SENATE DOCKET, NO. 1463 FILED ON: 1/18/2013

SENATE . . . . . No. 1081

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. Moore

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to certified professional midwives.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Richard T. Moore	*Worcester and Norfolk*
Daniel A. Wolf	*Cape and Islands*
Mary S. Keefe	*15th Worcester*
Christine E. Canavan	*10th Plymouth*
Katherine M. Clark	*Fifth Middlesex*
Thomas M. Stanley	*9th Middlesex*
William N. Brownsberger	*Second Suffolk and Middlesex*
Denise Andrews	*2nd Franklin*
Sonia Chang-Diaz	*Second Suffolk*
James B. Eldridge	*Middlesex and Worcester*
Martha M. Walz	*8th Suffolk*
Patricia D. Jehlen	*Second Middlesex*
Sal N. DiDomenico	*Middlesex and Suffolk*
Gale D. Candaras	*First Hampden and Hampshire*

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By Mr. Richard T. Moore, a petition (accompanied by bill, Senate, No. 1081) of Richard T. Moore, Daniel A. Wolf, Mary S. Keefe, Christine E. Canavan and other members of the General Court for legislation relative to certified professional midwives. Public Health.

The Commonwealth of Massachusetts

An Act relative to certified professional midwives.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 112 of the General Laws is hereby amended by adding the following 20 sections:-

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

"Board", the board of registration in medicine, established under section 10 of chapter 13.

"Certified Professional Midwife", a professional independent practitioner who has been certified as an expert in normal and out of hospital birth and has met the standards of certification by North American Registry of Midwives.

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

"Client", a woman under the care of a midwife and her fetus or newborn.

"Committee", the committee on midwifery, established under section 261.

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

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

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

27 Section 261. (a) The board of registration in medicine shall form a committee on
28 midwifery. Committee members shall be appointed as follows: 8 members shall be appointed by
29 the governor, 5 of whom shall be midwives who possess a valid Certified Professional Midwife
30 credential from the North American Registry of Midwives; 1 of whom shall be a licensed
31 physician who is an obstetrician certified by the American Congress of Obstetrics and
32 Gynecology and who has been actively involved with the practice of midwifery for at least 2
33 years, 1 of whom shall be a certified nurse-midwife chosen from a list of nominees provided by
34 the Massachusetts Chapter of the American College of Nurse-Midwives who has worked in an
35 out of hospital setting, and 1 of whom shall be from the general public who has been a consumer
36 of certified professional midwifery services and who shall not be engaged in or have a financial
37 interest in the delivery of health services; 1 member shall be appointed by the board.

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

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

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

54 Section 262. The committee shall make and publish such rules and regulations as it may
55 deem necessary for the proper conduct of its duties. The commissioner may review and approve
56 rules and regulations proposed by the committee. Such rules and regulations shall be deemed
57 approved unless disapproved within 15 days of submission to the commissioner; provided,

58 however, that any such disapproval shall be in writing setting forth the reasons for such
59 disapproval.

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

67 Section 264. The committee shall:

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

69 (2) adopt regulations establishing licensing and licensing renewal requirements;

70 (3) issue permits to apprentice midwives;

71 (4) investigate complaints against persons licensed under this chapter;

72 (5) hold hearings and order the disciplinary sanction of a person who violates this
73 chapter or a regulation of the committee;

74 (6) approve education and apprentice training that meet the requirements of this chapter
75 and of the committee and deny, revoke, or suspend approval of such programs for failure to meet
76 the requirements;

77 (7) adopt standards for approved midwifery education and training;

78 (8) adopt professional continuing education requirements for licensed midwives;

79 (9) develop practice standards for licensed midwives that shall include, but not be
80 limited to:

81 i. adoption of ethical standards for licensed midwives and apprentice midwives;

82 ii. maintenance of records of care, including client charts;

83 iii. participation in peer review; and

84 iv. development of standardized informed consent, reporting and written emergency
85 transport plan forms.

86 Section 265. A person who desires to be licensed and registered as a midwife shall apply
87 to the committee in writing on an application form prescribed and furnished by the committee.

88 The applicant shall include in the application statements under oath satisfactory to the committee
89 showing that the applicant possesses the qualifications required by section 267 preliminary to the
90 examination required by section 266. At the time of filing the application, an applicant shall pay
91 to the board a fee which shall be set by the secretary of administration and finance.

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

96 (b) An applicant who has failed the examination shall not retake the examination for a
97 period of 6 months. An applicant who has failed the examination more than 1 time may not
98 retake the examination unless the applicant has participated in or successfully competed further
99 education and training programs as prescribed by the committee.

