



28           ▶ brings licensed Direct-entry midwives within the scope of the Health Care Providers  
29 Immunity From Liability Act.

30 **Monies Appropriated in this Bill:**

31           None

32 **Other Special Clauses:**

33           None

34 **Utah Code Sections Affected:**

35 AMENDS:

36           **58-13-2**, as last amended by Chapter 3, Laws of Utah 2003

37           **58-13-3**, as last amended by Chapter 207, Laws of Utah 2003

38           **78-14-3**, as last amended by Chapter 280, Laws of Utah 2004

39 ENACTS:

40           **58-77-101**, Utah Code Annotated 1953

41           **58-77-102**, Utah Code Annotated 1953

42           **58-77-201**, Utah Code Annotated 1953

43           **58-77-202**, Utah Code Annotated 1953

44           **58-77-203**, Utah Code Annotated 1953

45           **58-77-301**, Utah Code Annotated 1953

46           **58-77-302**, Utah Code Annotated 1953

47           **58-77-303**, Utah Code Annotated 1953

48           **58-77-304**, Utah Code Annotated 1953

49           **58-77-401**, Utah Code Annotated 1953

50           **58-77-501**, Utah Code Annotated 1953

51           **58-77-502**, Utah Code Annotated 1953

52           **58-77-503**, Utah Code Annotated 1953

53           **58-77-601**, Utah Code Annotated 1953

54           **58-77-602**, Utah Code Annotated 1953

55           **58-77-603**, Utah Code Annotated 1953



57 *Be it enacted by the Legislature of the state of Utah:*

58           Section 1. Section **58-13-2** is amended to read:

59           **58-13-2. Emergency care rendered by licensee.**

60           (1) A person licensed under Title 58, Occupations and Professions, to practice as any  
61 of the following health care professionals, who is under no legal duty to respond, and who in  
62 good faith renders emergency care at the scene of an emergency gratuitously and in good faith,  
63 is not liable for any civil damages as a result of any acts or omissions by the person in  
64 rendering the emergency care:

- 65           (a) osteopathic physician;  
66           (b) physician and surgeon;  
67           (c) naturopathic physician;  
68           (d) dentist or dental hygienist;  
69           (e) chiropractic physician;  
70           (f) physician assistant;  
71           (g) optometrist;  
72           (h) nurse licensed under Section 58-31b-301 or 58-31c-102;  
73           (i) podiatrist;  
74           (j) certified nurse midwife;  
75           (k) respiratory therapist; [or]  
76           (l) pharmacist, pharmacy technician, and pharmacy intern[-]; or  
77           (m) Direct-entry midwife licensed under Section 58-77-301.

78           (2) (a) This Subsection (2) applies to health care professionals:

- 79           (i) described in Subsection (1);  
80           (ii) who are under no legal duty to respond to the circumstances described in  
81 Subsection (2)(b);  
82           (iii) who are acting within the scope of the health care professional's license, or within  
83 the scope of practice as modified under Subsection 58-1-307(4); and  
84           (iv) who are acting in good faith without compensation or remuneration as defined in  
85 Subsection 58-13-3(2).

86           (b) A health care professional described in Subsection (2)(a) is not liable for any civil  
87 damages as a result of any acts or omissions by the health care professional in rendering care as  
88 a result of:

- 89           (i) implementation of measures to control the causes of epidemic and communicable

90 diseases and other conditions significantly affecting the public health or necessary to protect  
91 the public health as set out in Title 26A, Chapter 1, Local Health Departments;

92 (ii) investigating and controlling suspected bioterrorism and disease as set out in Title  
93 26, Chapter 23b, Detection of Public Health Emergencies Act; and

94 (iii) responding to a national, state, or local emergency, a public health emergency as  
95 defined in Section 26-23b-102, or a declaration by the President of the United States or other  
96 federal official requesting public health-related activities.

97 (3) The immunity in Subsection (2) is in addition to any immunity or protection in state  
98 or federal law that may apply.

99 Section 2. Section **58-13-3** is amended to read:

100 **58-13-3. Qualified immunity -- Health professionals -- Charity care.**

101 (1) (a) (i) The Legislature finds many residents of this state do not receive medical care  
102 and preventive health care because they lack health insurance or because of financial  
103 difficulties or cost.

104 (ii) The Legislature also finds that many physicians, charity health care facilities, and  
105 other health care professionals in this state would be willing to volunteer medical and allied  
106 services without compensation if they were not subject to the high exposure of liability  
107 connected with providing these services.

