

Honolulu, Hawaii

APR - 5 2006

RE: H.B. No. 1242
H.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Judiciary and Hawaiian Affairs, to which was referred H.B. No. 1242, H.D. 1, entitled:

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

begs leave to report as follows:

The purpose of this measure is to clarify and eliminate outdated language in section 453-16, Hawaii Revised Statutes, dealing with intentional termination of pregnancy, while not changing the rights that are currently protected under state and federal law.

Your Committee received testimony in support of this measure from Planned Parenthood of Hawaii, the American Civil Liberties Union of Hawai'i, the Church of the Crossroads United Church of Christ, the Community Alliance on Prisons, the Domestic Violence Clearinghouse and Legal Hotline, the Hawaii Women's Coalition, Hawaii Women Work!, The League of Women Voters of Hawaii, the National Association of Social Workers, and forty-one individuals. The Hawaii Family Forum, the Hawaii Catholic Conference, Hawaii Right to Life, the Maui Chapter of Hawaii Right to Life, Pro-Family Hawaii, Christian Voice of Hawaii, the Hawaii Coalition of Christian Churches, and twenty-four individuals submitted testimony in opposition to the measure.

Your Committee finds that section 453-16, Hawaii Revised Statutes, which has not been amended since its enactment in 1970, is unconstitutional as written and needs to be revised to bring it



into conformance with current state and federal law. Your Committee further finds that this measure is a clarifying amendment and does not change the right of a woman to seek an abortion.

Specifically, this measure deletes the ninety-day residential requirement. The United States Supreme Court has repeatedly struck down durational residency requirements. In *Doe v. Bolton*, 410 U.S. 179 (1973), the United States Supreme Court held that the Privileges and Immunities Clause of Article 4, section 2 of the United States Constitution protects individuals seeking medical services that are available in a state. The Court held that a state law requiring residency for individuals seeking medical care within that state's borders was unconstitutional because it was not based on any policy of preserving state-supported facilities for residents and there was no evidence that the medical facilities were utilized to capacity in caring for its residents. Accordingly, the ninety-day residency requirement under 453-16(a)(3), Hawaii Revised Statutes, is unconstitutional and should be repealed to conform with federal law.

This measure also clarifies that clinics and physicians' offices are safe, acceptable places for abortions to be performed. This clarification is in accordance with the United States Supreme Court's decision in *Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416 (1983). In *Akron*, the United States Supreme Court struck down a statute requiring a 24-hour waiting period prior to the performance of an abortion. The Court held that the state had not shown that any legitimate state interest was being served by an arbitrary and inflexible waiting period. Similarly, in *Doe, supra*, the United States Supreme Court applied the same standard to a Georgia statute that required that abortions be performed at specifically accredited hospitals. In examining whether the standards were legitimately related to the objective the state sought to accomplish, the court held that a state's objective to ensure the quality of the operation was not legitimately related to requiring all abortions be performed in specially accredited hospitals, where there was no persuasive data to show that only hospitals could meet this objective. In addition, the court found that there was a multitude of data showing that other facilities besides hospitals, such as clinics, were more than adequate to perform abortions safely.

The Chair notes the concerns regarding the medical requirements for abortions performed in clinics and physicians'




offices; however, the Chair believes that these concerns would be more appropriately addressed in rules that could be adopted by the Department of Health.

Last, the Chair notes that most of the testimony in opposition to this measure expressed opposition to abortion in general; however, the ability of women to have abortions under certain circumstances is already codified in Hawaii law.

As affirmed by the record of votes of the members of your Committee on Judiciary and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1242, H.D. 1, and recommends that it pass Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Hawaiian Affairs,



A handwritten signature in black ink, appearing to read 'Colleen Hanabusa', is written over a horizontal line. The signature is stylized with a large 'C' and 'H'.

COLLEEN HANABUSA, Chair



