

Honolulu, Hawaii

March 2, 2006

RE: H.B. No. 1242

H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1242 entitled:

"A BILL FOR AN ACT RELATING TO SECTION 453-16, HAWAII REVISED STATUTES,"

begs leave to report as follows:

The purpose of this bill is to improve the health and safety of women by clarifying or eliminating outdated language in the statute dealing with abortion while not expanding rights that are currently protected under state and federal law.

The Hawaii State Commission on the Status of Women, American Civil Liberties Union of Hawaii, Planned Parenthood of Hawaii, Domestic Violence Clearinghouse and Legal Hotline, Hawaii Women's Coalition, National Association of Social Workers, Hawaii Chapter, Community Alliance on Prisons, League of Women Voters of Hawaii, and numerous concerned individuals supported this bill. The Lieutenant Governor, Hawaii Family Forum, Hawaii Catholic Conference, Hawaii Christian Coalition, Pro-family Hawaii, Christian Voice of Hawaii, Aloha Pregnancy Care and Counseling Centers, Hawaii Right to Life, Maui Chapter, Hawaii Coalition of Christian Churches, Moanalua Gardens Missionary Church, New Hope Christian Fellowship, and numerous concerned individuals opposed this measure.

At the outset of the hearing on this bill, all present were reassured that this bill is not intended to expand rights that are

HB1242 HD1 HSCR JUD HMS 2006-2275



currently protected under state and federal law, but were alerted to a drafting problem in this measure that related to when an abortion could be performed. Those present were informed that to address the drafting problem, any draft of this bill your Committee might pass out would leave the existing definition of abortion in section 453-16(b), Hawaii Revised Statutes (HRS), intact.

In decision-making, your Committee seriously discussed clarifying outdated language by replacing the term "operation" with "medical treatment" in the definition of abortion in section 453-16(b), HRS. Although this language is not related to any issue as to when an abortion may be performed, due to the assurances provided earlier in the hearing, your Committee intentionally decided against including any changes to the definition of abortion in section 453-16(b), HRS. Your Committee notes, however, that further consideration will be warranted if the Senate amends the term "operation" as this bill moves forward.

Your Committee also notes that the preamble for this bill refers to the importance of Article I, Section 6 of the Hawaii State Constitution, which provides:

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

Some testifiers maintained that a fundamental right to privacy exists only in the penumbra of other constitutional rights. Your Committee strongly disagrees. Unlike the United States Constitution, the Hawaii State Constitution explicitly recognizes the right to privacy, and mandates the Legislature to take affirmative steps to implement this precious right.

Your Committee has amended this bill by:


- (1) Restoring the existing definition of abortion in section 453-16(b), HRS;
- (2) Prohibiting the State from denying or interfering with a female's right to choose or obtain an abortion of a nonviable fetus or an abortion that is necessary to protect the life or health of the female; and



- (3) Making technical, nonsubstantive changes for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1242, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1242, H.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,

for 

SYLVIA LUKE, Chair