108 (b) The Legislature therefore declares that its intention in enacting this section is to  
109 encourage the provision of uncompensated volunteer charity health care in exchange for a  
110 limitation on liability for the health care facilities and health care professionals who provide  
111 those volunteer services.

112 (2) As used in this section:

113 (a) "Health care facility" means any clinic or hospital, church, or organization whose  
114 primary purpose is to sponsor, promote, or organize uncompensated health care services for  
115 people unable to pay for health care services.

116 (b) "Health care professional" means individuals licensed under Title 58, Occupations  
117 and Professions, as physicians and surgeons, osteopaths, podiatrists, optometrists,  
118 chiropractors, dentists, dental hygienists, registered nurses, certified nurse midwives, ~~and~~  
119 other nurses licensed under Section 58-31b-301[-], and licensed Direct-entry midwives.

120 (c) "Remuneration or compensation":

121 (i) (A) means direct or indirect receipt of any payment by the physician and surgeon,  
122 health care facility, other health care professional, or organization, on behalf of the patient,  
123 including payment or reimbursement under medicare or medicaid, or under the state program  
124 for the medically indigent on behalf of the patient; and

125 (B) compensation, salary, or reimbursement to the health care professional from any  
126 source for the health care professional's services or time in volunteering to provide  
127 uncompensated health care; and

128 (ii) does not mean any grant or donation to the health care facility used to offset direct  
129 costs associated with providing the uncompensated health care such as medical supplies or  
130 drugs.

131 (3) A health care professional who provides health care treatment at or on behalf of a  
132 health care facility is not liable in a medical malpractice action if:

133 (a) the treatment was within the scope of the health care professional's license under  
134 this title;

135 (b) neither the health care professional nor the health care facility received  
136 compensation or remuneration for the treatment;

137 (c) the acts or omissions of the health care professional were not grossly negligent or  
138 willful and wanton; and

139 (d) prior to rendering services, the health care professional disclosed in writing to the  
140 patient, or if a minor, to the patient's parent or legal guardian, that the health care professional  
141 is providing the services without receiving remuneration or compensation and that in exchange  
142 for receiving uncompensated health care, the patient consents to waive any right to sue for  
143 professional negligence except for acts or omissions which are grossly negligent or are willful  
144 and wanton.

145 (4) A health care facility which sponsors, promotes, or organizes the uncompensated  
146 care is not liable in a medical malpractice action for acts and omissions if:

147 (a) the health care facility meets the requirements in Subsection (3)(b);

148 (b) the acts and omissions of the health care facility were not grossly negligent or  
149 willful and wanton; and

150 (c) the health care facility has posted, in a conspicuous place, a notice that in  
151 accordance with this section the health care facility is not liable for any civil damages for acts

152 or omissions except for those acts or omissions that are grossly negligent or are willful and  
153 wanton.

154 (5) Immunity from liability under this section does not extend to the use of general  
155 anesthesia or care that requires an overnight stay in a general acute or specialty hospital  
156 licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

157 Section 3. Section **58-77-101** is enacted to read:

158 **CHAPTER 77. DIRECT-ENTRY MIDWIFE ACT**

159 **Part 1. General Provisions**

160 **58-77-101. Title.**

161 This chapter is known as the "Direct-entry Midwife Act."

162 Section 4. Section **58-77-102** is enacted to read:

163 **58-77-102. Definitions.**

164 In addition to the definitions in Section 58-1-102, as used in this chapter:

165 (1) "Board" means the Licensed Direct-entry Midwife Board created in Section  
166 58-77-201.

167 (2) "Certified nurse-midwife" means a person licensed under Title 58, Chapter 44a,  
168 Nurse Midwife Practice Act.

169 (3) "Client" means a woman under the care of a Direct-entry midwife and her fetus or  
170 newborn.

171 (4) "Direct-entry Midwife" means an individual who is engaging in the practice of  
172 Direct-entry midwifery.

173 (5) "Licensed Direct-entry midwife" means a person licensed under this chapter.

174 (6) "Physician" means an individual licensed as a physician and surgeon, osteopathic  
175 physician, or naturopathic physician.

