
A BILL FOR AN ACT

RELATING TO ABORTION.

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

1 SECTION 1. This Act shall be known and may be cited as the
2 Women's Rights Bill.

3 SECTION 2. The legislature finds that all lives matter.
4 According to contemporary medical research, a fetal heartbeat
5 has become a key medical predictor that an unborn child will
6 reach live birth, and that cardiac activity begins at a
7 biologically identifiable moment in time, typically when the
8 fetal heart is formed in the gestational sac.

9 The legislature further finds that Hawaii has a compelling
10 interest from the outset of a woman's pregnancy in protecting
11 the health of the woman and the life of the unborn child. In
12 order to make an informed choice about whether to continue her
13 pregnancy, the pregnant woman has a compelling interest in
14 knowing the likelihood of her unborn child surviving to full-
15 term birth based on the presence of cardiac activity.

16 The purpose of this Act is to protect the life of unborn
17 babies once a fetal heartbeat is detected, and to limit



1 abortions to have access to abortions for cases of rape, incest,
2 and when the life of the mother is in danger.

3 SECTION 3. The Hawaii Revised Statutes is amended by adding
4 a new chapter to be appropriately designated and to read as
5 follows:

6 "CHAPTER

7 HEARTBEAT DETECTION ABORTION BAN

8 PART I. GENERAL PROVISIONS

9 § -1 **Definitions.** As used in this chapter, unless the
10 context indicates otherwise:

11 "Fetal heartbeat" means cardiac activity or the steady and
12 repetitive rhythmic contraction of the fetal heart within the
13 gestational sac.

14 "Gestational age" means the amount of time that has elapsed
15 from the first day of a woman's last menstrual period.

16 "Gestational sac" means the structure comprising the
17 extraembryonic membranes that envelop the unborn child and that
18 is typically visible by ultrasound after the fourth week of
19 pregnancy.



1 "Physician" means an individual licensed to practice
2 medicine in this state, including a medical doctor and a doctor
3 of osteopathic medicine.

4 "Pregnancy" means the human female reproductive condition
5 that:

6 (1) Begins with fertilization;

7 (2) Occurs when the woman is carrying the developing human
8 offspring; and

9 (3) Is calculated from the first day of the woman's last
10 menstrual period.

11 "Standard medical practice" means the degree of skill,
12 care, and diligence that an obstetrician of ordinary judgment,
13 learning, and skill would employ in like circumstances.

14 "Unborn child" means a human fetus or embryo in any stage
15 gestation from fertilization until birth.

16 § -2 **General provisions.** Notwithstanding any law to the
17 contrary, it shall be unlawful for any physician to perform an
18 abortion or attempt to do so, unless in conformity with this
19 chapter.

20 **PART II. ABORTIONS OF UNBORN CHILDREN WHERE A FETAL HEARTBEAT**
21 **IS DETECTED**



1 § -11 **Assessment of post-fertilization age.** (a) A
2 physician performing or attempting an abortion shall first
3 determine the probable post-fertilization age of the unborn child
4 or reasonably rely upon a determination made by another physician.
5 In making that determination, the physician shall make inquiries
6 of the pregnant woman and perform or cause to be performed medical
7 examinations and tests that a reasonably prudent physician,
8 knowledgeable about the case and the medical conditions involved,
9 would consider necessary to make an accurate determination of post-
10 fertilization age.

11 (b) If the probable post-fertilization age of the unborn
12 child is at fifteen weeks, the child shall be considered an
13 unborn child with a fetal heartbeat.

14 § -12 **Prohibition of abortion of unborn children when a**
15 **heartbeat is detected; exceptions.** (a) Except as provided in
16 subsection (b), an abortion shall not be performed or attempted
17 if, as determined pursuant to the assessment performed under
18 section -11, the unborn child has a fetal heartbeat.

19 (b) Subsection (a) shall not apply if:

20 (1) In reasonable medical judgment, the abortion is
21 necessary to save the life of a pregnant woman whose



1 life is endangered by a physical disorder, physical
2 illness, or physical injury, including a life-
3 endangering physical condition caused by or arising
4 from the pregnancy itself, but not including
5 psychological or emotional conditions;

6 (2) The pregnancy is the result of rape against an adult
7 woman who, at least forty-eight hours before the
8 abortion, has obtained:

9 (A) Counseling for the rape; or

10 (B) Medical treatment for the rape or for an injury
11 related to the rape;

12 (3) The pregnancy is the result of rape against an adult
13 woman and the rape has been reported at any time
14 before the abortion to a law enforcement agency; or

15 (4) The pregnancy is a result of rape against a minor or
16 incest against a minor, and the rape or incest has
17 been reported at any time before the abortion to any:

18 (A) Government agency authorized to act on reports of
19 child abuse; or

20 (B) Law enforcement agency;



1 provided that the unborn child is sedated or aborted before any
2 dismemberment of the child's body is made.

