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LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
SENATE
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 248, L.D. 690, Bill, “An Act To Ensure the Safety of Home Birth”

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 32 MRSA §12501, sub-§1-A is enacted to read:

1-A. Accreditation commission for midwifery education. "Accreditation commission for midwifery education" means the United States Department of Education-recognized commission approved in rules adopted by the board that provides accreditation, pre-accreditation of certificate, graduate and precertification programs that meet the national college of nurse midwives core competencies for midwifery practice.

Sec. 2. 32 MRSA §12501, sub-§§4-A and 4-B are enacted to read:

4-A. Certified midwife. "Certified midwife" means an individual who holds a current and valid national certification as a certified midwife from the national midwifery certification board and is licensed under this chapter to practice midwifery.

4-B. Certified professional midwife. "Certified professional midwife" means an individual who holds a current and valid national certification as a certified professional midwife from the national registry of midwives and is licensed under this chapter and practices midwifery.

Sec. 3. 32 MRSA §12501, sub-§5-A is enacted to read:

5-A. Department. "Department" means the Department of Professional and Financial Regulation.

Sec. 4. 32 MRSA §12501, sub-§§6-A to 6-J are enacted to read:

6-A. International confederation of midwives. "International confederation of midwives" means a nongovernmental organization, approved in rules adopted by the board, representing midwives and midwifery associations that authors international standards for education and essential competencies for practice.

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1 **6-B. Midwife.** "Midwife" means a person who practices midwifery.

2 **6-C. Midwifery.** "Midwifery" means providing primary health or maternity care to
3 women and infants. "Midwifery" includes consultation with or referral to medical and
4 other health care providers when indicated by client health care needs.

5 **6-D. Midwifery bridge certificate.** "Midwifery bridge certificate" means a
6 certificate issued by the national registry of midwives that documents completion of
7 accredited continuing education for certified professional midwives based upon identified
8 areas to address education in emergency skills and other competencies set by the
9 international confederation of midwives.

10 **6-E. Midwifery education accreditation council.** "Midwifery education
11 accreditation council" means the United States Department of Education-recognized
12 commission that provides accreditation for programs and institutions that meet the
13 national midwives alliance core competencies, the international confederation of
14 midwives competencies and the national registry of midwives skills and standards for
15 basic midwifery practice.

16 **6-F. National association of certified professional midwives.** "National
17 association of certified professional midwives" means the national professional and
18 standard-setting association for certified professional midwives approved in rules adopted
19 by the board.

20 **6-G. National college of nurse midwives.** "National college of nurse midwives"
21 means the national professional and standard-setting organization for midwives certified
22 by the national midwifery certification board.

23 **6-H. National midwifery certification board.** "National midwifery certification
24 board" means the national certifying body, approved in rules adopted by the board, for
25 candidates in midwifery who have received graduate-level education in programs
26 accredited by the accreditation commission for midwifery education.

27 **6-I. National midwives alliance.** "National midwives alliance" means the national
28 midwifery organization, approved in rules adopted by the board, that has articulated core
29 competencies for midwives.

30 **6-J. National registry of midwives.** "National registry of midwives" means the
31 organization that sets national standards for the certified professional midwife credential
32 approved in rules adopted by the board.

33 **Sec. 5. 32 MRSA §12501, sub-§14-A** is enacted to read:

34 **14-A. Qualified midwife preceptor.** "Qualified midwife preceptor" means a
35 licensed and experienced midwife, or other health professional licensed in this State, who
36 participates in the clinical education of individuals enrolled in a midwifery education
37 program accredited by the midwifery education accreditation council or accreditation
38 commission for midwifery education and who meets the criteria for midwife preceptors
39 set forth by the organization.

