

SENATE No. 2863

The Commonwealth of Massachusetts

—
In the One Hundred and Ninety-First General Court
(2019-2020)
—

SENATE, July 30, 2020.

The committee on Senate Ways and Means to whom was referred the Senate Bill relative to out-of-hospital birth access and safety (Senate, No. 1332), - reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2863).

For the committee,
Michael J. Rodrigues

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**In the One Hundred and Ninety-First General Court
(2019-2020)**

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. Section 9 of chapter 13 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by inserting after the word “counselors”, in line 7, the
3 following words:- , the board of registration in midwifery .

4 SECTION 2. Said chapter 13 is hereby further amended by adding the following section:-

5 Section 110. (a) There shall be within the department of public health a board of
6 registration in midwifery. The board shall consist of 8 members to be appointed by the governor,
7 5 of whom shall be midwives with not less than 5 years of experience in the practice of
8 midwifery and who shall be licensed under sections 290 to 301, inclusive, of chapter 112, 1 of
9 whom shall be a physician licensed to practice medicine under section 2 of said chapter 112 with
10 experience working with midwives, 1 of whom shall be a certified nurse-midwife licensed to
11 practice midwifery under section 80B of said chapter 112 and 1 of whom shall be a member of
12 the public. Two of the members of the board of registration in midwifery shall have experience
13 working on the issue of racial disparities in maternal health or be a member of a population that

14 is underrepresented in the midwifery profession. When making the appointments, the governor
15 shall consider the recommendations of organizations representing certified professional
16 midwives in the commonwealth. The appointed members shall serve for terms of 3 years. Upon
17 the expiration of a term of office, a member shall continue to serve until a successor has been
18 appointed and qualified. A member shall not serve for more than 2 consecutive terms; provided,
19 however, that a person who is chosen to fill a vacancy in an unexpired term of a prior board
20 member may serve for 2 consecutive terms in addition to the remainder of that unexpired term. A
21 member may be removed by the governor for neglect of duty, misconduct, malfeasance or
22 misfeasance in the office after a written notice of the charges against the member and sufficient
23 opportunity to be heard thereon. Upon the death or removal for cause of a member of the board,
24 the governor shall fill the vacancy for the remainder of that member's term after considering
25 suggestions from a list of nominees provided by organizations representing certified professional
26 midwives in the commonwealth. Members of the board shall be residents of the commonwealth.

27 (b) Annually, the board shall elect from its membership a chair and a secretary who shall
28 serve until their successors have been elected and qualified. The board shall meet not less than 4
29 times annually and may hold additional meetings at the call of the chair or upon the request of
30 not less than 4 members. A quorum for the conduct of official business shall be a majority of
31 those appointed. Board members shall serve without compensation but shall be reimbursed for
32 actual and reasonable expenses incurred in the performance of their duties. The members shall be
33 public employees for the purposes of chapter 258 for all acts or omissions within the scope of
34 their duties as board members.

35 SECTION 3. Section 3B of Chapter 46 of the General Laws, as appearing in the 2018
36 Official Edition, is hereby amended by inserting after the word “physician”, in line 1, the
37 following words:- or licensed midwife.

38 SECTION 4. Chapter 112 of the General Laws is hereby amended by adding the
39 following 12 sections:-

40 Section 290. As used in sections 290 to 301, inclusive, the following words shall, have
41 the following meanings unless the context requires otherwise:

42 “Board”, the board of registration in midwifery, established under section 110 of chapter
43 13.

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

46 “Client”, a person under the care of a licensed midwife and such person’s fetus or
47 newborn, as codified by a written statement, pursuant to section 299.

48 “Licensed midwife”, a person registered by the board to practice midwifery in the
49 commonwealth under sections 290 to 301, inclusive.

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

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

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

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

56 Section 291. Nothing in sections 290 to 301 inclusive, shall limit or regulate the practice
57 of a licensed physician, certified nurse-midwife or licensed basic or advanced emergency
58 medical technician. The practice of midwifery shall not constitute the practice of medicine,
59 certified nurse-midwifery or emergency medical care to the extent that a licensed midwife
60 advises, attends or assists a person during pregnancy, labor, natural childbirth or the postpartum
61 period.

