

SENATE BILL NO. 172

INTRODUCED BY SVRCEK, PECK, LEE, PIPINICH, VAUGHN,  
COHEN, FRITZ, REAM, YELLOWTAIL, HALLIGAN, THOFT,  
SWYSGOOD, KEATING, COCCHIARELLA, ELLIOTT,  
WANZENRIED, SQUIRES, KADAS, ECK, BENEDICT,  
STEPPLER, HANSEN, RUSSELL, TOOLE, WHALEN,  
NISBET, COBB, HOFFMAN, J. BROWN, DARKO,  
ANDERSON, T. BECK, GROSFIELD, HARP, HAMMOND

IN THE SENATE

JANUARY 22, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON PUBLIC HEALTH, WELFARE, & SAFETY.

                                      FIRST READING.

FEBRUARY 16, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 18, 1991                   PRINTING REPORT.

                                      SECOND READING, DO PASS.

FEBRUARY 19, 1991                   ENGROSSING REPORT.

                                      THIRD READING, PASSED.  
AYES, 46; NOES, 4.

                                      TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON HUMAN SERVICES & AGING.

                                      FIRST READING.

MARCH 28, 1991                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

APRIL 5, 1991                   SECOND READING, CONCURRED IN.

APRIL 6, 1991                   THIRD READING, CONCURRED IN.  
AYES, 86; NOES, 11.

                                      RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 9, 1991

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 10, 1991

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *172*  
 2 INTRODUCED BY *Frank Rock MacBeth, Patrick Spink, Stephen Gagnon,*  
 3 *Fritz Ream, Yellowstone Valley, White Surgeon*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
 5 LICENSING AND REGULATION OF DIRECT-ENTRY MIDWIVES; CREATING  
 6 A BOARD OF DIRECT-ENTRY MIDWIFERY; PROVIDING FOR LICENSING,  
 7 INCLUDING PROVISIONAL LICENSES AND APPRENTICE LICENSES;  
 8 ESTABLISHING LICENSE EXEMPTION REQUIREMENTS; CREATING A  
 9 COMMUNICATIONS PRIVILEGE; PROVIDING FOR LICENSING  
 10 RECIPROCITY; REQUIRING INFORMED CONSENT; ESTABLISHING CLIENT  
 11 SCREENING PROCEDURES; PROVIDING FOR PHYSICIAN CONSULTATION;  
 12 REQUIRING THE FILING OF BIRTH CERTIFICATES AND REPORTS;  
 13 PROVIDING FOR AN ADMINISTRATIVE FINE, A CRIMINAL PENALTY,  
 14 AND AN INJUNCTION; GRANTING THE BOARD RULEMAKING AUTHORITY;  
 15 AMENDING SECTIONS 27-1-734 AND 37-3-103, MCA; AND PROVIDING  
 16 EFFECTIVE DATES."  
 17

18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because  
 20 [section 6] grants rulemaking authority to the board of  
 21 direct-entry midwifery to implement the provisions of this  
 22 bill. In adopting rules, the board is encouraged to review  
 23 regulations promulgated by the state of New Hampshire and,  
 24 where appropriate, to adopt comparable rules specifically  
 25 applicable to direct-entry midwifery in Montana. At a

- 1 minimum, it is the intent of the legislature that the board  
 2 adopt rules:  
 3 (1) governing the conduct of board business;  
 4 (2) establishing license application and examination  
 5 procedures, criteria for and grading of examinations,  
 6 examination and license fees, criteria for minimum  
 7 educational, apprenticeship, and clinical requirements for  
 8 license eligibility, and continuing education requirements  
 9 for license renewal;  
 10 (3) establishing eligibility criteria for client  
 11 screening by direct-entry midwives;  
 12 (4) developing procedures for the issuance, renewal,  
 13 suspension, revocation, and reciprocity of licenses;  
 14 (5) creating disciplinary standards for licensees,  
 15 establishing investigatory procedures for processing  
 16 complaints, and adopting ethical standards for licensed  
 17 direct-entry midwives;  
 18 (6) establishing supporting documentation for primary  
 19 birth attendants; and  
 20 (7) establishing standardized informed consent and  
 21 reporting forms.

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 NEW SECTION. Section 1. Short title. [Sections 1  
 24 through 4 and 6 through 23] may be cited as the  
 25



1 "Direct-Entry Midwifery Licensing Act".

2 NEW SECTION. Section 2. Purpose. The legislature finds  
3 and declares that because the practice of direct-entry  
4 midwifery affects the lives of the people of this state and  
5 because some Montanans may exercise their right to give  
6 birth where and with whom they choose, it is the purpose of  
7 [sections 1 through 4 and 6 through 23] to provide for the  
8 common good by ensuring the qualified and professional  
9 practice of direct-entry midwifery.

10 NEW SECTION. Section 3. Definitions. As used in  
11 [sections 1 through 4 and 6 through 23], the following  
12 definitions apply:

13 (1) "Apprentice" means a person who is working under  
14 the supervision of a licensed direct-entry midwife and is  
15 seeking licensure as a direct-entry midwife under [sections  
16 1 through 4 and 6 through 23].

17 (2) "Board" means the board of direct-entry midwifery  
18 established in [section 5].

19 (3) "Continuous care" means care provided for one  
20 person from the initial history-taking interview through  
21 monthly prenatal, intrapartum, and postpartum periods.

22 (4) "Department" means the department of commerce  
23 provided for in 2-15-1801.

24 (5) "Direct-entry midwife" means a person who advises,  
25 attends, or assists a woman during pregnancy, labor, natural

1 childbirth, or the postpartum period.

2 (6) "Licensee" means a person authorized by [sections 1  
3 through 4 and 6 through 23] to practice direct-entry  
4 midwifery.

5 (7) "Practice of direct-entry midwifery" means the  
6 advising, attending, or assisting of a woman during  
7 pregnancy, labor, natural childbirth, or the postpartum  
8 period.

9 NEW SECTION. Section 4. Exemptions. Sections 1 through  
10 4 and 6 through 23] do not limit or regulate the practice of  
11 a licensed physician, certified nurse-midwife, or licensed  
12 basic or advanced emergency medical technician. The practice  
13 of direct-entry midwifery does not constitute the practice  
14 of medicine, certified nurse-midwifery, or emergency medical  
15 care to the extent that a direct-entry midwife advises,  
16 attends, or assists a woman during pregnancy, labor, natural  
17 childbirth, or the postpartum period.

18 NEW SECTION. Section 5. Board -- composition --  
19 allocation -- quasi-judicial -- compensation. (1) There is a  
20 board of direct-entry midwifery.

21 (2) The board is composed of five members, all of whom  
22 support the practice of direct-entry midwifery. Members are  
23 appointed by the governor to serve staggered 4-year terms.  
24 The board consists of:

25 (a) three members who are direct-entry midwives who

1 filed the affidavit required by 37-75-102. Subsequent  
2 appointments may be made only from those direct-entry  
3 midwives who are licensed pursuant to [sections 1 through 4  
4 and 6 through 23].

5 (b) one member who is a physician whose practice  
6 includes obstetrics; and

7 (c) one member of the general public.

8 (3) The board is allocated to the department of  
9 commerce for administrative purposes only as prescribed in  
10 2-15-121.

11 (4) The board is designated as a quasi-judicial board  
12 for purposes of 2-15-124.

13 (5) Members of the board are entitled to compensation  
14 and travel expenses.

15 NEW SECTION. Section 6. General powers and duties of  
16 board -- rulemaking authority. (1) The board shall:

17 (a) meet at least once annually, and at other times as  
18 agreed upon, to elect officers and to perform the duties  
19 described in this section; and

20 (b) administer oaths, take affidavits, summon  
21 witnesses, and take testimony as to matters within the scope  
22 of the board's duties.

23 (2) The board shall have the authority to administer  
24 and enforce all the powers and duties granted statutorily or  
25 adopted administratively.

1 (3) The board shall adopt rules to administer [sections  
2 1 through 4 and 6 through 23]. The rules must include but  
3 are not limited to:

4 (a) the development of a license application and  
5 examination, criteria for and grading of examinations, and  
6 establishment of examination and license fees commensurate  
7 with actual costs;

8 (b) the issuance of a provisional license to midwives  
9 who filed the affidavit required by 37-75-102;

10 (c) the establishment of criteria for minimum  
11 educational, apprenticeship, and clinical requirements that,  
12 at a minimum, meet the standards established in [section 7];

13 (d) the development of eligibility criteria for client  
14 screening by direct-entry midwives;

15 (e) the development of procedures for the issuance,  
16 renewal, suspension, revocation, and reciprocity of  
17 licenses;

18 (f) the adoption of disciplinary standards for  
19 licensees;

20 (g) the establishment of investigatory and hearing  
21 procedures for processing complaints received by the board;

22 (h) the establishment of continuing education  
23 requirements of at least 10 hours annually for license  
24 renewal for direct-entry midwives;

25 (i) the development of standardized informed consent

1 and reporting forms;

2 (j) the adoption of ethical standards for licensed  
3 direct-entry midwives; and

4 (k) the adoption of supporting documentation  
5 requirements for primary birth attendants.

6 NEW SECTION. **Section 7. Qualifications of applicants**  
7 **for license -- educational and practical experience**  
8 **requirements. To be eligible for a license as a direct-entry**  
9 **midwife, an applicant:**

10 (1) must be of good moral character and be at least 21  
11 years of age;

12 (2) shall satisfactorily complete educational  
13 requirements in pregnancy and natural childbirth, approved  
14 by the board, which must include but are not limited to the  
15 following:

16 (a) provision of care during the antepartum,  
17 intrapartum, postpartum, and newborn period;

18 (b) parenting education for prepared childbirth;

19 (c) observation skills;

20 (d) aseptic techniques;

21 (e) management of birth and immediate care of the  
22 mother and the newborn;

23 (f) recognition of early signs of possible  
24 abnormalities;

25 (g) recognition and management of emergency situations;

1 and

2 (h) special requirements for home birth;

3 (3) shall acquire practical experience, which may be  
4 attained in a home, clinic, or hospital setting. Practical  
5 experience attained in a hospital does not constitute  
6 training or supervision by the hospital. At a minimum, this  
7 experience must include the following types and numbers of  
8 experiences acquired through an apprenticeship or other  
9 supervisory setting:

10 (a) provision of 100 prenatal examinations;

11 (b) observation of 40 births; and

12 (c) participation as the primary birth attendant at 25  
13 births, 15 of which included continuous care, as evidenced  
14 by signing the birth certificate as the primary birth  
15 attendant.

16 (4) shall file documentation with the board that the  
17 applicant has been certified by the American heart  
18 association or American red cross to perform adult and  
19 infant cardiopulmonary resuscitation. Certification must be  
20 current at the time of application and remain valid  
21 throughout the license period.

22 NEW SECTION. **Section 8. Examination -- exemption. (1)**  
23 **Except as provided in subsection (4), an applicant for a**  
24 **license as a direct-entry midwife shall pass a qualifying**  
25 **examination, prescribed by the board, that is designed to**

1 test knowledge of theory regarding pregnancy and childbirth  
2 and to test clinical judgment in midwifery management. If  
3 considered necessary, an oral interview may be conducted to  
4 determine the fitness of the applicant to practice as a  
5 direct-entry midwife.

6 (2) Before an applicant may take the examination, the  
7 applicant shall demonstrate to the board that the  
8 educational and practical experience requirements in  
9 [section 7(2) and (3)] have been met.

10 (3) An applicant is exempt from the study and practical  
11 experience requirements of [section 7(2) and (3)] if the  
12 applicant has:

13 (a) satisfactorily completed the first examination  
14 given by the board following [the effective date of sections  
15 1 through 4 and 7 through 25]; and

16 (b) filed supporting documentation, as required by the  
17 board by rule, certifying that the applicant has served as  
18 the primary birth attendant, providing continuous care at no  
19 less than 75 births within the 7 years prior to [the  
20 effective date of sections 1 through 4 and 7 through 25] as  
21 verified by birth certificates from Montana or another  
22 state, a signed affidavit from the birthing mother, or  
23 documented records from the midwife.

24 (4) Upon payment of the license fee established by the  
25 board, a nurse-midwife certified pursuant to 37-8-409 is

1 exempt from the requirements of [section 7 and this section]  
2 and may be licensed as a direct-entry midwife.

3 NEW SECTION. Section 9. Provisional license --  
4 apprentice license. (1) Upon payment of a \$200 fee to the  
5 department, the board may grant a provisional direct-entry  
6 midwife license only to a person who filed an affidavit  
7 required by 37-75-102.

8 (2) The provisional license is valid until the issuance  
9 of grades for the first examination administered pursuant to  
10 [section 10].

11 (3) Upon payment of a \$200 fee to the department, the  
12 board may grant an apprentice direct-entry midwife license  
13 to a person who is working under the personal supervision of  
14 a licensed direct-entry midwife and who is seeking licensure  
15 as a direct-entry midwife under [sections 1 through 4 and 6  
16 through 23].

17 (4) An apprentice direct-entry midwife license is valid  
18 for 1 year and must be renewed annually, with a limit of  
19 four renewals.

20 NEW SECTION. Section 10. Examination -- preparation --  
21 requirements. (1) An examination for a license to practice  
22 direct-entry midwifery must be prepared by a certified  
23 nurse-midwife designated by the board in consultation with  
24 the physician on the board.

25 (2) Examinations must be conducted once each year, be

1 fair and impartial, and be sufficiently comprehensive to  
2 adequately test the applicant's competence and ability.

3 (3) A person must attain a grade of at least 70% to  
4 pass the examination.

5 NEW SECTION. **Section 11.** Administration of  
6 prescription drugs prohibited -- exceptions. A licensed  
7 direct-entry midwife may not dispense or administer  
8 prescription drugs other than newborn vitamin K, pitosin  
9 postpartum, xylocaine, and, in accordance with Rule  
10 16.24.215, Administrative Rules of Montana, prophylactic eye  
11 agents to newborn infants. These drugs may be administered  
12 only if prescribed by a physician.

13 NEW SECTION. **Section 12.** Operative and surgical  
14 procedures prohibited -- exception. A licensed direct-entry  
15 midwife may not perform any operative or surgical procedures  
16 except for an episiotomy and simple surgical repair of an  
17 episiotomy or simple second-degree lacerations.

18 NEW SECTION. **Section 13.** Fees. (1) An applicant for a  
19 direct-entry midwife license shall, upon submitting an  
20 application to the board, pay an application fee set by the  
21 board, commensurate with costs.

22 (2) An applicant required to take an examination shall,  
23 before commencement of the examination, pay an examination  
24 fee set by the board, commensurate with costs.

25 (3) Before a license may be issued or renewed, an

1 applicant shall pay a fee set by the board, commensurate  
2 with costs.

3 (4) Subject to 37-1-101(6), money paid for application,  
4 examination, license, and license renewal fees must be  
5 deposited in the state special revenue fund for use by the  
6 board.

