

## ACT 32

S.B. NO. 1033

A Bill for an Act Relating to the Licensure of Midwives.

*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I

SECTION 1. As determined by Senate Concurrent Resolution No. 64, S.D.1 (1998), subsequent Auditor's Report No. 99-14 (1999), House Concurrent Resolution No. 65, H.D.1 (2016), and the subsequent Auditor's Report No. 17-01 (2017), the legislature finds that it is necessary to establish a mandatory regulatory process for the midwifery profession.

Hawaii regulated midwifery starting with registration in 1931, which progressed into certification and then licensure. However, the regulation of midwifery was repealed in 1998 when nurse-midwives were placed under the purview of the board of nursing. Since 1998, there has been a lapse in regulation, yet individuals in the community have continued to practice midwifery and offer birth services to the public.

The legislature finds that mothers and families seek out alternatives to hospital births and they find significant value in community or home birth services. These services are currently provided by individuals identifying themselves as traditional or cultural practitioners, midwives, certified professional midwives, lay midwives, direct entry midwives, birth keepers, or birth attendants. This Act will continue to allow a woman to choose where and with whom she gives birth.

The legislature further finds that the profession of midwifery has continued to evolve since the lapse in regulation. Common definitions, training, and competency standards for the practice of midwifery have developed on both a global and national level. However, not all practitioners easily fit into these definitions, categories, and standards. Hawaii currently has many individuals offering birth services under different titles and at varying levels of competency and training.

The legislature further finds the term "midwife" connotes an expectation of a minimum level of care by consumers and the community. The Hawaii regulatory licensing reform act requires the State to regulate professions or vocations where the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider. The practice of midwifery meets these criteria, and, therefore, must be regulated by the State.

The purpose of this Act is to resolve the lapse in regulation of midwifery and to regulate midwives engaged in the practice of midwifery by establishing licensure and regulatory requirements under the department of commerce and consumer affairs. This Act also exempts a separate category of birth attendants for a three-year period, to allow this community to define themselves and develop common standards, accountability measures, and disclosure requirements. By the end of the three-year period, the legislature intends to enact statutes that will incorporate all birth practitioners and allow them to practice to the fullest extent under the law. The legislature also notes that practicing midwifery according to this Act does not impede one's ability to incorporate or provide cultural practices.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## “CHAPTER MIDWIVES

§ -1 **Findings and purpose.** The legislature finds that:

- (1) Midwives offer maternity and newborn care from the antepartum period through the intrapartum period to the postpartum period;
- (2) The improper practice of midwifery poses a significant risk of harm to the mother or newborn, and may result in death; and
- (3) The regulation of the practice of midwifery is reasonably necessary to protect the health, safety, and welfare of mothers and their newborns.

§ -2 **Definitions.** As used in this chapter:

“Accreditation Commission for Midwifery Education” means the United States Department of Education-recognized commission that provides accreditation and pre-accreditation of certificates, post-baccalaureates, graduate degrees, and pre-certificate programs in nurse-midwifery and midwifery.

“American Midwifery Certification Board” means the national certifying body for certified nurse-midwife candidates and certified midwife candidates who have received their graduate level education in programs accredited by the Accreditation Commission for Midwifery Education.

“Certified midwife” means a person who holds a current and valid national certification as a certified midwife from the American Midwifery Certification Board, or any successor organization.

“Certified professional midwife” means a person who holds a current and valid national certification as a certified professional midwife from the North American Registry of Midwives, or any successor organization.

“Client” means a person under the care of a licensed midwife, as well as the person’s fetus and newborn child.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Interconception” means care provided to mothers between pregnancies to improve health outcomes for women, newborns, and children.

“International Confederation of Midwives” means the accredited non-governmental organization and representative of midwives and midwifery to organizations worldwide to achieve common goals in the care of mothers and newborns.

“Midwife” means a person licensed under this chapter.

“Midwifery” means the provision of one or more of the following services:

- (1) Assessment, monitoring, and care during pregnancy, labor, childbirth, post-partum and interconception periods, and for newborns, including ordering and interpreting screenings and diagnostic tests, and carrying out appropriate emergency measures when necessary;
- (2) Supervising the conduct of labor and childbirth; and
- (3) Provision of advice and information regarding the progress of childbirth and care for newborns and infants.

“Midwifery Education Accreditation Council” means the independent, nonprofit organization recognized by the United States Department of Education as an accrediting agency of direct-entry midwifery institutions and programs.

“North American Registry of Midwives” means the organization that sets national standards for the certified professional midwife credential.

