

HOUSE No. 1948

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>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>John Barrett, III</i>	<i>1st Berkshire</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Donald R. Berthiaume, Jr.</i>	<i>5th Worcester</i>
<i>David Biele</i>	<i>4th Suffolk</i>
<i>Natalie M. Blais</i>	<i>1st Franklin</i>
<i>Daniel Cahill</i>	<i>10th Essex</i>
<i>Daniel R. Carey</i>	<i>2nd Hampshire</i>
<i>Tackey Chan</i>	<i>2nd Norfolk</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Daniel R. Cullinane</i>	<i>12th Suffolk</i>
<i>Angelo L. D'Emilia</i>	<i>8th Plymouth</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>

<i>Mindy Domb</i>	<i>3rd Hampshire</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Kenneth I. Gordon</i>	<i>21st Middlesex</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>
<i>Stephan Hay</i>	<i>3rd Worcester</i>
<i>Jonathan Hecht</i>	<i>29th Middlesex</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>
<i>Bradford Hill</i>	<i>4th Essex</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>

<i>Christina A. Minicucci</i>	<i>14th Essex</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>
<i>Lenny Mirra</i>	<i>2nd Essex</i>
<i>Michael J. Moran</i>	<i>18th Suffolk</i>
<i>Mathew J. Muratore</i>	<i>1st Plymouth</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>
<i>Tram T. Nguyen</i>	<i>18th Essex</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>
<i>Smitty Pignatelli</i>	<i>4th Berkshire</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>
<i>Maria Duaiame Robinson</i>	<i>6th Middlesex</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Michael J. Soter</i>	<i>8th Worcester</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>
<i>William M. Straus</i>	<i>10th Bristol</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>
<i>Paul F. Tucker</i>	<i>7th Essex</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>
<i>Andres X. Vargas</i>	<i>3rd Essex</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>

HOUSE No. 1948

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 1948) of Kay Khan and others for legislation to establish a board of registration in midwifery and further regulating out-of-hospital birth access and safety. Public Health.

The Commonwealth of Massachusetts

**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 2016
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. Chapter 13 of the General Laws, as so appearing, is hereby amended by
5 adding the following section:-

6 Section 110.

7 (a) There shall be within the department a board of registration in midwifery which shall
8 consist of 8 persons appointed by the governor, 5 of whom shall be midwives with at least 5
9 years of experience in the practice of midwifery and who shall be licensed under sections 275 to
10 292 of chapter 112, 1 of whom shall be a physician licensed to practice medicine under section 2
11 of said chapter 112 with experience working with midwives, 1 of whom shall be a certified
12 nurse-midwife licensed to practice midwifery under section 80B of said chapter 112 and 1 of

13 whom shall be a member of the public. For the initial appointment, the 5 members required to be
14 midwives shall be persons with at least 5 years of experience in the practice of midwifery who
15 meet the eligibility requirements set forth in subsection (a) of section 282 of chapter 112. Two of
16 the members of the board of registration in midwifery shall have experience working on racial
17 disparities in maternal health or be a member of a population underrepresented in the midwifery
18 profession. When making such appointments, the governor shall consider the recommendations
19 of organizations representing certified professional midwives in the commonwealth. Board
20 members shall be residents of the commonwealth. The appointed members shall serve for terms
21 of 3 years. A member shall not serve for more than 2 consecutive terms; provided, however, that
22 a person who is chosen to fill a vacancy in an unexpired term of a prior board member may serve
23 for 2 consecutive terms in addition to the remainder of that unexpired term. A member may be
24 removed by the governor for neglect of duty, misconduct or malfeasance or misfeasance in the
25 office after a written notice of the charges against the member and sufficient opportunity to be
26 heard thereon. Upon the death or removal for cause of a member of the board, the governor shall
27 fill the vacancy for the remainder of that member's term after considering suggestions from a list
28 of nominees provided by organizations representing certified professional midwives in the
29 commonwealth.

30 (b) The board shall annually elect from its membership a chair and a secretary who shall
31 serve until their successors have been elected and qualified. The board shall meet at least 4 times
32 annually and may hold additional meetings at the call of the chair or upon the request of 4
33 members. A quorum for the conduct of official business shall be a majority of those appointed.
34 Board members shall serve without compensation, but shall be reimbursed for actual and
35 reasonable expenses incurred in the performance of their duties. The members shall be public

36 employees for the purposes of chapter 258 for all acts or omissions within the scope of their
37 duties as board members.

