

JAN 17 2020

A BILL FOR AN ACT

RELATING TO LIMITED SERVICE PREGNANCY CENTERS.

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

1 SECTION 1. The legislature finds that Act 200, Session
2 Laws of Hawaii 2017 (Act 200), required that limited service
3 pregnancy centers distribute information relating to
4 comprehensive family planning services, including services not
5 offered by the limited service pregnancy center, to their
6 clients or patients. Act 200 was subsequently codified as
7 sections 321-561 and 321-562, Hawaii Revised Statutes.

8 The legislature further finds that, in *Calvary Chapel Pearl*
9 *Harbor v. Suzuki*, Civil Action No. 17-00326-DKW-KSC (2018), the
10 United States District Court for the District of Hawaii declared
11 section 321-561(b) and (c), Hawaii Revised Statutes, to be
12 unconstitutional in light of the Supreme Court of the United
13 States decision in *National Institute of Family and Life*
14 *Advocates v. Becerra*, 138 S.Ct. 2361 (2018), and issued a
15 permanent injunction against enforcement of that section.

16 Accordingly, the purpose of this Act is to repeal sections
17 321-561 and 321-562, Hawaii Revised Statutes.



1 SECTION 2. Section 321-561, Hawaii Revised Statutes, is
2 repealed.

3 ~~["§321-561] Limited service pregnancy centers; notice of~~
4 ~~reproductive health services. (a) For purposes of this~~
5 ~~section, "limited service pregnancy center" or "center":~~

6 ~~(1) Means a facility that:~~

7 ~~(A) Advertises or solicits clients or patients with~~
8 ~~offers to provide prenatal sonography, pregnancy~~
9 ~~tests, or pregnancy options counseling;~~

10 ~~(B) Collects health information from clients or~~
11 ~~patients; and~~

12 ~~(C) Provides family planning or pregnancy-related~~
13 ~~services, including but not limited to obstetric~~
14 ~~ultrasound, obstetric sonogram, pregnancy~~
15 ~~testing, pregnancy diagnosis, reproductive health~~
16 ~~counseling, or prenatal care; and~~

17 ~~(2) Shall not include a health care facility. For the~~
18 ~~purposes of this paragraph, a "health care facility"~~
19 ~~means any facility designed to provide comprehensive~~
20 ~~health care, including but not limited to hospitals~~
21 ~~licensed pursuant to chapter 321, intermediate care~~



1 ~~facilities, organized ambulatory health care~~
2 ~~facilities, emergency care facilities and centers,~~
3 ~~health maintenance organizations, federally qualified~~
4 ~~health centers, and other facilities providing~~
5 ~~similarly organized comprehensive health care~~
6 ~~services.~~

7 ~~(b) Every limited service pregnancy center in the State~~
8 ~~shall disseminate on site to clients or patients the following~~
9 ~~written notice in English or another language requested by a~~
10 ~~client or patient.~~

11 ~~"Hawaii has public programs that provide immediate free or~~
12 ~~low cost access to comprehensive family planning services,~~
13 ~~including, but not limited to, all FDA approved methods of~~
14 ~~contraception and pregnancy related services for eligible women.~~

15 ~~To apply online for medical insurance coverage, that will~~
16 ~~cover the full range of family planning and prenatal care~~
17 ~~services, go to mybenefits.hawaii.gov.~~

18 ~~Only ultrasounds performed by qualified health care~~
19 ~~professionals and read by licensed clinicians should be~~
20 ~~considered medically accurate."~~



1 ~~The notice shall contain the internet address for online~~
2 ~~medical assistance applications and the statewide phone number~~
3 ~~for medical assistance applications.~~

4 ~~(c) The information required by subsection (b) shall be~~
5 ~~disclosed in at least one of the following ways:~~

6 ~~(1) A public notice on a sign sized at least eight and~~
7 ~~one half inches by eleven inches, written in no less~~
8 ~~than twenty two point type, and posted in a clear and~~
9 ~~conspicuous place within the center's waiting area so~~
10 ~~that it may be easily read by individuals seeking~~
11 ~~services from the center; or~~

12 ~~(2) A printed or digital notice written or rendered in no~~
13 ~~less than fourteen point type that is distributed~~
14 ~~individually to each patient or client at the time of~~
15 ~~check in for services; provided that a printed notice~~
16 ~~shall be available to all individuals who cannot or do~~
17 ~~not wish to receive the notice in a digital format.~~

