

CS FOR HOUSE BILL NO. 382 (HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 2/26/92

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES KOPONEN, B.Davis, Ulmer, Brown

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 08.02.010(a) is amended to read:

7 (a) An acupuncturist licensed under AS 08.06, an audiologist licensed under AS 08.11,  
8 a person licensed in the state as a chiropractor under AS 08.20, a dentist under AS 08.36, a  
9 medical practitioner or osteopath under AS 08.64, a midwife licensed under AS 08.65, a  
10 registered nurse under AS 08.68, an optometrist under AS 08.72, a registered pharmacist under  
11 AS 08.80, a physical therapist or occupational therapist licensed under AS 08.84, a psychologist  
12 under AS 08.86, or a clinical social worker licensed under AS 08.95 [,] shall use as professional  
13 identification appropriate letters or a title after that person's name that [WHICH] represents that  
14 person's specific field of practice. The letters or title shall appear on all signs, stationery, or

1 other advertising in which the person offers or displays personal professional services to the  
2 public. In addition, a person engaged in the practice of medicine or osteopathy as defined in  
3 AS 08.64.380, or a person engaged in any manner in the healing arts who diagnoses, treats, tests,  
4 or counsels other persons in relation to human health or disease and uses the letters "M.D." or  
5 the title "doctor" or "physician" or another title that tends to show that the person is willing or  
6 qualified to diagnose, treat, test, or counsel another person, shall clarify the letters or title by  
7 adding the appropriate specialist designation, if any, such as "dermatologist," "radiologist,"  
8 "audiologist," "naturopath," or the like.

9 \* Sec. 3. AS 08.03.010(c) is amended by adding a new paragraph to read:

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

11 \* Sec. 4. AS 08.64.370 is amended to read:

12 Sec. 08.64.370. EXCEPTIONS TO APPLICATION OF CHAPTER. This chapter does  
13 not apply to

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

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

18 (3) the practice of the religious tenets of a church;

19 (4) [REPEALED]

20 (5) a physician in the regular medical service of the United States Public Health  
21 Service or the armed services of the United States volunteering services without pay or other  
22 remuneration to a hospital, clinic, medical office, or other medical facility in the state;

23 (5) [(6)] a person who is licensed [REGISTERED] as a [LAY] midwife by the  
24 department [DEPARTMENT OF HEALTH AND SOCIAL SERVICES] under AS 08.65  
25 [AS 18.05.040] or who is excluded from registration under AS 08.65.170(3) and (4)  
26 [AS 18.05.057] while engaged in the practice of [LAY] midwifery whether or not the person  
27 accepts compensation for those services.

28 \* Sec. 5. AS 08 is amended by adding a new chapter to read:

29 CHAPTER 65. MIDWIVES.

30 Sec. 08.65.010. BOARD ESTABLISHED. (a) There is established the Board of  
31 Licensed Midwives.

1 (b) The board consists of five members appointed by the governor subject to  
2 confirmation by the legislature in joint session. Members serve for staggered terms of four years  
3 and until a successor is appointed and qualified. The board consists of two members who are  
4 licensed in this state as licensed midwives, one medical professional, one certified nurse midwife  
5 licensed by the Board of Nursing in this state, and one public member.

6 (c) The board shall elect a chairperson and a secretary from among its members to terms  
7 of one year.

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

9 Sec. 08.65.020. MEETINGS. The board shall meet twice annually and may hold special  
10 meetings at the call of the chairperson or on the written notice of two board members.

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

12 (1) examine applicants and issue licenses to those applicants it finds qualified;

13 (2) adopt regulations establishing licensing and license renewal requirements;

14 (3) issue permits to apprentice midwives;

15 (4) hold hearings and order the disciplinary sanction of a person who violates this  
16 chapter or a regulation of the board;

17 (5) supply forms for applications, licenses, permits, certificates, and other papers  
18 and records;

19 (6) report annually to the governor and the department on the board's proceedings  
20 during the year;

21 (7) enforce the provisions of this chapter and adopt regulations necessary to make  
22 the provisions of this chapter effective.

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

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

27 Sec. 08.65.050. QUALIFICATIONS FOR LICENSE. The board shall issue a license to  
28 practice midwifery to a person who

29 (1) applies on a form provided by the board;

30 (2) pays the fees required under AS 08.65.100;

31 (3) furnishes evidence satisfactory to the board that the person has not engaged

1 in conduct that is a ground for imposing disciplinary sanctions under AS 08.65.110;

2 (4) furnishes evidence satisfactory to the board that the person has completed a  
3 course of study and supervised clinical experience; the study and experience must be of at least  
4 one year's duration;

5 (5) successfully completes the examination required by the board.

6 Sec. 08.65.060. EXAMINATIONS. The board shall conduct examinations at least twice  
7 each year. Examinations may be written, oral, or practical or a combination of these. The board  
8 shall utilize the examination provided by a nationally certified midwives organization recognized  
9 by the board. An applicant who has failed the examination may not retake the examination for  
10 a period of six months.

