

JAN 25 2017

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# A BILL FOR AN ACT

RELATING TO THE LICENSURE OF MIDWIVES.

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

1           SECTION 1. The legislature finds that the nature of the  
2 maternity and prenatal services provided by midwives could  
3 potentially endanger the health and safety of women and newborns  
4 under a midwife's care if the profession is not adequately  
5 regulated. Public health and safety concerns substantially  
6 outweigh any negative effects arising from regulation, including  
7 the resulting restrictions on individuals entering the  
8 profession of midwifery and any increase in the cost of  
9 midwifery services caused by regulation of the profession. The  
10 legislature further finds that the auditor, in its sunrise  
11 analysis on the regulation of certified professional midwives,  
12 applied the criteria for licensure in the Hawaii regulatory  
13 licensing reform act. The auditor recommended that the  
14 profession of midwifery be regulated and its practitioners be  
15 licensed.

16           The purpose of this Act is to establish mandatory licensing  
17 for persons who engage in the practice of midwifery care.



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

4 "CHAPTER

5 MIDWIVES

6 § -1 Definitions. As used in this chapter:

7 "Accreditation Commission for Midwifery Education" means  
8 the organization established in 1982 and recognized by the  
9 United States Department of Education as an accrediting agency  
10 for midwifery education programs.

11 "Board" means the state board of nursing established under  
12 section 457-3.

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

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

18 "Midwife" means a person who engages in the practice of  
19 midwifery.

20 "Midwifery Education Accreditation Council" means the  
21 organization established in 1991 and recognized by the United



1 States Department of Education as an accrediting agency for  
2 midwifery education programs and institutions.

3 "Out-of-hospital" means taking place in a birth center or  
4 home.

5 "Postpartum period" means the period not exceeding six  
6 weeks from the date of delivery.

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

10 § -2 Powers and duties. In addition to any other powers  
11 and duties authorized by law, the board shall:

- 12 (1) Receive applications for licensure;
- 13 (2) Determine the qualifications of persons applying for  
14 licensure;
- 15 (3) Grant licenses to qualified applicants;
- 16 (4) Establish procedures to renew, suspend, revoke, and  
17 reinstate licenses;
- 18 (5) Establish and collect fees for the examination of  
19 applicants for licensure and license renewal;
- 20 (6) Establish the minimum educational and continuing  
21 educational requirements for licensure;



- 1 (7) Investigate complaints against licensed midwives;
- 2 (8) Undertake, when appropriate, disciplinary hearings;
- 3 and
- 4 (9) Subject to chapter 91, adopt, amend, or repeal rules,
- 5 as necessary to effectuate this chapter.

6 § -3 **Advisory committee; appointment; term.** (a) The  
7 board shall appoint an advisory committee to serve as experts to  
8 the board in licensing matters. The advisory committee shall  
9 consist of seven members as follows:

- 10 (1) The chair of the board, or the chair's designee, who  
11 shall be a nonvoting member;
- 12 (2) Four licensed midwives who shall be in current and  
13 active practice of midwifery in the State for the  
14 duration of their appointment and who shall have  
15 actively practiced as licensed midwives in the State  
16 for at least three years immediately preceding their  
17 appointment, who shall be voting members; provided  
18 that the four midwives initially appointed under this  
19 paragraph shall be as follows:

- 20 (A) Two certified professional midwives who shall be  
21 in current and active practice of midwifery in



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- 1           the State for the duration of their appointment  
2           and who shall have actively practiced as  
3           certified professional midwives in the State for  
4           at least three years immediately preceding their  
5           appointment, who shall be voting members; and
- 6           (B) Two certified nurse midwives who shall be in  
7           current and active practice of midwifery in the  
8           State for the duration of their appointment and  
9           who shall have actively practiced as certified  
10          nurse midwives in the State for at least three  
11          years immediately preceding their appointment,  
12          who shall be voting members;
- 13          (3) One licensed physician who has provided primary  
14          maternity care for at least twenty births in the  
15          twelve-month period prior to appointment, maintains  
16          current hospital privileges, and has attended at least  
17          one home birth, who shall be a nonvoting member; and
- 18          (4) One out-of-hospital birth consumer who is either  
19          currently under midwifery care and planning an out-of-  
20          hospital birth or has had an out-of-hospital birth in  
21          the past, who shall be a nonvoting member.