7 NEW SECTION. **Section 14.** Denial, suspension,  
8 revocation, or refusal to renew license -- grounds. (1) The  
9 board, after notice and hearing, may reprimand a licensee or  
10 deny, suspend, revoke, or refuse to renew the license of a  
11 licensee who:

12 (a) is habitually intoxicated or is addicted to  
13 narcotic drugs;

14 (b) is guilty of immoral or unprofessional conduct as  
15 defined by board rule;

16 (c) is guilty of gross negligence in practicing  
17 direct-entry midwifery;

18 (d) has obtained or attempted to obtain licensure by  
19 fraud or material misrepresentation;

20 (e) is guilty of conduct unbecoming a person licensed  
21 as a midwife or of conduct detrimental to the best interests  
22 of the public; or

23 (f) has violated any provision of [sections 1 through 4  
24 and 6 through 23] or a rule adopted by the board.

25 (2) The board may impose an administrative fine of not



1 more than \$500 per incident for any violation that could  
 2 result in the suspension or revocation of a direct-entry  
 3 midwife license. A fine collected under this subsection must  
 4 be deposited in the state general fund.

5 NEW SECTION. **Section 15. Unlawful to practice without**  
 6 **license.** It is unlawful for a person to practice  
 7 direct-entry midwifery in this state without first obtaining  
 8 a license under [sections 1 through 4 and 6 through 23].

9 NEW SECTION. **Section 16. Reciprocity.** Upon payment of  
 10 the license fee provided for in [section 13], the board may  
 11 grant a license to a person who, at the time of application,  
 12 is licensed or certified as a midwife in another state if  
 13 the board determines that the licensing requirements of that  
 14 state are equal to or exceed the requirements of [sections 1  
 15 through 4 and 6 through 23].

16 NEW SECTION. **Section 17. Privileged communications --**  
 17 **exceptions.** A licensee may not disclose any information  
 18 acquired from clients during consultation in a professional  
 19 capacity except:

20 (1) with the written consent of the client or, in the  
 21 case of the client's death or mental incapacity, with the  
 22 written consent of the client's personal representative or  
 23 guardian;

24 (2) that the licensee need not treat as confidential a  
 25 communication otherwise confidential that reveals the

1 contemplation of a crime by the client or any other person  
 2 or that in the licensee's professional opinion reveals a  
 3 threat of imminent harm to the client or others;

4 (3) that if the client is a minor and information  
 5 acquired by the licensee indicates that the client was the  
 6 victim of a crime, the licensee may be required to testify  
 7 fully in relation to the information in any investigation,  
 8 trial, or other legal proceeding in which the commission of  
 9 the crime is the subject of inquiry;

10 (4) that if the client or the client's personal  
 11 representative or guardian brings an action against a  
 12 licensee for a claim arising out of the client's interaction  
 13 with the direct-entry midwife, the client is considered to  
 14 have waived any privilege;

15 (5) to the extent that the privilege is otherwise  
 16 waived by the client; and

17 (6) as may otherwise be required by law.

18 NEW SECTION. **Section 18. Informed consent.** (1) Prior  
 19 to accepting a woman for care, a licensed direct-entry  
 20 midwife shall first obtain written, informed consent from  
 21 the woman.

22 (2) Informed consent may be evidenced by a written  
 23 statement, in a form prescribed by the board and signed by  
 24 the direct-entry midwife and the woman to whom care is to be  
 25 given, in which the direct-entry midwife certifies that full

1 disclosure has been made and acknowledged by the woman on  
2 the following:

- 3 (a) the direct-entry midwife's educational background;
- 4 (b) the nature and scope of the care to be given,  
5 including the possibility of and procedure for transport of  
6 the patient to a hospital;
- 7 (c) the available alternatives to midwifery care;
- 8 (d) the fact that the patient has been encouraged to  
9 consult with a physician at least twice during the  
10 pregnancy; and
- 11 (e) whether the midwifery services provided are located  
12 more than 50 miles from the nearest hospital.

13 NEW SECTION. Section 19. Reports -- failure to report.

14 (1) A licensed direct-entry midwife shall submit  
15 semiannually to the board, on forms supplied by the board, a  
16 summary report on each patient given care. The report must  
17 include vital statistics on each patient and information on  
18 the procedures and scope of care administered, including any  
19 transport of the patient to a hospital, but may not include  
20 information disclosing the identity of the patient.

21 (2) A licensed direct-entry midwife shall report within  
22 72 hours to the board and to the department of health and  
23 environmental sciences any maternal, fetal, or neonatal  
24 mortality or morbidity in patients for whom care has been  
25 given.

1 (3) Failure of a direct-entry midwife to submit  
2 required reports constitutes grounds to deny renewal of a  
3 license.

4 NEW SECTION. Section 20. Screening procedures. In  
5 addition to meeting the eligibility criteria for client  
6 screening established by the board pursuant to [section 6],  
7 a direct-entry midwife shall recommend that patients secure  
8 the following services by an appropriate health care  
9 provider:

- 10 (1) the standard serological test as defined in  
11 50-19-101(2) for women seeking prenatal care;
- 12 (2) screening for hepatitis B;
- 13 (3) maternal serum alpha-fetoprotein test and  
14 ultrasound, upon request;
- 15 (4) Rh antibody and glucose screening at 28 weeks'  
16 gestation, upon request;
- 17 (5) nonstress testing by a fetal monitor of a fetus at  
18 greater than 42 1/2 weeks' gestation or if other reasons  
19 indicate the testing; and
- 20 (6) screening for phenylketonuria.

21 NEW SECTION. Section 21. Physician consultation  
22 encouraged. A licensed direct-entry midwife is encouraged to  
23 advise all women accepted for midwifery care to consult with  
24 a physician at least twice during the pregnancy.

25 NEW SECTION. Section 22. Filing of birth certificate.

1 (1) When a birth occurs with a licensed direct-entry midwife  
 2 in attendance, the direct-entry midwife shall prepare and  
 3 file a birth certificate, as required by 50-15-201, with the  
 4 department of health and environmental sciences within 30  
 5 days of the birth of the newborn.

6 (2) Failure of a direct-entry midwife to prepare and  
 7 file the birth certificate constitutes grounds for the  
 8 suspension or revocation of a license granted under  
 9 [sections 1 through 4 and 6 through 23].

10 NEW SECTION. Section 23. violation -- penalties --  
 11 injunction -- manner of charging violation. (1) A person who  
 12 violates any provision of [sections 1 through 4 and 6  
 13 through 23] or any rule adopted pursuant to [sections 1  
 14 through 4 and 6 through 23] is guilty of a misdemeanor and  
 15 is punishable by a fine not to exceed \$500, by imprisonment  
 16 in the county jail for a term of not more than 6 months, or  
 17 both.

18 (2) Notwithstanding any other provisions of [sections 1  
 19 through 4 and 6 through 23], the board may maintain an  
 20 action to enjoin a person from engaging in the practice of  
 21 direct-entry midwifery until a license to practice  
 22 direct-entry midwifery is obtained. A person who has been  
 23 enjoined and who violates the injunction is punishable for  
 24 contempt of court. The injunction does not relieve the  
 25 person practicing direct-entry midwifery without a license

1 from criminal prosecution. The remedy by injunction is in  
 2 addition to remedies provided for criminal prosecution of  
 3 the offender. In charging a person in a complaint for  
 4 injunction or in an affidavit, information, or indictment  
 5 with a violation of law by practicing direct-entry midwifery  
 6 without a license, it is sufficient to charge that the  
 7 person did, on a certain day and in a certain county, engage  
 8 in the practice of direct-entry midwifery while not having a  
 9 license to do so, without averring further or more  
 10 particular facts concerning the violation.

11 **Section 24.** Section 27-1-734, MCA, is amended to read:

12 \*27-1-734. Limits on liability of health care provider  
 13 in emergency situations. ~~{}~~ A physician licensed under  
 14 Title 37, chapter 3, a nurse licensed under Title 37,  
 15 chapter 8, or a hospital licensed under Title 50, chapter 5,  
 16 rendering care or assistance in good faith to a patient of a  
 17 direct-entry midwife in an emergency situation is liable for  
 18 civil damages for acts or omissions committed in providing  
 19 such emergency obstetrical care or assistance only to the  
 20 extent that those damages are caused by gross negligence or  
 21 by willful or wanton acts or omissions.

22 ~~{2}--The-limitations-on-liability-provided-in-subsection~~  
 23 ~~{1}-do-not-apply-in-the-following-cases:~~

24 ~~{a)--The-physician,-nurse,-or-hospital-had-provided~~  
 25 ~~prior-medical-diagnosis-or-treatment-to-the-patient-for-a~~

1 condition--having-a-bearing-on-or-relevance-to-the-treatment  
2 of--the--obstetrical--condition--that---required---emergency  
3 services-

4 {b)--Before--rendering--emergency--obstetrical-services,  
5 the--physician,--nurse,--or--hospital--had---a---contractual  
6 obligation--or--agreement--with--the-patient,--another-health  
7 care-provider,--or--a-third-party-payer-to-provide-obstetrical  
8 care-for-the-patient-"

9 **Section 25.** Section 37-3-103, MCA, is amended to read:

10 \*37-3-103. Exemptions from licensing requirements. (1)  
11 This chapter does not prohibit or require a license with  
12 respect to any of the following acts:

13 (a) the gratuitous rendering of services in cases of  
14 emergency or catastrophe;

15 (b) the rendering of services in this state by a  
16 physician lawfully practicing medicine in another state or  
17 territory. However, if the physician does not limit the  
18 services to an occasional case or if he has any established  
19 or regularly used hospital connections in this state or  
20 maintains or is provided with, for his regular use, an  
21 office or other place for rendering the services, he must  
22 possess a license to practice medicine in this state.

23 (c) the practice of dentistry under the conditions and  
24 limitations defined by the laws of this state;

25 (d) the practice of podiatry under the conditions and

1 limitations defined by the laws of this state;

2 (e) the practice of optometry under the conditions and  
3 limitations defined by the laws of this state;

4 (f) the practice of osteopathy under the conditions and  
5 limitations defined in chapter 5 of this title for those  
6 doctors of osteopathy who do not receive a physician's  
7 certificate under this chapter;

8 (g) the practice of chiropractic under the conditions  
9 and limitations defined by the laws of this state;

10 (h) the practice of Christian Science, with or without  
11 compensation, and ritual circumcisions by rabbis;

12 (i) the performance by commissioned medical officers of  
13 the armed forces of the United States, of the United States  
14 public health service, or of the United States veterans'  
15 administration of their lawful duties in this state as  
16 officers;

17 (j) the rendering of nursing services by registered or  
18 other nurses in the lawful discharge of their duties as  
19 nurses or of midwife services by registered nurse-midwives  
20 under the supervision of a licensed physician;

21 (k) the rendering of services by interns or resident  
22 physicians in a hospital or clinic in which they are  
23 training, subject to the conditions and limitations of this  
24 chapter. The board may require a resident physician to be  
25 licensed if he otherwise engages in the practice of medicine

1 in the state of Montana.

2 (l) the rendering of services by a physical therapist,  
3 technician, or other paramedical specialist under the  
4 appropriate amount and type of supervision of a person  
5 licensed under the laws of this state to practice medicine,  
6 but this exemption does not extend the scope of a  
7 paramedical specialist;

8 (m) the rendering of services by a physician  
9 assistant-certified in accordance with Title 37, chapter 20;

10 (n) the practice by persons licensed under the laws of  
11 this state to practice a limited field of the healing arts,  
12 and not specifically designated, under the conditions and  
13 limitations defined by law;

14 (o) the execution of a death sentence pursuant to  
15 46-19-103; and

16 (p) the practice of direct-entry midwifery. For the  
17 purpose of this section, the practice of direct-entry  
18 midwifery means the advising, attending, or assisting of a  
19 woman during pregnancy, labor, natural childbirth, or the  
20 postpartum period. Except as authorized in [section 11], a  
21 direct-entry midwife may not dispense or administer a  
22 prescription drug, as those terms are defined in 37-7-101.

23 (2) Licensees referred to in subsection (1) of this  
24 section who are licensed to practice a limited field of  
25 healing arts shall confine themselves to the field for which

1 they are licensed or registered and to the scope of their  
2 respective licenses and, with the exception of those  
3 licensees who hold a medical degree, may not use the title  
4 "M.D." or any word or abbreviation to indicate or to induce  
5 others to believe that they are engaged in the diagnosis or  
6 treatment of persons afflicted with disease, injury, or  
7 defect of body or mind except to the extent and under the  
8 conditions expressly provided by the law under which they  
9 are licensed."

10 NEW SECTION. Section 26. Codification instruction. (1)  
11 [Sections 1 through 4 and 6 through 23] are intended to be  
12 codified as an integral part of Title 37, and the provisions  
13 of Title 37 apply to [sections 1 through 4 and 6 through  
14 23].

15 (2) [Section 5] is intended to be codified as an  
16 integral part of Title 2, chapter 15, part 18, and the  
17 provisions of Title 2, chapter 15, part 18, apply to  
18 [section 5].

19 NEW SECTION. Section 27. Effective dates. (1)  
20 [Sections 5, 6, 26, and this section] are effective on  
21 passage and approval.

22 (2) [Sections 1 through 4 and 7 through 25] are  
23 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0172, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill provides for the licensing and regulation of direct-entry midwives, creates a board of direct-entry midwifery, provides for licensing including provisional licenses and apprentice licenses, establishes license exemption requirements, and provides for informed consent and physician consultation.


ASSUMPTIONS:


1. The Board of Midwifery will provisionally license 25 applicants during FY92 and will license 15 applicants during FY93. The 25 provisional licenses at \$200 each will generate \$5,000 in fee revenue during FY92. The board will set the full license application, examination, and license fees which are assumed to be \$150, \$300, and \$300, respectively, for the 15 applicants during FY93.
2. The board will conduct two meetings during FY92 and one meeting during FY93 and each year thereafter. Travel expenses are assumed to be \$470 per meeting and each meeting will last about 8 hours.
3. Board operating expenses will include per diem, travel, supplies, communications, postage, printing, and administrative overhead recharges. Administrative overhead expenses must be shown in the Professional and Occupational Licensing Bureau of the Department of Commerce which will include an additional 0.10 FTE.

