

ACT 225

S.B. NO. 2102

A Bill for an Act Relating to Midwives.

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

SECTION 1. The purpose of this Act is to implement the recommendations of the legislative auditor in the auditor's sunset evaluation report. The report reviewed state laws that authorize the licensing of midwives by the department of health. The legislature agrees with the auditor's finding that the regulation of midwives should continue since the public's health and safety is dependent on qualified and competent midwives.

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

“§26H-4 Repeal dates. (a) The following chapter and sections are hereby repealed effective December 31, 1990:

- (1) Chapter 466J (Board of Radiologic Technology)
- (2) Sections 321-13 to 321-15 ([midwives,] laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, electrologists, and sanitarians)

- 1991: (b) The following chapters are hereby repealed effective December 31,
- (1) Chapter 447 (Dental Hygienists)
 - (2) Chapter 453 (Board of Medical Examiners)
 - (3) Chapter 457 (Board of Nursing)
 - (4) Chapter 458 (Board of Dispensing Opticians)
 - (5) Chapter 460J (Pest Control Board)
 - (6) Chapter 462A (Pilotage)
 - (7) Chapter 438 (Board of Barbers)
 - (8) Chapter 468K (Travel Agencies)
- 1992: (c) The following chapters are hereby repealed effective December 31,
- (1) Chapter 448H (Elevator Mechanics Licensing Board)
 - (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
 - (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
 - (4) Chapter 460 (Board of Osteopathic Examiners)
 - (5) Chapter 461 (Board of Pharmacy)
 - (6) Chapter 461J (Board of Physical Therapy)
 - (7) Chapter 463E (Podiatry)
 - (8) Chapter 467D (Social Workers)
- 1993: (d) The following chapters are hereby repealed effective December 31,
- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
 - (2) Chapter 437B (Motor Vehicle Repair Industry Board)
 - (3) Chapter 440 (Boxing Commission)
 - (4) Chapter 446 (Debt Adjusters)
 - (5) Chapter 436E (Board of Acupuncture)
- 1993: (e) The following sections are hereby repealed effective December 31,
- (1) Sections 445-21 to 38 (Auctions)
 - (2) Sections 445-131 to 136 (Pawnbrokers)
 - (3) Sections 445-171 to 172 (Secondhand Dealers)
 - (4) Sections 445-231 to 235 (Scrap Dealers)
- 1994: (f) The following chapters are hereby repealed effective December 31,
- (1) Chapter 441 (Cemetery and Funeral Trusts)
 - (2) Chapter 443B (Collection Agencies)
 - (3) Chapter 452 (Board of Massage)
 - (4) Chapter 455 (Board of Examiners in Naturopathy)
 - (5) Chapter 459 (Board of Examiners in Optometry)
 - (6) Chapter 442 (Board of Chiropractic Examiners)
 - (7) Chapter 373 (Commercial Employment Agencies)
 - (8) Chapter 448 (Board of Dental Examiners)
 - (9) Chapter 465 (Board of Psychology)
 - (10) Chapter 468E (Speech Pathology and Audiology)
- 1995: (g) The following chapters are hereby repealed effective December 31,
- (1) Chapter 439 (Board of Cosmetology)
 - (2) Chapter 444 (Contractors License Board)
 - (3) Chapter 448E (Board of Electricians and Plumbers)
 - (4) Chapter 454 (Mortgage Brokers and Solicitors)
 - (5) Chapter 454D (Real Estate Collection Servicing Agents)

(6) Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects)

(7) Chapter 466 (Board of Public Accountancy)

(8) Chapter 467 (Real Estate Commission)

(h) The following laws are hereby repealed effective December 31, 1996: Part , chapter 321 (Midwives)

31, 1997: [(h)] (i) The following chapters are hereby repealed effective December

(1) Chapter 463 (Board of Private Detectives and Guards)

(2) Chapter 471 (Board of Veterinary Examiners).”

SECTION 3. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . MIDWIVES

§321- Findings and purpose. The legislature recognizes the need for the safe and effective delivery of newborn babies and the health, safety, and welfare of their mothers in the delivery process. The legislature finds that the interests of public health require the regulation of the practice of midwifery in this State for the purpose of protecting the health and welfare of mothers and infants.

§321- Definitions. As used in this part:

“Department” means the department of health.

“Director” means the director of health.

“Midwife” means a person who is licensed under this part to practice midwifery.

“Midwifery” means the care and management of essentially normal newborns and women before, during, and after pregnancy and childbirth, and includes the provision of normal obstetrical and gynecological services and the rendering, undertaking, or providing of such care, management, or services, regardless of whether compensation or profit is received.