3 **§ -13 Requirement as to manner of procedure performed.**

4 Notwithstanding the definitions of "abortion" and "attempt" in
5 section -1, a physician terminating or attempting to
6 terminate a pregnancy pursuant to an exception provided under
7 section -12(b) may do so only in a manner that, in reasonable
8 medical judgment, provides the best opportunity for the unborn
9 child to survive.

10 **§ -14 Documentation requirements.** (a) A physician who
11 performs or attempts to perform an abortion on an adult woman
12 pursuant to an exception provided by section -12(b)(2) shall,
13 before the abortion, place in the patient medical file
14 documentation from a:

- 15 (1) Hospital licensed by the State or operated under
16 authority of a federal agency;
- 17 (2) Medical clinic licensed by the State or operated under
18 authority of a federal agency;
- 19 (3) Personal physician licensed by the State;
- 20 (4) Counselor licensed by the State; or



1 (5) Victim's rights advocate provided by a law enforcement
2 agency,

3 that the adult woman seeking the abortion obtained medical
4 treatment or counseling for the rape or for an injury related to
5 the rape.

6 (b) A physician who performs or attempts to perform an
7 abortion on an adult woman pursuant to an exception provided by
8 section -12(b)(3) shall, before the abortion, place in the
9 patient medical file documentation from the law enforcement
10 agency to which the rape was reported.

11 (c) A physician who performs or attempts to perform an
12 abortion on a minor pursuant to an exception provided under
13 section -12(b)(4) shall, before the abortion, place in the
14 patient medical file documentation from the government agency or
15 law enforcement agency to which the rape or incest of the minor
16 was reported.

17 (d) Section 622-58 shall apply to the documentation
18 required under this section.

19 § -15 **Informed consent.** (a) A physician who intends to
20 perform or attempt to perform an abortion of a pain-capable
21 unborn child under the provisions of section -12(b) shall not



1 commence the abortion procedure without first providing the
2 woman seeking the abortion a disclosure form that shall include:

3 (1) A statement by the physician indicating the probable
4 post-fertilization age of the unborn child;

5 (2) A statement by the physician that the unborn child,
6 due to the child's stage of development at that post-
7 fertilization age, has a fetal heartbeat;

8 (3) A statement that state law authorizes an abortion
9 after fifteen weeks fetal age only if the mother's
10 life is endangered by a physical disorder, physical
11 illness, or physical injury, when the pregnancy was
12 the result of rape, or an act of incest against a
13 minor;

14 (4) A statement that the abortion must be performed by the
15 method most likely to allow the child to be born alive
16 unless this would cause significant risk to the
17 mother; and

18 (5) A statement that these requirements are binding upon
19 the physician and all other medical personnel who are
20 subject to criminal and civil penalties, and that a



1 woman on whom an abortion has been performed may take
2 civil action if these requirements are not followed.

3 (b) The abortion disclosure form shall be signed in person
4 by the woman seeking the abortion, who shall indicate whether or
5 not she understands the contents of the form. If she does not
6 understand the contents of the form, the abortion shall not be
7 performed, unless the exception under section -16 applies.
8 The physician performing the abortion and a witness shall also
9 sign the form. The physician shall maintain the form in the
10 patient's medical file.

11 (c) Section 622-58 shall apply to the form required under
12 this section.

13 § -16 **Additional exception.** If, in reasonable medical
14 judgement, compliance with section -13, section -15, or
15 both, would pose a greater risk of:

- 16 (1) The death of the pregnant woman; or
17 (2) The substantial and irreversible physical impairment
18 of a major bodily function, not including
19 psychological or emotional conditions, of the pregnant
20 woman,



1 the physician shall be exempt from section -13 or from
2 section -15, or both, to the extent necessary to avoid the
3 death or impairment.