18 ~~(d) No limited service pregnancy center that collects~~
19 ~~health information from any individual seeking or receiving its~~
20 ~~services shall disclose any individually identifiable health~~
21 ~~information to any other person, entity, or organization without~~



1 ~~express written authorization from the subject individual. Any~~
2 ~~disclosure made under this section shall be limited by the~~
3 ~~express terms of the written authorization and all applicable~~
4 ~~state and federal laws and regulations, including the federal~~
5 ~~Health Insurance Portability and Accountability Act of 1996 and~~
6 ~~title 45 Code of Federal Regulations part 164.~~

7 ~~(e) A limited service pregnancy center that provides or~~
8 ~~assists in the provision of pregnancy testing shall provide the~~
9 ~~individual tested with a free written statement of the results~~
10 ~~of the pregnancy test in English or another language requested~~
11 ~~by a client or patient immediately after the test is completed.~~

12 ~~(f) Upon receipt of a written request from an individual~~
13 ~~to examine or copy all or part of the individual's recorded~~
14 ~~health information or other information retained by a limited~~
15 ~~service pregnancy center, the center shall, promptly as required~~
16 ~~under the circumstances but in no case later than fifteen~~
17 ~~working days after receiving the request.~~

18 ~~(1) Make the information available for examination by the~~
19 ~~individual during regular business hours,~~

20 ~~(2) Provide a free copy to the individual, if requested,~~



- 1 ~~(3) Inform the individual if the information does not~~
- 2 ~~exist or cannot be found; and~~
- 3 ~~(4) If the center does not maintain the record or~~
- 4 ~~information, inform the individual of that fact and~~
- 5 ~~provide the name and address of the entity that~~
- 6 ~~maintains the record or information."]~~

7 SECTION 3. Section 321-562, Hawaii Revised Statutes, is

8 repealed.

9 ~~"[§321-562] Limited service pregnancy centers;~~

10 ~~enforcement; private right of action. (a) A limited service~~

11 ~~pregnancy center that violates section 321-561 shall be liable~~

12 ~~for a civil penalty of \$500 for a first offense and \$1,000 for~~

13 ~~each subsequent offense. If the center is provided with~~

14 ~~reasonable notice of noncompliance, which informs the center~~

15 ~~that it is subject to a civil penalty if it does not correct the~~

16 ~~violation within thirty days from the date the notice is sent to~~

17 ~~the center, and the violation is not corrected as of the~~

18 ~~expiration of the thirty day notice period, the attorney general~~

19 ~~may bring an action in the district court of the district in~~

20 ~~which the center is located to enforce this section.~~



1 ~~A civil penalty imposed pursuant to this subsection shall~~
2 ~~be deposited to the credit of the general fund.~~

3 ~~(b) Any person who is aggrieved by a limited service~~
4 ~~pregnancy center's violation of section 321-561 may bring a~~
5 ~~civil action against the limited service pregnancy center in the~~
6 ~~district court of the district in which the center is located to~~
7 ~~enjoin further violations and to recover actual damages~~
8 ~~sustained together with the costs of the suit including~~
9 ~~reasonable attorneys' fees. The court may, in its discretion,~~
10 ~~increase the award of damages to an amount not to exceed three~~
11 ~~times the actual damages sustained. If damages are awarded~~
12 ~~pursuant to this subsection, the court may, in its discretion,~~
13 ~~impose on a liable center a civil fine of not more than \$1,000~~
14 ~~to be paid to the plaintiff.~~

15 ~~A party seeking civil damages under this subsection may~~
16 ~~recover upon proof of a violation by a preponderance of the~~
17 ~~evidence.~~

18 ~~For the purposes of this subsection, "person" includes a~~
19 ~~natural or legal person.~~

20 ~~(c) The enforcement procedure and remedies provided by~~
21 ~~this section shall be in addition to any other procedure or~~



1 ~~remedy that may be available to the State or a person aggrieved~~
2 ~~by a violation of this chapter.~~

3 ~~(d) This section and section 321-561 are not intended to~~
4 ~~require regulation or oversight of limited service pregnancy~~
5 ~~centers by the department of health."]~~

6 SECTION 4. Statutory material to be repealed is bracketed
7 and stricken.

8 SECTION 5. This Act shall take effect upon its approval.

9

INTRODUCED BY: Breene Hunt
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S.B. NO. 2394

Report Title:

Limited Service Pregnancy Centers; Notice of Reproductive Health Services; Repeal

Description:

Repeals sections 321-561 and 321-562, Hawaii Revised Statutes.

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