176 (7) "Practice of Direct-entry midwifery" means practice ~~H~~→ of providing the necessary  
176a supervision, care, and advice to a client during essentially normal pregnancy, labor, delivery,  
176b postpartum, and newborn periods ~~←H~~ that is ~~H~~→ [in accordance] consistent ~~←H~~ with  
177 national professional midwifery standards and that is based upon the acquisition of clinical  
178 skills necessary for the care of pregnant women and newborns, including antepartum,  
179 intrapartum, postpartum, newborn, and limited interconceptual care and includes:

180 (a) obtaining an informed consent to provide services;

181 (b) obtaining a health history, including a physical examination;

182 (c) developing a plan of care for a client;

- 183 (d) evaluating the results of client care;
- 184 (e) consulting and collaborating with and referring and transferring care to licensed
- 185 health care professionals, as is appropriate, regarding the care of a client;
- 186 (f) obtaining medications, as specified in this Subsection (7)(f) ~~H→ [or by rule] ←H~~
- 186a , to administer
- 187 to clients, including:
- 188 (i) prescription vitamins;
- 189 (ii) Rho D immunoglobulin;
- 190 ~~H→ [(iii) CDC- or ACOG-recommended agents for Group B strep prophylaxis;~~
- 191 ~~—(iv)] (iii) ←H sterile water;~~
- 192 ~~H→ [(v) IV fluids, excluding blood products;]~~ (iv) one dose of intramuscular oxytocin after
- 192a the delivery of the placenta to minimize blood loss;
- 193 ~~[(vi) anti-hemorrhagic medications;]~~ (v) one dose of intramuscular oxytocin if a
- 193a hemorrhage occurs, in which case the licensed Direct-entry midwife must either consult
- 193b immediately with a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act,
- 193c or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and initiate transfer, if
- 193d requested, or if the client's condition does not immediately improve, initiate transfer and notify
- 193e the local hospital;
- 194 ~~[(vii)] (vi) ←H oxygen;~~
- 195 ~~H→ [(viii)] (vii) ←H local anesthetics~~ ~~H→ without epinephrine used in accordance with~~
- 195a Subsection (7)(l) ←H ;
- 196 ~~H→ [(ix)] (viii) ←H vitamin K to prevent hemorrhagic disease of the newborn;~~
- 197 ~~H→ [(x)] (ix) ←H eye prophylaxis to prevent ophthalmia neonatorum as required by law; and~~
- 198 ~~H→ [(xi) other medications that are not controlled substances as defined in Section~~
- 198a 58-37-2] (x) any other medication approved by a licensed health care provider with
- 198b authority to prescribe that medication;
- 199 ~~[and which are approved by the division in collaboration with the Licensed Direct-entry~~
- 200 Midwife Formulary Committee;] ~~←H~~
- 201 (g) obtaining food, food extracts, dietary supplements, as defined by the Federal Food,
- 202 Drug, and Cosmetic Act, homeopathic remedies, plant substances that are not designated as
- 203 prescription drugs or controlled substances, and over-the-counter medications to administer to
- 204 clients;
- 205 (h) obtaining and using appropriate equipment and devices such as Doppler, blood
- 206 pressure cuff, phlebotomy supplies, instruments, and sutures;

- 207            (i) obtaining appropriate screening and testing, including laboratory tests, urinalysis,
- 208 and ultrasound;
- 209            (j) managing the antepartum period;
- 210            (k) managing the intrapartum period including:
- 211            (i) monitoring and evaluating the condition of mother and fetus;
- 212            (ii) performing emergency episiotomy; and
- 213            (iii) delivering in any out-of-hospital setting;



- 214 (l) managing the postpartum period including ~~H→~~ [:  
 215 ———(f)] ~~←H~~ suturing of episiotomy or first and second degree natural perineal and labial  
 216 lacerations, including the administration of a local anesthetic; ~~H→~~ [and  
 217 ———(ii) ~~managing hemorrhage, including the administration of anti-hemorrhagic~~  
 218 ~~medications or IV fluids;]~~ ~~←H~~
- 219 (m) managing the newborn period including:  
 220 (i) providing care for the newborn, including performing a normal newborn  
 221 examination; and  
 222 (ii) resuscitating a newborn;  
 223 (n) providing limited interconceptual services in order to provide continuity of care  
 224 including:  
 225 (i) breastfeeding support and counseling;  
 226 (ii) family planning, limited to natural family planning, cervical caps, and diaphragms;  
 227 and  
 228 (iii) pap smears, where all clients with abnormal results are to be referred to an  
 229 appropriate licensed health care provider; and  
 230 (o) executing the orders of a licensed health care professional, only within the  
 231 education, knowledge, and skill of the Direct-entry midwife.  
 232 (8) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-77-501.  
 233 (9) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-77-502 and as  
 234 may be further defined by rule.

