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# A BILL FOR AN ACT

RELATING TO LICENSURE OF CERTIFIED PROFESSIONAL MIDWIVES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the Hawaiian Islands  
2 have a culture and traditional heritage that includes midwifery  
3 care. Mothers have accessed midwifery care throughout history  
4 regardless of their religious, economic, or personal  
5 circumstances. As determined by Senate Concurrent Resolution  
6 No. 64, S.D.1 (1998), the subsequent sunrise audit report,  
7 Auditor's Report No. 99-14 (1999), and House Concurrent  
8 Resolution No. 65, H.D.1 (2016), the legislature finds that it  
9 is necessary to establish a regulatory process for certified  
10 professional midwives.

11           The purpose of this Act is to provide for licensure of  
12 certified professional midwives engaged in the practice of  
13 midwifery care by establishing licensure requirements and  
14 regulatory requirements.

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



1 "CHAPTER

2 CERTIFIED PROFESSIONAL MIDWIVES

3 § -1 Definitions. As used in this chapter:

4 "Certified professional midwife" means a person who is  
5 certified by the North American Registry of Midwives or any  
6 successor organization.

7 "Client" means a person under the care of a licensed  
8 midwife, as well as the person's fetus and newborn child.

9 "Department" means the department of commerce and consumer  
10 affairs.

11 "Director" means the director of commerce and consumer  
12 affairs.

13 "Licensed midwife" means an individual who holds a current  
14 license issued by the department pursuant to this chapter to  
15 engage in the practice of midwifery in Hawaii.

16 "Midwifery" means the provision of well-woman care,  
17 support, and education to healthy persons during the  
18 childbearing cycle including normal pregnancy, labor,  
19 childbirth, and the postpartum period with an emphasis on  
20 education, health promotion, shared responsibility, mutual



1 participation in decision making, and working with each client  
2 and the client's family to identify their unique physical,  
3 social, cultural, and emotional needs.

4 "Midwifery Education Accreditation Council" means the  
5 organization established in 1991 and recognized by the United  
6 States Department of Education as an accrediting agency for  
7 midwifery education programs and institutions.

8 "Midwives Alliance of North America" means a professional  
9 organization representing out-of-hospital birth midwives.

10 "National Association of Certified Professional Midwives"  
11 means the membership organization that specifically represents  
12 certified professional midwives in the United States.

13 "North American Registry of Midwives" means the  
14 organization that sets standards for competency based  
15 certification for certified professional midwives.

16 "Out-of-hospital" means taking place in a birth center or  
17 home.

18 "Postpartum period" means the period not exceeding six  
19 weeks from the date of delivery.



1 "Practice of midwifery" means providing well-woman and  
2 maternity care for individuals and their newborns during the  
3 antepartum, intrapartum, and postpartum periods.

4 "United States Midwifery Education, Regulation, and  
5 Association" means a coalition comprised of representatives of  
6 the following national midwifery associations, credentialing  
7 bodies, and education accreditation bodies: Accreditation  
8 Commission for Midwifery Education, American College of Nurse  
9 Midwives, American Midwifery Certification Board, Midwifery  
10 Education Accreditation Council, Midwives Alliance of North  
11 America, National Association of Certified Professional  
12 Midwives, and North American Registry of Midwives.

13 **§ -2 License required; validity and renewal.** (a) Except  
14 as specifically provided in this chapter, no person shall engage  
15 in the practice of midwifery or use the title "licensed midwife"  
16 without a valid license issued pursuant to this chapter.

17 (b) Only a person who has a current, unencumbered license  
18 from the department to practice as a licensed midwife shall use  
19 the title "Licensed Midwife" or the abbreviation "L.M.". No  
20 other person shall assume the title "Licensed Midwife" or in any



1 manner imply that the person is a licensed midwife except as  
2 defined in this chapter or use the abbreviation "L.M." or any  
3 other words, letter, sign, or device to indicate that the person  
4 using the same is a licensed midwife. Nothing in this section  
5 shall preclude a certified professional midwife who is not a  
6 licensed midwife and who is currently certified by a national  
7 certifying body recognized by the department from using another  
8 title designated by that certification.

9 (c) Any person who violates this section shall be subject  
10 to a fine of not more than \$1,000 for each separate offense.  
11 Each day of violation shall constitute a separate offense. The  
12 director may initiate a civil action to collect the fine imposed  
13 under this section in accordance with rules adopted by the  
14 director.