11 Sec. 08.65.070. LICENSURE BY CREDENTIALS. The board may by regulation  
12 provide for the licensing without examination of a person who meets the requirements of  
13 AS 08.65.050(1) - (4) and who is currently licensed in another state with licensing and  
14 examination requirements at least equivalent in scope, quality, and difficulty to those of this state  
15 at the time of licensure. At a minimum, an applicant for licensing by credentials

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

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

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

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

23 (5) shall pay the required fees.

24 Sec. 08.65.080. RENEWAL. A license issued under AS 08.65.050 or 08.65.070 expires  
25 on a date determined by the board and may be renewed every two years upon payment of the  
26 required fee and the submission of evidence satisfactory to the board that the licensed midwife  
27 has met the continuing education requirements of the board, has demonstrated continued practical  
28 professional competence under regulations adopted by the board, and has not committed an act  
29 that is a ground for discipline under AS 08.65.110.

30 Sec. 08.65.090. APPRENTICE MIDWIVES. (a) The board shall issue a permit to  
31 practice as an apprentice midwife to a person who satisfies the requirements of AS 08.65.050(1) -

1 (3). The permit application must include information about the supervisor's licensing and  
2 experience and be signed by the supervisor. The permit is valid for a term of two years and may  
3 be renewed in accordance with regulations adopted by the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (A) professional incompetence;



- 1 (B) failure to keep informed of current professional practices;
- 2 (C) addiction or severe dependency on alcohol or other drugs that impairs
- 3 the ability to practice safely;
- 4 (D) physical or mental disability;
- 5 (8) engaged in lewd or immoral conduct in connection with the delivery of
- 6 professional service to clients.

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

- 10 (1) permanently revoke a license to practice;
- 11 (2) suspend a license for a determinate period of time;
- 12 (3) censure a licensee;
- 13 (4) issue a letter of reprimand;
- 14 (5) place a licensee on probationary status and require the licensee to
  - 15 (A) report regularly to the board upon matters involving the basis of
  - 16 probation;
  - 17 (B) limit practice to those areas prescribed;
  - 18 (C) continue professional education until a satisfactory degree of skill has
  - 19 been attained in those areas determined by the board to need improvement;
  - 20 (6) impose limitations or conditions on the practice of a licensee.

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

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

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

31 (e) The board shall seek consistency in the application of disciplinary sanctions, and

1 significant departure from prior decisions involving similar situations shall be explained in  
2 findings of fact or orders.

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

5 Sec. 08.65.140. REQUIRED PRACTICES. (a) Except as provided in (d) of this section,  
6 a licensed midwife may not assume the care or delivery of a client unless the licensed midwife  
7 has recommended that the client undergo a physical examination performed by a physician,  
8 physician assistant, advanced nurse practitioner, or certified nurse midwife, who is licensed in  
9 this state.

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

14 (c) A licensed midwife shall comply with the requirements of AS 18.15.150 concerning  
15 taking of blood samples, AS 18.15.200 concerning screening of phenylketonuria (PKU),  
16 AS 18.150.160 concerning birth registration, AS 18.50.230 concerning registration of deaths,  
17 AS 18.50.240 concerning fetal death registration, and regulations adopted by the Department of  
18 Health and Social Services concerning prophylactic treatment of the eyes of newborn infants.

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

21 (1) has a history of thrombophlebitis or pulmonary embolism;

22 (2) has diabetes, hypertension, Rh disease with positive titer, active tuberculosis,  
23 active syphilis, active gonorrhea, epilepsy, heart disease, or kidney disease;

24 (3) contracts genital herpes simplex in the first trimester of pregnancy;

25 (4) has severe psychiatric illness;

26 (5) is addicted to narcotics or other drugs;

27 (6) has multiple gestation;

28 (7) has a fetus of less than 37 weeks gestation at the onset of labor;

29 (8) has a gestation of more than 42-1/2 weeks by dates and examination;

30 (9) has a fetus in any presentation other than vertex at the onset of labor;

31 (10) is a primigravida with an unengaged fetal head in active labor, or any woman

1 who has rupture of membranes with unengaged fetal head, with or without labor;  
2 (11) has a fetus with suspected or diagnosed congenital anomalies that may  
3 require immediate medical intervention;  
4 (12) has pre-eclampsia or eclampsia;  
5 (13) has bleeding with evidence of placenta previa; or  
6 (14) any condition determined by the board to be of high risk to the pregnant  
7 woman and newborn.

8 Sec. 08.65.150. PROHIBITED PRACTICES. Except as provided in AS 08.65.170, a  
9 person who is not licensed under this chapter as a midwife may not practice midwifery for  
10 compensation.