62 Section 292. (a) The board shall:

63 (i) adopt rules and promulgate regulations governing licensed midwives and the practice
64 of midwifery to promote public health, welfare and safety;

65 (ii) administer the licensing process, including, but not limited to:

66 (A) receiving, reviewing, approving, rejecting and issuing applications for licensure;

67 (B) renewing, suspending, revoking and reinstating licenses;

68 (C) investigating complaints against persons licensed under sections 290 to 301 inclusive;

69 (D) holding hearings and ordering the disciplinary sanction of a person who violates
70 sections 290 to 301, inclusive, or a regulation of the board;

71 (iii) establish administrative procedures for processing applications and renewals;

72 (iv) adopt and provide a uniform, proctored examination for applicants to measure the
73 qualifications necessary for licensure; provided, however, that the board may accept the exam

74 administered by the NARM in connection with granting a certified professional midwife
75 credential in place of and as an equivalent to its own professional examination;

76 (v) develop practice standards for licensed midwives that shall include, but not be limited
77 to:

78 (A) adoption of ethical standards for licensed midwives and apprentice midwives;

79 (B) maintenance of records of care, including client charts;

80 (C) participation in peer review; and

81 (D) development of standardized informed consent, reporting and written emergency
82 transport plan forms;

83 (vi) establish and maintain records of its actions and proceedings in accordance with
84 public records laws;

85 (vii) require a licensed midwife to report a client's data to the Midwives Alliance of
86 North America Statistical Registry or a similar registry maintained by a successor organization
87 as approved by the board, provided however, the client shall give consent to the reporting of their
88 data prior to any such data being reported unless the client refuses to consent to the reporting of
89 their data; and

90 (viii) adopt professional continuing education requirements for licensed midwives
91 seeking renewal consistent with those maintained by the NARM.

92 (b) Nothing in this section shall limit the board's authority to impose sanctions that are
93 considered reasonable and appropriate by the board. A person subject to any disciplinary action

94 taken by the board under this section or taken due to a violation of any other law, rule or
95 regulation may file a petition for judicial review pursuant to section 64.

96 (c) A licensed midwife shall only accept and provide care to clients in accordance with
97 the scope and standards of practice identified in the rules adopted pursuant to this section.

98 Section 293. A person who desires to be licensed and registered as a licensed midwife
99 shall apply to the board in writing on an application form prescribed and furnished by the board.
100 The applicant shall include in the application statements under oath satisfactory to the board
101 showing that the applicant possesses the qualifications described under section 294 prior to the
102 examination required by section 292 . The secretary of administration and finance, pursuant to
103 section 3B of chapter 7, shall establish a license application fee, a license renewal fee and any
104 other fee applicable under sections 290-301, inclusive. The board, in consultation with the
105 secretary of administration and finance, shall institute a process for applicants to apply for a
106 financial hardship waiver, which may reduce or fully exempt an applicant from paying the fee
107 pursuant to this section. Fees collected by the board shall be deposited into the Quality in Health
108 Professions Trust Fund pursuant to section 35X of chapter 10 to support board operations and
109 administration and to reimburse board members for actual and necessary expenses incurred in
110 the performance of their official duties.

111 Section 294. (a) To be eligible for registration and licensure by the board as a licensed
112 midwife, an applicant shall: (i) be of good moral character; (ii) be a graduate of a high school or
113 its equivalent; and (iii) possess a valid certified professional midwife credential from the NARM.

114 (b) Beginning January 1, 2020, an applicant must obtain certification by completing a
115 program or pathway accredited by the MEAC; provided, however, that if certification was

116 obtained prior to January 1, 2020 from an education program or pathway not accredited by the
117 MEAC, an applicant must obtain the MBC; provided further, that if the applicant holds a license
118 in a state that does not require an education or pathway accredited by the MEAC, the applicant
119 must obtain the MBC regardless of the date of certification.

120 Section 295. Notwithstanding section 172 of chapter 6, the board shall obtain all
121 available criminal offender record information from the criminal history systems board on an
122 applicant by means of fingerprint checks, and from the Federal Bureau of Investigation for a
123 national criminal history records check. The information obtained thereby may be used by the
124 board to determine the applicant's eligibility for licensure under this chapter. If the board
125 determines that such information has a direct bearing on the applicant's ability to serve as a
126 licensed midwife, such information may serve as a basis for the denial of the application;
127 provided, however, that the board shall not share criminal history records or information with a
128 private entity.

