

CS FOR HOUSE BILL NO. 382 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/2/92
Referred: 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 Certified Direct-Entry 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 direct-entry midwife certified under
10 AS 08.65, a registered nurse under AS 08.68, an optometrist under AS 08.72, a registered
11 pharmacist under AS 08.80, a physical therapist or occupational therapist licensed under
12 AS 08.84, a psychologist under AS 08.86, or a clinical social worker licensed under AS 08.95
13 [,] shall use as professional identification appropriate letters or a title after that person's name
14 that [WHICH] represents that person's specific field of practice. The letters or title shall appear

1 on all signs, stationery, or other advertising in which the person offers or displays personal
2 professional services to the public. In addition, a person engaged in the practice of medicine or
3 osteopathy as defined in AS 08.64.380, or a person engaged in any manner in the healing arts
4 who diagnoses, treats, tests, or counsels other persons in relation to human health or disease and
5 uses the letters "M.D." or the title "doctor" or "physician" or another title that tends to show that
6 the person is willing or qualified to diagnose, treat, test, or counsel another person, shall clarify
7 the letters or title by adding the appropriate specialist designation, if any, such as "dermatologist,"
8 "radiologist," "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 Certified Direct-Entry 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 certified [REGISTERED] as a direct-entry [LAY]
24 midwife by the department [DEPARTMENT OF HEALTH AND SOCIAL SERVICES] under
25 AS 08.65 [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. DIRECT-ENTRY MIDWIVES.

30 Sec. 08.65.010. BOARD ESTABLISHED. (a) There is established the Board of
31 Certified Direct-Entry 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 certified in this state as direct-entry midwives, one medical professional who has an obstetrical
5 practice or has specialized training in obstetrics, one certified nurse midwife licensed by the
6 Board of Nursing in this state, and one public member.

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

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

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

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

13 (1) examine applicants and issue certificates to those applicants it finds qualified;

14 (2) adopt regulations establishing certification and certificate renewal
15 requirements;

16 (3) issue permits to apprentice direct-entry midwives;

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

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

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

23 (7) enforce the provisions of this chapter and adopt regulations necessary to make
24 the provisions of this chapter effective;

25 (8) approve curricula and adopt standards for basic education, training, and
26 apprentice programs;

27 (9) provide for surveys of the basic direct-entry midwife education programs in
28 the state at the times it considers necessary;

29 (10) approve education, training, and apprentice programs that meet the
30 requirements of this chapter and of the board, and deny, revoke, or suspend approval of such
31 programs for failure to meet the requirements.

1 (b) The board may by regulation require that a certified direct-entry midwife undergo a
2 uniform or random period of peer review to ensure the quality of care provided by the certified
3 direct-entry midwife.

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

6 Sec. 08.65.050. QUALIFICATIONS FOR LICENSE. The board shall issue a certificate
7 to practice direct-entry midwifery to a person who

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

16 Sec. 08.65.060. EXAMINATIONS. The board shall conduct examinations at least once
17 each year. Examinations may be written, oral, or practical or a combination of these. The board
18 shall utilize the examination provided by a nationally certified midwives organization recognized
19 by the board. An applicant who has failed the examination may not retake the examination for
20 a period of six months. An applicant who has failed the examination more than one time may
21 not retake the examination unless the applicant has participated in or successfully completed
22 further education and training programs as prescribed by the board.

23 Sec. 08.65.070. LICENSURE BY CREDENTIALS. The board may by regulation
24 provide for the certification without examination of a person who meets the requirements of
25 AS 08.65.050(1) - (4), who is currently licensed in another state with licensing requirements at
26 least equivalent in scope, quality, and difficulty to those of this state, and who has passed the
27 national examination required of certified direct-entry midwives in this state. At a minimum, an
28 applicant for certification by credentials

- 29 (1) may not be the subject of an unresolved complaint or disciplinary action
30 before a regulatory authority in this state or another jurisdiction;
- 31 (2) may not have failed the examination for a certificate or license to practice

1 midwifery in this state;

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

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

5 (5) shall pay the required fees.