235 Section 5. Section **58-77-201** is enacted to read:

236 **Part 2. Board**

237 **58-77-201. Board.**

- 238 (1) There is created the Licensed Direct-entry Midwife Board consisting of four  
 239 licensed Direct-entry midwives and one member of the general public.  
 240 (2) The board shall be appointed and serve in accordance with Section 58-1-201.  
 241 (3) (a) The duties and responsibilities of the board shall be in accordance with Sections  
 242 58-1-202 and 58-1-203.  
 243 (b) The board shall designate one of its members on a permanent or rotating basis to:  
 244 (i) assist the division in reviewing complaints concerning the unlawful or

245 unprofessional conduct of a licensed Direct-entry midwife; and

246 (ii) advise the division in its investigation of these complaints.

246a **Ĥ→ (c)(i) For the years 2006 through 2011, the board shall present an annual report to**  
 246b **the Legislature's Health and Human Services Interim Committee describing the outcome data**  
 246c **of licensed Direct-entry midwives practicing in Utah.**

246d **(ii) The board shall base its report on data provided in large part from the**  
 246e **Midwives' Alliance of North America. ←Ĥ**

247 (4) A board member who has, under Subsection (3), reviewed a complaint or advised  
 248 in its investigation may be disqualified from participating with the board when the board serves  
 249 as a presiding officer in an adjudicative proceeding concerning the complaint.

250 (5) Qualified faculty, board members, and other staff of Direct-entry midwifery  
 251 learning institutions may serve as one or more of the licensed Directed-entry midwives on the  
 252 board.

253 Section 6. Section **58-77-202** is enacted to read:

254 **58-77-202. Licensed Direct-entry Midwife Formulary Committee -- Adoption of**  
 255 **licensed Direct-entry midwife formulary.**

256 (1) The division shall establish a Licensed Direct-entry Midwife Formulary Committee  
 257 under Subsection 58-1-203(1)(f) to make recommendations to the board and the division  
 258 regarding which additional prescription drugs are appropriate for the scope of practice of  
 259 licensed Direct-entry midwives and guidelines for their use.

260 (2) The committee shall consist of five members as follows:

261 (a) two licensed Direct-entry midwives;

262 (b) one licensed physician who has professional experience consulting for and  
 263 collaborating with Direct-entry midwives;

264 (c) one certified nurse midwife who has professional experience consulting for and  
 265 collaborating with Direct-entry midwives; and

266 (d) one licensed pharmacist.

267 (3) The committee members shall:

268 (a) be appointed by the director of the division; and

269 (b) serve without compensation, travel costs, or per diem for their services.

270 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
 271 division shall adopt by rule a licensed Direct-entry midwife formulary which includes:

272 (a) those additional prescription drugs which may be obtained and administered by  
 273 licensed Direct-entry midwives as defined in Subsection 58-77-102(7)(f)(xi); and

274 (b) standards, conditions, and guidelines for use of the prescription drugs included in  
 275 the formulary.

276 Section 7. Section **58-77-203** is enacted to read:

277 **58-77-203. Licensed Direct-entry Midwife Temporary Rules Committee -- Rules**  
278 **recommendations.**

279 (1) The division shall establish a Licensed Direct-entry Midwife Temporary Rules  
280 Committee under this section to make recommendations to the board and division regarding  
281 the condition types listed in Subsection 58-77-601(2).

282 (2) The committee shall consist of the following six members appointed by the director  
283 of the division:

284 (a) three Direct-entry midwives;

285 (b) one licensed physician who has professional experience consulting for and  
286 collaborating with Direct-entry midwives;

287 (c) one certified nurse midwife who has professional experience consulting for and  
288 collaborating with Direct-entry midwives; and

289 (d) a licensed physician or certified nurse midwife who has practiced obstetrics or  
290 midwifery in an out-of-hospital setting.

291 (3) The director of the division shall appoint one of the three Direct-entry midwives to  
292 serve as committee chair.

293 (4) Committee members shall serve without compensation and may not receive travel  
294 costs or per diem for their services on the committee.

295 (5) Qualified committee members may also serve on the Licensed Direct-entry  
296 Midwife Formulary Committee and the Licensed Direct-entry Midwife Board established  
297 under this chapter.

