
A BILL FOR AN ACT

RELATING TO BORN ALIVE INFANTS.

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

1 SECTION 1. The legislature finds that the State of Hawaii
2 has a paramount interest in protecting all human life, and if an
3 attempted abortion results in the live birth of an infant, the
4 infant is a legal person for all purposes under the laws of this
5 State. Without proper legal protection, newly born infants who
6 have survived attempted abortions may be denied appropriate
7 life-saving or life-sustaining medical care and treatment and be
8 left to die.

9 The legislature further finds that protecting an infant
10 whose live birth occurred as the result of an attempted abortion
11 is not an infringement on a woman's right to choose or obtain an
12 abortion of a nonviable fetus, or an abortion that is necessary
13 to protect the life or health of the mother.

14 The purpose of this bill is to ensure the protection and
15 promotion of the health and well-being of all infants born alive
16 in the State, to mandate that healthcare providers give
17 medically appropriate and reasonable life-saving and life-



1 sustaining medical care and treatment to all born alive infants
2 and to provide penalties for failure to provide medically
3 appropriate and reasonable life-saving and life-sustaining
4 medical care and treatment to all born alive infants.

5 SECTION 2. The Hawaii Revised Statutes is amended by
6 adding a new chapter to be appropriately designated and to read
7 as follows:

8 "CHAPTER

9 BORN ALIVE INFANT PROTECTION ACT

10 § -1 Definitions. As used in this chapter:

11 "Abortion" means the act of using or prescribing any
12 instrument, medicine, drug, or any other substance, device, or
13 means with the intent to terminate the clinically diagnosable
14 pregnancy of a woman with knowledge that the termination by
15 those means will, with reasonable likelihood, cause the death of
16 the unborn child. Such use, prescription, or means is not an
17 abortion if done with the intent to:

- 18 (1) Save the life or preserve the health of the unborn
19 child;
- 20 (2) Remove a dead unborn child caused by spontaneous
21 abortion; or



1 (3) Remove an ectopic pregnancy.

2 "Born alive" or "live birth" means the complete expulsion
3 or extraction of an infant from his or her mother, regardless of
4 the state of gestational development, that, after expulsion or
5 extraction, whether or not the umbilical cord has been cut or
6 the placenta is attached, and regardless of whether the
7 expulsion or extraction occurs as a result of natural or induced
8 labor, cesarean section, or induced abortion, shows any evidence
9 of life, including, but not limited to, one or more of the
10 following:

11 (1) Breathing;

12 (2) A heartbeat;

13 (3) Umbilical cord pulsation; or

14 (4) Definite movement of voluntary muscles.

15 "Consent" means the voluntary agreement or acquiescence by
16 a person of age and with the requisite mental capacity who is
17 not under duress or coercion and who has knowledge or
18 understanding of the act or action to which he or she has agreed
19 or acquiesced.

20 "Facility" or "medical facility" means any public or
21 private hospital, clinic, center, medical school, medical



1 training institution, healthcare facility, physician's office,
2 infirmary, dispensary, ambulatory surgical treatment center, or
3 other institution or location wherein medical care is provided
4 to any person.

5 "Infant" means a child of the species *homo sapiens* who has
6 been completely expelled or extracted from his or her mother,
7 regardless of the stage of gestational development, until the
8 age of thirty days post birth.

9 "Infanticide" means any deliberate act that

10 (1) Is intended to kill an infant who has been born alive;
11 and

12 (2) That does kill such infant.

13 "Physician" means a person licensed to practice medicine in
14 the State of Hawaii. This term includes medical doctors and
15 doctors of osteopathy.

16 "Premature" or "preterm" means occurring prior to the
17 thirty-seventh week of gestation.

