

**HOUSE BILL NO. 382**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY REPRESENTATIVES KOPONEN, B.Davis**

**Introduced: 1/13/92**

**Referred: Health, Education & Social Services, Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to regulating the practice of midwifery; and providing for an effective  
2 date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 08.01.010 is amended by adding a new paragraph to read:

5 (33) Board of Licensed Midwives (AS 08.65.010).

6 \* **Sec. 2.** AS 08.03.010(c) is amended by adding a new paragraph to read:

7 (23) Board of Licensed Midwives (AS 08.65.010) -- June 30, 1996.

8 \* **Sec. 3.** AS 08.64.370 is amended to read:

9 Sec. 08.64.370. EXCEPTIONS TO APPLICATION OF CHAPTER. This chapter does  
10 not apply to

11 (1) officers in the regular medical service of the armed services of the United  
12 States or the United States Public Health Service while in the discharge of their official duties;

13 (2) a physician or osteopath, who is not a resident of this state, who is asked by  
14 a physician or osteopath licensed in this state to help in the diagnosis or treatment of a case;

- 1 (3) the practice of the religious tenets of a church;
- 2 (4) [REPEALED
- 3 (5)] a physician in the regular medical service of the United States Public Health
- 4 Service or the armed services of the United States volunteering services without pay or other
- 5 remuneration to a hospital, clinic, medical office, or other medical facility in the state;
- 6 (5) [(6)] a person who is licensed [REGISTERED] as a [LAY] midwife by the
- 7 department [DEPARTMENT OF HEALTH AND SOCIAL SERVICES] under AS 08.65
- 8 [AS 18.05.040] or who is excluded from registration under AS 08.65.160(3) and (4)
- 9 [AS 18.05.057] while engaged in the practice of [LAY] midwifery whether or not the person
- 10 accepts compensation for those services.

11 \* Sec. 4. AS 08 is amended by adding a new chapter to read:

12 CHAPTER 65. MIDWIVES.

13 Sec. 08.65.010. BOARD ESTABLISHED. (a) There is established the Board of

14 Licensed Midwives.

15 (b) The board consists of five members appointed by the governor subject to

16 confirmation by the legislature in joint session. Members serve for staggered terms of four years

17 and until a successor is appointed and qualified. The board consists of two members who are

18 licensed in this state as licensed midwives, one health care professional, one certified nurse

19 midwife licensed by the Board of Nursing in this state, and one public member who has received

20 or paid for the services of a midwife licensed under this chapter.

21 (c) The board shall elect a chairperson and a secretary from among its members to terms

22 of one year.

23 (d) A member may serve no more than two complete consecutive terms on the board.

24 Sec. 08.65.020. MEETINGS. The board shall meet twice annually and may hold special

25 meetings at the call of the chairperson or on the written notice of two board members.

26 Sec. 08.65.030. DUTIES AND POWERS OF BOARD. (a) The board shall

- 27 (1) examine applicants and issue licenses to those applicants it finds qualified;
- 28 (2) adopt regulations establishing licensing and license renewal requirements;
- 29 (3) issue permits to apprentice midwives;
- 30 (4) hold hearings and order the disciplinary sanction of a person who violates this
- 31 chapter or a regulation of the board;

- 1 (5) supply forms for applications, licenses, permits, certificates, and other papers  
2 and records;  
3 (6) report annually to the governor and the department on the board's proceedings  
4 during the year;  
5 (7) enforce the provisions of this chapter and adopt regulations necessary to make  
6 the provisions of this chapter effective.

7 (b) The board may by regulation require that a licensee undergo a uniform or random  
8 period of peer review to ensure the quality of care provided by the licensee.

9 Sec. 08.65.040. PROCEDURES. The Administrative Procedure Act (AS 44.62) applies  
10 to regulations and proceedings under this chapter.

11 Sec. 08.65.050. QUALIFICATIONS FOR LICENSE. (a) The board shall issue a license  
12 to practice midwifery to a person who

- 13 (1) applies on a form provided by the board;  
14 (2) pays the fees required under AS 08.65.100;  
15 (3) furnishes evidence satisfactory to the board that the person has not engaged  
16 in conduct that is a ground for imposing disciplinary sanctions under AS 08.65.110;  
17 (4) furnishes evidence satisfactory to the board that the person has completed a  
18 course of study and supervised clinical experience; the study and experience must be of at least  
19 one year's duration;  
20 (5) successfully completes the examination required by the board.