FISCAL IMPACT:

Department of Commerce - Board of Midwifery

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Personal Services	0	1,000	1,000	0	500	500
Operating Costs	0	7,325	7,325	0	7,500	7,500
Equipment	0	300	300	0	0	0
Total	0	8,625	8,625	0	8,000	8,000
<u>Funding:</u>						
License Fees (02)	0	8,625	8,625	0	8,000	8,000
<u>Revenue:</u>						
Midwife Licenses (02)	0	5,000	5,000	0	11,250	11,250

  
 ROD SUNDSTED, BUDGET DIRECTOR  
 Office of Budget and Program Planning  
 DATE 1-26-91

  
 PAUL S. SVRCEK, PRIMARY SPONSOR  
 DATE 29 JAN 91

APPROVED BY COMMITTEE  
ON PUBLIC HEALTH, WELFARE  
& SAFETY

1 SENATE BILL NO. 172  
2 INTRODUCED BY SVRCEK, PECK, LEE, PIPINICH, VAUGHN,  
3 COHEN, FRITZ, REAM, YELLOWTAIL, HALLIGAN, THOFT,  
4 SWYSGOOD, KEATING, COCCHIARELLA, ELLIOTT,  
5 WANZENRIED, SQUIRES, KADAS, ECK, BENEDICT,  
6 STEPLER, HANSEN, RUSSELL, TOOLE, WHALEN,  
7 NISBET, COBB, HOFFMAN, J. BROWN, DARKO,  
8 ANDERSON, T. BECK, GROSFIELD, HARP, HAMMOND  
9

10 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
11 LICENSING AND REGULATION OF DIRECT-ENTRY MIDWIVES; CREATING  
12 A BOARD OF DIRECT-ENTRY MIDWIFERY; PROVIDING FOR LICENSING,  
13 INCLUDING PROVISIONAL LICENSES AND APPRENTICE LICENSES;  
14 ESTABLISHING LICENSE EXEMPTION REQUIREMENTS; CREATING A  
15 COMMUNICATIONS PRIVILEGE; PROVIDING FOR LICENSING  
16 RECIPROCITY; REQUIRING INFORMED CONSENT; ESTABLISHING CLIENT  
17 SCREENING PROCEDURES; PROVIDING FOR PHYSICIAN CONSULTATION;  
18 REQUIRING THE FILING OF BIRTH CERTIFICATES AND REPORTS;  
19 PROVIDING FOR AN ADMINISTRATIVE FINE, A CRIMINAL PENALTY,  
20 AND AN INJUNCTION; GRANTING THE BOARD RULEMAKING AUTHORITY;  
21 AMENDING SECTIONS 27-1-734 AND 37-3-103, MCA; AND PROVIDING  
22 EFFECTIVE DATES."  
23

24 STATEMENT OF INTENT

25 A statement of intent is required for this bill because

1 [section 6] grants rulemaking authority to the board of  
2 direct-entry midwifery to implement the provisions of this  
3 bill. In adopting rules, the board is encouraged to review  
4 regulations promulgated by the state of New Hampshire and,  
5 where appropriate, to adopt comparable rules specifically  
6 applicable to direct-entry midwifery in Montana. At a  
7 minimum, it is the intent of the legislature that the board  
8 adopt rules:

- 9 (1) governing the conduct of board business;
- 10 (2) establishing license application and examination  
11 procedures, criteria for and grading of examinations,  
12 examination and license fees, criteria for minimum  
13 educational, apprenticeship, and clinical requirements for  
14 license eligibility, and continuing education requirements  
15 for license renewal;
- 16 (3) establishing eligibility criteria for client  
17 screening by direct-entry midwives IN ORDER TO ACHIEVE THE  
18 GOAL OF PROVIDING MIDWIFERY SERVICES TO WOMEN DURING  
19 LOW-RISK PREGNANCIES;
- 20 (4) developing procedures for the issuance, renewal,  
21 suspension, revocation, and reciprocity of licenses;
- 22 (5) creating disciplinary standards for licensees,  
23 establishing investigatory procedures for processing  
24 complaints, and adopting ethical standards for licensed  
25 direct-entry midwives;

SECOND READING



1 (6) establishing supporting documentation for primary  
2 birth attendants; and

3 (7) establishing standardized informed consent and  
4 reporting forms; AND

5 (8) ESTABLISHING CRITERIA THAT LIMITS AN  
6 APPRENTICESHIP, AS PROVIDED IN [SECTION 6].

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Short title. [Sections 1  
10 through 4 and 6 through 23] may be cited as the  
11 "Direct-Entry Midwifery Licensing Act".

12 NEW SECTION. Section 2. Purpose. The legislature finds  
13 and declares that because the practice of direct-entry  
14 midwifery affects the lives of the people of this state and  
15 because some Montanans may exercise their right to give  
16 birth where and with whom they choose, it is the purpose of  
17 [sections 1 through 4 and 6 through 23] to provide for the  
18 common good by REGULATING AND ensuring the qualified and  
19 professional practice of direct-entry midwifery.

20 NEW SECTION. Section 3. Definitions. As used in  
21 [sections 1 through 4 and 6 through 23], the following  
22 definitions apply:

23 (1) "Apprentice" means a person who is working under  
24 the supervision of a licensed direct-entry midwife and is  
25 seeking licensure as a direct-entry midwife under [sections

1 1 through 4 and 6 through 23].

2 (2) "Board" means the board of direct-entry midwifery  
3 established in [section 5].

4 (3) "Continuous care" means care provided for one  
5 person from the initial history-taking interview through  
6 monthly prenatal, intrapartum, and postpartum periods.

7 (4) "Department" means the department of commerce  
8 provided for in 2-15-1801.

9 (5) "Direct-entry midwife" means a person who advises,  
10 attends, or assists a woman during pregnancy, labor, natural  
11 childbirth, or the postpartum period.

12 (6) "Licensee" means a person authorized by [sections 1  
13 through 4 and 6 through 23] to practice direct-entry  
14 midwifery.

15 (7) "POSTPARTUM PERIOD" MEANS THE PERIOD UP TO 6 WEEKS  
16 FOLLOWING BIRTH.

17 ~~(7)~~(8) "Practice of direct-entry midwifery" means the  
18 advising, attending, or assisting of a woman during  
19 pregnancy, labor, natural childbirth, or the postpartum  
20 period.

21 NEW SECTION. Section 4. Exemptions. [Sections 1  
22 through 4 and 6 through 23] do not limit or regulate the  
23 practice of a licensed physician, certified nurse-midwife,  
24 or licensed basic or advanced emergency medical technician.  
25 The practice of direct-entry midwifery does not constitute



1 the practice of medicine, certified nurse-midwifery, or  
 2 emergency medical care to the extent that a direct-entry  
 3 midwife advises, attends, or assists a woman during  
 4 pregnancy, labor, natural childbirth, or the postpartum  
 5 period WHEN NO RISK FACTORS HAVE BEEN IDENTIFIED.

6 NEW SECTION. Section 5. Board -- composition --  
 7 allocation -- quasi-judicial -- compensation. (1) There is a  
 8 board of direct-entry midwifery.

9 (2) The board is composed of five members, ~~all of whom~~  
 10 ~~support the practice of direct-entry midwifery~~. Members are  
 11 appointed by the governor to serve staggered 4-year terms.  
 12 The board consists of:

13 (a) three members who are direct-entry midwives who  
 14 filed the affidavit required by 37-75-102. Subsequent  
 15 appointments may be made only from those direct-entry  
 16 midwives who are licensed pursuant to [sections 1 through 4  
 17 and 6 through 23].

18 (b) one member who is a physician whose PRESENT  
 19 practice includes obstetrics; and

20 (c) one member of the general public.

21 (3) The board is allocated to the department of  
 22 commerce for administrative purposes only as prescribed in  
 23 2-15-121.

24 (4) The board is designated as a quasi-judicial board  
 25 for purposes of 2-15-124.

1 (5) Members of the board are entitled to compensation  
 2 and travel expenses.

3 NEW SECTION. Section 6. General powers and duties of  
 4 board -- rulemaking authority. (1) The board shall:

5 (a) meet at least once annually, and at other times as  
 6 agreed upon, to elect officers and to perform the duties  
 7 described in this section; and

8 (b) administer oaths, take affidavits, summon  
 9 witnesses, and take testimony as to matters within the scope  
 10 of the board's duties.

11 (2) The board shall have the authority to administer  
 12 and enforce all the powers and duties granted statutorily or  
 13 adopted administratively.

14 (3) The board shall adopt rules to administer [sections  
 15 1 through 4 and 6 through 23]. The rules must include but  
 16 are not limited to:

17 (a) the development of a license application and  
 18 examination, criteria for and grading of examinations, and  
 19 establishment of examination and license fees commensurate  
 20 with actual costs;

21 (b) the issuance of a provisional license to midwives  
 22 who filed the affidavit required by 37-75-102;

23 (c) the establishment of criteria for minimum  
 24 educational, apprenticeship, and clinical requirements that,  
 25 at a minimum, meet the standards established in [section 7];

1 (d) the development of eligibility criteria for client  
 2 screening by direct-entry midwives IN ORDER TO ACHIEVE THE  
 3 GOAL OF PROVIDING MIDWIFERY SERVICES TO WOMEN DURING  
 4 LOW-RISK PREGNANCIES;

5 (e) the development of procedures for the issuance,  
 6 renewal, suspension, revocation, and reciprocity of  
 7 licenses;

8 (f) the adoption of disciplinary standards for  
 9 licensees;

10 (g) the establishment of investigatory and hearing  
 11 procedures for processing complaints received by the board;

12 (h) the establishment of continuing education  
 13 requirements of at least ~~10~~ 14 hours annually for license  
 14 renewal for direct-entry midwives;

15 (i) the development of standardized informed consent  
 16 and reporting forms;

17 (j) the adoption of ethical standards for licensed  
 18 direct-entry midwives; and

19 (k) the adoption of supporting documentation  
 20 requirements for primary birth attendants; AND

21 (L) THE ESTABLISHMENT OF CRITERIA LIMITING AN  
 22 APPRENTICESHIP THAT, AT A MINIMUM, MEETS THE STANDARDS  
 23 ESTABLISHED IN [SECTION 7].

24 NEW SECTION. Section 7. Qualifications of applicants  
 25 for license -- educational and practical experience

1 requirements. To be eligible for a license as a direct-entry  
 2 midwife, an applicant:

3 (1) MUST BE A HIGH SCHOOL GRADUATE;  
 4 ~~(1)~~ (2) must be of good moral character and be at least  
 5 21 years of age;

6 ~~(2)~~ (3) shall satisfactorily complete educational  
 7 requirements in pregnancy and natural childbirth, approved  
 8 by the board, which must include but are not limited to the  
 9 following:

10 (a) provision of care during the antepartum,  
 11 intrapartum, postpartum, and newborn period;

12 (b) parenting education for prepared childbirth;

13 (c) observation skills;

14 (d) aseptic techniques;

15 (e) management of birth and immediate care of the  
 16 mother and the newborn;

17 (f) recognition of early signs of possible  
 18 abnormalities;

19 (g) recognition and management of emergency situations;  
 20 and

21 (h) special requirements for home birth;

22 (I) INTRAMUSCULAR AND SUBCUTANEOUS INJECTIONS;

23 (J) SUTURING NECESSARY FOR EPISIOTOMY REPAIR;

24 (K) RECOGNITION OF COMMUNICABLE DISEASES AFFECTING THE  
 25 PREGNANCY, BIRTH, NEWBORN, AND POSTPARTUM PERIODS;

1 (L) ASSESSMENT SKILLS; AND

2 (M) THE USE AND ADMINISTRATION OF DRUGS AUTHORIZED IN  
3 [SECTION 11];

4 ~~†3~~(4) shall acquire practical experience, which may be  
5 attained in a home, clinic, or hospital setting. Practical  
6 experience attained in a hospital does not constitute  
7 training or supervision by the hospital, NOR MAY A HOSPITAL  
8 BE REQUIRED TO PROVIDE SUCH PRACTICAL EXPERIENCE. At a  
9 minimum, this experience must include the following types  
10 and numbers of experiences acquired through an  
11 apprenticeship or other supervisory setting:

12 (a) provision of 100 prenatal examinations;

13 (b) observation of 40 births; and

14 (c) participation as the primary birth attendant at 25  
15 births, 15 of which included continuous care, as evidenced  
16 by signing the birth certificate as the primary birth  
17 attendant.

18 ~~†4~~(5) shall file documentation with the board that the  
19 applicant has been certified by the American heart  
20 association or American red cross to perform adult and  
21 infant cardiopulmonary resuscitation. Certification must be  
22 current at the time of application and remain valid  
23 throughout the license period.

24 NEW SECTION. Section 8. Examination -- exemption. (1)

25 Except as provided in subsection (4), an applicant for a

1 license as a direct-entry midwife shall pass a qualifying,  
2 WRITTEN examination, prescribed by the board, that is  
3 designed to test knowledge of theory regarding pregnancy and  
4 childbirth and to test clinical judgment in midwifery  
5 management. If considered necessary, an oral interview may  
6 be conducted IN ADDITION TO THE WRITTEN EXAMINATION to  
7 determine the fitness of the applicant to practice as a  
8 direct-entry midwife.

9 (2) Before an applicant may take the examination, the  
10 applicant shall demonstrate to the board that the  
11 educational and practical experience requirements in  
12 [section 7(2) and (3)] have been met.

13 (3) An applicant is exempt from the ~~study~~ EDUCATIONAL  
14 and practical experience requirements of [section 7(2) and  
15 (3)] if the applicant has:

16 (a) satisfactorily completed the first examination  
17 given by the board following [the effective date of sections  
18 1 through 4 and 7 through 25]; and

19 (b) filed supporting documentation, as required by the  
20 board by rule, certifying that the applicant has served as  
21 the primary birth attendant, providing continuous care at no  
22 less than 75 births within the 7 years prior to [the  
23 effective date of sections 1 through 4 and 7 through 25] as  
24 verified by birth certificates from Montana or another  
25 state, a signed affidavit from the birthing mother, or

1 documented records from the midwife.

2 (4) Upon payment of the license fee established by the  
3 board, a nurse-midwife certified pursuant to 37-8-409 is  
4 exempt from the requirements of [section 7 and this section]  
5 and may be licensed as a direct-entry midwife.

6 NEW SECTION. Section 9. Provisional license --  
7 apprentice license. (1) Upon payment of a \$200 fee to the  
8 department, the board may grant a provisional direct-entry  
9 midwife license only to a person who filed an affidavit  
10 required by 37-75-102.

11 (2) The provisional license is valid until the issuance  
12 of grades for the first examination administered pursuant to  
13 [section 10].

14 (3) Upon payment of a \$200 fee to the department, the  
15 board may grant an apprentice direct-entry midwife license  
16 to a person who is working under the personal supervision of  
17 a licensed direct-entry midwife, A CERTIFIED NURSE-MIDWIFE,  
18 OR A PHYSICIAN LICENSED UNDER TITLE 37, CHAPTER 3, and who  
19 is seeking licensure as a direct-entry midwife under  
20 [sections 1 through 4 and 6 through 23].

21 (4) An apprentice direct-entry midwife license is valid  
22 for 1 year and must be renewed annually, with a limit of  
23 four renewals.

24 NEW SECTION. Section 10. Examination -- preparation --  
25 requirements. (1) An examination for a license to practice

1 direct-entry midwifery must be prepared by a certified  
2 nurse-midwife designated by the board in consultation with  
3 the physician on the board.

4 (2) Examinations must be conducted once each year, be  
5 fair and impartial, and be sufficiently comprehensive to  
6 adequately test the applicant's competence and ability.

