

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 86 be amended to read as follows:

- 1 Page 25, line 12, after " individual" insert "  
2 (A)".
- 3 Page 25, line 13, delete "." and insert "; and  
4 (B) is a qualified provider under IC 34-18."
- 5 Page 28, line 36, delete "whether or not" and insert "that".
- 6 Page 31, between lines 9 and 10, begin a new paragraph and insert:  
7 "SECTION 20. IC 27-7-14 IS ADDED TO THE INDIANA CODE  
8 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
9 JULY 1, 2009]:
- 10 **Chapter 14. Midwife Joint Underwriting Association**
- 11 **Sec. 1. As used in this chapter, "association" refers to the**  
12 **midwife joint underwriting association established under this**  
13 **chapter.**
- 14 **Sec. 2. As used in this chapter, "certified direct entry midwife"**  
15 **has the meaning set forth in IC 25-23.4-1-4.**
- 16 **Sec. 3. As used in this chapter, "commissioner" refers to the**  
17 **commissioner of insurance appointed under IC 27-1-1-2**
- 18 **Sec. 4. As used in this chapter, "department" refers to the**  
19 **department of insurance created by IC 27-1-1-1.**
- 20 **Sec. 5. As used in this chapter, "licensee" means a certified**  
21 **direct entry midwife who is licensed under IC 25-23.4.**
- 22 **Sec. 6. As used in this chapter "midwifery malpractice liability**  
23 **insurance" means insurance coverage against the legal liability of**  
24 **the insured and against loss damage or expense incident to a claim**

1 arising out of the death or injury of an individual as a result of a  
 2 licensee's negligence or malpractice in rendering professional  
 3 service.

4 **Sec. 7. (a) The commissioner shall, not later than December 31,**  
 5 **2009, approve a reasonable plan for the establishment of a**  
 6 **nonprofit, midwife joint underwriting association through which**  
 7 **insurers that are members of the association make available**  
 8 **midwifery malpractice liability insurance policies in accordance**  
 9 **with this chapter.**

10 **(b) The plan approved under subsection (a) must include the**  
 11 **following:**

12 **(1) A market assistance plan to be used before the association**  
 13 **begins functioning.**

14 **(2) A risk management program for licensees insured by the**  
 15 **association. The risk management program must include the**  
 16 **following:**

17 **(A) Investigation and analysis of frequency, severity, and**  
 18 **causes of adverse outcomes.**

19 **(B) Development of measures to control the adverse**  
 20 **outcomes.**

21 **(C) Systematic reporting of incidents.**

22 **(D) Investigation and analysis of client complaints.**

23 **(E) Education of association policyholders to improve**  
 24 **quality of care and risk reduction.**

25 **Sec 8. Each insurer that possesses a certificate of authority**  
 26 **under IC 27 to do general casualty or malpractice liability**  
 27 **insurance business in Indiana shall be a member of the association.**

28 **Sec. 9. The commissioner may:**

29 **(1) administer the association; or**

30 **(2) contract with an insurer described in section 8 of this**  
 31 **chapter to administer the association.**

32 **Sec. 10. (a) The association shall provide coverage under a**  
 33 **midwifery malpractice liability insurance policy with liability**  
 34 **limits of:**

35 **(1) one million dollars (\$1,000,000) per occurrence; and**

36 **(2) three million dollars (\$3,000,000) in the annual aggregate;**  
 37 **or a higher minimum amount as determined by the commissioner.**

38 **(b) The commissioner shall require the use of a rating plan for**  
 39 **midwifery malpractice liability insurance that:**

40 **(1) is based on sound actuarial principles; and**

41 **(2) permits rates to be modified according to an individual**  
 42 **licensee's practice volume.**

43 **(c) Coverage provided by the association may not exclude**  
 44 **coverage for home birth or birthing center deliveries.**

45 **Sec. 11. The commissioner may not approve a midwifery**  
 46 **malpractice liability insurance policy that is written on a claims**  
 47 **made basis unless the insurer guarantees the continued availability**

1 of sufficient midwifery malpractice liability protection after the:  
 2 (1) licensee discontinues the practice of midwifery; or  
 3 (2) insurer terminates the midwifery malpractice liability  
 4 insurance policy;  
 5 until there is no longer a reasonable probability of a claim for  
 6 injury for which the licensee may be liable.