“Postpartum” means the period of time immediately after and up to eight weeks following the birth of the baby.

“Qualified midwife preceptor” means a licensed and experienced midwife, or other maternal health professional licensed in the State, who participates in the clinical education of individuals enrolled in a midwifery education program accredited by the Midwifery Education Accreditation Council or Accreditation Commission For Midwifery Education and who meets the criteria for midwife preceptors set forth by the applicable organization.

§ -3 **Midwives licensing program.** There is established a midwives licensing program within the department to be administered by the director.

§ -4 **Powers and duties of the director.** In addition to any other powers and duties authorized by law, the director shall have the power and duties to:

- (1) Grant permission to a person to use the title of “midwife” or “licensed midwife” and engage in the practice of midwifery in this State pursuant to this chapter and the rules adopted pursuant thereto;
- (2) Adopt, amend, or repeal rules pursuant to chapter 91 to carry out the purposes of this chapter;
- (3) Administer, coordinate, and enforce this chapter and rules adopted pursuant thereto;
- (4) Discipline a licensee for any cause described by this chapter or for any violation of rules or refuse to license a person for failure to meet the licensing requirements or for any cause that would be grounds for disciplining a licensee;
- (5) Appoint an advisory committee to assist with the implementation of this chapter and the rules adopted pursuant thereto. The advisory committee shall consist of the following:
  - (A) Three midwives who are certified professional midwives or certified midwives;
  - (B) Two members of the public; and
  - (C) A certified nurse midwife; and
- (6) Add, remove, or otherwise modify the authorized non-controlled legend drugs and legend devices listed in -11 by rule under chapter 91.

§ -5 **License required.** (a) Beginning July 1, 2020, except as provided in this chapter, no person shall engage in the practice of midwifery, or use the title “midwife”, “licensed midwife”, or the abbreviation “L.M.”, or any other words, letters, abbreviations, or insignia indicating or implying that the person is a licensed midwife without a valid license issued pursuant to this chapter.

(b) Nothing in this section shall preclude a person holding a national certification as a midwife from identifying the person as holding such certification, so long as the person is not practicing midwifery or professing to be authorized to practice midwifery in the State unless that person is licensed in accordance with this chapter.

§ -6 **Exemptions.** (a) A person may practice midwifery without a license to practice midwifery if the person is:

- (1) A certified nurse-midwife holding a valid license under chapter 457;
- (2) Licensed and performing work within the scope of practice or duties of the person’s profession that overlaps with the practice of midwifery;
- (3) A student midwife who is currently enrolled in a midwifery educational program under the direct supervision of a qualified midwife preceptor;

- (4) A person rendering aid in an emergency where no fee for the service is contemplated, charged, or received; or
- (5) A person acting as a birth attendant on or before July 1, 2023, who:
  - (A) Does not use legend drugs or devices, the use of which requires a license under the laws of the State;
  - (B) Does not advertise that the person is a licensed midwife;
  - (C) Discloses to each client verbally and in writing on a form adopted by the department, which shall be received and executed by the person under the birth attendant's care at the time care is first initiated:
    - (i) That the person does not possess a professional license issued by the State to provide health or maternity care to women or infants;
    - (ii) That the person's education and qualifications have not been reviewed by the State;
    - (iii) The person's education and training;
    - (iv) That the person is not authorized to acquire, carry, administer, or direct others to administer legend drugs;
    - (v) Any judgment, award, disciplinary sanction, order, or other determination that adjudges or finds that the person has committed misconduct or is criminally or civilly liable for conduct relating to midwifery by a licensing or regulatory authority, territory, state, or any other jurisdiction; and
    - (vi) A plan for transporting the client to the nearest hospital if a problem arises during the client's care; and
  - (D) Maintains a copy of the form required by subparagraph (C) for at least ten years and makes the form available for inspection upon request by the department.

(b) Nothing in this chapter shall prohibit healing practices by traditional Hawaiian healers engaged in traditional healing practices of prenatal, maternal, and child care as recognized by any council of kupuna convened by Papa Ola Lokahi. Nothing in this chapter shall limit, alter, or otherwise adversely impact the practice of traditional Native Hawaiian healing pursuant to the Constitution of the State of Hawaii.

(c) Nothing in this chapter shall prohibit a person from administering care to a person's spouse, domestic partner, parent, sibling, or child.

**§ -7 Fees.** (a) Each applicant shall pay a licensing fee upon application for an initial license or renewal of a license. Fees collected pursuant to this section or by rule adopted under this section shall be nonrefundable.