7 (3) A person must attain a grade of at least 70% to  
8 pass the examination.

9 (4) A PERSON WHO FAILS TO ACHIEVE A PASSING GRADE ON  
10 THE EXAMINATION MAY NOT ENGAGE IN THE PRACTICE OF MIDWIFERY.

11 NEW SECTION. Section 11. Administration of  
12 prescription drugs prohibited -- exceptions. A licensed  
13 direct-entry midwife may not dispense or administer  
14 prescription drugs other than newborn vitamin K, ORAL OR  
15 INTRAMUSCULAR PREPARATIONS, pitosin (INTRAMUSCULAR)  
16 postpartum, xylocaine (SUBCUTANEOUS), and, in accordance  
17 with Rule 16.24.215, Administrative Rules of Montana,  
18 prophylactic eye agents to newborn infants. These drugs may  
19 be administered only if prescribed by a physician.

20 NEW SECTION. Section 12. Operative and surgical  
21 procedures prohibited -- exception. A licensed direct-entry  
22 midwife may not perform any operative or surgical procedures  
23 except for an episiotomy and simple surgical repair of an  
24 episiotomy or simple second-degree lacerations.

25 NEW SECTION. Section 13. Fees. (1) An applicant for a

1 direct-entry midwife license shall, upon submitting an  
2 application to the board, pay an application fee set by the  
3 board, commensurate with costs.

4 (2) An applicant required to take an examination shall,  
5 before commencement of the examination, pay an examination  
6 fee set by the board, commensurate with costs.

7 (3) Before a license may be issued or renewed, an  
8 applicant shall pay a fee set by the board, commensurate  
9 with costs.

10 (4) Subject to 37-1-101(6), money paid for application,  
11 examination, license, and license renewal fees must be  
12 deposited in the state special revenue fund for use by the  
13 board.

14 NEW SECTION. Section 14. Denial, suspension,  
15 revocation, or refusal to renew license -- grounds. (1) The  
16 board, after notice and hearing, may reprimand a licensee or  
17 deny, suspend, revoke, or refuse to renew the license of a  
18 licensee who:

19 ~~(a) is habitually intoxicated or is addicted to~~  
20 ~~narcotic drugs;~~

21 (A) IS USING ALCOHOL OR OTHER DRUGS TO THE POINT THAT  
22 JOB PERFORMANCE IS IMPAIRED;

23 (b) is guilty of immoral or unprofessional conduct as  
24 defined by board rule;

25 (c) is guilty of gross negligence in practicing

1 direct-entry midwifery;

2 (d) has obtained or attempted to obtain licensure by  
3 fraud or material misrepresentation;

4 (e) is guilty of ~~conduct unbecoming a person licensed~~  
5 ~~as a midwife or~~ of conduct detrimental to the best interests  
6 of the public; or

7 (f) has violated any provision of [sections 1 through 4  
8 and 6 through 23] or a rule adopted by the board.

9 (2) The board may impose an administrative fine of not  
10 more than \$500 per incident for any violation that could  
11 result in the suspension or revocation of a direct-entry  
12 midwife license. A fine collected under this subsection must  
13 be deposited in the state general fund.

14 NEW SECTION. Section 15. Unlawful to practice without  
15 license. It is unlawful for a person to practice  
16 direct-entry midwifery in this state without first obtaining  
17 a license under [sections 1 through 4 and 6 through 23].

18 NEW SECTION. Section 16. Reciprocity. Upon payment of  
19 the license fee provided for in [section 13], the board may  
20 grant a license to a person who, at the time of application,  
21 is licensed or certified as a midwife in another state if  
22 the board determines that the licensing requirements of that  
23 state are equal to or exceed the requirements of [sections 1  
24 through 4 and 6 through 23].

25 NEW SECTION. Section 17. Privileged communications --

1 exceptions. A licensee may not disclose any information  
2 acquired from clients during consultation in a professional  
3 capacity except:

4 (1) with the written consent of the client or, in the  
5 case of the client's death or mental incapacity, with the  
6 written consent of the client's personal representative or  
7 guardian;

8 (2) that the licensee need not treat as confidential a  
9 communication otherwise confidential that reveals the  
10 contemplation of a crime by the client or any other person  
11 or that in the licensee's professional opinion reveals a  
12 threat of imminent harm to the client or others;

13 (3) that if the client is a minor and information  
14 acquired by the licensee indicates that the client was the  
15 victim of a crime, the licensee may be required to testify  
16 fully in relation to the information in any investigation,  
17 trial, or other legal proceeding in which the commission of  
18 the crime is the subject of inquiry;

19 (4) that if the client or the client's personal  
20 representative or guardian brings an action against a  
21 licensee for a claim arising out of the client's interaction  
22 with the direct-entry midwife, the client is considered to  
23 have waived any privilege;

24 (5) to the extent that the privilege is otherwise  
25 waived by the client; and

1 (6) WHEN THE CLIENT IS SEEKING EMERGENCY MEDICAL  
2 TREATMENT AND THE CLIENT'S HISTORY IS REQUESTED BY THE  
3 ATTENDING MEDICAL PROFESSIONAL; AND

4 ~~(6)~~(7) as may otherwise be required by law.

5 NEW SECTION. Section 18. Informed consent. (1) Prior  
6 to accepting a woman for care, a licensed direct-entry  
7 midwife shall first obtain written, informed consent from  
8 the woman.

9 (2) Informed consent may MUST be evidenced by a written  
10 statement, in a form prescribed by the board and signed by  
11 the direct-entry midwife and the woman to whom care is to be  
12 given, in which the direct-entry midwife certifies that full  
13 disclosure has been made and acknowledged by the woman on  
14 the following:

- 15 (a) the direct-entry midwife's educational background;  
16 (b) the nature and scope of the care to be given,  
17 including the possibility of and procedure for transport of  
18 the patient to a hospital;  
19 (c) the available alternatives to DIRECT-ENTRY  
20 midwifery care;

21 (D) A DESCRIPTION OF THE RISKS OF HOME BIRTH, PRIMARILY  
22 THOSE CONDITIONS THAT MAY ARISE DURING DELIVERY;

23 ~~(d)~~(E) the fact that the patient has been encouraged  
24 ADVISED to consult with a physician at least twice during  
25 the pregnancy; and

1 (e)(F) whether the midwifery services provided are  
2 located more than 50 miles from the nearest hospital.

3 NEW SECTION. Section 19. Reports -- failure to report.

4 (1) A licensed direct-entry midwife shall submit  
5 semiannually to the board, on forms supplied by the board, a  
6 summary report on each patient given care. The report must  
7 include vital statistics on each patient and information on  
8 the procedures and scope of care administered, including any  
9 transport of the patient to a hospital AND PHYSICIAN  
10 REFERRALS, but may not include information disclosing the  
11 identity of the patient.

12 (2) A licensed direct-entry midwife shall report within  
13 72 hours to the board and to the department of health and  
14 environmental sciences any maternal, fetal, or neonatal  
15 mortality or morbidity in patients for whom care has been  
16 given.

17 (3) Failure of a direct-entry midwife to submit  
18 required reports constitutes grounds to deny renewal of a  
19 license.

20 NEW SECTION. Section 20. screening procedures. In

21 addition to meeting the eligibility criteria for client  
22 screening established by the board pursuant to [section 6],  
23 a direct-entry midwife shall recommend that patients secure  
24 the following services by an appropriate health care  
25 provider:

1 (1) the standard serological test as defined in  
2 50-19-101(2) for women seeking prenatal care;

3 (2) screening for hepatitis B AND, WHEN APPROPRIATE,  
4 HUMAN IMMUNODEFICIENCY VIRUS;

5 (3) maternal serum alpha-fetoprotein test and  
6 ultrasound, upon request;

7 (4) Rh antibody and glucose screening at 28 weeks'  
8 gestation, upon request;

9 (5) nonstress testing by a fetal monitor of a fetus at  
10 greater than 42 1/2 weeks' gestation or if other reasons  
11 indicate the testing; and

12 (6) screening for phenylketonuria;

13 (7) RH SCREENING OF THE INFANT FOR RHO GAM TREATMENT IF  
14 THE MOTHER IS RH NEGATIVE; AND

15 (8) SCREENING FOR PREMATURE LABOR AND OTHER RISK  
16 FACTORS.

17 NEW SECTION. Section 21. Physician consultation

18 encouraged ADVISED. A licensed direct-entry midwife ~~is~~  
19 encouraged--to SHALL advise all women accepted for midwifery  
20 care to consult with a physician OR CERTIFIED NURSE-MIDWIFE  
21 at least twice during the pregnancy.

22 NEW SECTION. Section 22. Filing of birth certificate.

23 (1) When a birth occurs with a licensed direct-entry midwife  
24 in attendance, the direct-entry midwife shall prepare and  
25 file a birth certificate, as required by 50-15-201, with the

1 department of health and environmental sciences within 30  
2 days of the birth of the newborn.

3 (2) Failure of a direct-entry midwife to prepare and  
4 file the birth certificate constitutes grounds for the  
5 suspension or revocation of a license granted under  
6 [sections 1 through 4 and 6 through 23].

7 NEW SECTION. Section 23. Violation -- penalties --  
8 injunction -- manner of charging violation. (1) A person who  
9 violates any provision of [sections 1 through 4 and 6  
10 through 23] or any rule adopted pursuant to [sections 1  
11 through 4 and 6 through 23] is guilty of a misdemeanor and  
12 is punishable by a fine not to exceed \$500, by imprisonment  
13 in the county jail for a term of not more than 6 months, or  
14 both.

15 (2) Notwithstanding any other provisions of [sections 1  
16 through 4 and 6 through 23], the board may maintain an  
17 action to enjoin a person from engaging in the practice of  
18 direct-entry midwifery until a license to practice  
19 direct-entry midwifery is obtained. A person who has been  
20 enjoined and who violates the injunction is punishable for  
21 contempt of court. The injunction does not relieve the  
22 person practicing direct-entry midwifery without a license  
23 from criminal prosecution. The remedy by injunction is in  
24 addition to remedies provided for criminal prosecution of  
25 the offender. In charging a person in a complaint for

1 injunction or in an affidavit, information, or indictment  
2 with a violation of law by practicing direct-entry midwifery  
3 without a license, it is sufficient to charge that the  
4 person did, on a certain day and in a certain county, engage  
5 in the practice of direct-entry midwifery while not having a  
6 license to do so, without averring further or more  
7 particular facts concerning the violation.

8 **Section 24.** Section 27-1-734, MCA, is amended to read:

9 "27-1-734. **Limits on liability of health care provider**  
10 **in emergency situations.** (1) A physician licensed under  
11 Title 37, chapter 3, a nurse licensed under Title 37,  
12 chapter 8, or a hospital licensed under Title 50, chapter 5,  
13 rendering care or assistance in good faith to a patient of a  
14 direct-entry midwife in an emergency situation is liable for  
15 civil damages for acts or omissions committed in providing  
16 such emergency obstetrical care or assistance only to the  
17 extent that those damages are caused by gross negligence or  
18 by willful or wanton acts or omissions.

19 ~~(2) The limitations on liability provided in subsection~~  
20 ~~(1) do not apply in the following cases:~~

21 ~~(a) The physician, nurse, or hospital had provided~~  
22 ~~prior medical diagnosis or treatment to the patient for a~~  
23 ~~condition having a bearing on or relevance to the treatment~~  
24 ~~of the obstetrical condition that required emergency~~  
25 ~~services.~~



~~(b) Before rendering emergency obstetrical services, the physician, nurse, or hospital had a contractual obligation or agreement with the patient, another health care provider, or a third-party payer to provide obstetrical care for the patient."~~

**Section 25.** Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States veterans' administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the

1 appropriate amount and type of supervision of a person  
2 licensed under the laws of this state to practice medicine,  
3 but this exemption does not extend the scope of a  
4 paramedical specialist;

5 (m) the rendering of services by a physician  
6 assistant-certified in accordance with Title 37, chapter 20;

7 (n) the practice by persons licensed under the laws of  
8 this state to practice a limited field of the healing arts,  
9 and not specifically designated, under the conditions and  
10 limitations defined by law;

11 (o) the execution of a death sentence pursuant to  
12 46-19-103; and

13 (p) the practice of direct-entry midwifery. For the  
14 purpose of this section, the practice of direct-entry  
15 midwifery means the advising, attending, or assisting of a  
16 woman during pregnancy, labor, natural childbirth, or the  
17 postpartum period. A Except as authorized in [section 11], a  
18 direct-entry midwife may not dispense or administer a  
19 prescription drug, as those terms are defined in 37-7-101.

20 (2) Licensees referred to in subsection (1) of this  
21 section who are licensed to practice a limited field of  
22 healing arts shall confine themselves to the field for which  
23 they are licensed or registered and to the scope of their  
24 respective licenses and, with the exception of those  
25 licensees who hold a medical degree, may not use the title

1 "M.D." or any word or abbreviation to indicate or to induce  
2 others to believe that they are engaged in the diagnosis or  
3 treatment of persons afflicted with disease, injury, or  
4 defect of body or mind except to the extent and under the  
5 conditions expressly provided by the law under which they  
6 are licensed."

7 NEW SECTION. Section 26. Codification instruction. (1)  
8 [Sections 1 through 4 and 6 through 23] are intended to be  
9 codified as an integral part of Title 37, and the provisions  
10 of Title 37 apply to [sections 1 through 4 and 6 through  
11 23].

12 (2) [Section 5] is intended to be codified as an  
13 integral part of Title 2, chapter 15, part 18, and the  
14 provisions of Title 2, chapter 15, part 18, apply to  
15 [section 5].

16 NEW SECTION. Section 27. Effective dates. (1)  
17 [Sections 5, 6, 26, and this section] are effective on  
18 passage and approval.

19 (2) [Sections 1 through 4 and 7 through 25] are  
20 effective July 1, 1991.

-End-

## SENATE BILL NO. 172

INTRODUCED BY SVRCEK, PECK, LEE, PIPINICH, VAUGHN,  
 COHEN, FRITZ, REAM, YELLOWTAIL, HALLIGAN, THOFT,  
 SWYSGOOD, KEATING, COCCHIARELLA, ELLIOTT,  
 WANZENRIED, SQUIRES, KADAS, ECK, BENEDICT,  
 STEPLER, HANSEN, RUSSELL, TOOLE, WHALEN,  
 NISBET, COBB, HOFFMAN, J. BROWN, DARKO,  
 ANDERSON, T. BECK, GROSFIELD, HARP, HAMMOND

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
 LICENSING AND REGULATION OF DIRECT-ENTRY MIDWIVES; CREATING  
 A BOARD OF DIRECT-ENTRY MIDWIFERY; PROVIDING FOR LICENSING,  
 INCLUDING PROVISIONAL LICENSES AND APPRENTICE LICENSES;  
 ESTABLISHING LICENSE EXEMPTION REQUIREMENTS; CREATING A  
 COMMUNICATIONS PRIVILEGE; PROVIDING FOR LICENSING  
 RECIPROCITY; REQUIRING INFORMED CONSENT; ESTABLISHING CLIENT  
 SCREENING PROCEDURES; PROVIDING FOR PHYSICIAN CONSULTATION;  
 REQUIRING THE FILING OF BIRTH CERTIFICATES AND REPORTS;  
 PROVIDING FOR AN ADMINISTRATIVE FINE, A CRIMINAL PENALTY,  
 AND AN INJUNCTION; GRANTING THE BOARD RULEMAKING AUTHORITY;  
 AMENDING SECTIONS 27-1-734 AND 37-3-103, MCA; AND PROVIDING  
 EFFECTIVE DATES."