1           (b) Members of the committee shall serve four-year terms;  
2 provided that the initial members of the committee shall serve  
3 two-year terms; provided further that after June 30, 2017,  
4 members of the temporary advisory committee appointed under  
5 section 3 of Act       , Session Laws of Hawaii 2017, may continue  
6 in office as holdover members until their successors are  
7 appointed.

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

12           (d) The committee shall elect a chairperson from among its  
13 members. The committee shall meet at least annually to make  
14 recommendations to the board and may hold additional meetings at  
15 the call of the chairperson or at the written request of any two  
16 members of the committee. Three voting members shall constitute  
17 a quorum. The vote of the majority of members present at a  
18 meeting in which a quorum is present shall determine the action  
19 of the committee.



1           §   -4   Scope of practice; formulary. (a) The board shall  
2 establish scope of practice standards for the practice of  
3 midwifery.

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

5           (1) Adoption of a drug formulary recommended by the  
6 advisory committee and approved by the board; and

7           (2) Practice standards for antepartum, intrapartum,  
8 postpartum, and newborn care that prohibit a licensed  
9 midwife from providing care for a client with a  
10 history of disorders, diagnoses, conditions, or  
11 symptoms outside of the scope of practice approved by  
12 the board.

13          (c) The scope of practice standards shall not:

14          (1) Require a licensed midwife to practice under the  
15 supervision of another health care provider, except as  
16 a condition imposed as a result of discipline by the  
17 board;

18          (2) Require a licensed midwife to enter into an agreement  
19 with another health care provider, except as a  
20 condition imposed as a result of discipline by the  
21 board;



- 1           (3) Impose distance or time restrictions on where a  
2                    licensed midwife may practice;
- 3           (4) Grant a licensed midwife prescriptive privileges  
4                    outside of the privilege of ordering, obtaining, and  
5                    administering medications on the approved formulary;  
6                    or
- 7           (5) Allow a licensed midwife to perform abortions.

8           § -5 License; qualifications. (a) No person shall  
9 engage in the practice of midwifery in this State unless the  
10 person holds a current license issued by the board pursuant to  
11 this chapter. A license shall be granted to an applicant who  
12 files a board-approved application for licensure, pays the  
13 required application fees, and provides evidence to the board of  
14 the following:

- 15           (1) Completion of an educational program or pathway  
16                    accredited by the Midwifery Education Accreditation  
17                    Council or the Accreditation Commission for Midwifery  
18                    Education;
- 19           (2) Documentation of a graduate letter from a school  
20                    accredited by the Midwifery Education Accreditation  
21                    Council or the Accreditation Commission for Midwifery



1 Education or a letter of completion of portfolio  
2 evaluation process; and

3 (3) Successful completion of continuing education  
4 requirements.

5 (b) All licenses issued under this chapter shall be valid  
6 for two years from the date of issuance.

7 § -6 Fees; penalties. (a) Each applicant shall pay a  
8 licensing fee of \$250 upon application for a new or renewal  
9 license. Fees collected pursuant to this section shall be  
10 deposited into the compliance resolution fund established  
11 pursuant to section 26-9(o).

12 (b) Any fine imposed by the board after a hearing  
13 conducted pursuant to this chapter shall be no less than \$100  
14 and no more than \$1,000 for the first violation. A second or  
15 subsequent violation of this chapter shall be referred to the  
16 office of the attorney general for criminal prosecution. Any  
17 person who pleads guilty to or is found guilty of a second or  
18 subsequent violation of this chapter shall be guilty of a  
19 misdemeanor.

20 § -7 Hearings. (a) Unless otherwise provided by law,  
21 in every case in which the board 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 board shall conduct an administrative proceeding  
4 in accordance with chapter 91.