(b) Pursuant to section 26-9(l), the director may establish fees to restore a license, penalty fees, and any other fees required for the administration of this chapter by rule.

(c) All fees collected pursuant to this chapter shall be deposited by the director to the credit of the compliance resolution fund established pursuant to section 26-9(o).

(d) Fees assessed pursuant to this chapter shall be used to defray costs incurred by the department in implementing this chapter.

(e) The director may assess fees as provided in this chapter and section 26-9 and, notwithstanding any other law to the contrary, may change the amount of the fees required by this section at any time without regard to chapter 91, if the director:

- (1) Holds at least one public hearing to discuss and take testimony on the proposed fee change; and
- (2) Provides public notice at least thirty days prior to the date of the public hearing.

§ **-8 Application for license as a midwife.** To obtain a license under this chapter, the applicant shall provide:

- (1) An application for licensure;
- (2) The required fees;
- (3) Proof of current, unencumbered certification as a:
  - (A) Certified professional midwife; or
  - (B) Certified midwife;
- (4) For certified professional midwives, proof of a successful completion of a formal midwifery education and training program that is either:
  - (A) An educational program or pathway accredited by the Midwifery Education Accreditation Council; or
  - (B) A midwifery bridge certificate issued by the North American Registry of Midwives for certified professional midwife applicants who either obtained certification before January 1, 2020, through a non-accredited pathway, or who have maintained licensure in a state that does not require accredited education;
- (5) If applicable, evidence of any licenses held or once held in other jurisdictions indicating the status of the license and documenting any disciplinary proceedings pending or taken by any jurisdiction;
- (6) Information regarding any conviction of any crime which has not been annulled or expunged; and
- (7) Any other information the department may require to investigate the applicant's qualifications for licensure.

§ **-9 Issuance of license.** The director may issue a license to any person who meets all licensure requirements and pays the appropriate fees.

§ **-10 Renewals.** Every license issued under this chapter shall be renewed triennially on or before June 30, with the first renewal deadline occurring on June 30, 2023. Failure to renew a license shall result in a forfeiture of the license. Licenses which have been so forfeited may be restored within one year of the expiration date upon payment of renewal and penalty fees. Failure to restore a forfeited license within one year of the date of its expiration shall result in the automatic termination of the license. Relicensure after termination shall require the person to apply as a new applicant and again satisfy all licensing requirements in place at the time of the new application.

§ **-11 Authority to purchase and administer certain legend drugs and devices.** (a) A midwife licensed under this chapter may purchase and administer non-controlled legend drugs and devices that are used in pregnancy, birth, postpartum care, newborn care, or resuscitation, and that are deemed integral to providing care to the public by the department.

- (b) Legend drugs authorized under subsection (a) are limited for:
  - (1) Neonatal use to prophylactic ophthalmic medications, vitamin K, epinephrine for neonatal resuscitation per neonatal resuscitation guidelines, and oxygen; and
  - (2) Maternal use to antibiotics for Group B Streptococcal antibiotic prophylaxis per guidelines adopted by the Centers for Disease Con-

trol and Prevention, postpartum antihemorrhagics, Rho(D) immune globulin, epinephrine for anaphylactic reaction to an administered medication, intravenous fluids, amino amide local anesthetic, and oxygen.

(c) Legend devices authorized under subsection (a) are limited to devices for:

- (1) Injection of medications;
- (2) The administration of intravenous fluids;
- (3) Adult and infant resuscitation;
- (4) Rupturing amniotic membranes;
- (5) Repairing vaginal tears; and
- (6) Postpartum hemorrhage.

(d) A pharmacist who dispenses drugs and devices to a midwife as authorized by this section and in conformity with chapter 461 is not liable for any adverse reactions caused by the midwife's administration of legend drugs and devices.

**§ -12 Grounds for refusal to grant, renew, reinstate, or restore licenses and for revocation, suspension, denial, or condition of licenses.** In addition to any other acts or conditions provided by law, the director may refuse to grant, renew, reinstate, or restore, or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

