

STAND. COM. REP. NO. 651

Honolulu, Hawaii

FEB 17 2023

RE: S.B. No. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2023
State of Hawaii

Sir:

Your Committees on Health and Human Services and Commerce and Consumer Protection, to which was referred S.B. No. 1 entitled:

"A BILL FOR AN ACT RELATING TO HEALTH CARE,"

beg leave to report as follows:

The purpose and intent of this measure is to amend state law governing the intentional termination of pregnancy by:

- (1) Authorizing licensed physician assistants to perform certain abortions;
- (2) Repealing the requirement that abortions be performed in a hospital licensed by the Department of Health or operated by the federal government or an agency thereof, a clinic, or an office of a physician or osteopathic physician;
- (3) Declaring that a law of another state that authorizes a person to bring a civil action against a person who terminates or seeks to terminate a pregnancy; performs or induces the termination of a pregnancy; knowingly engages in conduct that aids or abets the performance or inducement of the termination of a pregnancy; or attempts or intends to engage in these acts, is contrary to the public policy of the State and shall not be enforceable in, or afford any basis for the granting of



legal or equitable relief by, any court of the State;
and

- (4) Prohibiting the State from taking certain actions with regard to civil and criminal actions from another state, including issuance of and enforcement of summons, subpoenas, and investigations related to reproductive health care.

Your Committees received testimony in support of this measure from the Department of Human Services; Department of Health; Hawai'i Civil Rights Commission; Hawai'i State Commission on the Status of Women; two members of the Kaua'i County Council; Hawaii Medical Service Association; Healthcare Association of Hawaii; Hawai'i Friends of Civil Rights; Stonewall Caucus of the Democratic Party of Hawai'i; Planned Parenthood Alliance Advocates - Hawai'i; Save Medicaid Hawaii; Rainbow Family 808.com Inc.; Hawai'i Academy of Physician Assistants; American Association of University Women (AAUW) of Hawaii; Pride at Work Hawai'i; Democratic Party of Hawai'i Women's Caucus; Hawai'i Association of Professional Nurses; Americans for Democratic Action Hawai'i; Hawai'i Section of the American College of Obstetricians and Gynecologists; Hawaii Association of Health Plans; Hawaii State Coalition Against Domestic Violence; and sixty-nine individuals. Your Committees received testimony in opposition to this measure from the Hawaii Family Forum; Ka'u Wellness LLC; and sixty-one individuals. Your Committees received comments on this measure from the Department of the Attorney General, Hawaii Medical Board, Hawai'i Women Lawyers and one individual.

Your Committees find that Hawaii has been and remains at the forefront of efforts to protect the right to privacy and personal autonomy independently of, and more broadly than, the United States Constitution. This is evidenced by the State being the first in the nation to decriminalize abortion through its enactment of Act 1, Session Laws of Hawaii 1970, codified at section 453-16, Hawaii Revised Statutes. Your Committees further find that the Hawaii State Constitution was amended in 1978 to include a separate and distinct section that recognizes the people's right to privacy and requires the Legislature to take affirmative steps to implement this right. In recognition of this fundamental right, existing state law 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 that is necessary to protect the life or health of the female.

Additionally, your Committees find that while Hawaii has been a long-time leader in protecting reproductive health care rights, your Committees find that the landscape in the remainder of the country is rapidly changing. In *Dobbs v. Jackson Women's Health Org.*, 142 S.Ct. 2228 (2022), the Supreme Court of the United States overruled nearly fifty years of precedent regarding reproductive rights and bodily autonomy, including *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), by holding that the United States Constitution does not provide a right to abortion and that the authority to regulate abortion must be returned to the people and their elected representatives. In response to *Dobbs*, an increasing number of states have enacted laws that ban abortion or severely restrict access thereto, including laws allowing enforcement through private, civil lawsuits. In addition, lawmakers in conservative states have threatened to pass laws that would reach across state lines and seek to penalize health care providers in other states who provided abortion-related care to their residents. These laws aim to restrict the residents of those states from not only accessing basic health care in their own state, but also from traveling to any other state to obtain abortion care. This measure declares that such laws and policies are contrary to the public policy of this State and are not enforceable in this State.