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

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

103 (2) be of good moral character;

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

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

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

115 (6) meet minimum educational requirements which shall include studying midwifery;
116 basic sciences; female reproductive anatomy and physiology; behavioral sciences; childbirth
117 education; community care; obstetrical pharmacology; epidemiology; gynecology; family
118 planning; genetics; embryology; neonatology; the medical and legal aspects of midwifery;
119 nutrition during pregnancy and lactation; breast feeding; and such other requirements prescribed
120 by the committee;

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

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

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

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

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

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

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

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

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

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

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

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

155 Section 270. The committee may enter into agreements with medical or midwifery
156 examination boards of other states and territories of the United States, the District of Columbia,
157 and Puerto Rico, having qualifications and standards at least as high as those of the
158 commonwealth, providing for reciprocal licensing in this state, without further examination, of
159 persons who hold a valid license granted by written examination in the other state or territory,
160 who have been licensed to practice for at least 5 years, and who apply and remit fees as provided
161 for in section 265.

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

165 (1) fraudulently procured licensure as a midwife;

166 (2) violated any provision of law relating to the practice of medicine or midwifery, or any
167 rule or regulation adopted thereunder ;

168 (3) acted with gross misconduct in the practice of midwifery or of practicing midwifery
169 fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross
170 negligence on a particular occasion or negligence on repeated occasions;

171 (4) practiced midwifery while the ability to practice is impaired by alcohol, drugs,
172 physical disability or mental instability;

173 (5) was habitually drunk or being or having been addicted to, dependent on, or a habitual
174 user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar
175 effects;

176 (6) knowingly permitted, aided or abetted an unlicensed person to perform activities
177 requiring a license for purposes of fraud, deception or personal gain;

178 (7) has been convicted of a criminal offense which reasonably calls into question the
179 ability to practice midwifery;

180 (8) violated any rule or regulation of the committee;

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

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

184 (b) No person filing a complaint or reporting information pursuant to this section or
185 assisting the committee or board at its request in any manner in discharging its duties and
186 functions shall be liable in any cause of action arising out of receiving such information or

187 assistance, providing the person making the complaint or reporting or providing such
188 information or assistance does so in good faith and without malice.

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

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

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

197 (3) the nature and scope of the care to be given, including a description of the ante
198 partum, intrapartum , and postpartum conditions requiring consultation, transfer of care, or
199 transport to a hospital;

200 (4) a copy of the medical emergency or transfer plan particular to each client; the right of
201 the client to file a complaint with the committee and instructions on how to file a complaint with
202 the committee;

203 (5) a statement indicating that the client's records and any transaction with the license
204 midwife are confidential;

205 (6) a disclosure of whether the licensed midwife carries malpractice or liability insurance;
206 and

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

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

210 (1) consultation with other health care providers;

211 (2) emergency transfer; and

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

213 Section 274. (a) The midwife shall only accept and provide care to those women who are
214 expected to have a normal pregnancy, labor, and delivery.

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

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

223 (d) As part of the initial screening and ongoing screening, a midwife may order and
224 interpret clinical tests for the client as required by the committee. The midwife shall include
225 these results in the client's record.

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

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

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

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

241 Section 277. No physician duly registered under the provisions of sections 2, 2A, 9, 9A
242 or 9B, no physician assistant duly registered under the provisions of section 9I or the physician
243 assistant's employing or supervising physician, and no nurse duly registered or licensed under
244 the provisions of section 74, 74A or 76, providing medical treatment to a woman or infant due to
245 an emergency arising during the delivery or birth as a consequence of the care received by a
246 midwife licensed under chapter 112 shall be held liable for any civil damages as a result of such
247 medical care or treatment, other than gross negligence or willful or wanton misconduct, resulting
248 from the attempt to render such emergency care, nor shall he be liable to a hospital for its
249 expenses if, under such emergency conditions, he orders a person hospitalized or causes his
250 admission. No health care facility licensed under chapter 111, providing medical treatment to a
251 woman or infant due to an emergency arising during the delivery or birth as a consequence of the
252 care received by a midwife licensed under chapter 112, shall be held liable for any civil damages
253 as a result of such medical care or treatment resulting from the attempt to render such emergency
254 care.

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

261 Such injunction shall not relieve such person from criminal prosecution for practicing
262 without a license.

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

272 SECTION 2. The committee shall adopt rules and regulations pursuant to section 264 of
273 chapter 112 within 180 days after the effective date of this act. Within 180 days after the
274 committee adopts the rules and regulations pursuant to said section 264 of said chapter 112, the
275 committee may commence the issuing of licenses.

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

280 SECTION 4. The committee of midwifery, established pursuant to section 261 of chapter
281 112, shall establish regulations for the licensure of individuals practicing midwifery prior to the
282 date on which the committee commences issuing licenses, provided that the individuals shall
283 have 2 years from the date on which the committee commences issuing licenses to provide proof
284 of passage of a licensing examination recognized by the committee and proof of completion of
285 any continuing education requirements necessary for re-licensure.