- (1) Failing to meet or maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Failing to notify the department in writing that the licensee's certification as a certified professional midwife or as a certified midwife is no longer current or unencumbered within thirty days of the change in status;
- (3) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements;
- (4) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;
- (5) Practicing as a licensed midwife while impaired by alcohol, drugs, physical disability, or mental instability;
- (6) Procuring a license through fraud, misrepresentation, or deceit;
- (7) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license;
- (8) Engaging in professional misconduct as defined by the program in accordance with its own rules, incompetence, gross negligence, or manifest incapacity in the practice of midwifery;
- (9) Failing to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
- (10) Engaging in conduct or practice contrary to recognized standards of ethics for the practice of midwifery;
- (11) Violating any condition or limitation upon which a conditional license was issued;
- (12) Engaging in business under a past or present license issued pursuant to this chapter, in a manner causing injury to one or more members of the public;
- (13) Failing to comply, observe, or adhere to any law in a manner such that the director deems the applicant or licensee to be an unfit or improper person to hold a license;



- (14) Having a revocation, suspension, or other disciplinary action by a territory, or by another state or federal agency against a licensee or applicant for any reason provided by the licensing laws or this section;
- (15) Having a criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of a licensed midwife;
- (16) Failing to report in writing to the director any disciplinary decision issued against the licensee or the applicant in another jurisdiction within thirty days of the disciplinary decision;
- (17) Employing, utilizing, or attempting to employ or utilize at any time any person not licensed under this chapter where licensure is required;
- (18) Violating this chapter, any other applicable licensing laws, or any rule or order of the director; or
- (19) Using or removing without authorization controlled substances or drugs, including diverting or attempting to divert drugs or controlled substances for unauthorized use.

§ -13 **Penalties.** Any person who violates this chapter or rules adopted pursuant thereto shall be subject to a fine of not more than \$1,000 for each separate offense. For purposes of this section, each day of violation shall constitute a separate offense.”

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**“§26H-4 Repeal dates for newly enacted professional and vocational regulatory programs.** (a) Any professional or vocational regulatory program enacted after January 1, 1994, and listed in this section shall be repealed as specified in this section. The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date.

(b) Chapter 465D (behavior analysts) shall be repealed on June 30, 2021.

(c) Chapter 466L (appraisal management companies) shall be repealed on June 30, 2023.

(d) Chapter (midwives) shall be repealed on June 30, 2025.”

SECTION 4. The department of commerce and consumer affairs may appoint an executive officer and a secretary, without regard to chapter 76, Hawaii Revised Statutes, to assist with the activities of the midwives licensing program.

SECTION 5. The department of commerce and consumer affairs may adopt interim rules to carry out the purposes of this Act without regard to chapters 91 or 201M, Hawaii Revised Statutes; provided that:

- (1) The department shall hold at least one public hearing prior to the adoption of interim rules; and
- (2) The interim rules shall be effective for no more than one year after their adoption.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$146,000 or so much thereof as may be necessary for fiscal year 2019-2020 to be deposited into the compliance resolution fund.

SECTION 7. There is appropriated out of the compliance resolution fund the sum of \$146,000 or so much thereof as may be necessary for fiscal year 2019-2020 and \$73,000 or so much thereof as may be necessary for fiscal year 2020-2021 to implement the licensure of midwives as required by this Act.

The sums appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

## PART II

SECTION 8. (a) There is established a home birth task force under the Hawaii state commission on the status of women.

(b) The task force shall consist of no more than twelve members and shall include:

- (1) The director of commerce and consumer affairs, or the director's designee;
- (2) The director of health, or the director's designee;
- (3) A representative from the Hawaii section of the American College of Obstetricians and Gynecologists;
- (4) A representative of the Healthcare Association of Hawaii; and
- (5) Members recommended by the Hawaii Home Birth Collective that represent the following stakeholder groups: certified nurse midwife; certified professional midwife; home birth elder; traditional or cultural birth attendant; and a member of the public that has used home birth services.

(c) The task force shall include representation from all counties. The task force may recommend additional members with appropriate expertise, to be approved by the chairperson.

(d) The task force shall elect a chairperson from among the members of the task force.

(e) The task force shall investigate issues relating to direct entry midwives and home births. The investigation shall include but not be limited to the following:

- (1) Data collection and reporting on home births;
- (2) Education and training of direct entry midwives; and
- (3) Regulation of direct entry midwives.

(f) The members of the task force shall serve without compensation. No member of the task force shall be made subject to section 84-17, Hawaii Revised Statutes, solely because of that member's participation on the task force. The task force shall be exempt from part I, chapter 92, Hawaii Revised Statutes.

(g) The Hawaii state commission on the status of women shall provide administrative and clerical support required by the task force.

(h) The task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2020.

(i) The home birth task force shall dissolve on June 30, 2020.

## PART III

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.



SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 11. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval; provided that sections 6 and 7 shall take effect on July 1, 2019.

(Approved April 30, 2019.)