## STATEMENT OF INTENT

A statement of intent is required for this bill because

[section 6] grants rulemaking authority to the board of  
 direct-entry midwifery to implement the provisions of this  
 bill. In adopting rules, the board is encouraged to review  
 regulations promulgated by the state of New Hampshire and,  
 where appropriate, to adopt comparable rules specifically  
 applicable to direct-entry midwifery in Montana. At a  
 minimum, it is the intent of the legislature that the board  
 adopt rules:

- (1) governing the conduct of board business;
- (2) establishing license application and examination  
 procedures, criteria for and grading of examinations,  
 examination and license fees, criteria for minimum  
 educational, apprenticeship, and clinical requirements for  
 license eligibility, and continuing education requirements  
 for license renewal;
- (3) establishing eligibility criteria for client  
 screening by direct-entry midwives IN ORDER TO ACHIEVE THE  
 GOAL OF PROVIDING MIDWIFERY SERVICES TO WOMEN DURING  
 LOW-RISK PREGNANCIES;
- (4) developing procedures for the issuance, renewal,  
 suspension, revocation, and reciprocity of licenses;
- (5) creating disciplinary standards for licensees,  
 establishing investigatory procedures for processing  
 complaints, and adopting ethical standards for licensed  
 direct-entry midwives;

THIRD READING

(6) establishing supporting documentation for primary birth attendants; and

(7) establishing standardized informed consent and reporting forms; AND

(8) ESTABLISHING CRITERIA THAT LIMITS AN APPRENTICESHIP, AS PROVIDED IN [SECTION 6].

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 4 and 6 through 23] may be cited as the "Direct-Entry Midwifery Licensing Act".

NEW SECTION. Section 2. Purpose. The legislature finds and declares that because the practice of direct-entry midwifery affects the lives of the people of this state and because some Montanans may exercise their right to give birth where and with whom they choose, it is the purpose of [sections 1 through 4 and 6 through 23] to provide for the common good by REGULATING AND ensuring the qualified and professional practice of direct-entry midwifery.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 4 and 6 through 23], the following definitions apply:

(1) "Apprentice" means a person who is working under the supervision of a licensed direct-entry midwife and is seeking licensure as a direct-entry midwife under [sections

1 through 4 and 6 through 23].

(2) "Board" means the board of direct-entry midwifery established in [section 5].

(3) "Continuous care" means care provided for one person from the initial history-taking interview through monthly prenatal, intrapartum, and postpartum periods.

(4) "Department" means the department of commerce provided for in 2-15-1801.

(5) "Direct-entry midwife" means a person who advises, attends, or assists a woman during pregnancy, labor, natural childbirth, or the postpartum period.

(6) "Licensee" means a person authorized by [sections 1 through 4 and 6 through 23] to practice direct-entry midwifery.

(7) "POSTPARTUM PERIOD" MEANS THE PERIOD UP TO 6 WEEKS FOLLOWING BIRTH.

~~(7)~~(8) "Practice of direct-entry midwifery" means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period.

NEW SECTION. Section 4. Exemptions. [Sections 1 through 4 and 6 through 23] do not limit or regulate the practice of a licensed physician, certified nurse-midwife, or licensed basic or advanced emergency medical technician. The practice of direct-entry midwifery does not constitute

1 the practice of medicine, certified nurse-midwifery, or  
 2 emergency medical care to the extent that a direct-entry  
 3 midwife advises, attends, or assists a woman during  
 4 pregnancy, labor, natural childbirth, or the postpartum  
 5 period WHEN NO RISK FACTORS HAVE BEEN IDENTIFIED.

6 NEW SECTION. Section 5. Board -- composition --  
 7 allocation -- quasi-judicial -- compensation. (1) There is a  
 8 board of direct-entry midwifery.

9 (2) The board is composed of five members, ~~all of whom~~  
 10 ~~support the practice of direct-entry midwifery.~~ Members are  
 11 appointed by the governor to serve staggered 4-year terms.  
 12 The board consists of:

13 (a) three members who are direct-entry midwives who  
 14 filed the affidavit required by 37-75-102. Subsequent  
 15 appointments may be made only from those direct-entry  
 16 midwives who are licensed pursuant to [sections 1 through 4  
 17 and 6 through 23].

18 (b) one member who is a physician whose PRESENT  
 19 practice includes obstetrics; and

20 (c) one member of the general public.

21 (3) The board is allocated to the department of  
 22 commerce for administrative purposes only as prescribed in  
 23 2-15-121.

24 (4) The board is designated as a quasi-judicial board  
 25 for purposes of 2-15-124.

1 (5) Members of the board are entitled to compensation  
 2 and travel expenses.

3 NEW SECTION. Section 6. General powers and duties of  
 4 board -- rulemaking authority. (1) The board shall:

5 (a) meet at least once annually, and at other times as  
 6 agreed upon, to elect officers and to perform the duties  
 7 described in this section; and

8 (b) administer oaths, take affidavits, summon  
 9 witnesses, and take testimony as to matters within the scope  
 10 of the board's duties.

11 (2) The board shall have the authority to administer  
 12 and enforce all the powers and duties granted statutorily or  
 13 adopted administratively.

14 (3) The board shall adopt rules to administer [sections  
 15 1 through 4 and 6 through 23]. The rules must include but  
 16 are not limited to:

17 (a) the development of a license application and  
 18 examination, criteria for and grading of examinations, and  
 19 establishment of examination and license fees commensurate  
 20 with actual costs;

21 (b) the issuance of a provisional license to midwives  
 22 who filed the affidavit required by 37-75-102;

23 (c) the establishment of criteria for minimum  
 24 educational, apprenticeship, and clinical requirements that,  
 25 at a minimum, meet the standards established in [section 7];

1 (d) the development of eligibility criteria for client  
2 screening by direct-entry midwives IN ORDER TO ACHIEVE THE  
3 GOAL OF PROVIDING MIDWIFERY SERVICES TO WOMEN DURING  
4 LOW-RISK PREGNANCIES;

5 (e) the development of procedures for the issuance,  
6 renewal, suspension, revocation, and reciprocity of  
7 licenses;

8 (f) the adoption of disciplinary standards for  
9 licensees;

10 (g) the establishment of investigatory and hearing  
11 procedures for processing complaints received by the board;

12 (h) the establishment of continuing education  
13 requirements of at least ~~10~~ 14 hours annually for license  
14 renewal for direct-entry midwives;

15 (i) the development of standardized informed consent  
16 and reporting forms;

17 (j) the adoption of ethical standards for licensed  
18 direct-entry midwives; **and**

19 (k) the adoption of supporting documentation  
20 requirements for primary birth attendants; AND

21 (L) THE ESTABLISHMENT OF CRITERIA LIMITING AN  
22 APPRENTICESHIP THAT, AT A MINIMUM, MEETS THE STANDARDS  
23 ESTABLISHED IN [SECTION 7].

24 NEW SECTION. Section 7. Qualifications of applicants  
25 for license -- educational and practical experience

1 requirements. To be eligible for a license as a direct-entry  
2 midwife, an applicant:

3 (1) MUST BE A HIGH SCHOOL GRADUATE;

4 ~~(1)~~ (2) must be of good moral character and be at least  
5 21 years of age;

6 ~~(2)~~ (3) shall satisfactorily complete educational  
7 requirements in pregnancy and natural childbirth, approved  
8 by the board, which must include but are not limited to the  
9 following:

10 (a) provision of care during the antepartum,  
11 intrapartum, postpartum, and newborn period;

12 (b) parenting education for prepared childbirth;

13 (c) observation skills;

14 (d) aseptic techniques;

15 (e) management of birth and immediate care of the  
16 mother and the newborn;

17 (f) recognition of early signs of possible  
18 abnormalities;

19 (g) recognition and management of emergency situations;

20 **and**

21 (h) special requirements for home birth;

22 (I) INTRAMUSCULAR AND SUBCUTANEOUS INJECTIONS;

23 (J) SUTURING NECESSARY FOR EPISIOTOMY REPAIR;

24 (K) RECOGNITION OF COMMUNICABLE DISEASES AFFECTING THE  
25 PREGNANCY, BIRTH, NEWBORN, AND POSTPARTUM PERIODS;

1 (L) ASSESSMENT SKILLS; AND

2 (M) THE USE AND ADMINISTRATION OF DRUGS AUTHORIZED IN  
3 [SECTION 11];

4 ~~(3)~~(4) shall acquire practical experience, which may be  
5 attained in a home, clinic, or hospital setting. Practical  
6 experience attained in a hospital does not constitute  
7 training or supervision by the hospital, NOR MAY A HOSPITAL  
8 BE REQUIRED TO PROVIDE SUCH PRACTICAL EXPERIENCE. At a  
9 minimum, this experience must include the following types  
10 and numbers of experiences acquired through an  
11 apprenticeship or other supervisory setting:

12 (a) provision of 100 prenatal examinations;

13 (b) observation of 40 births; and

14 (c) participation as the primary birth attendant at 25  
15 births, 15 of which included continuous care, as evidenced  
16 by signing the birth certificate as the primary birth  
17 attendant.

18 ~~(4)~~(5) shall file documentation with the board that the  
19 applicant has been certified by the American heart  
20 association or American red cross to perform adult and  
21 infant cardiopulmonary resuscitation. Certification must be  
22 current at the time of application and remain valid  
23 throughout the license period.

24 NEW SECTION. Section 8. Examination -- exemption. (1)  
25 Except as provided in subsection (4), an applicant for a

1 license as a direct-entry midwife shall pass a qualifying,  
2 WRITTEN examination, prescribed by the board, that is  
3 designed to test knowledge of theory regarding pregnancy and  
4 childbirth and to test clinical judgment in midwifery  
5 management. If considered necessary, an oral interview may  
6 be conducted IN ADDITION TO THE WRITTEN EXAMINATION to  
7 determine the fitness of the applicant to practice as a  
8 direct-entry midwife.

9 (2) Before an applicant may take the examination, the  
10 applicant shall demonstrate to the board that the  
11 educational and practical experience requirements in  
12 [section 7(2) and (3)] have been met.

13 (3) An applicant is exempt from the ~~study~~ EDUCATIONAL  
14 and practical experience requirements of [section 7(2) and  
15 (3)] if the applicant has:

16 (a) satisfactorily completed the first examination  
17 given by the board following [the effective date of sections  
18 1 through 4 and 7 through 25]; and

19 (b) filed supporting documentation, as required by the  
20 board by rule, certifying that the applicant has served as  
21 the primary birth attendant, providing continuous care at no  
22 less than 75 births within the 7 years prior to [the  
23 effective date of sections 1 through 4 and 7 through 25] as  
24 verified by birth certificates from Montana or another  
25 state, a signed affidavit from the birthing mother, or

1 documented records from the midwife.

2 (4) Upon payment of the license fee established by the  
3 board, a nurse-midwife certified pursuant to 37-8-409 is  
4 exempt from the requirements of [section 7 and this section]  
5 and may be licensed as a direct-entry midwife.

6 NEW SECTION. Section 9. Provisional license --  
7 apprentice license. (1) Upon payment of a \$200 fee to the  
8 department, the board may grant a provisional direct-entry  
9 midwife license only to a person who filed an affidavit  
10 required by 37-75-102.

11 (2) The provisional license is valid until the issuance  
12 of grades for the first examination administered pursuant to  
13 [section 10].

14 (3) Upon payment of a \$200 fee to the department, the  
15 board may grant an apprentice direct-entry midwife license  
16 to a person who is working under the personal supervision of  
17 a licensed direct-entry midwife, A CERTIFIED NURSE-MIDWIFE,  
18 OR A PHYSICIAN LICENSED UNDER TITLE 37, CHAPTER 3, and who  
19 is seeking licensure as a direct-entry midwife under  
20 [sections 1 through 4 and 6 through 23].

21 (4) An apprentice direct-entry midwife license is valid  
22 for 1 year and must be renewed annually, with a limit of  
23 four renewals.

24 NEW SECTION. Section 10. Examination -- preparation --  
25 requirements. (1) An examination for a license to practice

1 direct-entry midwifery must be prepared by a certified  
2 nurse-midwife designated by the board in consultation with  
3 the physician on the board.

4 (2) Examinations must be conducted once each year, be  
5 fair and impartial, and be sufficiently comprehensive to  
6 adequately test the applicant's competence and ability.

7 (3) A person must attain a grade of at least 70% to  
8 pass the examination.

9 (4) A PERSON WHO FAILS TO ACHIEVE A PASSING GRADE ON  
10 THE EXAMINATION MAY NOT ENGAGE IN THE PRACTICE OF MIDWIFERY.

11 NEW SECTION. Section 11. Administration of  
12 prescription drugs prohibited -- exceptions. A licensed  
13 direct-entry midwife may not dispense or administer  
14 prescription drugs other than newborn vitamin K, ORAL OR  
15 INTRAMUSCULAR PREPARATIONS, pitosin (INTRAMUSCULAR)  
16 postpartum, xylocaine (SUBCUTANEOUS), and, in accordance  
17 with Rule 16.24.215, Administrative Rules of Montana,  
18 prophylactic eye agents to newborn infants. These drugs may  
19 be administered only if prescribed by a physician.

20 NEW SECTION. Section 12. Operative and surgical  
21 procedures prohibited -- exception. A licensed direct-entry  
22 midwife may not perform any operative or surgical procedures  
23 except for an episiotomy and simple surgical repair of an  
24 episiotomy or simple second-degree lacerations.

25 NEW SECTION. Section 13. Fees. (1) An applicant for a



1 direct-entry midwife license shall, upon submitting an  
2 application to the board, pay an application fee set by the  
3 board, commensurate with costs.

4 (2) An applicant required to take an examination shall,  
5 before commencement of the examination, pay an examination  
6 fee set by the board, commensurate with costs.

7 (3) Before a license may be issued or renewed, an  
8 applicant shall pay a fee set by the board, commensurate  
9 with costs.

10 (4) Subject to 37-1-101(6), money paid for application,  
11 examination, license, and license renewal fees must be  
12 deposited in the state special revenue fund for use by the  
13 board.