18 § -2 **Requirements and responsibilities.** (a) A person
19 shall not deny or deprive an infant of nourishment with the
20 intent to cause or allow the death of the infant for any reason,
21 including, but not limited to:



- 1 (1) The infant was born with a handicap;
- 2 (2) The infant is not wanted by the parent(s) or
- 3 guardian(s); or
- 4 (3) The infant is born alive by natural or artificial
- 5 means;
- 6 (b) A person shall not deprive an infant of medically
- 7 appropriate and reasonable medical care and treatment or
- 8 surgical care.
- 9 (c) The requirements of this section shall not be
- 10 construed to prevent an infant's parent(s) or guardian(s) from
- 11 refusing to give consent to medical treatment or surgical care
- 12 which is not medically necessary or reasonable, including care
- 13 or treatment which either:
- 14 (1) Is not necessary to save the life of the infant;
- 15 (2) Has a potential risk to the infant's life or health
- 16 that outweighs the potential benefit to the infant of
- 17 the treatment or care; or
- 18 (3) Is treatment that will do no more than temporarily
- 19 prolong the act of dying when death is imminent.
- 20 (d) The physician performing an abortion must take all
- 21 medically appropriate and reasonable steps to preserve the life



1 and health of a born alive infant. If an abortion performed in
2 a hospital results in a live birth, the physician attending the
3 abortion shall provide immediate medical care to the infant,
4 inform the mother of the live birth, and request transfer of the
5 infant to an on-duty resident or emergency care physician who
6 shall provide medically appropriate and reasonable medical care
7 and treatment to the infant.

8 If an abortion performed in a facility other than a
9 hospital results in a live birth, a physician attending the
10 abortion shall provide immediate medical care to the infant and
11 call 9-1-1 for an emergency transfer of the infant to a hospital
12 that shall provide medically appropriate and reasonable care and
13 treatment to the infant.

14 (e) If the physician described in subsection (d) of this
15 section is unable to perform the duties of subsection (d)
16 because the physician is assisting the woman on whom the
17 abortion was performed, then an attending physician's assistant,
18 nurse, or other healthcare provider must assume the duties
19 outlined in subsection (d) of this section.

20 (f) Any born alive infant including one born in the course
21 of an abortion procedure shall be treated as a legal person



1 under the laws of this State, with the same rights to medically
2 appropriate and reasonable care and treatment. Birth and death
3 certificates shall be issued accordingly.

4 (g) If, before the abortion, the mother has stated in
5 writing that she does not wish to keep the infant in the event
6 that the abortion results in a live birth, and this writing is
7 not retracted before the attempted abortion, the infant, if born
8 alive, shall immediately upon birth become a ward under the care
9 of the department of human services.

10 (h) No person may use any born alive infant for any type
11 of scientific research or other kind of experimentation except
12 as necessary to protect the life and health of the born alive
13 infant.

14 § -3 **Infanticide.** Any physician, nurse, or other
15 healthcare provider who deliberately fails to provide medically
16 appropriate and reasonable care and treatment to a born alive
17 infant, where, as a result of that failure, the infant dies,
18 shall be guilty of the crime of infanticide.

19 § -4 **Criminal penalties.** (a) Any physician, nurse,
20 or other healthcare provider who intentionally or knowingly
21 fails to provide medically appropriate and reasonable care and



1 treatment to a born alive infant in the course of an attempted
2 abortion shall be fined an amount not exceeding \$1,000 or
3 imprisoned not more than five years, or both.

4 (b) Any person found guilty of the crime of infanticide
5 under section -3(a) shall be guilty of murder in the second
6 degree under section 707-701.5.

7 (c) If infanticide occurs under section -3(a) and any
8 physician, nurse, other healthcare provider, or person,
9 including the parent(s) or guardian(s), then conceals the corpse
10 of the infant with the intent to conceal the fact of its birth
11 or to prevent a determination of whether it was alive, that
12 person shall be guilty of concealing the corpse of an infant
13 under section 709-901.

14 (d) Any person who knowingly violates section -2(h) of
15 this chapter shall be fined not more than \$1,000 or imprisoned
16 not more than five years, or both.

17 (e) Unless otherwise indicated, the parent(s) or
18 guardian(s) of a born alive infant shall not be held criminally
19 or civilly liable for the actions of a physician, nurse, or
20 other healthcare provider that are in violation of this chapter
21 and to which the parent(s) or guardian(s) did not give consent.



1 § -5 **Civil and administrative action.** (a) Any
2 conviction under this chapter shall be admissible in a civil
3 suit as *prima facie* evidence of a failure to provide medically
4 appropriate and reasonable care and treatment to a born alive
5 infant. Any civil action may be based on a claim that the death
6 of or injury to the born alive infant was a result of simple
7 negligence, gross negligence, wantonness, willfulness,
8 intentional conduct, or another violation of the legal standard
9 of care.