In recognition of these important issues, your Committees held a public hearing on this measure on February 1, 2023, and announced various amendments to this measure. However, in further consideration of the testimony provided by the people of the State, your Committees subsequently conferred to reconsider their previous decision and decided to make additional amendments to this measure. Due to the substantive nature of the additional amendments, your Committees held a public hearing on this measure on February 14, 2023, to announce the additional amendments to ensure compliance with the Hawaii State Constitution requirement that a bill pass three readings in each chamber of the Legislature before becoming law.



Additionally, your Committees find that S.B. No. 896, as amended by your Committees on February 1, 2023 (S.B. No. 896, S.D. 1), clearly articulates the State's well-established history of supporting the right to abortion in the preamble of that measure, in addition to providing more detailed, comprehensive protections against any civil and criminal anti-abortion laws of other states compared to this measure, as currently written. Therefore, in addition to the amendments announced at your Committees' hearing on February 1, 2023, additional amendments to this measure are necessary to address these concerns and incorporate the contents of S.B. No. 896, S.D.1, to further strengthen this measure.

Accordingly, it is the intent of your Committees that this measure, as amended, will reverse and prevent the potential impacts that the *Dobbs* decision may have on the State and return Hawaii to the state of affairs prior to the overruling of *Roe* by the Supreme Court of the United States. Additionally, your Committees note the importance of maintaining a clean effective date to ensure the protections of this measure may apply immediately upon its approval.

Your Committees also acknowledge the concerns raised in testimony on February 1, 2023, pertaining to the rights of minors to consent to the provision of surgery or any treatment to induce abortion and your Committees find that there is a need to further amend this measure to reflect these additional findings. Moreover, to provide additional protections for advanced practice registered nurses, as was intended, your Committees find that certain portions of S.B. No. 890, Regular Session of 2023, should also be incorporated into this measure.

Finally, your Committees acknowledge testimony from the Hawaii Medical Board requesting that your Committees consider ensuring that physician assistants who perform abortions are authorized agents of their supervising physicians or physician group who have been authorized or delegated by the supervising physicians or physician group to perform the abortions. Your Committees note testimony stating that physician assistants are, by their scope of practice, already required to be under the supervision of physicians, and therefore, the Hawaii Medical Board's concern is already taken into account by statute.



Accordingly, pursuant to the amendments announced at the hearing conducted on February 1, 2023, as further amended at the hearing on February 14, 2023, your Committees have collectively amended this measure by:

- (1) Inserting the contents of section 1 of S.B. No. 896, S.D. 1, as section 1 of this measure, and amending it further to reflect this measure's amended purposes;
- (2) Clarifying that a patient has the right to choose to obtain an abortion, or to terminate a pregnancy if the termination is necessary to protect the life or health of the patient, and the State shall not deny or interfere with these rights;
- (3) Deleting language that would have provided protection to people who receive or perform abortions in the State against legal actions imposed by other states with restrictive abortion laws;
- (4) Deleting language that would have prohibited the State from engaging in certain actions with regard to civil and criminal actions from another state, including issuance of and enforcement of summons, subpoenas, and investigations related to reproductive health care;
- (5) Defining "nonviable fetus" as fetus that does not have a reasonable likelihood of sustained survival outside of the uterus;
- (6) Inserting the contents of section 3 of S.B. No. 890, Regular Session of 2023, which further clarifies that advanced practice registered nurses may provide abortion care;
- (7) Inserting the contents of sections 2 through 11 of S.B. No. 896, S.D. 1, which:
 - (A) Prohibits a covered entity from disclosing communication or information relating to reproductive health care services;