40 **Sec. 6. 32 MRSA §12502, sub-§1**, as amended by PL 2007, c. 402, Pt. AA, §1, is
41 further amended to read:

1 **1. Membership.** The Board of Complementary Health Care Providers, as
2 established in Title 5, section 12004-A, subsection 8-A, shall regulate the professions of
3 acupuncture ~~and~~, naturopathic medicine and midwifery according to the provisions of this
4 chapter. The board consists of ~~7~~ 9 members appointed by the Governor. The Governor
5 shall make the initial appointments to the board no later than 60 days after the effective
6 date of this section and shall inform the Commissioner of Professional and Financial
7 Regulation of these appointments. The commissioner shall call the first meeting of the
8 board on a date no later than 30 days following notification of appointments by the
9 Governor. All members of the board must be residents of this State. Two members of
10 the board must be acupuncturists licensed in this State. Two members of the board must
11 be ~~practitioners of naturopathic medicine~~ doctors who are eligible for licensure under, or
12 are licensed pursuant to, the requirements of subchapter 3. One member must be a
13 certified professional midwife licensed in this State. One member must be a midwife of
14 any classification licensed in this State. One member must be a public member as
15 defined in Title 5, section 12004-A. One member must be an allopathic or osteopathic
16 physician, board-certified in obstetrics and gynecology, who is licensed in this State. One
17 member must be a ~~pharmacist who is licensed~~ physician or nurse practitioner with a
18 specialty in pediatric care who is licensed in this State.

19 **Sec. 7. 32 MRSA §12503, sub-§1, ¶B-1** is enacted to read:

20 B-1. Set the standards of practice for midwives. Prior to January 1, 2021, rules
21 relating to the limitations in section 12536, the drug formulary, informed consent
22 documentation, preexisting conditions that render a pregnancy ineligible for out-of-
23 hospital birth and data collection and reporting must be adopted by the board in joint
24 rulemaking with the Board of Licensure in Medicine. On or after January 1, 2021,
25 rules adopted pursuant to this paragraph must be adopted by the board. All other
26 rules must be adopted by the board.

27 **Sec. 8. 32 MRSA §12503, sub-§1, ¶D**, as amended by PL 2007, c. 402, Pt. AA,
28 §2, is further amended to read:

29 D. Ensure that acupuncturists ~~and~~, naturopathic doctors and midwives serving the
30 public meet minimum standards of proficiency and competency to protect the health,
31 safety and welfare of the public; and

32 **Sec. 9. 32 MRSA §12504**, as enacted by PL 1995, c. 671, §13, is amended to
33 read:

34 **§12504. Unauthorized employment**

35 A person in the course of business may not employ an acupuncturist ~~or~~, naturopathic
36 doctor or midwife who does not have a license unless that person is a student or intern
37 within the meaning of this chapter.

38 **Sec. 10. 32 MRSA §12505-A**, as enacted by PL 2007, c. 402, Pt. AA, §5, is
39 amended to read:

40 **§12505-A. Unlicensed practice**

41 A person who violates section 12504, 12511 ~~or~~, 12521 or 12531 is subject to the
42 provisions of Title 10, section 8003.

1 **2. Certification.** Proof of a current and valid national certification as a certified
2 professional midwife from the national registry of midwives; and

3 **3. Education.** Proof of successful completion of a formal midwifery education and
4 training program as follows:

5 A. An educational program or institution accredited by the midwifery education
6 accreditation council;

7 B. For an applicant certified as a certified professional midwife who is certified
8 before January 1, 2020 and who has completed a midwifery education and training
9 program from an educational program or institution that is not accredited by the
10 midwifery education accreditation council, a midwifery bridge certificate; or

11 C. For an applicant who has maintained an authorization to practice midwifery as a
12 licensed certified professional midwife in a state that does not require completion of a
13 midwifery education and training program from an educational program or institution
14 that is accredited by the midwifery education accreditation council, regardless of the
15 date of that authorization, a midwifery bridge certificate.

