Williams</i>	<i>11th Hampden</i>

HOUSE No. 1189

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 1189) of Kay Khan and others for legislation to establish a board of registration of midwifery and regulating out-of-hospital birth access and safety. Public Health.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to out-of-hospital birth access and safety.

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 19 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 Midwifery, established under section 261.

6 “Certified Professional Midwife”, a professional independent practitioner who has
7 obtained certification by the NARM.

8 “Certified nurse-midwife”, a nurse with advanced training and who has obtained
9 certification by the American Midwifery Certification Board.

10 “Client”, a person under the care of a midwife and such person’s fetus or newborn.

11 “Department”, the Department of Public Health.

12 “Licensed midwife”, a person licensed under sections 260 to 277 to practice Midwifery.

13 “MBC”, the Midwifery Bridge Certificate issued by the NARM, or its successor
14 credential.

15 “MEAC”, the Midwifery Education Accreditation Council or its successor organization.

16 “Midwifery”, the practice of providing primary maternity care to a client and newborn
17 during the preconception, antepartum, intrapartum and postpartum periods.

18 “NARM”, the North American Registry of Midwives or its successor organization.

19 Section 260. Nothing in sections 259 through 277 inclusive, shall limit or regulate the
20 practice of a licensed physician, certified nurse-midwife, or licensed basic or advanced
21 emergency medical technician. In addition, sections 259 through 277 inclusive shall not apply to
22 any person who, in good faith, engages in the practice of the religious tenets of any church or in
23 any religious act if no fee is contemplated, charged or received, or to any person rendering aid in
24 an emergency. The practice of Midwifery shall not constitute the practice of medicine, certified
25 nurse-midwifery, or emergency medical care to the extent that a midwife advises, attends, or
26 assists a person during pregnancy, labor, natural childbirth, or the postpartum period.

27 Section 261.

28 (a) The Department shall form the Board. Board members shall be appointed as follows:
29 8 members shall be appointed by the governor, 5 of whom shall be midwives who possess a valid
30 Certified Professional Midwife credential from the NARM with at least 5 years of experience in
31 the practice of Midwifery and who shall be licensed under sections 260 to 277 of chapter 112; 1

32 of whom shall be a licensed physician who is an obstetrician certified by the American Congress
33 of Obstetrics and Gynecology and who has had professional experience working with Certified
34 Professional Midwives; 1 of whom shall be a certified nurse-midwife who has worked in an out-
35 of-hospital setting, and 1 of whom shall be from the general public who has been a consumer of
36 Certified Professional Midwifery services. When making such appointments the governor shall
37 consider the joint recommendations of organizations representing Certified Professional
38 Midwives and consumers of Certified Professional Midwifery in the commonwealth. Board
39 members shall be residents of the commonwealth.

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

46 (c) Any member of the Board may be removed by the governor for neglect of duty,
47 misconduct or malfeasance or misfeasance in office after being given a written statement of the
48 charges against him and sufficient opportunity to be heard thereon. Upon the death or removal
49 for cause of a member of the Board, the governor shall fill the vacancy from a list of nominees
50 provided by the Bay State Birth Coalition or its successor organization for the remainder of that
51 member's term.

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

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

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

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

70 Section 264. The Board shall:

71 (1) establish regulations that:

72 (A) are consistent with the current job description for Midwifery published by the
73 NARM;

74 (B) create processes for licensure application and renewal and for the granting of
75 temporary permits to practice Midwifery pending qualification for licensure;

76 (C) permit a licensee to obtain for clients appropriate screening and testing, including but
77 not limited to laboratory tests and ultrasounds;

78 (D) permit a licensee to obtain and administer during the practice of Midwifery,
79 antihemorrhagic agents including but not limited to Pitocin (oxytocin), misoprostol and
80 methergine, intravenous fluids for stabilization, vitamin K, eye prophylaxis, oxygen, antibiotics
81 for Group B Streptococcal antibiotic prophylaxis, Rho (D) immune globulin, local anesthetic,
82 epinephrine and other drugs and procedures consistent with the scope of Midwifery practice;

83 (E) do not require a licensee to have a nursing degree;

84 (F) do not require a Licensed Midwife to practice under the supervision of or in
85 collaboration with another healthcare provider or to enter into an agreement, written or
86 otherwise, with another healthcare provider;

87 (G) do not limit the location where a licensee may practice Midwifery;

88 (H) do not allow a Licensed Midwife to use forceps or a vacuum extractor;

89 (I) do not allow a Licensed Midwife to obtain or administer narcotics; and

90 (J) require a Licensed Midwife to report a client's data to the MANA Statistical Registry
91 maintained by the Midwives Alliance of North America, or a similar registry maintained by a
92 successor organization approved by the Board, unless the client refuses to consent to the
93 reporting of his or her data.