6 Sec. 08.65.080. RENEWAL. A certificate issued under AS 08.65.050 or 08.65.070
7 expires on a date determined by the board and may be renewed every two years upon payment
8 of the required fee and the submission of evidence satisfactory to the board that the certified
9 direct-entry midwife has met the continuing education requirements of the board, has
10 demonstrated continued practical professional competence under regulations adopted by the board,
11 and has not committed an act that is a ground for discipline under AS 08.65.110.

12 Sec. 08.65.090. APPRENTICE DIRECT-ENTRY MIDWIVES. (a) The board shall issue
13 a permit to practice as an apprentice direct-entry midwife to a person who satisfies the
14 requirements of AS 08.65.050(1) - (3) and who has been accepted into a program of education,
15 training, and apprenticeship approved by the board under AS 08.65.030. A permit application
16 under this section must include information the board may require. The permit is valid for a
17 term of two years and may be renewed in accordance with regulations adopted by the board.

18 (b) An apprentice direct-entry midwife may perform all the activities of a certified direct-
19 entry midwife if supervised in a manner prescribed by the board by

20 (1) a certified-direct-entry midwife who has been licensed and practicing in this
21 state for at least two years;

22 (2) a certified direct-entry midwife who has been licensed for at least two years
23 in a state with licensing requirements at least equivalent in scope, quality, and difficulty to those
24 of this state at the time of licensing, who is certified in this state, and who has practiced
25 midwifery for the last two years;

26 (3) a physician licensed in this state with an obstetrical practice at the time of
27 undertaking the apprenticeship; or

28 (4) a certified nurse midwife licensed by the Board of Nursing in this state with
29 an obstetrical practice at the time of undertaking the apprenticeship.

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

1 **Sec. 08.65.110. GROUNDS FOR DISCIPLINE, SUSPENSION, OR REVOCATION OF**
2 **CERTIFICATION.** The board may impose a disciplinary sanction on a person holding a
3 certificate or permit under this chapter if the board finds that the person

4 (1) secured a certificate or permit through deceit, fraud, or intentional
5 misrepresentation;

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

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

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

11 (5) intentionally or negligently engaged in or permitted the performance of client
12 care by persons under the certified direct-entry midwife's supervision that does not conform to
13 minimum professional standards regardless of whether actual injury to the client occurred;

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

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

17 (A) professional incompetence;

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

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

21 (D) physical or mental disability;

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

24 **Sec. 08.65.120. DISCIPLINARY SANCTIONS.** (a) When it finds that a person holding
25 a certificate or permit is guilty of an offense under AS 08.65.110, the board, in addition to the
26 powers provided in AS 08.01.075, may impose the following sanctions singly or in combination:

27 (1) permanently revoke a certificate or permit to practice;

28 (2) suspend a certificate or permit for a determinate period of time;

29 (3) censure a person holding a certificate or permit;

30 (4) issue a letter of reprimand;

31 (5) place a person holding a certificate or permit on probationary status and

1 require the person to
2 (A) report regularly to the board upon matters involving the basis of
3 probation;
4 (B) limit practice to those areas prescribed;
5 (C) continue professional education until a satisfactory degree of skill has
6 been attained in those areas determined by the board to need improvement;
7 (6) impose limitations or conditions on the practice of a person holding a
8 certificate or permit.
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 certificate or permit before final hearing or
12 during the appeals process if the board finds that the person holding a certificate or permit poses
13 a clear and immediate danger to the public health and safety if the person continues to practice.
14 A person whose certificate or permit is suspended under this subsection shall be entitled to a
15 hearing by the board no later than seven days after the effective date of the order. The person
16 may appeal the suspension after a hearing to the superior court.
17 (d) The board may reinstate a certificate or permit that has been suspended or revoked
18 if the board finds after a hearing that the applicant is able to practice with reasonable skill and
19 safety.
20 (e) The board shall seek consistency in the application of disciplinary sanctions, and
21 significant departure from prior decisions involving similar situations shall be explained in
22 findings of fact or orders.
23 Sec. 08.65.130. CRIMINAL PENALTY. A person who violates this chapter is guilty
24 of a class B misdemeanor.
25 Sec. 08.65.140. REQUIRED PRACTICES. (a) Except as provided in (d) of this section,
26 a certified direct-entry midwife may not assume the care or delivery of a client unless the
27 certified direct-entry midwife has recommended that the client undergo a physical examination
28 performed by a physician, physician assistant, advanced nurse practitioner, or certified nurse
29 midwife, who is licensed in this state.
30 (b) A certified direct-entry midwife shall inform a woman seeking home birth of the
31 possible risks of home birth and shall obtain a signed informed consent, including the