38 SECTION 3. Section 3B of Chapter 46 of the General Laws, as so appearing, is hereby
39 amended by inserting in line 1 after the word “physician” the following: - “or licensed midwife”.

40 SECTION 4. Chapter 112 of the General Laws, as so appearing, is hereby amended by
41 adding the following 18 sections:—

42 Section 275. As used in sections 275 to 292, inclusive, of this chapter, the following
43 words shall, unless the context requires otherwise, have the following meanings:

44 “Board”, the Board of Registration in Midwifery, established under section 110 of
45 chapter 13.

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

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

49 “Department”, the Department of Public Health.

50 “Licensed midwife”, a person registered by the board to practice midwifery under
51 sections 275 to 292, inclusive.

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

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

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

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

58 Section 276. Nothing in sections 275 through 292 inclusive, shall limit or regulate the
59 practice of a licensed physician, certified nurse-midwife, or licensed basic or advanced
60 emergency medical technician. In addition, sections 275 through 292 inclusive shall not apply to
61 any person who, in good faith, engages in the practice of the religious tenets of any church or in
62 any religious act if no fee is contemplated, charged or received, or to any person rendering aid in
63 an emergency. The practice of midwifery shall not constitute the practice of medicine, certified
64 nurse-midwifery, or emergency medical care to the extent that a midwife advises, attends, or
65 assists a person during pregnancy, labor, natural childbirth, or the postpartum period.

66 Section 277. The board shall make, amend and rescind such rules and regulations as it
67 may deem necessary for the proper conduct of its duties. The commissioner may review and
68 approve rules and regulations proposed by the board. Such rules and regulations shall be deemed
69 approved unless disapproved within 15 days of submission to the commissioner; provided,
70 however, that any such disapproval shall be in writing setting forth the reasons for such
71 disapproval.

72 Section 278. The board shall keep a full record of its proceedings and keep a register of
73 all persons registered and licensed by it, which shall be available for public inspection. The
74 register shall contain the name of every living registrant, the registrant’s last known business
75 address and the date and number of the registrant’s registration and certificate as a licensed
76 midwife. The board shall make an annual report containing a full and complete account of all its

77 official acts during the preceding year, including a statement of the condition of midwifery in the
78 commonwealth.

79 Section 279279. The board shall:

80 (1) establish regulations that:

81 (A) are consistent with the current job description for midwifery published by the
82 NARM;

83 (B) create processes for licensure application and renewal and for the granting of
84 temporary permits to practice midwifery pending qualification for licensure;

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

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

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

93 (F) do not require a licensed midwife to practice under the supervision of or in
94 collaboration with another healthcare provider or to enter into an agreement, written or
95 otherwise, with another healthcare provider;

96 (G) do not limit the location where a licensee may practice midwifery;

- 97 (H) do not allow a licensed midwife to use forceps or a vacuum extractor;
- 98 (I) do not allow a licensed midwife to obtain or administer narcotics; and
- 99 (J) require a licensed midwife to report a client's data to the MANA Statistical Registry
100 maintained by the Midwives Alliance of North America, or a similar registry maintained by a
101 successor organization approved by the board, unless the client refuses to consent to the
102 reporting of their data.
- 103 (2) examine applicants and issue licenses to those applicants it finds qualified;
- 104 (3) renew, suspend, revoke and reinstate licenses;
- 105 (4) investigate complaints against persons licensed under this chapter;
- 106 (5) hold hearings and order the disciplinary sanction of a person who violates this chapter
107 or a regulation of the board;
- 108 (6) adopt professional continuing education requirements for licensed midwives seeking
109 renewal consistent with those maintained by the NARM; and
- 110 (7) develop practice standards for licensed midwives that shall include, but not be limited
111 to:
- 112 (A) adoption of ethical standards for licensed midwives and apprentice midwives;
- 113 (B) maintenance of records of care, including client charts;
- 114 (C) participation in peer review; and

115 (D) development of standardized informed consent, reporting and written emergency
116 transport plan forms.

117 Section 280. A person who desires to be licensed and registered as a midwife shall apply
118 to the board in writing on an application form prescribed and furnished by the board. The
119 applicant shall include in the application statements under oath satisfactory to the board showing
120 that the applicant possesses the qualifications required by section 282 preliminary to the
121 examination required by section 265. At the time of filing the application, an applicant shall pay
122 to the department a fee which shall be set by the secretary of administration and finance,
123 pursuant to section 3B of Chapter 7. The board, in consultation with the secretary of
124 administration and finance, shall institute a process for applicants to apply for a financial
125 hardship waiver, which may reduce or fully exempt an applicant from paying the fee pursuant to
126 this section.