10 (b) Failure to comply with the requirements of this
11 chapter shall provide a basis for professional disciplinary
12 action under section 442-9, section 453-8, section 455-11, or
13 any other section appropriate, or any appropriate combination
14 thereof, for the suspension or revocation of any license for
15 physicians, licensed and registered nurses, or other licensed or
16 regulated persons. Any conviction of any person for any failure
17 to comply with the requirements of this chapter shall result in
18 the automatic suspension of his or her license for a period of
19 no less than one year.

20 (c) Failure to comply with the requirements of this
21 chapter shall provide a basis for recovery for the parent(s) of



1 the infant or the parent(s) or guardian(s) of the mother, if the
2 mother is a minor, for the wrongful death of the infant under
3 section 663-3, whether or not the infant was viable at the time
4 the attempted abortion was performed.

5 § -6 **Construction.** (a) Nothing in this chapter shall
6 be construed to affirm, deny, expand, or contract any legal
7 status or legal right applicable to any member of the species
8 *homo sapiens* at any point prior to being born alive.

9 (b) Nothing in this chapter shall be construed to affect
10 existing federal or state law regarding abortion.

11 (c) Nothing in this chapter shall be construed as creating
12 or recognizing a right to abortion.

13 (d) Nothing in this chapter shall be construed to alter
14 generally accepted medical standards."

15 SECTION 3. Section 453-16, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§453-16 Intentional termination of pregnancy; penalties;**
18 **refusal to perform.** (a) No abortion shall be performed in this
19 State unless:



1 (1) The abortion is performed by a licensed physician or
2 surgeon, or by a licensed osteopathic physician and
3 surgeon; and

4 (2) The abortion is performed in a hospital licensed by
5 the department of health or operated by the federal
6 government or an agency thereof, or in a clinic or
7 physician's or osteopathic physician's office.

8 (b) Abortion [~~shall mean an operation to intentionally~~
9 ~~terminate the pregnancy of a nonviable fetus. The termination~~
10 ~~of a pregnancy of a viable fetus is not included in this~~
11 ~~section.~~] has the same meaning as in section -1.

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

16 (d) Any person who knowingly violates subsection (a) shall
17 be fined not more than \$1,000 or imprisoned not more than five
18 years, or both.

19 (e) Any attempted abortion that results in a born alive
20 infant under chapter shall be subject to the provisions of
21 that chapter.



1 [~~e~~] (f) Nothing in this section shall require any
2 hospital or any person to participate in an abortion nor shall
3 any hospital or any person be liable for a refusal."

4 SECTION 4. Section 442-9, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "**§442-9 License refusal, revocations, suspension, fine,**
7 **limitation, restriction, probation, reissuance.** (a) In
8 addition to any other actions authorized by law, the board shall
9 refuse to issue or may order any license issued under this
10 chapter to be revoked, suspended, limited, restricted, or placed
11 under probation at any time in a proceeding before the board or
12 fine a licensee for any cause authorized by law, including but
13 not limited to the following:

14 (1) Procuring or aiding or abetting in procuring a
15 criminal abortion;

16 (2) Failing to comply with the requirements of the born
17 alive infant protection act, chapter .

18 [~~2~~] (3) Employing what is popularly known as a "capper"
19 or "steerer";

20 [~~3~~] (4) Obtaining a fee on the assurance that a
21 manifestly incurable disease can be permanently cured;



- 1 [~~(4)~~] (5) Wilfully betraying patient confidentiality;
- 2 [~~(5)~~] (6) Making any untruthful statement in advertising
- 3 one's practice or business under this chapter;
- 4 [~~(6)~~] (7) False, fraudulent, or deceptive advertising;
- 5 [~~(7)~~] (8) Advertising directly or indirectly, or in
- 6 substance upon any card, sign, newspaper
- 7 advertisement, or other written or printed sign of
- 8 advertisement that the holder of a license or the
- 9 licensee's employer or employee will treat, cure, or
- 10 attempt to treat or cure any venereal disease, or will
- 11 treat or cure, or attempt to treat or cure, any person
- 12 afflicted with any sexual disease, lost manhood,
- 13 sexual weakness, or sexual disorder or any disease of
- 14 the sexual organs;
- 15 [~~(8)~~] (9) Being habitually intemperate;
- 16 [~~(9)~~] (10) Habitually using any habit-forming drug, such as
- 17 opium, or any of its derivatives, morphine, heroin,
- 18 cocaine, or any other habit-forming drug;
- 19 [~~(10)~~] (11) The advertising of any means whereby the monthly
- 20 periods of women can be regulated or the menses
- 21 reestablished if suppressed;