1 recommendation for a physical examination required under (a) of this section, from the woman
2 before the onset of labor. The consent shall be maintained by the certified direct-entry midwives
3 as part of the woman's record. A certified direct-entry midwife shall accept full legal
4 responsibility for the direct-entry midwife's acts or omissions.

5 (c) A certified direct-entry midwife shall comply with the requirements of AS 18.15.150
6 concerning taking of blood samples, AS 18.15.200 concerning screening of phenylketonuria
7 (PKU), AS 18.150.160 concerning birth registration, AS 18.50.230 concerning registration of
8 deaths, AS 18.50.240 concerning fetal death registration, and regulations adopted by the
9 Department of Health and Social Services concerning prophylactic treatment of the eyes of
10 newborn infants.

11 (d) A certified direct-entry midwife may not knowingly deliver a woman who
12 (1) has a history of thrombophlebitis or pulmonary embolism;
13 (2) has gestational diabetes, diabetes, hypertension, Rh disease with positive titer,
14 active tuberculosis, active syphilis, active gonorrhea, epilepsy, heart disease, or kidney disease;
15 (3) contracts genital herpes simplex in the first trimester of pregnancy or has
16 active genital herpes in the last two weeks of pregnancy;
17 (4) has severe psychiatric illness;
18 (5) inappropriately uses controlled substances, including those obtained by
19 prescription;
20 (6) has multiple gestation;
21 (7) has a fetus of less than 37 weeks gestation at the onset of labor;
22 (8) has a gestation of more than 42 weeks by dates and examination;
23 (9) has a fetus in any presentation other than vertex at the onset of labor;
24 (10) is a primigravida with an unengaged fetal head in active labor, or any woman
25 who has rupture of membranes with unengaged fetal head, with or without labor;
26 (11) has a fetus with suspected or diagnosed congenital anomalies that may
27 require immediate medical intervention;
28 (12) has pre-eclampsia or eclampsia;
29 (13) has bleeding with evidence of placenta previa;
30 (14) any condition determined by the board to be of high risk to the pregnant
31 woman and newborn;

1 (15) has had a previous caesarian delivery or other uterine surgery;
2 (16) experienced the rupture of membranes at least 24 hours before the onset of
3 labor; or

4 (17) is less than 16 years of age at the time of delivery.

5 (e) Notwithstanding (d) of this section, a certified direct-entry midwife may deliver a
6 woman with any of the complications or conditions listed in (d)(1) - (17) of this section if

7 (1) the delivery is a verifiable emergency; and

8 (2) a physician or certified nurse midwife is not available in the geographic
9 vicinity.

10 (f) A certified direct-entry midwife may not attempt to correct fetal presentation by
11 external or internal inversion unless

12 (1) there is a verifiable emergency; and

13 (2) a physician or certified nurse midwife is not available in the geographic
14 vicinity.

15 Sec. 08.65.150. PROHIBITED PRACTICES. Except as provided in AS 08.65.170, a
16 person who is not certified under this chapter as a direct-entry midwife may not practice
17 midwifery for compensation.