15 **§ -3 License; qualifications; validity and renewal. (a)**  
16 A license to practice midwifery pursuant to this chapter shall  
17 be granted to an applicant who files a department-approved  
18 application for licensure, pays the required application fees,  
19 and provides evidence to the department of the following:



- 1           (1) Current certification as a certified professional  
2           midwife by the North American Registry of Midwives or  
3           a successor organization;
- 4           (2) Completion of an educational program or pathway  
5           accredited by the Midwifery Education Accreditation  
6           Council or having obtained the midwifery bridge  
7           certificate issued by the North American Registry of  
8           Midwives; and
- 9           (3) Successful completion of continuing education courses  
10          accredited by the Midwifery Education Accreditation  
11          Council as approved and required by the director.
- 12          (b) All licenses issued under this chapter shall be valid  
13          for two years from the date of issuance and shall be renewed  
14          upon the payment of a renewal fee within sixty days before the  
15          expiration of the license. Failure to renew a license shall  
16          result in forfeiture of that license. Licenses that have been  
17          forfeited may be restored within one year of the forfeiture date  
18          upon payment of renewal and restoration fees. Failure to  
19          restore a forfeited license within one year shall result in the  
20          automatic termination of the license. A person whose license has



1 been terminated pursuant to this section shall be required to  
2 reapply for a new license as a new applicant.

3       **§ -4 Fees.** (a) Each applicant shall pay a licensing  
4 fee of \$275 upon application for a new or renewal license. Fees  
5 collected pursuant to this section or by rule adopted under this  
6 section shall be non-refundable. Fees collected pursuant to  
7 this section or by rule adopted under this section shall be  
8 deposited into the compliance resolution fund established  
9 pursuant to section 26-9(o).

10       (b) The director may establish fees for the restoration of  
11 a license, penalty fees, and any other fees required for the  
12 administration of this chapter by rule pursuant to chapter 91.

13       **§ -5 Grounds for refusal to renew, reinstate, or restore**  
14 **a license and for revocation, suspension, denial, or condition**  
15 **of a license.** (a) In addition to any other acts or conditions  
16 provided by law, the director may refuse to renew, reinstate or  
17 restore or may deny, revoke, suspend, or condition in any  
18 manner, any license issued under this chapter for any one or  
19 more of the following:



- 1           (1) Failure to meet or maintain the conditions and  
2                   requirements necessary to qualify for the granting of  
3                   a license;
- 4           (2) Engaging in false, fraudulent, or deceptive  
5                   advertising or making untruthful statements;
- 6           (3) Engaging in the practice of midwifery as a licensed  
7                   midwife while impaired by alcohol or drugs;
- 8           (4) Mental incompetence;
- 9           (5) Procuring a license through fraud, misrepresentation,  
10                   or deceit;
- 11          (6) Professional misconduct, incompetence, gross  
12                   negligence, or manifest incapacity in the practice of  
13                   midwifery as a licensed midwife;
- 14          (7) Conduct or practice contrary to recognized standards  
15                   of ethics for midwifery as a licensed midwife;
- 16          (8) Violation of any condition or limitation imposed by  
17                   the director on a license to practice certified  
18                   professional midwifery care;
- 19          (9) Failure to comply with, observe, or adhere to any law  
20                   in a manner such that the director deems the applicant



- 1           or holder to be an unfit or improper person to hold a  
2           license;
- 3       (10) Revocation, suspension, or other disciplinary action  
4           by another state or federal agency against a licensee  
5           or applicant for any reason provided by that  
6           jurisdiction's licensing laws or this section;
- 7       (11) Criminal conviction, whether by nolo contendere or  
8           otherwise, of a penal crime directly related to the  
9           qualifications, functions, or duties of the practice  
10          of midwifery by a licensed midwife;
- 11       (12) Failure to report in writing to the director any  
12          disciplinary decision issued against the licensee or  
13          the applicant in another jurisdiction within thirty  
14          days of the disciplinary decision;
- 15       (13) Submission to or filing with the director any notice,  
16          statement, or other document required under this  
17          chapter that is false or untrue or that contains any  
18          material misstatement of fact; or
- 19       (14) Violating this chapter, the applicable licensing laws,  
20          or any rule or order of the director.



1           (b) In any proceeding to discipline a licensee or for the  
2 suspension, limitation, or revocation of a license for the  
3 practice of midwifery, the licensee sought to be disciplined or  
4 whose license is sought to be suspended, limited, or revoked  
5 shall be given notice and opportunity for hearing in conformity  
6 with chapter 91. Any person whose application for a license has  
7 been denied shall be given notice and the opportunity for a  
8 hearing pursuant to chapter 91.