- 94 (2) examine applicants and issue licenses to those applicants it finds qualified;
- 95 (3) renew, suspend, revoke and reinstate licenses;
- 96 (4) investigate complaints against persons licensed under this chapter;
- 97 (5) hold hearings and order the disciplinary sanction of a person who violates this chapter
98 or a regulation of the Board;
- 99 (6) adopt professional continuing education requirements for Licensed Midwives seeking
100 renewal consistent with those maintained by the NARM; and
- 101 (7) develop practice standards for Licensed Midwives that shall include, but not be
102 limited to:
- 103 i. adoption of ethical standards for Licensed Midwives and apprentice midwives;
- 104 ii. maintenance of records of care, including client charts;
- 105 iii. participation in peer review; and
- 106 iv. development of standardized informed consent, reporting and written emergency
107 transport plan forms.

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

114 Section 266.

115 (a) The Board may adopt an exam for applicants for licensure to measure the
116 qualifications necessary for licensure, provided, however, that the Board may accept the exam
117 administered by the NARM in connection with the granting of the Certified Professional
118 Midwife credential in place of and as an equivalent to its own professional examination. In such
119 case, before registration in pursuance of this section, the applicant therefor shall pay the fees set
120 forth in Section 265. In the event the Board determines to adopt a separate examination for
121 applicants, the Board shall conduct at least one but not more than two examinations in each
122 calendar year.

123 (b) The Board may adopt an exam for applicants to measure the qualifications necessary
124 in order to safely utilize the pharmaceutical agents provided for in section 275, and in such case,
125 shall conduct at least one but not more than two examinations in each calendar year.

126 (c) An applicant who has failed an examination administered by the Board shall not
127 retake the examination for a period of 6 months. An applicant who has failed an examination
128 more than 1 time may not retake the examination unless the applicant has participated in or
129 successfully completed further education and training programs as prescribed by the Board.

130 Section 267.

131 (a) To be eligible for registration and licensure by the Board as a midwife, an applicant
132 shall:

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

134 (2) be of good moral character;

- 135 (3) be a graduate of a high school or its equivalent;
- 136 (4) possess a valid Certified Professional Midwife credential from the NARM; and
- 137 (A) beginning January 1, 2020, obtain certification by completing a program or pathway
138 accredited by the MEAC;
- 139 (B) if certification was obtained prior to January 1, 2020, from an education program or
140 pathway not accredited by the MEAC, obtain the MBC; or
- 141 (C) if licensure has been maintained in a state that does not require an education or
142 pathway accredited by the MEAC, obtain the MBC regardless of the date of certification.

143 Section 268. Notwithstanding the provisions of section 172 of chapter 6, the Board shall
144 obtain all available criminal offender record information from the criminal history systems board
145 on an applicant by means of fingerprint checks, and from the Federal Bureau of Investigation for
146 a national criminal history records check. The information obtained thereby may be used by the
147 Board to determine the applicant's eligibility for licensing under this chapter. Receipt of criminal
148 history record information by a private entity is prohibited. If the Board determines that such
149 information has a direct bearing on the applicant's ability to serve as a midwife, such information
150 may serve as a basis for the denial of the application.

151 Section 269. Fees collected by the Board shall be deposited into the Quality in Health
152 Professions Trust Fund pursuant to section 35X of chapter 10 to support Board operations and
153 administration and to reimburse Board members for actual and necessary expenses incurred in
154 the performance of their official duties.

155 Section 270. The Board may license in like manner, without examination, any Certified
156 Professional Midwife who has been licensed in another state under laws which, in the opinion of
157 the Board, require qualifications and maintain standards substantially the same as those of this
158 commonwealth for Certified Professional Midwives, provided such Certified Professional
159 Midwife applies and remits fees as provided for in section 265.

160 Section 271.

161 (a) The Board may, after a hearing pursuant to chapter 30A, revoke, suspend, or cancel
162 the license of a midwife, or reprimand or censure a Licensed Midwife, for any of the reasons set
163 forth in M.G.L. c. 112, §§ 61.

