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**SENATE BILL 5778**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senators Prentice, Hargrove, Jesernig, Prince, Wojahn, Haugen, Franklin, Spanel, Fraser, Barr, Amondson, McAuliffe, Moore, Moyer, Hochstatter and Pelz

Read first time 02/12/93. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to a joint underwriting association for midwives  
2 and birthing centers; and adding a new chapter to Title 48 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** Certified nurse midwives and licensed  
5 midwives experience a major problem in both the availability and  
6 affordability of malpractice insurance. In particular midwives  
7 practicing outside hospital settings are unable to obtain malpractice  
8 insurance at any price in this state at this time. Licensed midwives  
9 have been unable to obtain hospital privileges due in part to the  
10 requirement of almost all Washington hospitals that professional staff  
11 members have liability insurance.

12 The services performed by midwives are in demand by many women for  
13 childbirth and prenatal care. Women often choose to have a home or  
14 birth center birth instead of a hospital birth. Women are entitled to  
15 the provider of their choice at such a critical life event. Studies  
16 document the safety of midwife-attended births and the safety of home  
17 births for low-risk women.

18 At a time when safety, cost-effectiveness, and individual choice  
19 are of paramount concern to the citizens of Washington state, midwifery

1 care in a variety of settings must be available to the public. This is  
2 essential to the goals of increased access to maternity care and  
3 increased cost-effectiveness of care, as well as addressing problems of  
4 provider shortage. One of the primary impediments to the availability  
5 of maternity services performed by midwives is the lack of available  
6 and affordable malpractice liability insurance coverage.

7 This chapter is intended to increase the availability of cost-  
8 effective, high-quality maternity care by making malpractice insurance  
9 available for midwives. This chapter is implemented by requiring all  
10 insurers authorized to write commercial or professional liability  
11 insurance to be members of a joint underwriting association created to  
12 provide malpractice insurance for midwives.

13 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
14 otherwise, the definitions in this section apply throughout this  
15 chapter.

16 (1) "Association" means the joint underwriting association  
17 established under this chapter.

18 (2) "Midwifery and birth center malpractice insurance" means  
19 insurance coverage against the legal liability of the insured and  
20 against loss damage or expense incident to a claim arising out of the  
21 death or injury of a person as a result of negligence or malpractice in  
22 rendering professional service by a licensee.

23 (3) "Licensee" means a person or facility licensed to provide  
24 midwifery services under chapter 18.50, 18.88, or 18.46 RCW.

25 NEW SECTION. **Sec. 3.** The insurance commissioner shall approve by  
26 December 31, 1993, a reasonable plan for the establishment of a  
27 nonprofit, joint underwriting association for midwifery and birth  
28 center malpractice insurance subject to the conditions and limitations  
29 contained in this chapter.

30 NEW SECTION. **Sec. 4.** The association shall be comprised of all  
31 insurers possessing a certificate of authority to write and engaged in  
32 writing medical malpractice insurance within this state and general  
33 casualty companies. Every insurer shall be a member of the association  
34 and shall remain a member as a condition of its authority to continue  
35 to transact business in this state. Only licensed midwives under  
36 chapter 18.50 RCW, certified nurse midwives licensed under chapter

1 18.88 RCW, or birth centers licensed under chapter 18.46 RCW may  
2 participate in the joint underwriting authority.

3 NEW SECTION. **Sec. 5.** A licensee may apply to the association to  
4 purchase midwifery and birth center malpractice insurance and the  
5 association shall offer a policy with liability limits of two million  
6 dollars. The insurance commissioner shall require the use of a rating  
7 plan for midwifery malpractice insurance that permits rates to be  
8 modified according to practice volume. Coverage may not exclude  
9 midwives who engage in home birth or birth center deliveries.

10 NEW SECTION. **Sec. 6.** The commissioner may select an insurer to  
11 administer a plan established under this chapter. The insurer must be  
12 admitted to transact the business of insurance of the state of  
13 Washington.

14 NEW SECTION. **Sec. 7.** The insurance commissioner may not approve  
15 a policy written on a claims made basis by an insurer doing business in  
16 this state unless the insurer guarantees to the commissioner the  
17 continued availability of suitable liability protection for midwives  
18 subsequent to the discontinuance of professional practice by the  
19 midwife or the sooner termination of the insurance policy by the  
20 insurer for so long as there is a reasonable probability of a claim for  
21 injury for which the health care provider might be liable.

22 NEW SECTION. **Sec. 8.** A risk management program for insureds of  
23 the association must be established as a part of the plan. This  
24 program must include but not be limited to: Investigation and analysis  
25 of frequency, severity, and causes of adverse or untoward outcomes;  
26 development of measures to control these injuries; systematic reporting  
27 of incidents; investigation and analysis of patient complaints; and  
28 education of association members to improve quality of care and risk  
29 reduction.

30 NEW SECTION. **Sec. 9.** By December 1, 1996, the insurance  
31 commissioner shall file or cause to be filed a report to the  
32 legislature detailing the operations, finances, claims, and marketing  
33 experience of the association.

1        NEW SECTION.    **Sec. 10.**    The commissioner may adopt all rules  
2 necessary to ensure the efficient, equitable operation of the  
3 association, including but not limited to, rules requiring or limiting  
4 certain policy provisions.

5        NEW SECTION.    **Sec. 11.**    Sections 1 through 10 of this act shall  
6 constitute a new chapter in Title 48 RCW.

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