14 NEW SECTION. Section 14. Denial, suspension,  
15 revocation, or refusal to renew license -- grounds. (1) The  
16 board, after notice and hearing, may reprimand a licensee or  
17 deny, suspend, revoke, or refuse to renew the license of a  
18 licensee who:

19 ~~(a) is habitually intoxicated or is addicted to~~  
20 ~~narcotic drugs;~~

21 (A) IS USING ALCOHOL OR OTHER DRUGS TO THE POINT THAT  
22 JOB PERFORMANCE IS IMPAIRED;

23 (b) is guilty of immoral or unprofessional conduct as  
24 defined by board rule;

25 (c) is guilty of gross negligence in practicing

1 direct-entry midwifery;

2 (d) has obtained or attempted to obtain licensure by  
3 fraud or material misrepresentation;

4 (e) is guilty ~~of conduct unbecoming a person licensed~~  
5 ~~as a midwife or~~ of conduct detrimental to the best interests  
6 of the public; or

7 (f) has violated any provision of [sections 1 through 4  
8 and 6 through 23] or a rule adopted by the board.

9 (2) The board may impose an administrative fine of not  
10 more than \$500 per incident for any violation that could  
11 result in the suspension or revocation of a direct-entry  
12 midwife license. A fine collected under this subsection must  
13 be deposited in the state general fund.

14 NEW SECTION. Section 15. Unlawful to practice without  
15 license. It is unlawful for a person to practice  
16 direct-entry midwifery in this state without first obtaining  
17 a license under [sections 1 through 4 and 6 through 23].

18 NEW SECTION. Section 16. Reciprocity. Upon payment of  
19 the license fee provided for in [section 13], the board may  
20 grant a license to a person who, at the time of application,  
21 is licensed or certified as a midwife in another state if  
22 the board determines that the licensing requirements of that  
23 state are equal to or exceed the requirements of [sections 1  
24 through 4 and 6 through 23].

25 NEW SECTION. Section 17. Privileged communications --

1 exceptions. A licensee may not disclose any information  
2 acquired from clients during consultation in a professional  
3 capacity except:

4 (1) with the written consent of the client or, in the  
5 case of the client's death or mental incapacity, with the  
6 written consent of the client's personal representative or  
7 guardian;

8 (2) that the licensee need not treat as confidential a  
9 communication otherwise confidential that reveals the  
10 contemplation of a crime by the client or any other person  
11 or that in the licensee's professional opinion reveals a  
12 threat of imminent harm to the client or others;

13 (3) that if the client is a minor and information  
14 acquired by the licensee indicates that the client was the  
15 victim of a crime, the licensee may be required to testify  
16 fully in relation to the information in any investigation,  
17 trial, or other legal proceeding in which the commission of  
18 the crime is the subject of inquiry;

19 (4) that if the client or the client's personal  
20 representative or guardian brings an action against a  
21 licensee for a claim arising out of the client's interaction  
22 with the direct-entry midwife, the client is considered to  
23 have waived any privilege;

24 (5) to the extent that the privilege is otherwise  
25 waived by the client; and

1 (6) WHEN THE CLIENT IS SEEKING EMERGENCY MEDICAL  
2 TREATMENT AND THE CLIENT'S HISTORY IS REQUESTED BY THE  
3 ATTENDING MEDICAL PROFESSIONAL; AND

4 ~~(6)~~(7) as may otherwise be required by law.

5 NEW SECTION. Section 18. Informed consent. (1) Prior  
6 to accepting a woman for care, a licensed direct-entry  
7 midwife shall first obtain written, informed consent from  
8 the woman.

9 (2) Informed consent may MUST be evidenced by a written  
10 statement, in a form prescribed by the board and signed by  
11 the direct-entry midwife and the woman to whom care is to be  
12 given, in which the direct-entry midwife certifies that full  
13 disclosure has been made and acknowledged by the woman on  
14 the following:

- 15 (a) the direct-entry midwife's educational background;
- 16 (b) the nature and scope of the care to be given,  
17 including the possibility of and procedure for transport of  
18 the patient to a hospital;
- 19 (c) the available alternatives to DIRECT-ENTRY  
20 midwifery care;

21 (D) A DESCRIPTION OF THE RISKS OF HOME BIRTH, PRIMARILY  
22 THOSE CONDITIONS THAT MAY ARISE DURING DELIVERY;

23 ~~(d)~~(E) the fact that the patient has been encouraged  
24 ADVISED to consult with a physician at least twice during  
25 the pregnancy; and

1        ~~(e)~~(F) whether the midwifery services provided are  
2 located more than 50 miles from the nearest hospital.

3        **NEW SECTION. Section 19. Reports -- failure to report.**

4        (1) A licensed direct-entry midwife shall submit  
5 semiannually to the board, on forms supplied by the board, a  
6 summary report on each patient given care. The report must  
7 include vital statistics on each patient and information on  
8 the procedures and scope of care administered, including any  
9 transport of the patient to a hospital AND PHYSICIAN  
10 REFERRALS, but may not include information disclosing the  
11 identity of the patient.

12        (2) A licensed direct-entry midwife shall report within  
13 72 hours to the board and to the department of health and  
14 environmental sciences any maternal, fetal, or neonatal  
15 mortality or morbidity in patients for whom care has been  
16 given.

17        (3) Failure of a direct-entry midwife to submit  
18 required reports constitutes grounds to deny renewal of a  
19 license.

20        **NEW SECTION. Section 20. Screening procedures.** In  
21 addition to meeting the eligibility criteria for client  
22 screening established by the board pursuant to {section 6},  
23 a direct-entry midwife shall recommend that patients secure  
24 the following services by an appropriate health care  
25 provider:

1        (1) the standard serological test as defined in  
2 50-19-101(2) for women seeking prenatal care;

3        (2) screening for hepatitis B AND, WHEN APPROPRIATE,  
4 HUMAN IMMUNODEFICIENCY VIRUS;

5        (3) maternal serum alpha-fetoprotein test and  
6 ultrasound, upon request;

7        (4) Rh antibody and glucose screening at 28 weeks'  
8 gestation, upon request;

9        (5) nonstress testing by a fetal monitor of a fetus at  
10 greater than 42 1/2 weeks' gestation or if other reasons  
11 indicate the testing; and

12        (6) screening for phenylketonuria;

13        (7) RH SCREENING OF THE INFANT FOR RHOGAM TREATMENT IF  
14 THE MOTHER IS RH NEGATIVE; AND

15        (8) SCREENING FOR PREMATURE LABOR AND OTHER RISK  
16 FACTORS.

17        **NEW SECTION. Section 21. Physician consultation**  
18 **encouraged ADVISED.** A licensed direct-entry midwife is  
19 encouraged--to SHALL advise all women accepted for midwifery  
20 care to consult with a physician OR CERTIFIED NURSE-MIDWIFE  
21 at least twice during the pregnancy.

22        **NEW SECTION. Section 22. Filing of birth certificate.**

23        (1) When a birth occurs with a licensed direct-entry midwife  
24 in attendance, the direct-entry midwife shall prepare and  
25 file a birth certificate, as required by 50-15-201, with the

1 department of health and environmental sciences within 30  
2 days of the birth of the newborn.

3 (2) Failure of a direct-entry midwife to prepare and  
4 file the birth certificate constitutes grounds for the  
5 suspension or revocation of a license granted under  
6 [sections 1 through 4 and 6 through 23].

7 NEW SECTION. **Section 23.** Violation -- penalties --  
8 injunction -- manner of charging violation. (1) A person who  
9 violates any provision of [sections 1 through 4 and 6  
10 through 23] or any rule adopted pursuant to [sections 1  
11 through 4 and 6 through 23] is guilty of a misdemeanor and  
12 is punishable by a fine not to exceed \$500, by imprisonment  
13 in the county jail for a term of not more than 6 months, or  
14 both.

15 (2) Notwithstanding any other provisions of [sections 1  
16 through 4 and 6 through 23], the board may maintain an  
17 action to enjoin a person from engaging in the practice of  
18 direct-entry midwifery until a license to practice  
19 direct-entry midwifery is obtained. A person who has been  
20 enjoined and who violates the injunction is punishable for  
21 contempt of court. The injunction does not relieve the  
22 person practicing direct-entry midwifery without a license  
23 from criminal prosecution. The remedy by injunction is in  
24 addition to remedies provided for criminal prosecution of  
25 the offender. In charging a person in a complaint for

1 injunction or in an affidavit, information, or indictment  
2 with a violation of law by practicing direct-entry midwifery  
3 without a license, it is sufficient to charge that the  
4 person did, on a certain day and in a certain county, engage  
5 in the practice of direct-entry midwifery while not having a  
6 license to do so, without averring further or more  
7 particular facts concerning the violation.

8 **Section 24.** Section 27-1-734, MCA, is amended to read:  
9 "27-1-734. Limits on liability of health care provider  
10 in emergency situations. (1) A physician licensed under  
11 Title 37, chapter 3, a nurse licensed under Title 37,  
12 chapter 8, or a hospital licensed under Title 50, chapter 5,  
13 rendering care or assistance in good faith to a patient of a  
14 direct-entry midwife in an emergency situation is liable for  
15 civil damages for acts or omissions committed in providing  
16 such emergency obstetrical care or assistance only to the  
17 extent that those damages are caused by gross negligence or  
18 by willful or wanton acts or omissions.

19 ~~(2) The limitations on liability provided in subsection~~  
20 ~~(1) do not apply in the following cases:~~

21 ~~(a) The physician, nurse, or hospital had provided~~  
22 ~~prior medical diagnosis or treatment to the patient for a~~  
23 ~~condition having a bearing on or relevance to the treatment~~  
24 ~~of the obstetrical condition that required emergency~~  
25 ~~services.~~

~~(b) Before rendering emergency obstetrical services, the physician, nurse, or hospital had a contractual obligation or agreement with the patient, another health care provider, or a third-party payer to provide obstetrical care for the patient."~~

**Section 25.** Section 37-3-103, MCA, is amended to read:

**"37-3-103. Exemptions from licensing requirements. (1)**

This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States veterans' administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the

1 appropriate amount and type of supervision of a person  
2 licensed under the laws of this state to practice medicine,  
3 but this exemption does not extend the scope of a  
4 paramedical specialist;

5 (m) the rendering of services by a physician  
6 assistant-certified in accordance with Title 37, chapter 20;

7 (n) the practice by persons licensed under the laws of  
8 this state to practice a limited field of the healing arts,  
9 and not specifically designated, under the conditions and  
10 limitations defined by law;

11 (o) the execution of a death sentence pursuant to  
12 46-19-103; and

13 (p) the practice of direct-entry midwifery. For the  
14 purpose of this section, the practice of direct-entry  
15 midwifery means the advising, attending, or assisting of a  
16 woman during pregnancy, labor, natural childbirth, or the  
17 postpartum period. A Except as authorized in [section 11], a  
18 direct-entry midwife may not dispense or administer a  
19 prescription drug, as those terms are defined in 37-7-101.

20 (2) Licensees referred to in subsection (1) of this  
21 section who are licensed to practice a limited field of  
22 healing arts shall confine themselves to the field for which  
23 they are licensed or registered and to the scope of their  
24 respective licenses and, with the exception of those  
25 licensees who hold a medical degree, may not use the title

1 "M.D." or any word or abbreviation to indicate or to induce  
2 others to believe that they are engaged in the diagnosis or  
3 treatment of persons afflicted with disease, injury, or  
4 defect of body or mind except to the extent and under the  
5 conditions expressly provided by the law under which they  
6 are licensed."

7 NEW SECTION. Section 26. Codification instruction. (1)  
8 [Sections 1 through 4 and 6 through 23] are intended to be  
9 codified as an integral part of Title 37, and the provisions  
10 of Title 37 apply to [sections 1 through 4 and 6 through  
11 23].

12 (2) [Section 5] is intended to be codified as an  
13 integral part of Title 2, chapter 15, part 18, and the  
14 provisions of Title 2, chapter 15, part 18, apply to  
15 [section 5].

16 NEW SECTION. Section 27. Effective dates. (1)  
17 [Sections 5, 6, 26, and this section] are effective on  
18 passage and approval.

19 (2) [Sections 1 through 4 and 7 through 25] are  
20 effective July 1, 1991.

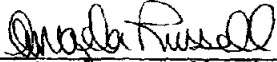
-End-

HOUSE STANDING COMMITTEE REPORT

March 28, 1991  
Page 2 of 2

March 28, 1991  
Page 1 of 2

Mr. Speaker: We, the committee on Human Services and Aging report that Senate Bill 172 (third reading copy -- blue) be concurred in as amended .

Signed:   
Angela Russell, Chairman

Carried by: Rep. Lee

And, that such amendments read:

1. Page 5, line 5.  
Strike: "NO RISK FACTORS HAVE BEEN IDENTIFIED"  
Insert: "the pregnancy is not a high-risk pregnancy"

2. Page 12, line 14.  
Following: "K"  
Strike: ", "  
Insert: "("

3. Page 12, line 15.  
Following: "PREPARATIONS"  
Strike: ", "  
Insert: ")"

4. Page 14, line 24.  
Following: "through 23]"  
Insert: " and if the other state extends similar privileges to direct-entry midwives licensed under [sections 1 through 4 and 6 through 23]"

5. Page 16, line 25.  
Strike: "and"

6. Page 17, line 2.  
Strike: ", "  
Insert: "; and"

7. Page 17.  
Following: line 2  
Insert: "(g) that a health care provider's liability in rendering care or assistance in good faith to a patient of a direct-entry midwife in an emergency situation is limited to damages caused by gross negligence or by willful or wanton acts or omissions."