129 Section 296. The board may license in a like manner, without examination, any certified
130 professional midwife who has been licensed in another state under laws which, in the opinion of
131 the board, require qualifications and maintain standards substantially the same as those of this
132 commonwealth for licensed midwives, provided, however, that such certified professional
133 midwife applies and remits fees as provided for in section 293.

134 Section 297. (a) The board may, after a hearing pursuant to chapter 30A, revoke, suspend
135 or cancel the license of a licensed midwife, or reprimand or censure a licensed midwife, for any
136 of the reasons set forth in section 61.

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

142 Section 298. When accepting a client for care, a licensed midwife shall obtain the client's
143 informed consent, which shall be evidenced by a written statement in a form prescribed by the
144 board and signed by both the licensed midwife and the client.

145 The form shall certify that full disclosure has been made and acknowledged by the client
146 as to each of the following items, with the client's acknowledgement evidenced by a separate
147 signature adjacent to each item in addition to the client's signature and the date at the end of the
148 form: (i) the name, business address, telephone number and license number of the licensed
149 midwife; (ii) a description of the licensed midwife's education, training and experience in
150 midwifery; (iii) the nature and scope of the care to be given, including a description of any
151 antepartum, intrapartum or postpartum conditions for which consultation, transfer of care or
152 transport to a hospital is recommended or required; (iv) a copy of the medical emergency or
153 transfer plan particular to each client; (v) the right of the client to file a complaint with the board
154 and instructions on how to file a complaint with the board; (vi) a statement indicating that the
155 client's records and any transaction with the licensed midwife are confidential; (vii) a disclosure
156 of whether the licensed midwife carries malpractice or liability insurance; and (viii) any further
157 information as required by the board.

158 Section 299. A licensed midwife shall prepare, in a form prescribed by the board, a
159 written plan for the appropriate delivery of emergency care. The plan shall include, but not be
160 limited to: (i) consultation with other health care providers; (ii) emergency transfer; and (iii)
161 access to neonatal intensive care units and obstetrical units or other patient care areas.

162 Section 300. A health care provider that consults with or accepts a transport, transfer or
163 referral from a licensed midwife, or that provides care to a client of a licensed midwife or such
164 client's newborn, shall not be liable in a civil action for personal injury or death resulting from
165 an act or omission by the licensed midwife, unless the professional negligence or malpractice of
166 the health care provider was a proximate cause of the injury or death.

167 Section 301. (a) A person who practices as a licensed midwife in the commonwealth
168 without a license granted pursuant to sections 290 to 301, inclusive, shall be punished by a fine
169 of not less than \$100 and not more than \$1,000, or by imprisonment for not more than 3 months
170 or both. The board may petition any court of competent jurisdiction for an injunction against any
171 person practicing midwifery or any branch thereof without a license. Such injunction may be
172 issued without proof of damage sustained by any person. Such injunction shall not relieve such
173 person from criminal prosecution for practicing without a license.

174 (b) Nothing in this section shall prevent or restrict the practice, service or activities of:

175 (i) a person licensed in the commonwealth from engaging in activities within the scope of
176 practice of the profession or occupation for which such person is licensed; provided, however,
177 that such person does not represent to the public, directly or indirectly, that such person is
178 licensed under sections 290 to 301, inclusive, and that such person does not use any name, title
179 or designation indicating that such person is licensed under said sections 290 to 301, inclusive; or

180 (ii) a person employed as a midwife by the federal government or an agency thereof if
181 that person provides midwifery services solely under the direction and control of the
182 organization by which such person is employed.

183 SECTION 5. The board shall adopt rules and promulgate regulations pursuant to this act
184 within 1 year from the effective date of this act.

185 SECTION 6. Nothing in this act shall preclude a person who was practicing midwifery
186 before the effective date of this act from practicing midwifery in the commonwealth until the
187 board establishes procedures for the licensure of midwives pursuant to this act.

188 SECTION 7. The board established pursuant to section 110 of chapter 13 of the General
189 Laws shall promulgate regulations for the licensure of individuals practicing midwifery prior to
190 the date on which the board commences issuing licenses, provided, however, that individuals
191 practicing out-of-hospital midwifery in the commonwealth as of the date on which the board
192 commences issuing licenses shall have 2 years from that date to complete the requirements
193 necessary for re-licensure.