298 (6) The director shall make appointments to the committee by July 1, 2005, and the  
299 committee shall cease to function after March 31, 2006.

300 (7) (a) The committee shall recommend rules under Subsection (1) based on  
301 convincing evidence presented to the committee.

302 (b) At least four members must vote in the affirmative on any recommendation made  
303 by the committee to the board or the division.

304 (c) If the committee is unable to complete its recommendations by March 31, 2006, it  
305 shall develop a recommended plan of action which, along with its work product and  
306 responsibilities, shall be transferred to the board on April 1, 2006.

307 Section 8. Section **58-77-301** is enacted to read:

308 **Part 3. Licensure**

309 **58-77-301. Licensure.**

310 The division shall issue to a person who qualifies under this chapter a license as a  
311 licensed Direct-entry midwife.

312 Section 9. Section **58-77-302** is enacted to read:

313 **58-77-302. Qualifications for licensure.**

314 Each applicant for licensure as a licensed Direct-entry midwife shall:

315 (1) submit an application in a form prescribed by the division;

316 (2) pay a fee as determined by the department under Section 63-38-3.2;

317 (3) be of good moral character;

318 (4) hold a Certified Professional Midwife certificate in good standing with the North  
319 American Registry of Midwives or equivalent certification approved by the division in  
320 collaboration with the board;

321 (5) hold current adult and infant CPR and newborn resuscitation certifications through  
322 an organization approved by the division in collaboration with the board; and

323 (6) provide documentation of successful completion of an approved pharmacology  
324 course as defined by division rule.

325 Section 10. Section **58-77-303** is enacted to read:

326 **58-77-303. Term of license -- Expiration -- Renewal.**

327 (1) (a) The division shall issue each license under this chapter in accordance with a  
328 two-year renewal cycle established by rule.

329 (b) The division may by rule extend or shorten a renewal period by as much as one year  
330 to stagger the renewal cycles it administers.

331 (2) Each license automatically expires on the expiration date shown on the license  
332 unless the individual renews it in accordance with Section 58-1-308.

333 (3) At the time of renewal, the licensed Direct-entry midwife shall be in current  
334 compliance with the requirements of Section 58-77-302.

335 Section 11. Section **58-77-304** is enacted to read:

336 **58-77-304. Parents' rights.**

337 Nothing in this chapter abridges, limits, or changes in any way the right of parents to

338 deliver their baby where, when, how, and with whom they choose, regardless of licensure  
339 under this chapter.

340 Section 12. Section **58-77-401** is enacted to read:

341 **Part 4. Licensure Denial and Discipline**

342 **58-77-401. Grounds for denial of license -- Disciplinary proceedings.**

343 Grounds for refusing to issue a license to an applicant, for refusing to renew a license,  
344 for revoking, suspending, restricting, or placing on probation a license, for issuing a public or  
345 private reprimand, and for issuing a cease and desist order shall be in accordance with Section  
346 58-1-401.

347 Section 13. Section **58-77-501** is enacted to read:

348 **Part 5. Unlawful and Unprofessional Conduct -- Penalties**

349 **58-77-501. Unlawful conduct.**

350 (1) In addition to the definition in Subsection 58-1-501(1), "unlawful conduct"  
351 includes:

352 (a) representing or holding oneself out as a licensed Direct-entry midwife when not  
353 licensed under this chapter; and

354 (b) using prescription medications, except oxygen, while engaged in the practice of  
355 Direct-entry midwifery when not licensed under this chapter.

356 (2) (a) Except as provided in Subsections (1)(a) and (b), it is lawful to practice  
357 Direct-entry midwifery in the state without being licensed under this chapter.

358 (b) The practice of Direct-entry midwifery is not considered the practice of medicine,  
359 nursing, or nurse-midwifery.

360 Section 14. Section **58-77-502** is enacted to read:

361 **58-77-502. Unprofessional conduct.**

362 In addition to the definition in Subsection 58-1-501(2), "unprofessional conduct"  
363 includes:

364 (1) failing to obtain informed consent as described in Subsection 58-77-601(1);

365 (2) disregarding a client's dignity or right to privacy as to her person, condition,  
366 possessions, or medical record;

367 (3) failing to file or record any medical report as required by law, impeding, or  
368 obstructing the filing or recording of the report, or inducing another to fail to file or record the

369 report;

370 (4) breaching a statutory, common law, regulatory, or ethical requirement of

371 confidentiality with respect to a person who is a client, unless ordered by the court;

372 (5) inappropriately delegating Direct-entry midwifery duties;

373 (6) using advertising or an identification statement that is false, misleading, or

374 deceptive;

375 (7) using in combination with the term "midwife" the term "nurse" or another title,

376 initial, or designation that falsely implies that the Direct-entry midwife is licensed as a certified

377 nurse midwife, registered nurse, or licensed practical nurse; and

378 (8) submitting a birth certificate known by the person to be false or fraudulent.

