

JAN 24 2024

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# A BILL FOR AN ACT

RELATING TO ACCESS FOR REPRODUCTIVE CARE.

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

1           SECTION 1. The legislature finds that a person's right to  
2 choose where to give birth and who they want as their preferred  
3 birth attendant are integral to providing care, safety, bodily  
4 autonomy, and comfort during the birthing process. This right  
5 is particularly important amongst practitioners of traditional  
6 and Indigenous midwifery.

7           The legislature notes that, although most maternal deaths  
8 are preventable, maternal deaths have been increasing in the  
9 United States since 2000. Although Hawaii has a lower maternal  
10 mortality rate compared to other states, Hawaii's mortality rate  
11 has over time increased significantly. The United States also  
12 has the highest maternal mortality rate among developed  
13 countries. In most other countries, midwives outnumber  
14 obstetrician-gynecologists by severalfold. However, in the  
15 United States, obstetrician-gynecologists are overrepresented in  
16 the maternity care workforce relative to midwives, but there is  
17 an overall shortage of maternity care providers, both



1 obstetrician-gynecologists and midwives, relative to the number  
2 of births. Furthermore, while the federal Affordable Care Act  
3 requires that state medicaid programs cover midwifery care, the  
4 supply of providers is often so low that beneficiaries are often  
5 unable to access these services.

6 The legislature further finds that protecting the rights of  
7 cultural practitioners is enshrined in the Hawaii State  
8 Constitution. The United Nations also supports and encourages  
9 similar protections. In 2007, the United Nations passed the  
10 Declaration on the Rights of Indigenous Peoples, which  
11 established a universal framework of minimum standards for the  
12 survival, dignity, and wellbeing of Indigenous peoples. The  
13 Declaration also elaborates on existing human rights standards  
14 and fundamental freedoms as they apply to the specific situation  
15 of Indigenous peoples.

16 The legislature also notes that on December 7, 2023, the  
17 United Nations International Covenant on Civil and Political  
18 Rights' Human Rights Committee distributed its Concluding  
19 Observations on the Fifth Periodic Report of the United States  
20 of America, wherein it expressed concerns that "in various  
21 states, midwifery is severely restricted, banned or even



1 criminalized, limiting the availability of culturally sensitive  
2 and respectful maternal health care for those with low incomes,  
3 those living in rural areas, people of African descent and  
4 members of Indigenous communities".

5       The legislature recognizes that the World Health  
6 Organization recommends midwifery as an evidence-based approach  
7 to reducing maternal mortality. Several systematic reviews have  
8 found that midwifery-led care for women with healthy pregnancies  
9 is comparable or preferable to physician-led care in terms of  
10 maternal and neonatal outcomes; more efficient use of health  
11 system resources; improved patient satisfaction and maternal  
12 psychosocial well-being outcomes, including those for postpartum  
13 depression.

14       The legislature additionally finds that Act 32, Session  
15 Laws of Hawaii 2019 (Act 32), established licensing and  
16 regulatory requirements for the practice of midwifery. However,  
17 although Act 32 states that "[n]othing in this chapter shall  
18 limit, alter, or otherwise adversely impact the practice of  
19 traditional Native Hawaiian healing pursuant to the Constitution  
20 of the State of Hawaii," there is no statutory provision that  
21 would affirmatively protect such practitioners from citation or



1 other criminal repercussions. Additionally, while Act 32 states  
2 that midwifery licensing is not intended to "prohibit healing  
3 practices by traditional Hawaiian healers ... as recognized by  
4 any council of kupuna convened by Papa Ola Lokahi", the  
5 legislature recognizes that this is not a means to protect all  
6 traditional practitioners of Hawaiian birthing customs in  
7 Hawaii.

8 Concerns with Act 32 have also been expressed by the  
9 counties. In 2023, resolutions were adopted by three county  
10 councils, including the Hawaii county council in resolution no.  
11 57-23; Kauai county council in resolution no. 2023-31; and Maui  
12 county council in resolution no. 23-28, urging the legislature  
13 to enact a statute permanently exempting birth attendants from  
14 state licensure requirements for the practice of midwifery.

15 The legislature further notes that Act 32 stated that the  
16 Act will "continue to allow a woman to choose where and with  
17 whom she gives birth." However, Act 32 also stated, "[b]y the  
18 end of the three-year period, the legislature intends to enact  
19 statutes that will incorporate all birth practitioners and allow  
20 them to practice to the fullest extent under the law." The  
21 legislature believes that it is now necessary to clarify the



1 intent and scope of Hawaii's midwifery licensure law to  
2 facilitate continuity of care and ensure that persons of all  
3 cultures and religions in the State have clear, legal access to  
4 the birth attendants of their choosing.

5 Accordingly, the purpose of this Act is to clarify the  
6 State's midwifery law to ensure that doulas, cultural birth  
7 workers, and other pregnancy and birth practitioners are able to  
8 offer maternity and newborn care in line with their traditions,  
9 ethnic cultures, and religions.