16 **§12534. Qualifications for licensure as a certified midwife**

17 An applicant for a license to practice midwifery as a certified midwife shall submit to
18 the board in a format as prescribed by the board the following:

19 **1. Fee.** A completed application together with the fee established under section
20 12538;

21 **2. Certification.** Proof of a current and valid national certification as a certified
22 midwife from the national midwifery certification board; and

23 **3. Education.** Proof of successful completion of a graduate-level education program
24 in midwifery that is accredited by the accreditation commission for midwifery education.

25 **§12535. Scope of practice for certified professional midwife**

26 **1. Certification.** A certified professional midwife may not practice without a
27 current and valid certification.

28 **2. National standards.** A certified professional midwife shall at all times practice
29 within the scope of practice and national standards as delineated by the national
30 association of certified professional midwives.

31 **3. Medical testing and supplies.** The scope of practice of a certified professional
32 midwife includes authorization to order and interpret medical laboratory tests and
33 ultrasound scanning and to obtain equipment and supplies necessary for the safe practice
34 of midwifery.

35 **4. Administration of drugs.** The scope of practice of a certified professional
36 midwife includes the authority to obtain and administer certain drugs as determined by
37 board rule. The board shall limit the drug formulary for certified professional midwives to
38 only those medications that are indicated for the safe conduct of pregnancy, labor and
39 birth and care of women and newborns and that a midwife is educationally prepared to

1 administer and monitor. These may not include schedule II, III or IV drugs as defined in
2 the federal Controlled Substances Act of 1970, 21 United States Code, Section 812.

3 **5. Board rules.** Clarifications of the scope of practice of a certified professional
4 midwife may be established by board rule.

5 **§12536. Limitations on scope of practice for certified professional midwife**

6 **1. Limitations.** Certified professional midwives must refer clients to a hospital-
7 based perinatal care provider and may not provide birth services to parents in a home or
8 freestanding birth center setting when there is a reasonable likelihood that any of the
9 following conditions exist:

10 A. Multifetal gestation;

11 B. Breech presentation;

12 C. Vaginal birth after a cesarean section; and

13 D. Conditions that present a moderate or high risk of harm to parent or child as
14 defined in board rule.

15 **2. Rules.** Notwithstanding subsection 1, the board and the Board of Licensure in
16 Medicine, jointly, prior to January 1, 2021 or the board beginning January 1, 2021 may
17 adopt rules relating to the provision of birth services by certified professional midwives
18 in cases in which there is a reasonable likelihood that any condition identified in
19 subsection 1 exists.

20 **3. Contingent repeal.** Any paragraph in subsection 1 the subject matter of which is
21 addressed in a rule or rules adopted pursuant to subsection 2 is repealed after the effective
22 date of the rule or rules upon notification from the Director of the Office of Professional
23 and Occupational Regulation within the department, or the commissioner, to the
24 Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of
25 Statutes that the rule or rules have been adopted.

26 **§12537. Scope of practice for certified midwife**

27 **1. Certification.** A certified midwife may not practice without a current and valid
28 certification.

29 **2. Standards.** A certified midwife shall at all times practice within the scope of
30 practice and national standards as delineated by the national college of nurse midwives.

31 **3. Medical testing and supplies.** The scope of practice of a certified midwife
32 includes authorization to order and interpret medical laboratory tests, to perform
33 ultrasound scanning and to obtain equipment and supplies necessary for the safe practice
34 of midwifery.

35 **4. Prescriptive authority.** The scope of practice of a certified midwife includes
36 prescriptive authority, which may not include schedule II drugs. As used in this
37 subsection, "schedule II drug" has the same meaning as in the federal Controlled
38 Substances Act of 1970, 21 United States Code, Section 812.

39 **5. Board rules.** Clarifications of the scope of practice of a certified midwife may be
40 established by board rule, consistent with national standards.

1 **§12538. Fees and renewals**

2 **1. Fees.** The Director of the Office of Professional and Occupational Regulation
3 within the department may establish by rule fees for purposes authorized under this
4 subchapter in amounts that are reasonable and necessary for their respective purposes,
5 except that the fee for initial and renewal licensure may not exceed \$675 annually. Rules
6 adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter
7 375, subchapter 2-A.