379 Section 15. Section **58-77-503** is enacted to read:

380 **58-77-503. Penalty for unlawful conduct.**

381 A person who violates the unlawful conduct provisions defined in this chapter is guilty

382 of a class A misdemeanor.

383 Section 16. Section **58-77-601** is enacted to read:

384 **Part 6. Standards of Practice**

385 **58-77-601. Standards of practice.**

386 (1) (a) Prior to providing any services, a licensed Direct-entry midwife must obtain an

387 informed consent from a client.

388 (b) The consent must include:

389 (i) the name and license number of the Direct-entry midwife;

390 (ii) the client's name, address, telephone number, and primary care provider, if the

391 client has one;

392 (iii) the fact, if true, that the licensed Direct-entry midwife is not a certified nurse

393 midwife or a physician;

394 (iv) all sections required by the North American Registry of Midwives in its informed

395 consent guidelines, including:

396 (A) a description of the licensed Direct-entry midwife's education, training, continuing

397 education, and experience in midwifery;

398 (B) a description of the licensed Direct-entry midwife's peer review process;

399 (C) the licensed Direct-entry midwife's philosophy of practice;

400 (D) a promise to provide the client, upon request, separate documents describing the  
 401 rules governing licensed Direct-entry midwifery practice, including a list of conditions  
 402 indicating the need for consultation, collaboration, referral, transfer or ~~H~~→ [emergency]  
 402a mandatory ←~~H~~ transfer, and  
 403 the licensed Direct-entry midwife's personal written practice guidelines;

404 (E) a medical back-up or transfer plan;

405 (F) a description of the services provided to the client by the licensed Direct-entry  
 406 midwife;

407 (G) the licensed Direct-entry midwife's current legal status;

408 (H) the availability of a grievance process; and

409 (I) client and licensed Direct-entry midwife signatures and the date of signing; and

410 (v) whether the licensed Direct-entry midwife is covered by a professional liability  
 411 insurance policy.

412 (2) A licensed Direct-entry midwife shall appropriately recommend and facilitate  
 413 consultation with, collaboration with, referral to, or transfer or ~~H~~→ [emergency]  
 413a mandatory ←~~H~~ transfer of care to a  
 414 licensed health care professional when the circumstances require that action in accordance with  
 415 standards established by division rule.

416 (3) If after a client has been informed that she has or may have a condition indicating  
 417 the need for medical consultation, collaboration, referral, or transfer and the client chooses to  
 418 decline, then the licensed Direct-entry midwife shall:

419 (a) terminate care in accordance with procedures established by division rule; or

420 (b) continue to provide care for the client if the client signs a waiver of medical  
 421 consultation, collaboration, referral, or transfer.

422 (4) If after a client has been informed that she has or may have a condition indicating  
 423 the need for ~~H~~→ [emergency] mandatory ←~~H~~ transfer, the licensed Direct-entry midwife shall  
 423a ~~H~~→, in accordance with procedures established by division rule, terminate the care or ←~~H~~  
 423b initiate transfer by:

424 (a) calling 911 and reporting the need for immediate transfer;

425 (b) immediately transporting the client by private vehicle to the receiving provider; or

426 (c) contacting the physician to whom the client will be transferred and following that  
 427 physician's orders.

427a ~~H~~→ (5) For the period from 2006 through 2011, a licensed Direct-entry midwife must submit  
 427b outcome data to the Midwives's Alliance of North America's Division of Research on the

427c **form and in the manner prescribed by rule.** ←H

428 H→ [~~5~~] (6) ←H This chapter does not mandate health insurance coverage for midwifery services.

429 Section 17. Section **58-77-602** is enacted to read:

430 **58-77-602. Immunity and liability.**



431 (1) If a Direct-entry midwife seeks to consult with, refer, or transfer a client to a  
 432 licensed health care provider or facility, the responsibility of the provider or facility for the  
 433 client does not begin until the client is physically within the care of the provider or facility.