11 Sec. 08.65.160. LICENSE REQUIRED IF DESIGNATION USED. A person who is not  
12 licensed under this chapter or whose license is suspended or revoked, or whose license has  
13 lapsed, who knowingly uses in connection with the person's name the words or letters "L.N.M.,"  
14 "Licensed Midwife," or other letters, words, or insignia indicating or implying that the person is  
15 licensed as a midwife by this state or who in any way, orally or in writing, directly or by  
16 implication, knowingly holds out as being licensed by the state as a midwife in this state is guilty  
17 of a class B misdemeanor.

18 Sec. 08.65.170. EXCLUSIONS. This chapter does not apply to a person

19 (1) who is licensed as a physician in this state;  
20 (2) who is licensed as a certified nurse midwife by the Board of Nursing in this  
21 state;

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

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

31 Sec. 08.65.180. RESPONSIBILITY FOR CARE. If a midwife seeks to consult with or

1 refer a patient to a licensed physician, the responsibility of the physician for the patient does not  
2 begin until the patient is physically within the physician's care.

3 Sec. 08.65.190. DEFINITIONS. In this chapter,

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

5 (2) "department" means the Department of Commerce and Economic  
6 Development;

7 (3) "practice of midwifery" means providing reproductive health care to women  
8 and newborns in a community; providing necessary supervision, health care, and education to  
9 women during pregnancy, labor, and the postpartum period, conducting deliveries on the  
10 midwife's own responsibility, and providing immediate postpartum care of the newborn and  
11 primary reproductive health care to the woman during the interconceptual period; "practice of  
12 midwifery" includes preventative measures, the identification of physical, social, and emotional  
13 needs of the newborn and the woman, and arranging for consultation, referral, and continued  
14 involvement when the care required extends beyond the abilities of the midwife, and the  
15 execution of emergency measures in the absence of medical assistance, as specified in regulations  
16 adopted by the board.

17 \* Sec. 6. AS 18.05.040(a) is amended to read

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

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

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

21 (3) protection and promotion of the public health and prevention of disability and  
22 mortality;

23 (4) the transportation of dead bodies;

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

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

27 (7) establishing the divisions and local offices and advisory groups necessary or  
28 considered expedient to carry out or assist in carrying out a duty or power assigned to it;

29 (8) the voluntary certification of laboratories to perform diagnostic, quality  
30 control, or enforcement analyses or examinations based on recognized or tentative standards of  
31 performance relating to analysis and examination of food to include seafood, milk, water, and

1 specimens from human beings submitted by licensed physicians and nurses for analysis;

2 (9) the regulation of quality and purity of commercially compressed oxygen sold

3 for human respiration;

4 (10) the registration of birth centers, except that the commissioner may not

5 require the presence of a physician or nurse midwife at a birth resulting from a low risk

6 pregnancy attended by a midwife licensed in this state [LAY MIDWIVES WHO MEET THE

7 REQUIREMENTS ADOPTED BY THE DEPARTMENT FOR EDUCATION, TRAINING, AND

8 DISCIPLINE OF PERSONS ENGAGED IN THE PRACTICE OF LAY MIDWIFERY].

9 \* Sec. 7. AS 18.05.056, 18.05.057, 18.05.060, 18.05.070(3) are repealed.

10 \* Sec. 8. Notwithstanding AS 08.65.050, enacted by sec. 5 of this Act, the board shall issue a license

11 to a person who is practicing midwifery in this state on the effective date of this Act or who has

12 practiced midwifery in this state within the two years immediately before the effective date of this Act

13 if the person fulfills the requirements of AS 08.65.050(1) - (3), substantially fulfills the requirements of

14 AS 08.65.050(4), and passes the examination provided by AS 08.65.060.

15 \* Sec. 9. Notwithstanding AS 08.65.150, enacted by sec. 5 of this Act, a person who is practicing

16 midwifery on the effective date of this Act or who has practiced midwifery within the two years

17 immediately before the effective date of this Act may accept fees for practicing midwifery until the date

18 180 days after the effective date of this Act even if the person is not licensed under AS 08.65.

19 \* Sec. 10. TEMPORARY SUPERVISORS. A midwife who has been licensed in this state for less

20 than two years may supervise an apprentice until two and one-half years after the effective date of this

21 Act if the licensed midwife has practiced midwifery in this state for at least two years immediately

22 before the effective date of this Act.

23 \* Sec. 11. INITIAL APPOINTMENTS TO THE BOARD. (a) Notwithstanding AS 08.65.010, one

24 initial member of the Board of Licensed Midwives shall be appointed for a term of one year, one initial

25 member shall be appointed for a term of two years, one initial member shall be appointed for a term of

26 three years, and two initial members shall be appointed for terms of four years. The members appointed

27 to initial terms less than four years under this section may be reappointed to one full four-year term.

28 (b) In making initial appointments of midwives to the Board of Licensed Midwives, the governor

29 shall consider a midwife licensed for the purpose of AS 08.65.010 if the midwife has practiced

30 midwifery in this state for a period of two years.

31 \* Sec. 12. This Act takes effect immediately under AS 01.10.070(c).