9           (c) The remedies or penalties provided by this chapter are  
10 cumulative and are in addition to the remedies or penalties  
11 available under all other laws of this State.

12           § -6 Powers and duties. In addition to any other powers  
13 and duties authorized by law, the director shall:

- 14           (1) Receive applications for licensure;  
15           (2) Determine the qualifications of persons applying for  
16                licensure;  
17           (3) Grant licenses to qualified applicants;  
18           (4) Establish procedures to renew, suspend, revoke, and  
19                reinstate licenses;



- 1 (5) Establish and collect fees for the examination of
- 2 applicants for licensure and license renewal;
- 3 (6) Establish the minimum educational and continuing
- 4 educational requirements for licensure;
- 5 (7) Investigate complaints against licensed midwives;
- 6 (8) Undertake, when appropriate, disciplinary hearings;
- 7 and
- 8 (9) Subject to chapter 91, adopt, amend, or repeal rules,
- 9 as necessary to effectuate this chapter.

10 § -7 Advisory committee; appointment; term. (a) The

11 director shall appoint an advisory committee to serve as experts

12 to the department in licensing matters. The advisory committee

13 shall consist of five voting members as follows:

- 14 (1) The director or the director's designee;
- 15 (2) Three licensed midwives who shall be in current and
- 16 active practice in the State for the duration of their
- 17 appointment and who shall have actively practiced as
- 18 licensed midwives in the State for at least three
- 19 years immediately preceding their appointment;
- 20 provided that the initial members appointed pursuant



1 to this paragraph shall be three certified  
2 professional midwives who each have at least three  
3 years of experience in the practice of midwifery and  
4 who are eligible to become licensed pursuant to this  
5 chapter; and

6 (3) One out-of-hospital birth consumer, who is either  
7 currently under midwifery care and planning an out-of-  
8 hospital birth or has had an out-of hospital birth in  
9 the past.

10 (b) Members of the committee shall serve four year terms.

11 (c) In the event of the death, resignation, or removal of  
12 any committee member before the expiration of the member's term,  
13 the vacancy shall be filled for the unexpired portion of the  
14 term in the same manner as the original appointment.

15 (d) The committee shall elect a chairperson from among its  
16 members. The committee shall meet at least annually to make  
17 recommendations to the director and may hold additional meetings  
18 at the call of the chairperson or at the written request of any  
19 two members of the committee. Three voting members shall  
20 constitute a quorum. The vote of the majority of members



1 present at a meeting at which a quorum is present shall  
2 determine the action of the committee.

3       **§ -8 Scope of practice; formulary.** (a) The director  
4 shall establish scope of practice standards for the practice of  
5 midwifery.

6       (b) The scope of practice standards shall include:

7       (1) Adoption of a drug formulary recommended by the  
8 advisory committee and approved by the director; and

9       (2) Practice standards for antepartum, intrapartum,  
10 postpartum, and newborn care that prohibit a licensed  
11 midwife from providing care for a client with a  
12 history of disorders, diagnoses, conditions, or  
13 symptoms outside of the scope of practice recommended  
14 by the advisory committee and approved by the director  
15 pursuant to the standards of the National Association  
16 of Certified Professional Midwives.

17       (c) The scope of practice standards:

18       (1) Shall not require a licensed midwife to practice under  
19 the supervision of another health care provider,



- 1           except as a condition imposed as a result of  
2           discipline by the department;
- 3           (2) Shall not require a licensed midwife to enter into an  
4           agreement with another health care provider, except as  
5           a condition imposed as a result of discipline by the  
6           department;
- 7           (3) Shall not impose distance or time restrictions on  
8           where a licensed midwife may practice; and
- 9           (4) Shall not grant a licensed midwife prescriptive  
10          privileges outside of the privilege of ordering,  
11          obtaining, and administering medications on the  
12          approved formulary.
- 13          § -9 Client protection. A licensed midwife shall not:
- 14          (1) Disregard a client's dignity or right to privacy as to  
15          the client's person, condition, possessions, or  
16          medical record;
- 17          (2) Breach any legal requirement of confidentiality with  
18          respect to a client, unless ordered by a court of law;
- 19          (3) Submit a birth certificate known by the licensed  
20          midwife to be false or fraudulent, or willfully make



1 or file false or incomplete reports or records in the  
2 practice of midwifery;

3 (4) Fail to provide information sufficient to allow a  
4 client to give fully informed consent;

5 (5) Engage in the practice of midwifery while impaired  
6 because of the use of alcoholic beverages or drugs; or

7 (6) Violate any other standards of conduct as determined  
8 by the department.