434 (2) A licensed health care provider who examines a Direct-entry midwife's client is  
 435 only liable for the actual examination and cannot be held accountable for the client's decision to  
 436 pursue an out-of-hospital birth or the services of a Direct-entry midwife.

437 (3) (a) A licensed health care provider may, upon receiving a briefing data from a  
 438 Direct-entry midwife, issue a medical order for the Direct-entry midwife's client, without that  
 439 client being an explicit patient of the provider.

440 (b) Regardless of the advice given or order issued, the responsibility and liability for  
 441 caring for the client is that of the Direct-entry midwife.

442 (c) The provider giving the order is responsible and liable only for the appropriateness  
 443 of the order given the data received.

444 (d) The issuing of an order for a Direct-entry midwife's client does not constitute a  
 445 delegation of duties from the other provider to the Direct-entry midwife.

445a **H→ (4) A licensed health care provider may not be held civilly liable for rendering**  
 445b **emergency medical services that arise from prohibited conduct in Section 57-77-603, or from**  
 445c **care rendered under a waiver as specified in Subsection 58-77-601(3)(b), unless the emergency**  
 445d **medical services constitute gross negligence or reckless disregard for the client.**

445e **(5) A licensed Direct-entry midwife shall be solely responsible for the use of medications**  
 445f **under this chapter. ←H**

446 Section 18. Section **58-77-603** is enacted to read:

447 **58-77-603. Prohibited practices.**

448 A Direct-entry midwife may not:

449 (1) administer a prescription drug to a client H→ [~~other than those specified in Subsections~~]  
 449a **in a manner that violates this chapter;**

450 **[58-77-102(7) and 58-77-602(3)(a);] ←H**

451 (2) effect any type of surgical delivery except for the cutting of an emergency  
 452 episiotomy;

453 (3) administer any type of epidural, spinal, or caudal anesthetic, or any type of narcotic  
 454 analgesia; H→ [or]

454a **(4) use forceps or a vacuum extractor;**

454b **(5) manually remove the placenta, except in an emergency that presents an immediate**  
 454c **threat to the life of the client; or ←H**

455            ~~H~~→ [(4)] (6) ←~~H~~ induce abortion.

456            Section 19. Section **78-14-3** is amended to read:

457            **78-14-3. Definitions.**

458            As used in this chapter:

459            (1) "Audiologist" means a person licensed to practice audiology under Title 58,

460 Chapter 41, Speech-language Pathology and Audiology Licensing Act.

461            (2) "Certified social worker" means a person licensed to practice as a certified social

462 worker under Section 58-60-205.

463 (3) "Chiropractic physician" means a person licensed to practice chiropractic under  
464 Title 58, Chapter 73, Chiropractic Physician Practice Act.

465 (4) "Clinical social worker" means a person licensed to practice as a clinical social  
466 worker under Section 58-60-205.

467 (5) "Commissioner" means the commissioner of insurance as provided in Section  
468 31A-2-102.

469 (6) "Dental hygienist" means a person licensed to practice dental hygiene as defined in  
470 Section 58-69-102.

471 (7) "Dentist" means a person licensed to practice dentistry as defined in Section  
472 58-69-102.

473 (8) "Division" means the Division of Occupational and Professional Licensing created  
474 in Section 58-1-103.

475 (9) "Future damages" includes damages for future medical treatment, care or custody,  
476 loss of future earnings, loss of bodily function, or future pain and suffering of the judgment  
477 creditor.

478 (10) "Health care" means any act or treatment performed or furnished, or which should  
479 have been performed or furnished, by any health care provider for, to, or on behalf of a patient  
480 during the patient's medical care, treatment, or confinement.

481 (11) "Health care facility" means general acute hospitals, specialty hospitals, home  
482 health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers,  
483 ambulatory surgical facilities, small health care facilities, health care facilities owned or  
484 operated by health maintenance organizations, and end stage renal disease facilities.

485 (12) "Health care provider" includes any person, partnership, association, corporation,  
486 or other facility or institution who causes to be rendered or who renders health care or  
487 professional services as a hospital, health care facility, physician, registered nurse, licensed  
488 practical nurse, nurse-midwife, licensed Direct-entry midwife, dentist, dental hygienist,  
489 optometrist, clinical laboratory technologist, pharmacist, physical therapist, podiatric  
490 physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician,  
491 osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social  
492 worker, certified social worker, social service worker, marriage and family counselor,

493 practitioner of obstetrics, or others rendering similar care and services relating to or arising out  
494 of the health needs of persons or groups of persons and officers, employees, or agents of any of  
495 the above acting in the course and scope of their employment.