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

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

175 (1) the name, business address, telephone number, and license number of the Licensed
176 Midwife;

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

178 (3) the nature and scope of the care to be given, including a description of any
179 antepartum, intrapartum, and/or postpartum conditions for which consultation, transfer of care,
180 or transport to a hospital is recommended or required;

181 (4) a copy of the medical emergency or transfer plan particular to each client as required
182 by Section 273; the right of the client to file a complaint with the Board and instructions on how
183 to file a complaint with the Board;

184 (5) a statement indicating that the client's records and any transaction with the Licensed
185 Midwife are confidential;

186 (6) a disclosure of whether the Licensed Midwife carries malpractice or liability
187 insurance; and

188 (7) any further information as required by the Board.

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

191 (1) consultation with other health care providers;

192 (2) emergency transfer; and

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

194 Section 274. The midwife shall only accept and provide care to clients in accordance
195 with the scope and standards of practice identified in the rules adopted pursuant to section 264.

196 Section 275. A midwife (i) qualified by examination under the provisions of section
197 266(b), if the Board elects to adopt such examination, or (ii) who has appropriate pharmacology
198 training as otherwise established by rule by the Board pursuant to section 264, may obtain and
199 administer prophylactic ophthalmic medication, anti-hemorrhagic medications including but not
200 limited to Pitocin (oxytocin), misoprostol and methergine, vitamin K, eye prophylaxis,
201 antibiotics for Group B Streptococcal antibiotic prophylaxis, Rho (D) immune globulin,
202 intravenous fluids, oxygen for maternal or fetal distress and infant resuscitation, epinephrine and
203 local anesthetic and may administer such other drugs or medications as prescribed by a physician
204 or certified nurse-midwife or otherwise consistent with the scope of Midwifery practice. A
205 pharmacist who dispenses such drugs to a Licensed Midwife shall not be liable for any adverse
206 reactions caused by any method of use by the midwife.

207 Section 276. When a birth occurs with a Licensed Midwife in attendance, the midwife
208 shall prepare and file a birth certificate as required by chapter 46. Section 3B of chapter 46 shall
209 be amended to add “and Licensed Midwife” after “Every physician”.

210 Section 277. A health care provider that consults with or accepts a transport, transfer or
211 referral from a Licensed Midwife, and/or that provides care to a client of a Licensed Midwife or
212 such client’s newborn, shall not be liable in a civil action for personal injury or death resulting
213 from an act or omission by the Licensed Midwife, unless the professional negligence or
214 malpractice of the health care provider was a proximate cause of the injury or death.

215 Section 278.

216 (a) Other than as set forth in the second sentence of section 260, any person who
217 practices Midwifery in the commonwealth without a license granted pursuant to sections 260 to

218 277, inclusive, shall be punished by a fine of not less than \$100 nor more than \$ 1,000, or by
219 imprisonment for not more than 3 months, or by both. The Board may petition in any court of
220 competent jurisdiction for an injunction against any person practicing Midwifery or any branch
221 thereof without a license. Such injunction may be issued without proof of damage sustained by
222 any person. Such injunction shall not relieve such person from criminal prosecution for
223 practicing without a license.

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

233 SECTION 2. The Board shall adopt rules and regulations pursuant to section 264 of
234 chapter 112 within 365 days after the effective date of this act. Within 180 days after the Board
235 adopts the rules and regulations pursuant to said section 264 of said chapter 112, the Board may
236 commence the issuing of licenses.

237 SECTION 3. Nothing in this act shall preclude any person who was practicing Midwifery
238 before the effective date of this act from practicing Midwifery in the commonwealth until the

239 Board establishes procedures for the licensure of midwives pursuant to sections 259 to 278,
240 inclusive, of chapter 112.

241 SECTION 4. The Board, established pursuant to section 261 of chapter 112, shall
242 establish regulations for the licensure of individuals practicing Midwifery prior to the date on
243 which the Board commences issuing licenses, provided that individuals practicing out-of-
244 hospital Midwifery in the commonwealth as of the date on which the Board commences issuing
245 licenses shall have 2 years from the date on which the Board commences issuing licenses to
246 provide proof of passage of a licensing examination recognized by the Board and proof of
247 completion of any continuing education requirements necessary for re-licensure.