- 1 [~~(11)~~] (12) Procuring a license through fraudulent
- 2 misrepresentation or deceit;
- 3 [~~(12)~~] (13) Professional misconduct or gross carelessness or
- 4 manifest incapability in the practice of chiropractic;
- 5 [~~(13)~~] (14) Violating section 453-2; and
- 6 [~~(14)~~] (15) Knowingly recording, registering, or filing, or
- 7 offering for recordation, registration, or filing,
- 8 with the department of commerce and consumer affairs
- 9 any written statement which has been falsely made,
- 10 completed, or altered, or in which a false entry has
- 11 been made, or which contains a false statement or
- 12 false information."

13 SECTION 5. Section 453-8, Hawaii Revised Statutes, is

14 amended by amending subsection (a) to read as follows:

15 **"§453-8 Revocation, limitation, suspension, or denial of**

16 **licenses.** (a) In addition to any other actions authorized by

17 law, any license to practice medicine and surgery may be

18 revoked, limited, or suspended by the board at any time in a

19 proceeding before the board, or may be denied, for any cause

20 authorized by law, including but not limited to the following:



- 1 (1) Procuring, or aiding or abetting in procuring, a
- 2 criminal abortion;
- 3 (2) Failing to comply with the requirements of the born
- 4 alive infant protection act, chapter .
- 5 ~~[(2)]~~ (3) Employing any person to solicit patients for
- 6 one's self;
- 7 ~~[(3)]~~ (4) Engaging in false, fraudulent, or deceptive
- 8 advertising, including but not limited to:
- 9 (A) Making excessive claims of expertise in one or
- 10 more medical specialty fields;
- 11 (B) Assuring a permanent cure for an incurable
- 12 disease; or
- 13 (C) Making any untruthful and improbable statement in
- 14 advertising one's medical or surgical practice or
- 15 business;
- 16 ~~[(4)]~~ (5) Being habituated to the excessive use of drugs or
- 17 alcohol; or being addicted to, dependent on, or a
- 18 habitual user of a narcotic, barbiturate, amphetamine,
- 19 hallucinogen, or other drug having similar effects;



- 1 [~~(5)~~] (6) Practicing medicine while the ability to practice
2 is impaired by alcohol, drugs, physical disability, or
3 mental instability;
- 4 [~~(6)~~] (7) Procuring a license through fraud,
5 misrepresentation, or deceit, or knowingly permitting
6 an unlicensed person to perform activities requiring a
7 license;
- 8 [~~(7)~~] (8) Professional misconduct, hazardous negligence
9 causing bodily injury to another, or manifest
10 incapacity in the practice of medicine or surgery;
- 11 [~~(8)~~] (9) Incompetence or multiple instances of negligence,
12 including but not limited to the consistent use of
13 medical service, which is inappropriate or
14 unnecessary;
- 15 [~~(9)~~] (10) Conduct or practice contrary to recognized
16 standards of ethics of the medical profession as
17 adopted by the Hawaii Medical Association, the
18 American Medical Association, the Hawaii Association
19 of Osteopathic Physicians and Surgeons, or the
20 American Osteopathic Association;



- 1 [~~(10)~~] (11) Violation of the conditions or limitations upon
2 which a limited or temporary license is issued;
- 3 [~~(11)~~] (12) Revocation, suspension, or other disciplinary
4 action by another state or federal agency of a
5 license, certificate, or medical privilege for reasons
6 as provided in this section;
- 7 [~~(12)~~] (13) Conviction, whether by nolo contendere or
8 otherwise, of a penal offense substantially related to
9 the qualifications, functions, or duties of a
10 physician or osteopathic physician, notwithstanding
11 any statutory provision to the contrary;
- 12 [~~(13)~~] (14) Violation of chapter 329, the uniform controlled
13 substances act, or any rule adopted thereunder except
14 as provided in section 329-122;
- 15 [~~(14)~~] (15) Failure to report to the board, in writing, any
16 disciplinary decision issued against the licensee or
17 the applicant in another jurisdiction within thirty
18 days after the disciplinary decision is issued; or
- 19 [~~(15)~~] (16) Submitting to or filing with the board any
20 notice, statement, or other document required under



1 this chapter, which is false or untrue or contains any
2 material misstatement or omission of fact."