8 **2. Renewal.** A license issued under this subchapter expires on the stated expiration
9 date as determined by the commissioner. Prior to expiration of a license, a licensee may
10 make an application in a format as determined by the commissioner for renewal and upon
11 payment of the renewal fee as set pursuant to subsection 1. A license may not be issued
12 until the applicant certifies to the board that the applicant has completed the continuing
13 education requirements adopted by the board.

14 **3. Late renewal.** Licenses may be renewed up to 90 days after the date of expiration
15 upon payment of a late fee in addition to the renewal fee as set pursuant to subsection 1.
16 A person who submits an application for renewal more than 90 days after the date of
17 expiration is subject to all requirements governing new applicants under this subchapter,
18 except that the board, giving due consideration to the protection of the public, may waive
19 any such requirement if that renewal application is received, together with the late fee and
20 renewal fee, within 2 years from the date of the expiration.

21 **§12539. Data collection and reporting for a licensed midwife**

22 **1. Report.** Beginning February 1, 2017, and on each February 1st thereafter, a
23 midwife licensed under this subchapter shall report to the board, in a form specified by
24 the board, the following information regarding cases in which the midwife assisted during
25 the previous calendar year when the intended place of birth at the onset of care was an
26 out-of-hospital setting:

27 A. The total number of clients served as primary maternity caregiver at the onset of
28 care;

29 B. The number, by county, of live births attended as primary maternity caregiver;

30 C. The number, by county, of cases of fetal demise, infant deaths and maternal
31 deaths attended as primary maternity caregiver at the discovery of the demise or
32 death;

33 D. The number of women whose primary maternity care was transferred to another
34 health care practitioner during the antepartum period and the reason for transfer;

35 E. The number, reason for and outcome of each nonemergency transfer during the
36 intrapartum or postpartum period;

37 F. The number, reason for and outcome of each urgent or emergency transport of an
38 expectant mother in the antepartum period;

39 G. The number, reason for and outcome of each urgent or emergency transport of an
40 infant or mother during the intrapartum or immediate postpartum period;

1 H. The number of planned out-of-hospital births at the onset of labor and the number
2 of births completed in an out-of-hospital setting;

3 I. A brief description of any complications resulting in the morbidity or mortality of
4 a mother or a neonate; and

5 J. Any information required by the board in rules.

6 **2. Penalty.** Failure to comply with the reporting requirements under subsection 1 is
7 grounds for discipline by the board.

8 **§12540. Qualified immunity**

9 Other health care practitioners or health care providers, as defined in Title 24, section
10 2502, subsections 1-A and 2, respectively, are immune from civil liability for any injuries
11 or death resulting from the acts or omissions of a midwife. Notwithstanding any
12 inconsistent provisions of any public or private and special law, a health care practitioner
13 or health care provider who consults or collaborates with a midwife or accepts transfer of
14 care of clients of a midwife is not liable for damages for injuries or death alleged to have
15 occurred by reason of an act or omission, unless it is established that the injuries or the
16 death were caused willfully, wantonly or recklessly or by gross negligence on the part of
17 the health care practitioner or health care provider.

18 **§12541. Informed consent to care**

19 In a format accepted by the board, a midwife licensed under this subchapter attending
20 a birth at a home or freestanding birth center shall provide each client with and maintain a
21 record of a signed informed consent to care form that describes the midwife's education
22 and credentials, written practice guidelines, services provided, whether the midwife has
23 professional liability insurance coverage, procedures and risks of birth in the client's
24 chosen environment, components of the emergency plan and the address and telephone
25 number of the board where complaints may be filed. The board shall establish by rule a
26 form for this purpose.

27 **§12542. Public health authority and responsibility**

28 A certified professional midwife or certified midwife is a licensed health care
29 provider and has the same authority and responsibility as other licensed health care
30 providers regarding public health laws, reportable disease and conditions, communicable
31 disease control and prevention, recording of vital statistics, health and physical
32 examinations and local boards of health, except that this authority is limited to activity
33 consistent with the scope of practice authorized by this subchapter.