10 SECTION 2. Section 457J-1, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[~~§~~457J-1] **Findings and purpose.** The legislature  
13 finds that:

14 (1) Midwives, doulas, cultural birth workers, and other  
15 pregnancy and birth practitioners offer maternity and  
16 newborn care from the antepartum period through the  
17 intrapartum period to the postpartum period;

18 (2) The improper practice of midwifery poses a significant  
19 risk of harm to the mother or newborn, and may result  
20 in death; [~~and~~]



1 (3) The regulation of the practice of midwifery is  
2 reasonably necessary to protect the health, safety,  
3 and welfare of mothers and their newborns[-];

4 (4) Maternal mortality is significantly higher for  
5 Hawaiian, Pacific Islander, and black women than for  
6 other ethnicities in the State, with rural women at an  
7 elevated risk;

8 (5) Cultural factors and access to care have been found to  
9 be significant factors in decreasing maternal  
10 mortality rates in the United States; and

11 (6) The regulation of the practice of midwifery shall not  
12 preclude or limit care by extended family, cultural  
13 supporters, or others with whom a woman chooses to  
14 give birth, and shall not deter effective  
15 communication between all parties in the event of a  
16 hospital transport."

17 SECTION 3. Section 457J-2, Hawaii Revised Statutes, is  
18 amended as follows:

19 1. By adding a new definition to be appropriately inserted  
20 and to read:



1        "Clinical" means involving or relating to the direct  
2 medical treatment or testing of patients."

3        2. By amending the definition of "midwifery" to read:

4        "Midwifery" means the provision of [~~one or more of the~~  
5 ~~following services:~~

6        ~~(1) Assessment,~~ clinical assessment, monitoring, and care  
7        during pregnancy, labor, childbirth, postpartum and  
8        interconception periods, and for newborns, including  
9        ordering and interpreting screenings and diagnostic  
10       tests, and carrying out appropriate emergency measures  
11       when necessary[~~+~~

12       ~~(2) Supervising the conduct of labor and childbirth; and~~

13       ~~(3) Provision of advice and information regarding the~~  
14       ~~progress of childbirth and care for newborns and~~  
15       ~~infants]."~~

16       SECTION 4. Section 457J-6, Hawaii Revised Statutes, is  
17 amended to read as follows:

18       "[~~+~~]**\$457J-6**[~~+~~] **Exemptions.** (a) A person may practice  
19 midwifery without a license to practice midwifery if the person  
20 is:



- 1           (1) A certified nurse-midwife holding a valid license
- 2                   under chapter 457;
- 3           (2) Licensed and performing work within the scope of
- 4                   practice or duties of the person's profession that
- 5                   overlaps with the practice of midwifery;
- 6           (3) A student midwife who is currently enrolled in a
- 7                   midwifery educational program under the direct
- 8                   supervision of a qualified midwife preceptor;
- 9           (4) A person rendering aid in an emergency where no fee
- 10                   for the service is contemplated, charged, or received;
- 11                   or
- 12           (5) A person acting as a birth attendant on or before July
- 13                   1, 2023, who:
- 14                   (A) Does not use legend drugs or devices, the use of
- 15                           which requires a license under the laws of the
- 16                           State;
- 17                   (B) Does not advertise that the person is a licensed
- 18                           midwife;
- 19                   (C) Discloses to each client verbally and in writing
- 20                           on a form adopted by the department, which shall
- 21                           be received and executed by the person under the





1 birth attendant's care at the time care is first  
2 initiated:

3 (i) That the person does not possess a  
4 professional license issued by the State to  
5 provide health or maternity care to women or  
6 infants;

7 (ii) That the person's education and  
8 qualifications have not been reviewed by the  
9 State;

10 (iii) The person's education and training;

11 (iv) That the person is not authorized to  
12 acquire, carry, administer, or direct others  
13 to administer legend drugs;

14 (v) Any judgment, award, disciplinary sanction,  
15 order, or other determination that adjudges  
16 or finds that the person has committed  
17 misconduct or is criminally or civilly  
18 liable for conduct relating to midwifery by  
19 a licensing or regulatory authority,  
20 territory, state, or any other jurisdiction;  
21 and



1 (vi) A plan for transporting the client to the  
2 nearest hospital if a problem arises during  
3 the client's care; and

4 (D) Maintains a copy of the form required by  
5 subparagraph (C) for at least ten years and makes  
6 the form available for inspection upon request by  
7 the department.

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

15 (c) Nothing in this chapter shall prohibit a person from  
16 administering care to a person's spouse, domestic partner,  
17 parent, sibling, ~~[or]~~ child[-], or other member of a person's  
18 immediate or extended family.

19 (d) Nothing in this chapter shall prohibit or restrict  
20 healing practices by traditional healers of any ethnic culture  
21 or religious faith and their students.



1        (e) Nothing in this chapter shall limit, alter, or  
2 otherwise adversely impact any religion or ethnic cultural  
3 practices as protected by the Hawaii State Constitution.

4        (f) Nothing in this chapter shall prohibit or interfere  
5 with a person right to choose where and with whom that person  
6 gives birth."

7        SECTION 5. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9        SECTION 6. This Act shall take effect upon its approval.

10

INTRODUCED BY: \_\_\_\_\_



# S.B. NO. 2969

**Report Title:**

Midwives; Practice of Midwifery; Cultural and Traditional Healers; Exemptions

**Description:**

Clarifies the State's midwifery law to permit care by extended family, cultural supporters, or others with whom a woman chooses to give birth. Specifies that nothing in the midwifery law shall prohibit or restrict healing practices by traditional healers of any ethnic culture or religious faith or their students; limit, alter, or adversely impact any religion or ethnic cultural practices; or prohibit or interfere with a person's right to choose where and with whom the person gives birth.

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