- (B) Prohibits the issuance of a subpoena in connection with an out-of-state proceeding relating to reproductive health care services legally performed in the State;
 - (C) Prohibits agencies from providing information or expending resources in the furtherance of interstate investigations or proceedings relating to reproductive health care services;
 - (D) Prohibits the State from penalizing, prosecuting, or otherwise taking adverse action based on pregnancy outcomes or aiding or assisting a pregnant individual with accessing reproductive health care services;
 - (E) Requires the Governor to deny any demand for surrender of a person charged with a crime involving reproductive health care services unless the conduct constitutes a crime in the State;
 - (F) Enumerates laws contrary to public policy and prohibits their application as rules of decision in the courts;
 - (G) Prohibits the issuance of a summons for persons to testify in another state with regard to lawful reproductive health care services;
 - (H) Clarifies under various licensing statutes that the provision or assistance in receipt or provision of medical, surgical, pharmaceutical, counseling, or referral services related to the human reproductive system cannot form a basis for disciplinary action; and
 - (I) Prohibits the enforcement of a judgment or order arising from a foreign penal civil action or other penal law with respect to reproductive health care services;
- (8) Inserting language that amends the definition of "medical care and services" that a minor aged fourteen



through seventeen inclusive, may consent to receive without any other person's consent to include surgery and any treatment to induce an abortion;

- (9) Making it effective upon its approval; and
- (10) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Health and Human Services and Commerce and Consumer Protection that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committees on Health and Human
Services and Commerce and
Consumer Protection,



JARRETT KEOHOKALOLE, Chair




JOY A. SAN BUENAVENTURA, Chair



The Senate
 Thirty-Second Legislature
 State of Hawai'i

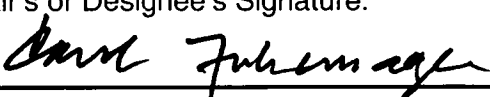
Record of Votes
Committee on Health and Human Services
HHS

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 1	HHS/CPN, JDC	02/14/23		
<input checked="" type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: <u>PASS w/ AMEND.</u>				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
SAN BUENAVENTURA, Joy A. (C)	✓			
AQUINO, Henry J.C. (VC)	✓			
MORIWAKI, Sharon Y.	✓			
SHIMABUKURO, Maile S.L.				✓
AWA, Brenton			✓	
TOTAL	3		1	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

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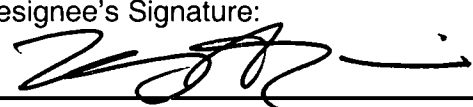
Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* SB 1	Committee Referral: HHS/CPN, JDC	Date: 2/14/23		
<input checked="" type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: <u>pass with amendments</u>				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEOHOKALOLE, Jarrett (C)	✓			
FUKUNAGA, Carol (VC)	✓			
MCKELVEY, Angus L.K.				✓
RICHARDS, III, Herbert M. "Tim"	✓			
AWA, Brenton			✓	
TOTAL	3	0	1	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

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 Thirty-Second Legislature
 State of Hawai'i

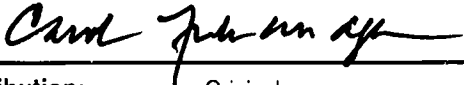
Record of Votes
Committee on Health and Human Services
HHS

Bill / Resolution No.:*	Committee Referral:	Date:		
SBI	HHS/CPN, JDC	02/01/23		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
SAN BUENAVENTURA, Joy A. (C)	✓			
AQUINO, Henry J.C. (VC)	✓			
MORIWAKI, Sharon Y.	✓			
SHIMABUKURO, Maile S.L.	✓			
AWA, Brenton			✓	
TOTAL	4		1	
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
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The Senate
Thirty-Second Legislature
State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:* SB1	Committee Referral: HHS/CPN, JDC	Date: 2/1/23		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEOHOKALOLE, Jarrett (C)	✓			
FUKUNAGA, Carol (VC)	✓			
MCKELVEY, Angus L.K.	✓			
RICHARDS, III, Herbert M. "Tim"				✓
AWA, Brenton			✓	
TOTAL	3	0	1	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
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