34 **§12543. Disciplinary actions**

35 **1. Disciplinary action.** The board may deny a license, refuse to renew a license or
36 impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for
37 any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A.

38 **2. Consultation.** In any disciplinary actions involving consultation between
39 midwives and physicians, informed consent, transport, transfer of care, scope of practice,
40 drug formulary or standards of care, the board shall act in consultation with the Board of
41 Licensure in Medicine but is not bound by that board's recommendations.

1 **3. Reinstatement after revocation.** An application for reinstatement may be made
2 to the board one year from the date of revocation of a license. The board may accept or
3 reject the application for reinstatement and hold a hearing to consider reinstatement.

4 **Sec. 12. 32 MRSA §13811**, as enacted by PL 2007, c. 669, §1, is repealed.

5 **Sec. 13. 32 MRSA §13812**, as enacted by PL 2007, c. 669, §2, is repealed.

6 **Sec. 14. Midwife data collection and reporting guidelines pending initial**
7 **licensure.** The Board of Complementary Health Care Providers, established in the
8 Maine Revised Statutes, Title 5, section 12004-A, subsection 8-A, shall invite and
9 encourage every midwife who intends to be licensed in this State to keep data records and
10 report them to the board upon application for initial licensure. Those records must contain
11 the following information:

12 1. The total number of clients served as primary maternity caregiver at the onset of
13 care;

14 2. The number, by county, of live births attended as primary maternity caregiver;

15 3. The number, by county, of cases of fetal demise, infant deaths and maternal deaths
16 attended as primary maternity caregiver at the discovery of the demise or death;

17 4. The number of women whose primary maternity care was transferred to another
18 health care practitioner during the antepartum period and the reason for transfer;

19 5. The number, reason for and outcome of each nonemergency transfer of care during
20 the intrapartum or postpartum period;

21 6. The number, reason for and outcome of each urgent or emergency transfer of care
22 of an expectant mother in the antepartum period;

23 7. The number, reason for and outcome of each urgent or emergency transfer of care
24 of an infant or mother during the intrapartum or immediate postpartum period;

25 8. The number of planned home or freestanding birth center out-of-hospital births at
26 the onset of labor and the number of births completed in an out-of-hospital setting;

27 9. A brief description of any complications resulting in the morbidity or mortality of a
28 mother or a neonate that occurs during pregnancy, postpartum and the newborn period;
29 and

30 10. The number of cases involving vaginal birth after cesarean section, breech
31 presentation and multifetal gestation, including for each such case the information
32 contained in subsections 1 to 9.

33 **Sec. 15. Transition provisions**

34 **1. Midwife members; initial appointments.** For purposes of initial appointments
35 to the Board of Complementary Health Care Providers pursuant to that section of this Act
36 that amends the Maine Revised Statutes, Title 32, section 12502, subsection 1, the
37 midwife members need only hold a current and valid national certification as a midwife,
38 except that after January 1, 2020 all midwife members of the board must be licensed
39 pursuant to the requirements of Title 32, chapter 113-B, subchapter 4.

1 **2. Expiration of terms.** The terms of members of the Board of Complementary
 2 Health Care Providers who on the effective date of this Act do not meet the requirements
 3 of the Maine Revised Statutes, Title 32, section 12502, subsection 1 expire on September
 4 1, 2016. New members appointed in accordance with the provisions of Title 32, section
 5 12502, subsection 1 must be appointed by September 1, 2016.

6 **Sec. 16. Transfer by August 1, 2016.** Notwithstanding any other provision of
 7 law, the State Controller shall transfer \$76,365 from the General Fund unappropriated
 8 surplus to the Licensing and Enforcement, Other Special Revenue Funds account within
 9 the Department of Professional and Financial Regulation no later than August 1, 2016.