18 Sec. 08.65.160. CERTIFICATION REQUIRED IF DESIGNATION USED. A person
19 who is not certified under this chapter or whose certification is suspended or revoked, or whose
20 license has lapsed, who knowingly uses in connection with the person's name the words or letters
21 "C.D.M.," "Certified Direct-Entry Midwife," or other letters, words, or insignia indicating or
22 implying that the person is certified as a direct-entry midwife by this state or who in any way,
23 orally or in writing, directly or by implication, knowingly holds out as being certified by the state
24 as a direct-entry midwife in this state is guilty of a class B misdemeanor.

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

26 (1) who is licensed as a physician in this state;

27 (2) who is licensed as a certified nurse midwife by the Board of Nursing in this
28 state;

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

1 births;

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

7 Sec. 08.65.180. RESPONSIBILITY FOR CARE. If a certified direct-entry midwife seeks
8 to consult with or refer a patient to a licensed physician, the responsibility of the physician for
9 the patient does not begin until the patient is physically within the physician's care.

10 Sec. 08.65.190. DEFINITIONS. In this chapter,

11 (1) "board" means the Board of Certified Direct-Entry Midwives;

12 (2) "department" means the Department of Commerce and Economic
13 Development;

14 (3) "practice of midwifery" means providing necessary supervision, health care,
15 and education to women during pregnancy, labor, and the postpartum period, conducting
16 deliveries on the midwife's own responsibility, and providing immediate postpartum care of the
17 newborn; "practice of midwifery" includes preventative measures, the identification of physical,
18 social, and emotional needs of the newborn and the woman, and arranging for consultation,
19 referral, and continued involvement when the care required extends beyond the abilities of the
20 midwife, and the execution of emergency measures in the absence of medical assistance, as
21 specified in regulations adopted by the board.

22 * Sec. 6. AS 18.05.040(a) is amended to read:

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

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

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

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

28 (4) the transportation of dead bodies;

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

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

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

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

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

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

15 * Sec. 7. AS 44.62.330(a) is amended by adding a new paragraph to read:

16 (57) Board of Certified Direct-Entry Midwives.

17 * Sec. 8. AS 18.05.056, 18.05.057, 18.05.060, 18.05.070(3) are repealed.

18 * Sec. 9. Notwithstanding AS 08.65.050, enacted by sec. 5 of this Act, the board shall issue a
19 certificate to a person who is practicing midwifery in this state on the effective date of this Act or who
20 has practiced midwifery in this state within the two years immediately before the effective date of this
21 Act if the person fulfills the requirements of AS 08.65.050(1) - (3), substantially fulfills the requirements
22 of AS 08.65.050(4), and passes the examination provided by AS 08.65.060.

23 * Sec. 10. Notwithstanding AS 08.65.150, enacted by sec. 5 of this Act, a person who is practicing
24 midwifery on the effective date of this Act or who has practiced midwifery within the two years
25 immediately before the effective date of this Act may accept fees for practicing midwifery until the date
26 180 days after the effective date of this Act even if the person is not certified under AS 08.65.

27 * Sec. 11. TEMPORARY SUPERVISORS. A direct-entry midwife who has been certified in this
28 state for less than two years may supervise an apprentice until two and one-half years after the effective
29 date of this Act if the certified direct-entry midwife has practiced midwifery in this state for at least two
30 years immediately before the effective date of this Act.

31 * Sec. 12. INITIAL APPOINTMENTS TO THE BOARD. (a) Notwithstanding AS 08.65.010, one

1 initial member of the Board of Certified Direct-Entry Midwives shall be appointed for a term of one
2 year, one initial member shall be appointed for a term of two years, one initial member shall be
3 appointed for a term of three years, and two initial members shall be appointed for terms of four years.
4 The members appointed to initial terms less than four years under this section may be reappointed to one
5 full four-year term.

6 (b) In making initial appointments of midwives to the Board of Certified Direct-Entry Midwives,
7 the governor shall consider a midwife licensed for the purpose of AS 08.65.010 if the midwife has
8 practiced midwifery in this state for a period of two years.

9 * Sec. 13. This Act takes effect immediately under AS 01.10.070(c).