21 (b) The board may issue a license to a person who meets the requirements of (a)(1) - (3)  
22 and (5) of this section if the board determines that the person substantially satisfies the  
23 requirements of (a)(4) of this section. The board may defer consideration of an application under  
24 this subsection and require completion of additional study or supervised clinical experience before  
25 making its decision.

26 Sec. 08.65.060. EXAMINATIONS. The board shall conduct examinations at least twice  
27 each year. Examinations may be written, oral, or practical or a combination of these. The board,  
28 at a minimum, shall utilize the examination provided by the Midwives Alliance of North  
29 America. An applicant who has failed the examination may not retake the examination for a  
30 period of six months.

31 Sec. 08.65.070. LICENSURE BY CREDENTIALS. The board may by regulation

1 provide for the licensing without examination of a person who meets the requirements of  
2 AS 08.65.050(1) - (4) and who is currently licensed in another state with licensing and  
3 examination requirements at least equivalent in scope, quality, and difficulty to those of this state  
4 at the time of licensure. At a minimum, an applicant for licensing by credentials

5 (1) may not be the subject of an unresolved complaint or disciplinary action  
6 before a regulatory authority in this state or another jurisdiction;

7 (2) may not have failed the examination for a license to practice midwifery in this  
8 state;

9 (3) may not have had a license to practice midwifery revoked in this state or  
10 another jurisdiction;

11 (4) shall submit proof of continued competency satisfactory to the board; and

12 (5) shall pay the required fees.

13 Sec. 08.65.080. RENEWAL. A license issued under AS 08.65.050 or 08.65.070 expires  
14 on a date determined by the board and may be renewed every two years upon payment of the  
15 required fee and the submission of evidence satisfactory to the board that the licensed midwife  
16 has met the continuing education requirements of the board and has not committed an act that  
17 is a ground for discipline under AS 08.65.110.

18 Sec. 08.65.090. APPRENTICE MIDWIVES. (a) The board shall issue a permit to  
19 practice as an apprentice midwife to a person who satisfies the requirements of AS 08.65.050(1) -  
20 (3). The permit application must include information about the supervisor's licensing and  
21 experience and be signed by the supervisor. The permit is valid for a term of two years and may  
22 be renewed in accordance with regulations adopted by the board.

23 (b) An apprentice midwife may perform all the activities of a licensed midwife if  
24 supervised by

25 (1) a licensed midwife who has been licensed and practicing in this state for at  
26 least two years;

27 (2) a licensed midwife who has been licensed for at least two years in a state with  
28 licensing requirements at least equivalent in scope, quality, and difficulty to those of this state  
29 at the time of licensing, who is licensed in this state, and who has practiced midwifery for the  
30 last two years;

31 (3) a physician licensed in this state; or

1 (4) a certified nurse midwife licensed by the Board of Nursing in this state.

2 Sec. 08.65.100. FEES. The department shall set fees under AS 08.01.065 to implement  
3 this chapter.

4 Sec. 08.65.110. GROUNDS FOR DISCIPLINE, SUSPENSION, OR REVOCATION OF  
5 LICENSE. After a hearing, the board may impose a disciplinary sanction on a person licensed  
6 under this chapter if the board finds that the licensee

7 (1) secured a license through deceit, fraud, or intentional misrepresentation;

8 (2) engaged in deceit, fraud, or intentional misrepresentation in the course of  
9 providing professional services or engaging in professional activities;

10 (3) advertised professional services in a false or misleading manner;

11 (4) has been convicted of a felony or other crime that affects the licensee's ability  
12 to continue to practice competently and safely;

13 (5) intentionally or negligently engaged in or permitted the performance of client  
14 care by persons under the licensee's supervision that does not conform to minimum professional  
15 standards regardless of whether actual injury to the client occurred;

16 (6) failed to comply with this chapter, with a regulation adopted under this  
17 chapter, or with an order of the board;

18 (7) continued to practice after becoming unfit due to

19 (A) professional incompetence;

20 (B) failure to keep informed of current professional practices;

21 (C) addiction or severe dependency on alcohol or other drugs that impairs  
22 the ability to practice safely;

23 (D) physical or mental disability;

24 (8) engaged in lewd or immoral conduct in connection with the delivery of  
25 professional service to clients.

