

# SENATE, NO. 2341

[Senate, April 1, 2010 - New draft of Senate, No. 847 reported from the committee on Public Health.]



## The Commonwealth of Massachusetts

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IN THE YEAR OF TWO THOUSAND AND TEN

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### **AN ACT RELATIVE TO CERTIFIED PROFESSIONAL MIDWIVES AND ENHANCING THE PRACTICE OF NURSE-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.** Subsection (d) of section 7 of chapter 94C of the general laws, as  
2    appearing in the 2008 Official Edition, is hereby amended by adding the following clause:-
- 3           (11) A midwife who utilizes controlled substances pursuant to section 275 of chapter  
4    112; provided, however, that a wholesale distributor or pharmacist may dispense such substances  
5    to a licensed midwife for subsequent administration to clients only if such midwife provides the  
6    wholesale distributor or pharmacist with the midwife's certification of qualification to administer  
7    such controlled substances.

8           **SECTION 2.** Subsection (g) of said section 7 of chapter 94C of the general laws, as so  
9 appearing, is hereby amended by striking out the third paragraph and inserting in place thereof  
10 the following paragraph:-:

11           The commissioner shall promulgate regulations which provide for the registration of  
12 certified nurse-midwives, as provided in section 80G of chapter 112, to issue written  
13 prescriptions in accordance with regulations as provided for in section 80B of chapter 112. Prior  
14 to promulgating such regulations, the commissioner shall consult with the board of registration in  
15 nursing and the board of registration in medicine with regard to those schedules of controlled  
16 substances for which certified nurse-midwives may be registered.

17           **SECTION 3.** Section 80C of chapter 112 of the General Laws is hereby repealed.

18           **SECTION 4.** Said chapter 112, as appearing in the 2008 Official Edition is hereby  
19 amended by striking out section 80G and inserting in place thereof the following section:-

20           Section 80G. A nurse authorized to practice as a certified nurse-midwife may order and  
21 interpret tests, therapeutics and prescribe medications in accordance with regulations  
22 promulgated by the board and subject to the provisions of subsection (g) of section 7 of chapter  
23 94C.”

24           **SECTION 5.** Chapter 112 of the General Laws is hereby amended by adding the  
25 following 18 sections:-

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

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

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

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

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

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

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

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

47           Section 261. (a) The board of registration in medicine shall form a committee on  
48 midwifery. Committee members shall be appointed as follows: 8 members shall be appointed by  
49 the governor, 5 of whom shall be midwives who possess a valid Certified Professional Midwife  
50 credential from the North American Registry of Midwives; 1 of whom shall be a licensed  
51 physician who is an obstetrician certified by the American Congress of Obstetrics and  
52 Gynecology and who has been actively involved with the practice of midwifery for at least 2  
53 years, 1 of whom shall be a certified nurse-midwife chosen from a list of nominees provided by  
54 the Massachusetts Chapter of the American College of Nurse-Midwives, and 1 of whom shall be  
55 from the general public who shall not be engaged in or have a financial interest in the delivery of  
56 health services; 1 member shall be appointed by the board.

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

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

68 (d) The committee shall meet not less than 4 times per calendar year. At its first meeting  
69 and annually thereafter, the committee shall elect from among its members a chairperson, a vice-  
70 chairperson and a secretary who shall each serve for 1 year and until a successor is appointed and  
71 qualified. Committee members shall serve without compensation but shall be reimbursed for  
72 actual and reasonable expenses incurred in the performance of their duties.

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

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

86 Section 264. The committee shall:

- 87 (1) examine applicants and issue licenses to those applicants it finds qualified;
- 88 (2) adopt regulations establishing licensing and licensing renewal requirements;
- 89 (3) issue permits to apprentice midwives;

- 90 (4) investigate complaints against persons licensed under this chapter;
- 91 (5) hold hearings and order the disciplinary sanction of a person who violates this chapter  
92 or a regulation of the committee;
- 93 (6) approve education, training, and apprentice programs that meet the requirements of  
94 this chapter and of the committee and deny revoke, or suspend approval of such  
95 programs for failure to meet the requirements;
- 96 (7) adopt standards for approved midwifery education and training;
- 97 (8) adopt professional continuing education requirements for licensed midwives;
- 98 (9) develop practice standards for licensed midwives that shall include but not be limited  
99 to:
- 100 i. adoption of ethical standards for licensed midwives and apprentice midwives;
- 101 ii. maintenance of records of care, including client charts;
- 102 iii. participation in peer review; and
- 103 iv. development of standardized informed consent, reporting and written  
104 emergency transport plan forms.

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

111 Section 266. (a) The committee shall examine applicants for licensure and shall conduct  
112 at least 2 examinations in each calendar year. The committee shall establish examination and

113 testing procedures to enable it to determine the competency of persons applying for licensure as  
114 a midwife.