SENATE BILL NO. 172

INTRODUCED BY SVRCEK, PECK, LEE, PIPINICH, VAUGHN,  
COHEN, FRITZ, REAM, YELLOWTAIL, HALLIGAN, THOFT,  
SWYSGOOD, KEATING, COCCHIARELLA, ELLIOTT,  
WANZENRIED, SQUIRES, KADAS, ECK, BENEDICT,  
STEPPLER, HANSEN, RUSSELL, TOOLE, WHALEN,  
NISBET, COBB, HOFFMAN, J. BROWN, DARKO,  
ANDERSON, T. BECK, GROSFIELD, HARP, HAMMOND

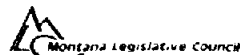
A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
LICENSING AND REGULATION OF DIRECT-ENTRY MIDWIVES; CREATING  
A BOARD OF DIRECT-ENTRY MIDWIFERY; PROVIDING FOR LICENSING,  
INCLUDING PROVISIONAL LICENSES AND APPRENTICE LICENSES;  
ESTABLISHING LICENSE EXEMPTION REQUIREMENTS; CREATING A  
COMMUNICATIONS PRIVILEGE; PROVIDING FOR LICENSING  
RECIPROCITY; REQUIRING INFORMED CONSENT; ESTABLISHING CLIENT  
SCREENING PROCEDURES; PROVIDING FOR PHYSICIAN CONSULTATION;  
REQUIRING THE FILING OF BIRTH CERTIFICATES AND REPORTS;  
PROVIDING FOR AN ADMINISTRATIVE FINE, A CRIMINAL PENALTY,  
AND AN INJUNCTION; GRANTING THE BOARD RULEMAKING AUTHORITY;  
AMENDING SECTIONS 27-1-734 AND 37-3-103, MCA; AND PROVIDING  
EFFECTIVE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because

[section 6] grants rulemaking authority to the board of  
direct-entry midwifery to implement the provisions of this  
bill. In adopting rules, the board is encouraged to review  
regulations promulgated by the state of New Hampshire and,  
where appropriate, to adopt comparable rules specifically  
applicable to direct-entry midwifery in Montana. At a  
minimum, it is the intent of the legislature that the board  
adopt rules:

- (1) governing the conduct of board business;
- (2) establishing license application and examination  
procedures, criteria for and grading of examinations,  
examination and license fees, criteria for minimum  
educational, apprenticeship, and clinical requirements for  
license eligibility, and continuing education requirements  
for license renewal;
- (3) establishing eligibility criteria for client  
screening by direct-entry midwives IN ORDER TO ACHIEVE THE  
GOAL OF PROVIDING MIDWIFERY SERVICES TO WOMEN DURING  
LOW-RISK PREGNANCIES;
- (4) developing procedures for the issuance, renewal,  
suspension, revocation, and reciprocity of licenses;
- (5) creating disciplinary standards for licensees,  
establishing investigatory procedures for processing  
complaints, and adopting ethical standards for licensed  
direct-entry midwives;





1 (6) establishing supporting documentation for primary  
2 birth attendants; and

3 (7) establishing standardized informed consent and  
4 reporting forms; AND

5 (8) ESTABLISHING CRITERIA THAT LIMITS AN  
6 APPRENTICESHIP, AS PROVIDED IN [SECTION 6].

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Short title. [Sections 1  
10 through 4 and 6 through 23] may be cited as the  
11 "Direct-Entry Midwifery Licensing Act".

12 NEW SECTION. Section 2. Purpose. The legislature finds  
13 and declares that because the practice of direct-entry  
14 midwifery affects the lives of the people of this state and  
15 because some Montanans may exercise their right to give  
16 birth where and with whom they choose, it is the purpose of  
17 [sections 1 through 4 and 6 through 23] to provide for the  
18 common good by REGULATING AND ensuring the qualified and  
19 professional practice of direct-entry midwifery.

20 NEW SECTION. Section 3. Definitions. As used in  
21 [sections 1 through 4 and 6 through 23], the following  
22 definitions apply:

23 (1) "Apprentice" means a person who is working under  
24 the supervision of a licensed direct-entry midwife and is  
25 seeking licensure as a direct-entry midwife under [sections

1 through 4 and 6 through 23].

2 (2) "Board" means the board of direct-entry midwifery  
3 established in [section 5].

4 (3) "Continuous care" means care provided for one  
5 person from the initial history-taking interview through  
6 monthly prenatal, intrapartum, and postpartum periods.

7 (4) "Department" means the department of commerce  
8 provided for in 2-15-1801.

9 (5) "Direct-entry midwife" means a person who advises,  
10 attends, or assists a woman during pregnancy, labor, natural  
11 childbirth, or the postpartum period.

12 (6) "Licensee" means a person authorized by [sections 1  
13 through 4 and 6 through 23] to practice direct-entry  
14 midwifery.

15 (7) "POSTPARTUM PERIOD" MEANS THE PERIOD UP TO 6 WEEKS  
16 FOLLOWING BIRTH.

17 ~~(7)~~(8) "Practice of direct-entry midwifery" means the  
18 advising, attending, or assisting of a woman during  
19 pregnancy, labor, natural childbirth, or the postpartum  
20 period.

21 NEW SECTION. Section 4. Exemptions. [Sections 1  
22 through 4 and 6 through 23] do not limit or regulate the  
23 practice of a licensed physician, certified nurse-midwife,  
24 or licensed basic or advanced emergency medical technician.  
25 The practice of direct-entry midwifery does not constitute

1 the practice of medicine, certified nurse-midwifery, or  
 2 emergency medical care to the extent that a direct-entry  
 3 midwife advises, attends, or assists a woman during  
 4 pregnancy, labor, natural childbirth, or the postpartum  
 5 period WHEN NO--RISK--FACTORS--HAVE--BEEN--IDENTIFIED THE  
 6 PREGNANCY IS NOT A HIGH-RISK PREGNANCY.

7 NEW SECTION. Section 5. Board -- composition --  
 8 allocation -- quasi-judicial -- compensation. (1) There is a  
 9 board of direct-entry midwifery.

10 (2) The board is composed of five members, ~~all of whom~~  
 11 ~~support the practice of direct-entry midwifery.~~ Members are  
 12 appointed by the governor to serve staggered 4-year terms.

13 The board consists of:

14 (a) three members who are direct-entry midwives who  
 15 filed the affidavit required by 37-75-102. Subsequent  
 16 appointments may be made only from those direct-entry  
 17 midwives who are licensed pursuant to [sections 1 through 4  
 18 and 6 through 23].

19 (b) one member who is a physician whose PRESENT  
 20 practice includes obstetrics; and

21 (c) one member of the general public.

22 (3) The board is allocated to the department of  
 23 commerce for administrative purposes only as prescribed in  
 24 2-15-121.

25 (4) The board is designated as a quasi-judicial board

1 for purposes of 2-15-124.

2 (5) Members of the board are entitled to compensation  
 3 and travel expenses.

4 NEW SECTION. Section 6. General powers and duties of  
 5 board -- rulemaking authority. (1) The board shall:

6 (a) meet at least once annually, and at other times as  
 7 agreed upon, to elect officers and to perform the duties  
 8 described in this section; and

9 (b) administer oaths, take affidavits, summon  
 10 witnesses, and take testimony as to matters within the scope  
 11 of the board's duties.

12 (2) The board shall have the authority to administer  
 13 and enforce all the powers and duties granted statutorily or  
 14 adopted administratively.

15 (3) The board shall adopt rules to administer [sections  
 16 1 through 4 and 6 through 23]. The rules must include but  
 17 are not limited to:

18 (a) the development of a license application and  
 19 examination, criteria for and grading of examinations, and  
 20 establishment of examination and license fees commensurate  
 21 with actual costs;

22 (b) the issuance of a provisional license to midwives  
 23 who filed the affidavit required by 37-75-102;

24 (c) the establishment of criteria for minimum  
 25 educational, apprenticeship, and clinical requirements that,

1 at a minimum, meet the standards established in [section 7];

2 (d) the development of eligibility criteria for client  
3 screening by direct-entry midwives IN ORDER TO ACHIEVE THE  
4 GOAL OF PROVIDING MIDWIFERY SERVICES TO WOMEN DURING  
5 LOW-RISK PREGNANCIES;

6 (e) the development of procedures for the issuance,  
7 renewal, suspension, revocation, and reciprocity of  
8 licenses;

9 (f) the adoption of disciplinary standards for  
10 licensees;

11 (g) the establishment of investigatory and hearing  
12 procedures for processing complaints received by the board;

13 (h) the establishment of continuing education  
14 requirements of at least ~~10~~ 14 hours annually for license  
15 renewal for direct-entry midwives;

16 (i) the development of standardized informed consent  
17 and reporting forms;

18 (j) the adoption of ethical standards for licensed  
19 direct-entry midwives; and

20 (k) the adoption of supporting documentation  
21 requirements for primary birth attendants; AND

22 (L) THE ESTABLISHMENT OF CRITERIA LIMITING AN  
23 APPRENTICESHIP THAT, AT A MINIMUM, MEETS THE STANDARDS  
24 ESTABLISHED IN [SECTION 7].

25 NEW SECTION. Section 7. Qualifications of applicants

1 for license -- educational and practical experience  
2 requirements. To be eligible for a license as a direct-entry  
3 midwife, an applicant:

4 (1) MUST BE A HIGH SCHOOL GRADUATE;  
5 ~~(1)~~ (2) must be of good moral character and be at least  
6 21 years of age;

7 ~~(2)~~ (3) shall satisfactorily complete educational  
8 requirements in pregnancy and natural childbirth, approved  
9 by the board, which must include but are not limited to the  
10 following:

11 (a) provision of care during the antepartum,  
12 intrapartum, postpartum, and newborn period;

13 (b) parenting education for prepared childbirth;

14 (c) observation skills;

15 (d) aseptic techniques;

16 (e) management of birth and immediate care of the  
17 mother and the newborn;

18 (f) recognition of early signs of possible  
19 abnormalities;

20 (g) recognition and management of emergency situations;

21 and

22 (h) special requirements for home birth;

23 (I) INTRAMUSCULAR AND SUBCUTANEOUS INJECTIONS;

24 (J) SUTURING NECESSARY FOR EPISIOTOMY REPAIR;

25 (K) RECOGNITION OF COMMUNICABLE DISEASES AFFECTING THE

1 PREGNANCY, BIRTH, NEWBORN, AND POSTPARTUM PERIODS;

2 (L) ASSESSMENT SKILLS; AND

3 (M) THE USE AND ADMINISTRATION OF DRUGS AUTHORIZED IN  
 4 [SECTION 11];

5 ~~(3)~~(4) shall acquire practical experience, which may be  
 6 attained in a home, clinic, or hospital setting. Practical  
 7 experience attained in a hospital does not constitute  
 8 training or supervision by the hospital, NOR MAY A HOSPITAL  
 9 BE REQUIRED TO PROVIDE SUCH PRACTICAL EXPERIENCE. At a  
 10 minimum, this experience must include the following types  
 11 and numbers of experiences acquired through an  
 12 apprenticeship or other supervisory setting:

13 (a) provision of 100 prenatal examinations;

14 (b) observation of 40 births; and

15 (c) participation as the primary birth attendant at 25  
 16 births, 15 of which included continuous care, as evidenced  
 17 by signing the birth certificate as the primary birth  
 18 attendant.

19 ~~(4)~~(5) shall file documentation with the board that the  
 20 applicant has been certified by the American heart  
 21 association or American red cross to perform adult and  
 22 infant cardiopulmonary resuscitation. Certification must be  
 23 current at the time of application and remain valid  
 24 throughout the license period.

25 NEW SECTION. Section 8. Examination -- exemption. (1)

1 Except as provided in subsection (4), an applicant for a  
 2 license as a direct-entry midwife shall pass a qualifying,  
 3 WRITTEN examination, prescribed by the board, that is  
 4 designed to test knowledge of theory regarding pregnancy and  
 5 childbirth and to test clinical judgment in midwifery  
 6 management. If considered necessary, an oral interview may  
 7 be conducted IN ADDITION TO THE WRITTEN EXAMINATION to  
 8 determine the fitness of the applicant to practice as a  
 9 direct-entry midwife.

10 (2) Before an applicant may take the examination, the  
 11 applicant shall demonstrate to the board that the  
 12 educational and practical experience requirements in  
 13 [section 7(2) and (3)] have been met.

14 (3) An applicant is exempt from the ~~study~~ EDUCATIONAL  
 15 and practical experience requirements of [section 7(2) and  
 16 (3)] if the applicant has:

17 (a) satisfactorily completed the first examination  
 18 given by the board following [the effective date of sections  
 19 1 through 4 and 7 through 25]; and

20 (b) filed supporting documentation, as required by the  
 21 board by rule, certifying that the applicant has served as  
 22 the primary birth attendant, providing continuous care at no  
 23 less than 75 births within the 7 years prior to [the  
 24 effective date of sections 1 through 4 and 7 through 25] as  
 25 verified by birth certificates from Montana or another

1 state, a signed affidavit from the birthing mother, or  
2 documented records from the midwife.

3 (4) Upon payment of the license fee established by the  
4 board, a nurse-midwife certified pursuant to 37-8-409 is  
5 exempt from the requirements of [section 7 and this section]  
6 and may be licensed as a direct-entry midwife.

7 NEW SECTION. Section 9. Provisional license --  
8 apprentice license. (1) Upon payment of a \$200 fee to the  
9 department, the board may grant a provisional direct-entry  
10 midwife license only to a person who filed an affidavit  
11 required by 37-75-102.

12 (2) The provisional license is valid until the issuance  
13 of grades for the first examination administered pursuant to  
14 [section 10].

15 (3) Upon payment of a \$200 fee to the department, the  
16 board may grant an apprentice direct-entry midwife license  
17 to a person who is working under the personal supervision of  
18 a licensed direct-entry midwife, A CERTIFIED NURSE-MIDWIFE,  
19 OR A PHYSICIAN LICENSED UNDER TITLE 37, CHAPTER 3, and who  
20 is seeking licensure as a direct-entry midwife under  
21 [sections 1 through 4 and 6 through 23].

22 (4) An apprentice direct-entry midwife license is valid  
23 for 1 year and must be renewed annually, with a limit of  
24 four renewals.

25 NEW SECTION. Section 10. Examination -- preparation --

1 requirements. (1) An examination for a license to practice  
2 direct-entry midwifery must be prepared by a certified  
3 nurse-midwife designated by the board in consultation with  
4 the physician on the board.

5 (2) Examinations must be conducted once each year, be  
6 fair and impartial, and be sufficiently comprehensive to  
7 adequately test the applicant's competence and ability.

8 (3) A person must attain a grade of at least 70% to  
9 pass the examination.

10 (4) A PERSON WHO FAILS TO ACHIEVE A PASSING GRADE ON  
11 THE EXAMINATION MAY NOT ENGAGE IN THE PRACTICE OF MIDWIFERY.

12 NEW SECTION. Section 11. Administration of  
13 prescription drugs prohibited -- exceptions. A licensed  
14 direct-entry midwife may not dispense or administer  
15 prescription drugs other than newborn vitamin K7 (ORAL OR  
16 INTRAMUSCULAR PREPARATIONS) pitocin (INTRAMUSCULAR)  
17 postpartum, xylocaine (SUBCUTANEOUS), and, in accordance  
18 with Rule 16.24.215, Administrative Rules of Montana,  
19 prophylactic eye agents to newborn infants. These drugs may  
20 be administered only if prescribed by a physician.

21 NEW SECTION. Section 12. Operative and surgical  
22 procedures prohibited -- exception. A licensed direct-entry  
23 midwife may not perform any operative or surgical procedures  
24 except for an episiotomy and simple surgical repair of an  
25 episiotomy or simple second-degree lacerations.

1 NEW SECTION. Section 13. Fees. (1) An applicant for a  
2 direct-entry midwife license shall, upon submitting an  
3 application to the board, pay an application fee set by the  
4 board, commensurate with costs.

5 (2) An applicant required to take an examination shall,  
6 before commencement of the examination, pay an examination  
7 fee set by the board, commensurate with costs.

8 (3) Before a license may be issued or renewed, an  
9 applicant shall pay a fee set by the board, commensurate  
10 with costs.

11 (4) Subject to 37-1-101(6), money paid for application,  
12 examination, license, and license renewal fees must be  
13 deposited in the state special revenue fund for use by the  
14 board.