26 Sec. 08.65.120. DISCIPLINARY SANCTIONS. (a) When it finds that a licensee is  
27 guilty of an offense under AS 08.65.110, the board, in addition to the powers provided in  
28 AS 08.01.075, may impose the following sanctions singly or in combination:

29 (1) permanently revoke a license to practice;

30 (2) suspend a license for a determinate period of time;

31 (3) censure a licensee;

- 1 (4) issue a letter of reprimand;  
2 (5) place a licensee on probationary status and require the licensee to  
3 (A) report regularly to the board upon matters involving the basis of  
4 probation;  
5 (B) limit practice to those areas prescribed;  
6 (C) continue professional education until a satisfactory degree of skill has  
7 been attained in those areas determined by the board to need improvement;  
8 (6) impose limitations or conditions on the practice of a licensee.

9 (b) The board may withdraw probationary status if it finds that the deficiencies that  
10 required the sanction have been remedied.

11 (c) The board may summarily suspend a license before final hearing or during the  
12 appeals process if the board finds that the licensee poses a clear and immediate danger to the  
13 public health and safety if the licensee continues to practice. A person whose license is  
14 suspended under this section shall be entitled to a hearing by the board no later than seven days  
15 after the effective date of the order. The person may appeal the suspension after a hearing to the  
16 superior court.

17 (d) The board may reinstate a license that has been suspended or revoked if the board  
18 finds after a hearing that the applicant is able to practice with reasonable skill and safety.

19 (e) The board shall seek consistency in the application of disciplinary sanctions, and  
20 significant departure from prior decisions involving similar situations shall be explained in  
21 findings of fact or orders.

22 Sec. 08.65.130. CRIMINAL PENALTY. A person who violates this chapter is guilty  
23 of a class B misdemeanor.

24 Sec. 08.65.140. REQUIRED PRACTICES. (a) Except as provided in (d) of this section,  
25 a licensed midwife may not assume the care or delivery of a client unless the licensed midwife  
26 has recommended that the client undergo a physical examination performed by a physician,  
27 public health nurse, or nurse midwife, who is licensed in this state, and the client is in normal  
28 physical condition and is expected to have a low risk pregnancy.

29 (b) A licensed midwife shall inform a woman seeking home birth of the possible risks  
30 of home birth and shall obtain a signed informed consent from the woman before the onset of  
31 labor. A licensed midwife shall accept full legal responsibility for the midwife's acts or

1 omissions.

2 (c) A licensed midwife shall comply with the requirements of AS 18.15.150 concerning  
3 taking of blood samples, AS 18.15.200 concerning screening of phenylketonuria (PKU),  
4 AS 18.15.160 concerning birth registration, AS 18.50.230 concerning registration of deaths,  
5 AS 18.50.240 concerning fetal death registration, and regulations adopted by the Department of  
6 Health and Social Services concerning prophylactic treatment of the eyes of newborn infants.

7 (d) Unless a physician is not available to attend a delivery, a licensed midwife may not  
8 knowingly deliver a woman who

- 9 (1) has a history of thrombophlebitis or pulmonary embolism;
- 10 (2) has diabetes, hypertension, Rh disease with positive titer, active tuberculosis,  
11 active syphilis, active gonorrhea, epilepsy, heart disease, or kidney disease;
- 12 (3) contracts genital herpes simplex in the first trimester of pregnancy;
- 13 (4) has severe psychiatric illness;
- 14 (5) is addicted to narcotics or other drugs;
- 15 (6) has multiple gestation;
- 16 (7) has a fetus of less than 37 weeks gestation at the onset of labor;
- 17 (8) has a gestation of more than 42-1/2 weeks by dates and examination;
- 18 (9) has a fetus in any presentation other than vertex at the onset of labor;
- 19 (10) is a primigravida with an unengaged fetal head in active labor, or any woman  
20 who has rupture of membranes with unengaged fetal head, with or without labor;
- 21 (11) has a fetus with suspected or diagnosed congenital anomalies that may  
22 require immediate medical intervention;
- 23 (12) has pre-eclampsia or eclampsia;
- 24 (13) has bleeding with evidence of placenta previa.

25 Sec. 08.65.150. PROHIBITED PRACTICES. Except as provided in AS 08.65.160(3) and  
26 (4), a person who is not licensed under this chapter as a licensed midwife may not practice mid-  
27 wifery for compensation.

28 Sec. 08.65.160. EXCLUSIONS. This chapter does not apply to a person

- 29 (1) who is licensed as a physician in this state;
- 30 (2) who is licensed as a certified nurse midwife by the Board of Nursing in this  
31 state;

1 (3) who is practicing midwifery on the effective date of this Act and who receives  
2 compensation for services if the person's cultural traditions have included, for at least two  
3 generations, the attendance of lay midwives at births, and if the person has attended at least 10  
4 births;

5 (4) whose cultural traditions have included, for at least two generations, the  
6 attendance of midwives at births, who accepts compensation for the practice of midwifery if the  
7 person has assisted another in at least 10 births and the person assisted is excluded from  
8 registration under this section or is a licensed midwife, physician, nurse midwife, or public health  
9 nurse.