115 (b) The examination shall consist of 2 parts:

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

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

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

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

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

127 (2) be of good moral character;

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

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

131 (5) Notwithstanding the provisions of section 172 of chapter 6, the committee shall obtain all  
132 available criminal offender record information from the criminal history systems board  
133 on an applicant by means of fingerprint checks, and from the Federal Bureau of  
134 Investigation for a national criminal history records check. The information obtained

135 thereby may be used by the committee to determine the applicant's eligibility for  
136 licensing under this chapter. Receipt of criminal history record information by a private  
137 entity is prohibited. If the committee determines that such information has a direct  
138 bearing on the applicant's ability to serve as a midwife, such information may serve as a  
139 basis for the denial of the application;

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

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

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

154 Section 268. The committee shall annually administer an examination designed to  
155 measure the qualifications necessary in order to safely utilize the pharmaceutical agents provided  
156 for in section 275. Such examination shall be open upon application to any midwife licensed  
157 under the provisions of this chapter and to any person who meets the qualifications for



158 examination under section 267; provided, however, that each applicant shall furnish to the  
159 committee satisfactory evidence of the completion of a qualifying course of study relating to the  
160 safe and proper administration of approved pharmaceutical agents as determined by the  
161 committee.

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

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

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

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

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

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

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

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

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

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

- 183 (1) fraudulently procured licensure as a midwife;
- 184 (2) violated any provision of law relating to the practice of medicine or midwifery, or any  
185 rule or regulation adopted thereunder;
- 186 (3) acted with gross misconduct in the practice of midwifery or of practicing midwifery  
187 fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross  
188 negligence on a particular occasion or negligence on repeated occasions;
- 189 (4) practiced midwifery while the ability to practice is impaired by alcohol, drugs, physical  
190 disability or mental instability;
- 191 (5) was habitually drunk or being or having been addicted to, dependent on, or a habitual  
192 user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having  
193 similar effects;
- 194 (6) knowingly permitted, aided or abetted an unlicensed person to perform activities  
195 requiring a license for purposes of fraud, deception or personal gain;
- 196 (7) has been convicted of a criminal offense which reasonably calls into question the ability  
197 to practice midwifery;
- 198 (8) violated any rule or regulation of the committee;
- 199 (9) acted in a manner which is professionally unethical according to ethical standards of the  
200 profession of midwifery; or
- 201 (10) violated any provision of sections 260 to 278.

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

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

- 213 (1) the name, address, telephone number, and license number of the licensed midwife;
- 214 (2) a description of the midwife's education, training, and experience in midwifery;
- 215 (3) the nature and scope of the care to be given, including a description of the ante partum,  
216 intrapartum, and postpartum conditions requiring consultation, transfer of care, or  
217 transport to a hospital;
- 218 (4) a copy of the medical emergency or transfer plan particular to each client; the right of the  
219 client to file a complaint with the committee and instructions on how to file a complaint  
220 with the committee;
- 221 (5) a statement indicating that the client's records and any transaction with the license  
222 midwife are confidential;
- 223 (6) a disclosure of whether the licensed midwife carries malpractice or liability insurance;
- 224 and

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

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

228 (1) consultation with other health care providers;

229 (2) emergency transfer; and

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

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

233 (b) A midwife shall provide an initial and ongoing screening to ensure that each client  
234 receives safe and appropriate care. As part of the initial screening to determine whether any  
235 contraindications are present, the midwife shall take a detailed health history as defined by the  
236 committee.

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

241 (d) As part of the initial screening and ongoing screening, a midwife shall recommend  
242 that the client undergo clinical tests as required by the committee from an appropriate health care  
243 provider. The midwife shall include these results in the client's record.

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

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

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

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

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

269 woman or infant due to an emergency arising during the delivery or birth as a consequence of the  
270 care received by a midwife licensed under chapter 112, shall be held liable for any civil damages  
271 as a result of such medical care or treatment resulting from the attempt to render such emergency  
272 care.

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

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

289           **SECTION 6.** The board shall adopt rules and regulations pursuant to section 260 of  
290 chapter 112 within 180 days after the effective date of this act. Within 180 days after the board

291 adopts the rules and regulations pursuant to said section 260 of said chapter 112, the board may  
292 commence the issuing of licenses.

293           **SECTION 7.** Nothing in this act shall preclude any person who was practicing  
294 midwifery before the effective date of this act from practicing midwifery in the commonwealth  
295 until the board establishes procedures for the licensure of midwives pursuant to sections 259 to  
296 278, inclusive, of chapter 112.

297           **SECTION 8.** The committee of midwifery, established pursuant to section 260 of  
298 chapter 112, shall establish regulations for the licensure of individuals practicing midwifery prior  
299 to the date on which the board commences issuing licenses, provided that the individuals shall  
300 have 2 years from the date on which the board commences issuing licenses to provide proof of  
301 passage of a licensing examination recognized by the board and proof of completion of any  
302 continuing education requirements necessary for re-licensure.