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

16 § -8 Exemptions. This chapter shall not apply to the  
17 following:

- 18 (1) Student midwives in training under the direct  
19 supervision of licensed midwives;  
20 (2) A person administering care to a spouse or parent;



1 (3) A person rendering aid in an emergency where no fee  
2 for the service is contemplated, charged, or received;  
3 and

4 (4) A person performing a service within the person's  
5 authorized scope of practice of a profession that is  
6 licensed, certified, or registered under other laws of  
7 this State.

8 § -9 Client protection. A licensed midwife shall not:

9 (1) Disregard a client's dignity or right to privacy as to  
10 the client's person, condition, possessions, or  
11 medical record;

12 (2) Breach any legal requirement of confidentiality with  
13 respect to a client, unless ordered by a court of law;

14 (3) Submit a birth certificate known by the licensed  
15 midwife to be false or fraudulent, or willfully make  
16 or file false or incomplete reports or records in the  
17 practice of midwifery;

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

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



1           (6) Violate any other standards of conduct as determined  
2                   by the board.

3           § -10 Disclosure; record keeping. (a) Before  
4 initiating care, a licensed midwife shall obtain a signed  
5 informed consent agreement from each client.

6           (b) All licensed midwives shall maintain a record of  
7 signed informed consent agreements for each client pursuant to  
8 section 622-58.

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



1 SECTION 3. (a) There shall be established a temporary  
2 advisory committee to serve as experts to the board in midwife  
3 licensing matters. The temporary advisory committee shall  
4 consist of seven members as follows:

5 (1) The chair of the board, or the chair's designee, who  
6 shall be a nonvoting member;

7 (2) Two certified professional midwives who shall be in  
8 current and active practice of midwifery in the State  
9 for the duration of their appointment and who shall  
10 have actively practiced as certified professional  
11 midwives in the State for at least three years  
12 immediately preceding their appointment, who shall be  
13 voting members;

14 (3) Two certified nurse midwives who shall be in current  
15 and active practice of midwifery in the State for the  
16 duration of their appointment and who shall have  
17 actively practiced as certified nurse midwives in the  
18 State for at least three years immediately preceding  
19 their appointment, who shall be voting members;

20 (4) One licensed physician who has provided primary  
21 maternity care for at least twenty births in the



1 twelve-month period prior to appointment, maintains  
2 current hospital privileges, and has attended at least  
3 one home birth, who shall be a nonvoting member; and

4 (5) One out-of-hospital birth consumer who is either  
5 currently under midwifery care and planning an out-of-  
6 hospital birth or has had an out-of-hospital birth in  
7 the past, who shall be a nonvoting member.

8 (b) In the event of the death, resignation, or removal of  
9 any temporary advisory committee member before the expiration of  
10 the member's term, the vacancy shall be filled for the unexpired  
11 portion of the term in the same manner as the original  
12 appointment.

13 (c) The temporary advisory committee shall elect a  
14 chairperson from among its members. The committee shall meet at  
15 least annually to make recommendations to the board and may hold  
16 additional meetings at the call of the chairperson or at the  
17 written request of any two members of the committee. Three  
18 voting members shall constitute a quorum. The vote of the  
19 majority of members present at a meeting in which a quorum is  
20 present shall determine the action of the committee.



1 (d) The temporary advisory committee shall submit annual  
2 reports to the legislature not later than twenty days prior to  
3 the convening of the regular sessions of 2018 and 2019.

4 (e) The temporary advisory committee shall cease to exist  
5 on June 30, 2019; provided that all members shall continue to  
6 serve as the initial members of the permanent advisory committee  
7 established under section -3 in section 2 of the Act until  
8 their successors are appointed.

9 SECTION 4. If any provision of this Act, or the  
10 application thereof to any person or circumstance, is held  
11 invalid, the invalidity does not affect other provisions or  
12 applications of this Act that can be given effect without the  
13 invalid provision or application, and to this end the provisions  
14 of this Act are severable.

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

18 SECTION 6. This Act shall take effect on July 1, 2019;  
19 provided that section 3 shall take effect on July 1, 2017.

20

INTRODUCED BY:





# S.B. NO. 1312

**Report Title:**

Licensure; Midwife

**Description:**

Establishes mandatory licensing for midwives. Effective 7/1/2019. Establishes temporary advisory committee on midwife licensing until 7/1/19.

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