15 NEW SECTION. Section 14. Denial, suspension,  
16 revocation, or refusal to renew license -- grounds. (1) The  
17 board, after notice and hearing, may reprimand a licensee or  
18 deny, suspend, revoke, or refuse to renew the license of a  
19 licensee who:

20 ~~(a) is habitually intoxicated or is addicted to~~  
21 ~~narcotic drugs;~~

22 (A) IS USING ALCOHOL OR OTHER DRUGS TO THE POINT THAT  
23 JOB PERFORMANCE IS IMPAIRED;

24 (b) is guilty of immoral or unprofessional conduct as  
25 defined by board rule;

1 (c) is guilty of gross negligence in practicing  
2 direct-entry midwifery;

3 (d) has obtained or attempted to obtain licensure by  
4 fraud or material misrepresentation;

5 ~~(e) is guilty of conduct unbecoming a person licensed~~  
6 ~~as a midwife or~~ of conduct detrimental to the best interests  
7 of the public; or

8 (f) has violated any provision of [sections 1 through 4  
9 and 6 through 23] or a rule adopted by the board.

10 (2) The board may impose an administrative fine of not  
11 more than \$500 per incident for any violation that could  
12 result in the suspension or revocation of a direct-entry  
13 midwife license. A fine collected under this subsection must  
14 be deposited in the state general fund.

15 NEW SECTION. Section 15. Unlawful to practice without  
16 license. It is unlawful for a person to practice  
17 direct-entry midwifery in this state without first obtaining  
18 a license under [sections 1 through 4 and 6 through 23].

19 NEW SECTION. Section 16. Reciprocity. Upon payment of  
20 the license fee provided for in [section 13], the board may  
21 grant a license to a person who, at the time of application,  
22 is licensed or certified as a midwife in another state if  
23 the board determines that the licensing requirements of that  
24 state are equal to or exceed the requirements of [sections 1  
25 through 4 and 6 through 23] AND IF THE OTHER STATE EXTENDS

1 SIMILAR PRIVILEGES TO DIRECT-ENTRY MIDWIVES LICENSED UNDER  
2 [SECTIONS 1 THROUGH 4 AND 6 THROUGH 23].

3 NEW SECTION. Section 17. Privileged communications --  
4 exceptions. A licensee may not disclose any information  
5 acquired from clients during consultation in a professional  
6 capacity except:

7 (1) with the written consent of the client or, in the  
8 case of the client's death or mental incapacity, with the  
9 written consent of the client's personal representative or  
10 guardian;

11 (2) that the licensee need not treat as confidential a  
12 communication otherwise confidential that reveals the  
13 contemplation of a crime by the client or any other person  
14 or that in the licensee's professional opinion reveals a  
15 threat of imminent harm to the client or others;

16 (3) that if the client is a minor and information  
17 acquired by the licensee indicates that the client was the  
18 victim of a crime, the licensee may be required to testify  
19 fully in relation to the information in any investigation,  
20 trial, or other legal proceeding in which the commission of  
21 the crime is the subject of inquiry;

22 (4) that if the client or the client's personal  
23 representative or guardian brings an action against a  
24 licensee for a claim arising out of the client's interaction  
25 with the direct-entry midwife, the client is considered to

1 have waived any privilege;

2 (5) to the extent that the privilege is otherwise  
3 waived by the client; and

4 (6) WHEN THE CLIENT IS SEEKING EMERGENCY MEDICAL  
5 TREATMENT AND THE CLIENT'S HISTORY IS REQUESTED BY THE  
6 ATTENDING MEDICAL PROFESSIONAL; AND

7 ~~(6)~~(7) as may otherwise be required by law.

8 NEW SECTION. Section 18. Informed consent. (1) Prior  
9 to accepting a woman for care, a licensed direct-entry  
10 midwife shall first obtain written, informed consent from  
11 the woman.

12 (2) Informed consent ~~may~~ MUST be evidenced by a written  
13 statement, in a form prescribed by the board and signed by  
14 the direct-entry midwife and the woman to whom care is to be  
15 given, in which the direct-entry midwife certifies that full  
16 disclosure has been made and acknowledged by the woman on  
17 the following:

18 (a) the direct-entry midwife's educational background;  
19 (b) the nature and scope of the care to be given,  
20 including the possibility of and procedure for transport of  
21 the patient to a hospital;

22 (c) the available alternatives to DIRECT-ENTRY  
23 midwifery care;

24 (D) A DESCRIPTION OF THE RISKS OF HOME BIRTH, PRIMARILY  
25 THOSE CONDITIONS THAT MAY ARISE DURING DELIVERY;

1 (d)(E) the fact that the patient has been encouraged  
2 ADVISED to consult with a physician at least twice during  
3 the pregnancy; and

4 (e)(F) whether the midwifery services provided are  
5 located more than 50 miles from the nearest hospital; AND

6 (G) THAT A HEALTH CARE PROVIDER'S LIABILITY IN  
7 RENDERING CARE OR ASSISTANCE IN GOOD FAITH TO A PATIENT OF A  
8 DIRECT-ENTRY MIDWIFE IN AN EMERGENCY SITUATION IS LIMITED TO  
9 DAMAGES CAUSED BY GROSS NEGLIGENCE OR BY WILLFUL OR WANTON  
10 ACTS OR OMISSIONS.

11 NEW SECTION. Section 19. Reports -- failure to report.

12 (1) A licensed direct-entry midwife shall submit  
13 semiannually to the board, on forms supplied by the board, a  
14 summary report on each patient given care. The report must  
15 include vital statistics on each patient and information on  
16 the procedures and scope of care administered, including any  
17 transport of the patient to a hospital AND PHYSICIAN  
18 REFERRALS, but may not include information disclosing the  
19 identity of the patient.

20 (2) A licensed direct-entry midwife shall report within  
21 72 hours to the board and to the department of health and  
22 environmental sciences any maternal, fetal, or neonatal  
23 mortality or morbidity in patients for whom care has been  
24 given.

25 (3) Failure of a direct-entry midwife to submit

1 required reports constitutes grounds to deny renewal of a  
2 license.

3 NEW SECTION. Section 20. Screening procedures. In  
4 addition to meeting the eligibility criteria for client  
5 screening established by the board pursuant to [section 6],  
6 a direct-entry midwife shall recommend that patients secure  
7 the following services by an appropriate health care  
8 provider:

9 (1) the standard serological test as defined in  
10 50-19-101(2) for women seeking prenatal care;

11 (2) screening for hepatitis B AND, WHEN APPROPRIATE,  
12 HUMAN IMMUNODEFICIENCY VIRUS;

13 (3) maternal serum alpha-fetoprotein test and  
14 ultrasound, upon request;

15 (4) Rh antibody and glucose screening at 28 weeks'  
16 gestation, upon request;

17 (5) nonstress testing by a fetal monitor of a fetus at  
18 greater than 42 1/2 weeks' gestation or if other reasons  
19 indicate the testing; and

20 (6) screening for phenylketonuria;

21 (7) RH SCREENING OF THE INFANT FOR RHOGAM TREATMENT IF  
22 THE MOTHER IS RH NEGATIVE; AND

23 (8) SCREENING FOR PREMATURE LABOR AND OTHER RISK  
24 FACTORS.

25 NEW SECTION. Section 21. Physician consultation



1 encouraged ADVISED. A licensed direct-entry midwife is  
 2 encouraged-to SHALL advise all women accepted for midwifery  
 3 care to consult with a physician OR CERTIFIED NURSE-MIDWIFE  
 4 at least twice during the pregnancy.

5 NEW SECTION. Section 22. Filing of birth certificate.

6 (1) When a birth occurs with a licensed direct-entry midwife  
 7 in attendance, the direct-entry midwife shall prepare and  
 8 file a birth certificate, as required by 50-15-201, with the  
 9 department of health and environmental sciences within 30  
 10 days of the birth of the newborn.

11 (2) Failure of a direct-entry midwife to prepare and  
 12 file the birth certificate constitutes grounds for the  
 13 suspension or revocation of a license granted under  
 14 [sections 1 through 4 and 6 through 23].

15 NEW SECTION. Section 23. Violation -- penalties --

16 injunction -- manner of charging violation. (1) A person who  
 17 violates any provision of [sections 1 through 4 and 6  
 18 through 23] or any rule adopted pursuant to [sections 1  
 19 through 4 and 6 through 23] is guilty of a misdemeanor and  
 20 is punishable by a fine not to exceed \$500, by imprisonment  
 21 in the county jail for a term of not more than 6 months, or  
 22 both.

23 (2) Notwithstanding any other provisions of [sections 1  
 24 through 4 and 6 through 23], the board may maintain an  
 25 action to enjoin a person from engaging in the practice of

1 direct-entry midwifery until a license to practice  
 2 direct-entry midwifery is obtained. A person who has been  
 3 enjoined and who violates the injunction is punishable for  
 4 contempt of court. The injunction does not relieve the  
 5 person practicing direct-entry midwifery without a license  
 6 from criminal prosecution. The remedy by injunction is in  
 7 addition to remedies provided for criminal prosecution of  
 8 the offender. In charging a person in a complaint for  
 9 injunction or in an affidavit, information, or indictment  
 10 with a violation of law by practicing direct-entry midwifery  
 11 without a license, it is sufficient to charge that the  
 12 person did, on a certain day and in a certain county, engage  
 13 in the practice of direct-entry midwifery while not having a  
 14 license to do so, without averring further or more  
 15 particular facts concerning the violation.

16 Section 24. Section 27-1-734, MCA, is amended to read:

17 \*27-1-734. Limits on liability of health care provider  
 18 in emergency situations. (1) A physician licensed under  
 19 Title 37, chapter 3, a nurse licensed under Title 37,  
 20 chapter 8, or a hospital licensed under Title 50, chapter 5,  
 21 rendering care or assistance in good faith to a patient of a  
 22 direct-entry midwife in an emergency situation is liable for  
 23 civil damages for acts or omissions committed in providing  
 24 such emergency obstetrical care or assistance only to the  
 25 extent that those damages are caused by gross negligence or

1 by willful or wanton acts or omissions.

2 ~~{2}--The limitations on liability provided in subsection~~  
 3 ~~{1} do not apply in the following cases:~~

4 ~~{a}--The physician, nurse, or hospital had provided~~  
 5 ~~prior medical diagnosis or treatment to the patient for a~~  
 6 ~~condition having a bearing on or relevance to the treatment~~  
 7 ~~of the obstetrical condition that required emergency~~  
 8 ~~services;~~

9 ~~{b}--Before rendering emergency obstetrical services,~~  
 10 ~~the physician, nurse, or hospital had a contractual~~  
 11 ~~obligation or agreement with the patient, another health~~  
 12 ~~care provider, or a third party payer to provide obstetrical~~  
 13 ~~care for the patient."~~

14 **Section 25.** Section 37-3-103, MCA, is amended to read:

15 "37-3-103. Exemptions from licensing requirements. (1)  
 16 This chapter does not prohibit or require a license with  
 17 respect to any of the following acts:

18 (a) the gratuitous rendering of services in cases of  
 19 emergency or catastrophe;

20 (b) the rendering of services in this state by a  
 21 physician lawfully practicing medicine in another state or  
 22 territory. However, if the physician does not limit the  
 23 services to an occasional case or if he has any established  
 24 or regularly used hospital connections in this state or  
 25 maintains or is provided with, for his regular use, an

1 office or other place for rendering the services, he must  
 2 possess a license to practice medicine in this state.

3 (c) the practice of dentistry under the conditions and  
 4 limitations defined by the laws of this state;

5 (d) the practice of podiatry under the conditions and  
 6 limitations defined by the laws of this state;

7 (e) the practice of optometry under the conditions and  
 8 limitations defined by the laws of this state;

9 (f) the practice of osteopathy under the conditions and  
 10 limitations defined in chapter 5 of this title for those  
 11 doctors of osteopathy who do not receive a physician's  
 12 certificate under this chapter;

13 (g) the practice of chiropractic under the conditions  
 14 and limitations defined by the laws of this state;

15 (h) the practice of Christian Science, with or without  
 16 compensation, and ritual circumcisions by rabbis;

17 (i) the performance by commissioned medical officers of  
 18 the armed forces of the United States, of the United States  
 19 public health service, or of the United States veterans'  
 20 administration of their lawful duties in this state as  
 21 officers;

22 (j) the rendering of nursing services by registered or  
 23 other nurses in the lawful discharge of their duties as  
 24 nurses or of midwife services by registered nurse-midwives  
 25 under the supervision of a licensed physician;

1 (k) the rendering of services by interns or resident  
2 physicians in a hospital or clinic in which they are  
3 training, subject to the conditions and limitations of this  
4 chapter. The board may require a resident physician to be  
5 licensed if he otherwise engages in the practice of medicine  
6 in the state of Montana.

7 (l) the rendering of services by a physical therapist,  
8 technician, or other paramedical specialist under the  
9 appropriate amount and type of supervision of a person  
10 licensed under the laws of this state to practice medicine,  
11 but this exemption does not extend the scope of a  
12 paramedical specialist;

13 (m) the rendering of services by a physician  
14 assistant-certified in accordance with Title 37, chapter 20;

15 (n) the practice by persons licensed under the laws of  
16 this state to practice a limited field of the healing arts,  
17 and not specifically designated, under the conditions and  
18 limitations defined by law;

19 (o) the execution of a death sentence pursuant to  
20 46-19-103; and

21 (p) the practice of direct-entry midwifery. For the  
22 purpose of this section, the practice of direct-entry  
23 midwifery means the advising, attending, or assisting of a  
24 woman during pregnancy, labor, natural childbirth, or the  
25 postpartum period. A Except as authorized in [section 11], a

1 direct-entry midwife may not dispense or administer a  
2 prescription drug, as those terms are defined in 37-7-101.

3 (2) Licensees referred to in subsection (1) of this  
4 section who are licensed to practice a limited field of  
5 healing arts shall confine themselves to the field for which  
6 they are licensed or registered and to the scope of their  
7 respective licenses and, with the exception of those  
8 licensees who hold a medical degree, may not use the title  
9 "M.D." or any word or abbreviation to indicate or to induce  
10 others to believe that they are engaged in the diagnosis or  
11 treatment of persons afflicted with disease, injury, or  
12 defect of body or mind except to the extent and under the  
13 conditions expressly provided by the law under which they  
14 are licensed."

15 NEW SECTION. Section 26. Codification instruction. (1)  
16 [Sections 1 through 4 and 6 through 23] are intended to be  
17 codified as an integral part of Title 37, and the provisions  
18 of Title 37 apply to [sections 1 through 4 and 6 through  
19 23].

20 (2) [Section 5] is intended to be codified as an  
21 integral part of Title 2, chapter 15, part 18, and the  
22 provisions of Title 2, chapter 15, part 18, apply to  
23 [section 5].

24 NEW SECTION. Section 27. Effective dates. (1)  
25 [Sections 5, 6, 26, and this section] are effective on

SB 0172/03

1 passage and approval.

2 (2) [Sections 1 through 4 and 7 through 25] are

3 effective July 1, 1991.

-End-