7 Sec. 12. (a) Only a licensee is eligible to purchase coverage from  
 8 the association.

9 (b) A licensee may apply to the association to purchase  
 10 midwifery malpractice liability insurance.

11 Sec. 13. The commissioner may adopt rules under IC 4-22-2 to  
 12 implement this chapter, including rules specifying midwifery  
 13 malpractice liability insurance policy provisions.

14 SECTION 21. IC 34-6-2-19.2 IS ADDED TO THE INDIANA  
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 16 [EFFECTIVE JULY 1, 2009]: Sec. 19.2. "Certified direct entry  
 17 midwife", for purposes of IC 34-18, has the meaning set forth in  
 18 IC 34-18-2-6.4."

19 Page 31, between lines 14 and 15, begin a new paragraph and insert:

20 "SECTION 23. IC 34-18-2-6.4 IS ADDED TO THE INDIANA  
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 22 [EFFECTIVE JULY 1, 2009]: Sec. 6.4. "Certified direct entry  
 23 midwife" means an individual who is licensed under IC 25-23.4."

24 Page 32, between lines 19 and 20, begin a new paragraph and insert:

25 "SECTION 26. IC 34-18-4-1 IS AMENDED TO READ AS  
 26 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. Financial  
 27 responsibility of a health care provider and the provider's officers,  
 28 agents, and employees while acting in the course and scope of their  
 29 employment with the health care provider may be established under  
 30 subdivision (1), (2), or (3):

31 (1) By the health care provider's insurance carrier filing with the  
 32 commissioner proof that the health care provider is insured by a  
 33 policy of malpractice liability insurance in the amount of at least  
 34 two hundred fifty thousand dollars (\$250,000) per occurrence and  
 35 seven hundred fifty thousand dollars (\$750,000) in the annual  
 36 aggregate, except for the following:

37 (A) If the health care provider is a hospital, as defined in this  
 38 article, the minimum annual aggregate insurance amount is as  
 39 follows:

40 (i) For hospitals of not more than one hundred (100) beds,  
 41 five million dollars (\$5,000,000).

42 (ii) For hospitals of more than one hundred (100) beds,  
 43 seven million five hundred thousand dollars (\$7,500,000).

44 (B) If the health care provider is a health maintenance  
 45 organization (as defined in IC 27-13-1-19) or a limited service  
 46 health maintenance organization (as defined in

- 1 IC 27-13-34-4), the minimum annual aggregate insurance  
 2 amount is one million seven hundred fifty thousand dollars  
 3 (\$1,750,000).  
 4 (C) If the health care provider is a health facility, the minimum  
 5 annual aggregate insurance amount is as follows:  
 6 (i) For health facilities with not more than one hundred  
 7 (100) beds, seven hundred fifty thousand dollars (\$750,000).  
 8 (ii) For health facilities with more than one hundred (100)  
 9 beds, one million two hundred fifty thousand dollars  
 10 (\$1,250,000).  
 11 **(D) If the health care provider is a certified direct entry**  
 12 **midwife, the minimum malpractice liability insurance**  
 13 **policy amounts are as follows:**  
 14 **(i) One million dollars (\$1,000,000) per occurrence.**  
 15 **(ii) Three million dollars (\$3,000,000) in the annual**  
 16 **aggregate.**  
 17 (2) By filing and maintaining with the commissioner cash or  
 18 surety bond approved by the commissioner in the amounts set  
 19 forth in subdivision (1).  
 20 (3) If the health care provider is a hospital or a psychiatric  
 21 hospital, by submitting annually a verified financial statement  
 22 that, in the discretion of the commissioner, adequately  
 23 demonstrates that the current and future financial responsibility  
 24 of the health care provider is sufficient to satisfy all potential  
 25 malpractice claims incurred by the provider or the provider's  
 26 officers, agents, and employees while acting in the course and  
 27 scope of their employment up to a total of two hundred fifty  
 28 thousand dollars (\$250,000) per occurrence and annual  
 29 aggregates as follows:  
 30 (A) For hospitals of not more than one hundred (100) beds,  
 31 five million dollars (\$5,000,000).  
 32 (B) For hospitals of more than one hundred (100) beds, seven  
 33 million five hundred thousand dollars (\$7,500,000).  
 34 The commissioner may require the deposit of security to assure  
 35 continued financial responsibility."  
 36 Renumber all SECTIONS consecutively.  
 (Reference is to ESB 86 as printed April 10, 2009.)

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Representative Fry