3 SECTION 6. Section 455-11, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "**§455-11. Discipline; grounds; proceedings; hearings.** (a)

6 In addition to any other actions authorized by law, the board
7 shall have the power to deny, revoke, suspend, or refuse to
8 renew any license to practice naturopathic medicine applied for
9 or issued by the board in accordance with this chapter, and to
10 fine or otherwise discipline a licensee for any cause authorized
11 by law, including but not limited to the following:

12 (1) Failing to meet or maintain the conditions and
13 requirements necessary to qualify for the issuance of
14 a license;

15 (2) Failing to comply with the requirements of the born
16 alive infant protection act, chapter .

17 ~~[-2-]~~ (3) Procuring, or aiding or abetting in procuring, a
18 criminal abortion;

19 ~~[-3-]~~ (4) Employing any person to solicit patients;

20 ~~[-4-]~~ (5) Obtaining a fee on the assurance that a
21 manifestly incurable disease can be permanently cured;



- 1 ~~[(5)]~~ (6) Betraying a patient's confidence;
- 2 ~~[(6)]~~ (7) Making any untruthful and improbable statement in
3 advertising one's naturopathic practice or business;
- 4 ~~[(7)]~~ (8) False, fraudulent, or deceptive advertising;
- 5 ~~[(8)]~~ (9) Being habituated to the excessive use of drugs or
6 alcohol; or being addicted to, dependent on, or an
7 habitual user of a narcotic, barbiturate, amphetamine,
8 hallucinogen, or other drug having similar effects;
- 9 ~~[(9)]~~ (10) Practicing naturopathic medicine while the
10 ability to practice is impaired by alcohol, drug,
11 physical disability, or mental instability;
- 12 ~~[(10)]~~ (11) Procuring a license through fraud,
13 misrepresentation, or deceit or knowingly permitting
14 an unlicensed person to perform activities requiring a
15 license;
- 16 ~~[(11)]~~ (12) Professional misconduct or gross carelessness or
17 manifest incapacity in the practice of naturopathic
18 medicine;
- 19 ~~[(12)]~~ (13) Conduct or practice contrary to recognized
20 standard of ethics of the naturopathic profession;



- 1 ~~[(13)]~~ (14) Using medical service or treatment which is
2 inappropriate or unnecessary;
- 3 ~~[(14)]~~ (15) Submitting to or filing with the board any
4 notice, statement, or other document required under
5 this chapter which is false or untrue or contains any
6 material misstatement of fact, including any false
7 certification of compliance with the continuing
8 education requirement specified under section 455-8;
- 9 ~~[(15)]~~ (16) Failure to report to the board any disciplinary
10 action taken against the licensee in another
11 jurisdiction within thirty days after the disciplinary
12 action becomes final;
- 13 ~~[(16)]~~ (17) Using the title "physician" without clearly
14 identifying oneself as being a naturopathic physician;
- 15 ~~[(17)]~~ (18) Prescribing, administering, and dispensing
16 naturopathic formulary that are not included in the
17 formulary established by the board under section 455-
18 6; and
- 19 ~~[(18)]~~ (19) Violation of any provision of this chapter or
20 rules adopted under this chapter."



1 SECTION 7. Section 709-901, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§709-901 **Concealing the corpse of an infant.** (1) A
4 person commits the offense of concealing the corpse of an infant
5 if the person conceals the corpse of a new-born child with
6 intent to conceal the fact of its birth or to prevent a
7 determination of whether it was born dead or alive.

8 (2) An attempted abortion that results in a live birth
9 under chapter shall be considered a new-born child under this
10 section.

11 [~~2~~] (3) Concealing the corpse of an infant is a
12 misdemeanor."

13 SECTION 8. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 9. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 10. This Act shall take effect on July 1, 2015.

19 INTRODUCED BY: A. Juppola
20 Richard...
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H.B. NO. 1444

Report Title:

Born Alive Infant; Abortion; Penalties

Description:

Ensures the protection and promotion of the health and well-being of all infants born alive the State. Mandates medically appropriate and reasonable life-saving and life-sustaining medical care and treatment to all born alive infants. Provides criminal penalties.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