10 Sec. 08.65.170. DEFINITIONS. In this chapter,

11 (1) "board" means the Board of Licensed Midwives;

12 (2) "caring for" means detecting abnormal conditions in mother and child,  
13 procuring medical help, executing emergency measures in the absence of medical help, and  
14 performing standard preventive measures against infant blindness;

15 (3) "department" means the Department of Commerce and Economic  
16 Development;

17 (4) "practice of midwifery" means giving education and advice concerning  
18 pregnancy; supervising, caring for, and advising women during pregnancy, labor, and the  
19 postpartum period; conducting deliveries without supervision; and caring for newborns and  
20 infants who are less than four weeks old.

21 \* Sec. 5. AS 18.05.040(a) is amended to read:

22 (a) The commissioner shall adopt regulations consistent with existing law for

23 (1) the definition, reporting, and control of diseases of public health significance;

24 (2) cooperation with local boards of health and health officers;

25 (3) protection and promotion of the public health and prevention of disability and  
26 mortality;

27 (4) the transportation of dead bodies;

28 (5) carrying out the purposes of this chapter;

29 (6) the conduct of its business and for carrying out the provisions of laws of the  
30 United States and the state relating to public health;

31 (7) establishing the divisions and local offices and advisory groups necessary or

1 considered expedient to carry out or assist in carrying out a duty or power assigned to it;

2 (8) the voluntary certification of laboratories to perform diagnostic, quality  
3 control, or enforcement analyses or examinations based on recognized or tentative standards of  
4 performance relating to analysis and examination of food to include seafood, milk, water, and  
5 specimens from human beings submitted by licensed physicians and nurses for analysis;

6 (9) the regulation of quality and purity of commercially compressed oxygen sold  
7 for human respiration;

8 (10) the registration of birth centers, except that the commissioner may not  
9 require the presence of a physician or nurse midwife at a birth resulting from a low risk  
10 pregnancy attended by a midwife licensed in this state [LAY MIDWIVES WHO MEET THE  
11 REQUIREMENTS ADOPTED BY THE DEPARTMENT FOR EDUCATION, TRAINING, AND  
12 DISCIPLINE OF PERSONS ENGAGED IN THE PRACTICE OF LAY MIDWIFERY].

13 \* Sec. 6. AS 18.05.056, 18.05.057, 18.05.060, 18.05.070(3) are repealed.

14 \* Sec. 7. Notwithstanding AS 08.65.050, enacted by sec. 4 of this Act, the board may issue a license  
15 to a person who is practicing midwifery in this state on the effective date of this Act or who has  
16 practiced midwifery in this state within the two years immediately before the effective date of this Act  
17 if the person fulfills the requirements of AS 08.65.050(1) - (3), substantially fulfills the requirements of  
18 AS 08.65.050(4), and passes the examination provided by AS 08.65.060.

19 \* Sec. 8. Notwithstanding AS 08.65.150, enacted by sec. 4 of this Act, a person who is practicing  
20 midwifery on the effective date of this Act or who has practiced midwifery within the two years  
21 immediately before the effective date of this Act may accept fees for practicing midwifery until the date  
22 180 days after the effective date of this Act even if the person is not licensed under AS 08.65.

23 \* Sec. 9. TEMPORARY SUPERVISORS. A midwife who has been licensed in this state for less  
24 than two years may supervise an apprentice until two and one-half years after the effective date of this  
25 Act if the licensed midwife has practiced midwifery in this state for at least two years immediately  
26 before the effective date of this Act.

27 \* Sec. 10. INITIAL APPOINTMENTS TO THE BOARD. (a) Notwithstanding AS 08.65.010, one  
28 initial member of the Board of Licensed Midwives shall be appointed for a term of one year, one initial  
29 member shall be appointed for a term of two years, one initial member shall be appointed for a term of  
30 three years, and two initial members shall be appointed for terms of four years. The members appointed  
31 to initial terms less than four years under this section may be reappointed to one full four-year term.

1 (b) In making initial appointments of midwives and a person who has received or paid for the  
2 services of a midwife to the Board of Licensed Midwives, the governor shall consider a midwife licensed  
3 for the purpose of AS 08.65.010 if the midwife has practiced midwifery in this state for a period of two  
4 years.

5 \* Sec. 11. This Act takes effect immediately under AS 01.10.070(c).