“Normal” means without significant medical complications or injury to the mother or child.

“Physician” means a person licensed to practice medicine as authorized in chapter 453.

§321- License required. Except as otherwise provided by law, no person, other than a physician, shall engage or hold themselves out as practicing midwifery without first obtaining and holding a valid license to do so in accordance with this part and any rules adopted by the department.

§321- Qualifications for licensing. A person shall meet the following requirements in order to qualify for a license to practice as a midwife:

(1) Licensure as a registered nurse under chapter 457; and

(2) Certification to practice midwifery by the American College of Nurse-Midwives.

§321- Fees. No license shall be issued unless all fees required by the director have been paid.

§321- Regulation of midwives. (a)¹ The director shall adopt rules in accordance with this part and pursuant to chapter 91 to implement the purposes

of this part and as may be necessary to safeguard the health and safety of the mother and child. The rules shall include, but shall not be limited to:

- (1) Procedures for maintaining a safe and hygienic environment, monitoring the progress of labor and the status of the fetus, recognizing early signs of distress or complications, referring complications to a physician, and preparing an emergency care plan to ensure continuity of medical care throughout labor and delivery and to provide for immediate medical care if an emergency arises;
- (2) Providing that midwives shall practice in accordance with a mutually agreed upon written guideline/protocol for clinical practice with a physician who specializes in the field of gynecology or obstetrics, or a physician or group of physicians who have a formal consultative arrangement with a gynecologist or obstetrician;
- (3) The allowable scope of midwifery practice regarding use of equipment, procedures, and medication; and
- (4) Procedures for the issuance and renewal of licenses.

§321- Disciplinary actions; penalties. (a) The following acts shall be grounds for disciplinary action:

- (1) Procuring or attempting to procure a license to practice midwifery by fraud, misrepresentation, deceit, or bribery;
- (2) Engaging in unprofessional conduct, which includes, but is not limited to, any departure from, or the failure to conform to, the standards of practice of midwifery as established by the director, or as provided by the statement of functions, standards, and qualification of the American College of Nurse-Midwives;
- (3) Advertising falsely, fraudulently, or deceptively;
- (4) Being unable to practice midwifery with reasonable skill and safety to patients by reason of illness, drunkenness, or use of drugs, narcotics, chemicals, or other materials, or as a result of any mental or physical condition;
- (5) Wilfully or repeatedly violating any provision of this part, any rule, or any lawful order of the department previously entered in a disciplinary proceeding;
- (6) Loss of licensure, for any reason, to practice as a registered nurse in the State of Hawaii; and
- (7) Having a license to practice midwifery revoked, suspended, or otherwise acted against, including being denied licensure, by the licensing authority of another state, territory, or country.

(b) When the department finds any person guilty of any of the grounds set forth in subsection (a), it may enter an order imposing one or more of the following penalties:

- (1) Refusal to approve an application for licensure;
- (2) Revocation or suspension of a license;
- (3) Imposition of an administrative fine not to exceed \$1,000 for each separate offense;
- (4) Issuance of a reprimand; or
- (5) Placement of the licensee on probation for a period of time and subject to conditions the department may specify, including, but not limited to, requiring the midwife to undertake further relevant education or training approved by the American College of Nurse-Midwives, or supervision of the licensee by a physician.

(c) All actions under this section shall be taken only after notice and opportunity for hearing as provided in chapter 91.

§321- Violations; penalties. It shall be a misdemeanor for any person to:

- (1) Practice midwifery, unless holding a valid license to do so;
- (2) Use or attempt to use a license which has been suspended or revoked;
- (3) Use in connection with the person's name any designation tending to imply that the person is a licensed midwife unless licensed to practice under this part;
- (4) Knowingly permit or assist an unlicensed person to practice midwifery;
- (5) Knowingly conceal information relating to the enforcement of this part [or rules adopted pursuant to it]¹; or
- (6) Otherwise violate any provisions of this part."

SECTION 4. Section 321-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of health with the approval of the governor, may prescribe such rules as it deems necessary for the public health or safety respecting:

- (1) The occupations or practices of [midwives,] laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, electrologists, sanitarians, asbestos inspectors, asbestos management planners, and asbestos abatement project designers;
- (2) The health, education, training, experience, habits, qualifications, or character of persons to whom certificates of registration or permits for [such] those occupations or practices may be issued;
- (3) The health, habits, character, practices, standards, or conduct of persons holding [such] those certificates or permits; or
- (4) The grounds or causes for revoking or suspending [such] those certificates or permits.

[Such] The rules shall have the force and effect of law."

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

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 25, 1990.)

Note

1. So in original.