127 Section 281.

128 (a) The board may adopt an exam for applicants for licensure to measure the
129 qualifications necessary for licensure; provided, however, that the board may accept the exam
130 administered by the NARM in connection with granting a certified professional midwife
131 credential in place of and as an equivalent to its own professional examination. In such case,
132 before registration in pursuance of this section, the applicant therefor shall pay the fees set forth
133 in Section 280. In the event the board determines to adopt a separate examination for applicants,
134 the board shall conduct at least one but not more than two examinations in each calendar year.

135 (b) The board may adopt an exam for applicants to measure the qualifications necessary
136 in order to safely utilize the pharmaceutical agents provided for in section 290, and in such case,
137 shall conduct at least one but not more than two examinations in each calendar year.

138 (c) An applicant who has failed an examination administered by the board shall not retake
139 the examination for a period of 6 months. An applicant who has failed an examination more than
140 1 time may not retake the examination unless the applicant has participated in or successfully
141 competed further education and training programs as prescribed by the board.

142 Section 282.

143 (a) To be eligible for registration and licensure by the board as a midwife, an applicant
144 shall:

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

146 (2) be of good moral character;

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

148 (4) possess a valid certified professional midwife credential from the NARM.

149 (b) In addition, to be eligible for registration and licensure by the board as a midwife,

150 (1) beginning January 1, 2020, an applicant must obtain certification by completing a
151 program or pathway accredited by the MEAC;

152 (2) if certification was obtained prior to January 1, 2020, from an education program or
153 pathway not accredited by the MEAC, an applicant must obtain the MBC; or

154 (3) if licensure has been maintained in a state that does not require an education or
155 pathway accredited by the MEAC, an applicant must obtain the MBC regardless of the date of
156 certification.

157 Section 283. Notwithstanding the provisions of section 172 of chapter 6, the board shall
158 obtain all available criminal offender record information from the criminal history systems board
159 on an applicant by means of fingerprint checks, and from the Federal Bureau of Investigation for
160 a national criminal history records check. The information obtained thereby may be used by the
161 board to determine the applicant's eligibility for licensing under this chapter. Receipt of criminal
162 history record information by a private entity is prohibited. If the board determines that such
163 information has a direct bearing on the applicant's ability to serve as a midwife, such information
164 may serve as a basis for the denial of the application.

165 Section 284. Fees collected by the board shall be deposited into the Quality in Health
166 Professions Trust Fund pursuant to section 35X of chapter 10 to support board operations and
167 administration and to reimburse board members for actual and necessary expenses incurred in
168 the performance of their official duties.

169 Section 285. The board may license in like manner, without examination, any certified
170 professional midwife who has been licensed in another state under laws which, in the opinion of
171 the board, require qualifications and maintain standards substantially the same as those of this
172 commonwealth for licensed midwives, provided such certified professional midwife applies and
173 remits fees as provided for in section 264.

174 Section 286.

175 (a) The Board may, after a hearing pursuant to chapter 30A, revoke, suspend or cancel
176 the license of a midwife, or reprimand or censure a licensed midwife, for any of the reasons set
177 forth in section 61 of chapter 112.

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

183 Section 287. When accepting a client for care, a midwife shall obtain the client's
184 informed consent, which shall be evidenced by a written statement in a form prescribed by the
185 board and signed by both the midwife and the client. The form shall certify that full disclosure
186 has been made and acknowledged by the client as to each of the following items, with the
187 client's acknowledgement evidenced by a separate signature adjacent to each item in addition to
188 the client's signature and the date at the end of the form:

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

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

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

195 (4) a copy of the medical emergency or transfer plan particular to each client as required
196 by section 288;

197 (5) the right of the client to file a complaint with the board and instructions on how to file
198 a complaint with the board;

199 (6) a statement indicating that the client's records and any transaction with the licensed
200 midwife are confidential;

201 (7) a disclosure of whether the licensed midwife carries malpractice or liability insurance;
202 and

203 (8) any further information as required by the board.

204 Section 288. A midwife shall prepare, in a form prescribed by the board, a written plan
205 for the appropriate delivery of emergency care. The plan shall address the following:

206 (1) consultation with other health care providers;

207 (2) emergency transfer; and

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

209 Section 289. The midwife shall only accept and provide care to clients in accordance with
210 the scope and standards of practice identified in the rules adopted pursuant to section 279.