10 **Sec. 17. Transfer by August 1, 2017.** Notwithstanding any other provision of
 11 law, the State Controller shall transfer \$26,985 from the General Fund unappropriated
 12 surplus to the Licensing and Enforcement, Other Special Revenue Funds account within
 13 the Department of Professional and Financial Regulation no later than August 1, 2017.

14 **Sec. 18. Transfer by August 1, 2018.** Notwithstanding any other provision of
 15 law, the State Controller shall transfer \$26,985 from the General Fund unappropriated
 16 surplus to the Licensing and Enforcement, Other Special Revenue Funds account within
 17 the Department of Professional and Financial Regulation no later than August 1, 2018.

18 **Sec. 19. Transfer by August 1, 2019.** Notwithstanding any other provision of
 19 law, the State Controller shall transfer \$26,985 from the General Fund unappropriated
 20 surplus to the Licensing and Enforcement, Other Special Revenue Funds account within
 21 the Department of Professional and Financial Regulation no later than August 1, 2019.

22 **Sec. 20. Appropriations and allocations.** The following appropriations and
 23 allocations are made.

24 **PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**
 25 **Administrative Services - Professional and Financial Regulation 0094**

26 Initiative: Allocates funds for the additional administrative costs including service center
 27 fees and STA-CAP charges.

28	OTHER SPECIAL REVENUE FUNDS	2015-16	2016-17
29	All Other	\$0	\$3,451
30			
31	OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$3,451

32 **Licensing and Enforcement 0352**

33 Initiative: Allocates funds for the per diem and All Other costs of adding 2 members to
 34 the Board of Complementary Health Care Providers beginning in fiscal year 2016-17.

35	OTHER SPECIAL REVENUE FUNDS	2015-16	2016-17
36	Personal Services	\$0	\$3,290
37	All Other	\$0	\$12,663

1
2 OTHER SPECIAL REVENUE FUNDS TOTAL \$0 \$15,953

3 **Licensing and Enforcement 0352**

4 Initiative: Allocates funds for the cost of contracting for staff services to assist the Board
5 of Complementary Health Care Providers in establishing the new licensing requirement
6 for individuals practicing midwifery in the State.

7 **OTHER SPECIAL REVENUE FUNDS** **2015-16** **2016-17**
8 All Other \$0 \$56,961
9
10 OTHER SPECIAL REVENUE FUNDS TOTAL \$0 \$56,961

11 **PROFESSIONAL AND FINANCIAL**
12 **REGULATION, DEPARTMENT OF**
13 **DEPARTMENT TOTALS** **2015-16** **2016-17**
14
15 **OTHER SPECIAL REVENUE FUNDS** **\$0** **\$76,365**
16
17 **DEPARTMENT TOTAL - ALL FUNDS** **\$0** **\$76,365**

18 **Sec. 21. Contingent effective date.** Those sections of this Act that repeal the
19 Maine Revised Statutes, Title 32, sections 13811 and 13812 do not take effect unless:

20 1. The Board of Complementary Health Care Providers, established in the Maine
21 Revised Statutes, Title 5, section 12004-A, subsection 8-A, either alone or in joint
22 rulemaking with the Board of Licensure in Medicine, established in Title 5, section
23 12004-A, subsection 24, adopts a rule or rules concerning drug possession and
24 administration by certified professional midwives and certified midwives; and

25 2. The Director of the Office of Professional and Occupational Regulation within the
26 Department of Professional and Financial Regulation, or the Commissioner of
27 Professional and Financial Regulation, notifies the Secretary of the Senate, the Clerk of
28 the House of Representatives and the Revisor of Statutes that the rule or rules have been
29 adopted.'

30 **SUMMARY**

31 This amendment replaces the bill, which is a concept draft, with changes to the
32 makeup of the Board of Complementary Health Care Providers and a new licensing
33 scheme, under the authority of that board, for 2 categories of individuals practicing
34 midwifery in the State. Among other things, the amendment establishes:

35 1. Criteria for licensure and oversight of midwives;