9 § -10 **Disclosure; record keeping.** (a) Before  
10 initiating care, a licensed midwife shall obtain a signed  
11 informed consent agreement from each client, acknowledging  
12 receipt, at minimum, of the current North American Registry of  
13 Midwives required Informed Disclosure for Midwifery Care.

14 (b) All licensed midwives shall maintain accurate and  
15 truthful records as a provider of maternity and birth services  
16 and shall maintain a record of signed informed consent  
17 agreements for each client. Licensed midwives shall maintain  
18 midwifery records in accordance with section 622-58.

19 § -11 **Exemptions.** This chapter shall not apply to the  
20 following:



- 1           (1) Certified nurse midwives authorized by the board of  
2           nursing to practice in Hawaii, unless the certified  
3           nurse midwife chooses to become concurrently licensed  
4           under this chapter. Certified nurse midwives with  
5           concurrent licensure shall be subject to chapter 457,  
6           as well as this chapter;
- 7           (2) Student midwives in training under the direct  
8           supervision of licensed midwives as required by the  
9           North American Registry of Midwives;
- 10          (3) A person administering care to a spouse or parent;
- 11          (4) A person rendering aid in an emergency where no fee  
12          for the service is contemplated, charged, or received;  
13          or
- 14          (5) Other than as provided in paragraph (1), the practice  
15          of a profession by persons who are licensed,  
16          certified, or registered under other laws of this  
17          State and are performing services within their  
18          authorized scope of practice.

19          § -12 Hearings. (a) Unless otherwise provided by law,  
20 in every case in which the department refuses to issue, renew,



1 restore, or reinstate a license under this chapter, or proposes  
2 to take disciplinary action or other licensing sanctions against  
3 a licensee, the department shall conduct an administrative  
4 proceeding in accordance with chapter 91.

5 (b) In all proceedings before it, the department and each  
6 member thereof shall have the same powers respecting  
7 administering oaths, compelling the attendance of witnesses and  
8 the production of documentary evidence, and examining witnesses  
9 as are possessed by circuit courts. In case of disobedience by  
10 any person of any order of the department or of a member  
11 thereof, or of any subpoena issued by it or a member, or the  
12 refusal of any witness to testify to any matter regarding which  
13 the witness may be questioned lawfully, any circuit judge, on  
14 application by the department or a member thereof, shall compel  
15 obedience as in the case of disobedience of the requirements of  
16 a subpoena issued by a circuit court, or a refusal to testify  
17 therein.

18 § -13 Penalties. Unless otherwise specified in this  
19 chapter, any fine or penalty imposed by the director after a



1 hearing conducted pursuant to this chapter shall be no less than  
2 \$100 and no more than \$1,000 for the first violation.

3       **§ -14 Immunity from vicarious liability.** No licensed  
4 health care provider or facility providing medical care or  
5 treatment to a person due to an emergency arising during  
6 childbirth as a consequence of care received by a licensed  
7 midwife shall be held liable for any civil damages as a result  
8 of such medical care or treatment unless the damages result from  
9 the licensed health care provider or facility's provision of or  
10 failure to provide medical care or treatment under circumstances  
11 demonstrating a reckless disregard for the consequences so as to  
12 affect the life or health of another. A physician who consults  
13 with a licensed midwife but who does not examine or treat a  
14 client of the midwife shall not be deemed to have created a  
15 physician-patient relationship with the client."

16       SECTION 3. If any provision of this Act, or the  
17 application thereof to any person or circumstance, is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of the Act that can be given effect without the



# H.B. NO. 1288

1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

3 SECTION 4. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6 SECTION 5. This Act shall take effect upon its approval.  
7

INTRODUCED BY: Debra A. Ruetz

Brenda Kobayashi

Angela Johnson

R. J. [Signature]

Patricia [Signature]

[Signature]

Cindy Evans

John M. [Signature]

10m [Signature]

JAN 24 2017



# H.B. NO. 1288

**Report Title:**

Certified Professional Midwives; Licensure

**Description:**

Establishes licensure requirements for the practice of midwifery. Requires the Director of Commerce and Consumer Affairs to adopt rules regulating the practice of midwifery.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