496 (13) "Hospital" means a public or private institution licensed under Title 26, Chapter  
497 21, Health Care Facility Licensing and Inspection Act.

498 (14) "Licensed Direct-entry midwife" means a person licensed under the Direct-entry  
499 Midwife Act to practice midwifery as defined in Section 58-77-102.

500 [~~(14)~~] (15) "Licensed practical nurse" means a person licensed to practice as a licensed  
501 practical nurse as provided in Section 58-31b-301.

502 [~~(15)~~] (16) "Malpractice action against a health care provider" means any action against  
503 a health care provider, whether in contract, tort, breach of warranty, wrongful death, or  
504 otherwise, based upon alleged personal injuries relating to or arising out of health care rendered  
505 or which should have been rendered by the health care provider.

506 [~~(16)~~] (17) "Marriage and family therapist" means a person licensed to practice as a  
507 marriage therapist or family therapist under Sections 58-60-305 and 58-60-405.

508 [~~(17)~~] (18) "Naturopathic physician" means a person licensed to practice naturopathy  
509 as defined in Section 58-71-102.

510 [~~(18)~~] (19) "Nurse-midwife" means a person licensed to engage in practice as a nurse  
511 midwife under Section 58-44a-301.

512 [~~(19)~~] (20) "Optometrist" means a person licensed to practice optometry under Title 58,  
513 Chapter 16a, Utah Optometry Practice Act.

514 [~~(20)~~] (21) "Osteopathic physician" means a person licensed to practice osteopathy  
515 under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

516 [~~(21)~~] (22) "Patient" means a person who is under the care of a health care provider,  
517 under a contract, express or implied.

518 [~~(22)~~] (23) "Pharmacist" means a person licensed to practice pharmacy as provided in  
519 Section 58-17b-301.

520 [~~(23)~~] (24) "Physical therapist" means a person licensed to practice physical therapy  
521 under Title 58, Chapter 24a, Physical Therapist Practice Act.

522 [~~(24)~~] (25) "Physician" means a person licensed to practice medicine and surgery under  
523 Title 58, Chapter 67, Utah Medical Practice Act.

524            [~~(25)~~] (26) "Podiatric physician" means a person licensed to practice podiatry under  
525 Title 58, Chapter 5a, Podiatric Physician Licensing Act.

526            [~~(26)~~] (27) "Practitioner of obstetrics" means a person licensed to practice as a  
527 physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58,  
528 Chapter 68, Utah Osteopathic Medical Practice Act.

529            [~~(27)~~] (28) "Psychologist" means a person licensed under Title 58, Chapter 61,  
530 Psychologist Licensing Act, to practice psychology as defined in Section 58-61-102.

531            [~~(28)~~] (29) "Registered nurse" means a person licensed to practice professional nursing  
532 as provided in Section 58-31b-301.

533            [~~(29)~~] (30) "Representative" means the spouse, parent, guardian, trustee,  
534 attorney-in-fact, or other legal agent of the patient.

535            [~~(30)~~] (31) "Social service worker" means a person licensed to practice as a social  
536 service worker under Section 58-60-205.

537            [~~(31)~~] (32) "Speech-language pathologist" means a person licensed to practice  
538 speech-language pathology under Title 58, Chapter 41, Speech-language Pathology and  
539 Audiology Licensing Act.

540            [~~(32)~~] (33) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act  
541 or omission proximately causing injury or damage to another.

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**Legislative Review Note**  
**as of 12-7-04 8:41 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
**as of 12-08-04 9:31 AM**

The Health and Human Services Interim Committee recommended this bill.

**AMENDED NOTE**

**State Impact**

Implementation of the provisions of this bill will cost \$3,100 from the Commerce Service Fund and Generate \$1,500. Licenses are renewed every two years, so revenues are expected to drop to \$100 in the second year. The Attorney General indicates that they may incur costs because this is a new regulated profession. However with only 15 seeking licensure, these costs would be minimal.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
Commerce Service Fund	\$3,100	\$3,100	\$1,500	\$100
<b>TOTAL</b>	<b>\$3,100</b>	<b>\$3,100</b>	<b>\$1,500</b>	<b>\$100</b>

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**Individual and Business Impact**

Individual fiscal impacts will vary.

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