
A BILL FOR AN ACT

RELATING TO SECTION 453-16, HAWAII REVISED STATUTES.

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

1 SECTION 1. The legislature finds that Hawaii has a long
2 tradition of protecting the right of reproductive choice
3 independently of, and more broadly than, the federal
4 constitution. In 1970, three years before the United States
5 Supreme Court's decision in *Roe v. Wade*, 410 U.S. 113 (1973),
6 Hawaii became one of the first states to repeal its law
7 criminalizing abortion. In addition, article I, section 6 of
8 the Hawaii State Constitution includes an explicit right to
9 privacy:

10 The right of the people to privacy is
11 recognized and shall not be infringed without the
12 showing of a compelling state interest. The
13 legislature shall take affirmative steps to
14 implement this right.

15 To make clear that the right to reproductive choice is
16 protected as a fundamental right under the Hawaii State
17 Constitution, the committee of the whole explained during the
18 1978 constitutional convention that:



1 "By amending the Constitution to include a
2 separate and distinct privacy right, it is the
3 intent of your Committee to insure that privacy is
4 treated as a fundamental right for purposes of
5 constitutional analysis . . . [T]his privacy
6 concept encompasses the notion that in certain
7 highly personal and intimate matters, the
8 individual should be afforded freedom of choice
9 absent a compelling state interest." (Committee
10 of the Whole Rep. No. 15, in 1 *Proceedings of the*
11 *Constitutional Convention of Hawaii of 1978*, at
12 1024 (1980)).

13 To date, however, the legislature has not taken
14 "affirmative steps" to amend outdated language in the abortion
15 statutes to ensure full access to abortion services. The
16 legislature finds that the existing residency requirement
17 violates the United States Constitution's privileges and
18 immunities clause and is, therefore, unconstitutional and
19 invalid. The legislature further finds that the hospital
20 requirement is unenforceable during the first trimester under
21 *Roe v. Wade*, according to Attorney General Opinion number 74-17.



1 The purpose of this Act is to clarify or eliminate outdated
2 statutory language while not expanding those rights that are
3 currently protected under state and federal law.

4 SECTION 2. Section 453-16, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[~~+~~]**§453-16**[~~+~~] **Intentional termination of pregnancy;**
7 **penalties; refusal to perform.** (a) No abortion shall be
8 performed in this [~~State~~] state unless:

9 (1) [~~Such~~] The abortion is performed by a licensed
10 physician or surgeon, or by a licensed osteopathic
11 physician and surgeon; and

12 (2) [~~Such~~] The abortion is performed in a hospital
13 licensed by the department of health or operated by
14 the federal government or an agency thereof[~~;~~ and

15 ~~(3) The woman upon whom such abortion is to be performed~~
16 ~~is domiciled in this State or has been physically~~
17 ~~present in this State for at least ninety days~~
18 ~~immediately preceding such abortion. The affidavit of~~
19 ~~such a woman shall be prima facie evidence of~~
20 ~~compliance with this requirement.] , or in a clinic or~~
21 physician's office.



1 (b) Abortion shall mean an operation to intentionally
2 terminate the pregnancy of a nonviable fetus. The termination
3 of a pregnancy of a viable fetus is not included in this
4 section.

5 (c) The State shall not deny or interfere with a female's
6 right to choose or obtain an abortion of a nonviable fetus or an
7 abortion that is necessary to protect the life or health of the
8 female.

9 [~~(e)~~] (d) Any person who knowingly violates [~~this section~~]
10 subsection (a) shall be fined not more than \$1,000 or imprisoned
11 not more than five years, or both.

12 [~~(d)~~] (e) Nothing in this section shall require any
13 hospital or any person to participate in [~~such~~] an abortion nor
14 shall any hospital or any person be liable for [~~such~~] a
15 refusal."

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.



HB 1242
HD1

Report Title:

Intentional Termination of Pregnancy

Description:

Prohibits the State from denying or interfering with a female's right to choose or obtain an abortion of a nonviable fetus or an abortion necessary to protect the female's life or health. Repeals residency requirement for abortions. Permits abortions to be performed in clinics and physician's offices. (HB1242 HD1)