211 Section 290. A midwife (i) qualified by examination under the provisions of subsection
212 (b) of section 281, if the board elects to adopt such examination, or (ii) who has appropriate
213 pharmacology training as otherwise established by rule by the board pursuant to section 279,
214 may obtain and administer prophylactic ophthalmic medication, anti-hemorrhagic medications

215 including but not limited to Pitocin (oxytocin), misoprostol and methergine, vitamin K, eye
216 prophylaxis, antibiotics for Group B Streptococcal antibiotic prophylaxis, Rho (D) immune
217 globulin, intravenous fluids, oxygen for maternal or fetal distress and infant resuscitation,
218 epinephrine and local anesthetic and may administer such other drugs or medications as
219 prescribed by a physician or certified nurse-midwife or otherwise consistent with the scope of
220 midwifery practice. A pharmacist who dispenses such drugs to a licensed midwife shall not be
221 liable for any adverse reactions caused by any method of use by the midwife.

222 Section 291. A health care provider that consults with or accepts a transport, transfer or
223 referral from a licensed midwife, or that provides care to a client of a licensed midwife or such
224 client's newborn, shall not be liable in a civil action for personal injury or death resulting from
225 an act or omission by the licensed midwife, unless the professional negligence or malpractice of
226 the health care provider was a proximate cause of the injury or death.

227 Section 292.

228 (a) Other than as set forth in the second sentence of section 276, any person who
229 practices midwifery in the commonwealth without a license granted pursuant to sections 275 to
230 292, inclusive, shall be punished by a fine of not less than \$100 nor more than \$1,000, or by
231 imprisonment for not more than 3 months, or by both. The board may petition in any court of
232 competent jurisdiction for an injunction against any person practicing midwifery or any branch
233 thereof without a license. Such injunction may be issued without proof of damage sustained by
234 any person. Such injunction shall not relieve such person from criminal prosecution for
235 practicing without a license.

236 (b) Nothing in this section shall be construed to prevent or restrict the practice, service or
237 activities of (1) any person licensed in the commonwealth from engaging in activities within the
238 scope of practice of the profession or occupation for which such person is licensed, provided that
239 such person does not represent to the public, directly or indirectly, that such person is licensed
240 under sections 275 to 292, inclusive, and that such person does not use any name, title or
241 designation indicating that such person is licensed under said sections 275 to 292, inclusive; or
242 (2) any person employed as a midwife by the federal government or an agency thereof if that
243 person provides midwifery services solely under the direction and control of the organization by
244 which such person is employed.

245 Section 293. A licensed midwife, registered by the board of registration in midwifery
246 pursuant to sections 275 to 293, inclusive, who provides services to any person or beneficiary
247 covered by Title XIX of the Social Security Act or MassHealth pursuant to section 9A of chapter
248 118E, may accept the Medicaid or MassHealth approved rate as payment in full for such
249 services; provided, that a licensed midwife who accepts the Medicaid or MassHealth approved
250 rate pursuant to this section shall be reimbursed at said rate for such services.

251 SECTION 5. Chapter 118E in the General Laws, as appearing in a 2016 Official Edition,
252 is hereby amended in section 10A by adding the words “ licensed midwife,” after the word
253 “physician,” in line 15 and after the word “pediatrician,” in line 20, and by inserting at the end of
254 the section the following words: - “The division shall provide coverage for midwifery services
255 including prenatal care, childbirth and postpartum care provided by a licensed midwife
256 regardless of the site of services.”

257 SECTION 6. The board shall adopt rules and regulations pursuant to section 279 of
258 chapter 112 of the General Laws within 365 days after the effective date of this act. Within 180
259 days after the board adopts the rules and regulations pursuant to said section 279 of said chapter
260 112, the board may commence the issuing of licenses.

261 SECTION 7. Nothing in this act shall preclude any person who was practicing midwifery
262 before the effective date of this act from practicing midwifery in the commonwealth until the
263 board establishes procedures for the licensure of midwives pursuant to sections 275 to 292,
264 inclusive, of chapter 112 of the General Laws.

265 SECTION 8. The board, established pursuant to section 110 of chapter 13 of the General
266 Laws, shall establish regulations for the licensure of individuals practicing midwifery prior to the
267 date on which the board commences issuing licenses, provided that individuals practicing out-of-
268 hospital midwifery in the commonwealth as of the date on which the board commences issuing
269 licenses shall have 2 years from the date on which the board commences issuing licenses to
270 provide proof of passage of a licensing examination recognized by the board and proof of
271 completion of any continuing education requirements necessary for re-licensure.