4 § -17 **Exclusion of certain facilities.** Notwithstanding
5 the definitions of the terms "counseling" and "medical
6 treatment" in section -1, the counseling or medical treatment
7 provided by a facility that performs abortions shall not be
8 valid for the purposes of the exception provided under
9 section -12(b)(2), unless that facility is a hospital.

10 § -18 **Data collection.** (a) Any physician who performs
11 or attempts an abortion described in section -12(b)(2) shall
12 submit an annual summary of all those abortions to the
13 department of health not later than sixty days after the end of
14 each calendar year.

15 (b) Each annual summary shall include the number of
16 abortions performed or attempted on an unborn child who had a
17 post-fertilization age of fifteen weeks or more and specify the
18 following for each abortion performed or attempted pursuant to
19 exception under section -12(b)(2):

20 (1) The probable post-fertilization age of the unborn
21 child;



- 1 (2) The method used to carry out the abortion;
- 2 (3) The location where the abortion was conducted;
- 3 (4) The exception under section -12(b)(2) under which
- 4 the abortion was conducted; and
- 5 (5) Any incident of live birth that occurred in spite of
- 6 an attempted abortion.

7 (c) A summary required under this section shall not
8 contain personal identifying patient information and shall be
9 submitted in compliance with federal and state laws requiring
10 patient privacy.

11 (d) The department of health shall prepare an annual
12 report providing statistics for the most recently completed
13 fiscal year, compiled from all of the summaries made to the
14 department under this section. The department shall ensure that
15 none of the information included in the public reports could
16 reasonably lead to the identification of any pregnant woman upon
17 whom an abortion was performed or attempted. The annual report
18 shall be submitted to the legislature no later than twenty days
19 prior to the convening of each regular legislative session. The
20 department shall also make the report available to the general
21 public.



PART III. PENALTIES; REMEDIES

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§ -31 **Criminal penalties; bar to prosecution.** (a) A physician who violates part II, except section -18, shall be guilty of a class C felony.

(b) A physician who violates section -18 shall be guilty of a violation.

(c) A woman upon whom an abortion is performed may not be prosecuted for conspiracy in or as an accomplice to violating this chapter.

§ -32 **Civil remedies.** (a) A woman upon whom an abortion has been performed or attempted in violation of any provision of this chapter may, in a civil action against any person who committed the violation, obtain appropriate relief.

(b) A parent of a minor upon whom an abortion has been performed or attempted under an exception provided for in section -12(b)(3), and that was performed in violation of any provision of this chapter may, in a civil action against any person who committed the violation, obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct.



1 (c) Appropriate relief in a civil action under this
2 section includes:

3 (1) Objective verifiable money damages for all injuries,
4 psychological and physical, occasioned by the
5 violation;

6 (2) Damages up to three times the cost of the abortion or
7 attempted abortion;

8 (3) Punitive damages; and

9 (4) Other appropriate relief pursuant to applicable law.

10 (d) The court shall award reasonable attorney's fees as
11 part of the costs to a prevailing plaintiff in a civil action
12 under this section.

13 (e) If a defendant in a civil action under this section
14 prevails and the court finds that the plaintiff's suit was
15 frivolous, the court shall award reasonable attorney's fees in
16 favor of the defendant against the plaintiff.

17 (f) Except as provided in subsection (e), in a civil
18 action under this section, no damages, attorney's fees or other
19 monetary relief may be assessed against the woman upon whom the
20 abortion was performed or attempted."



1 SECTION 4. Section 453-16, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§453-16 Intentional termination of pregnancy; penalties;
4 refusal to perform.** (a) No abortion shall be performed in this
5 State unless:

6 (1) The abortion is performed by a licensed physician or
7 surgeon, or by a licensed osteopathic physician and
8 surgeon; ~~and~~

9 (2) The abortion is performed in a hospital licensed by
10 the department of health or operated by the federal
11 government or an agency thereof, or in a clinic or
12 physician's or osteopathic physician's office~~[-]; and~~

13 (3) The abortion complies with chapter _____.

14 (b) ~~[Abortion]~~ "Abortion" shall ~~[mean an operation to~~
15 ~~intentionally terminate the pregnancy of a nonviable fetus. The~~
16 ~~termination of a pregnancy of a viable fetus is not included in~~
17 ~~this section.]~~ have the same meaning as in section _____-1.

18 (c) The State shall not deny or interfere with a female's
19 right to choose or obtain an abortion ~~[of a nonviable fetus or~~
20 ~~an abortion]~~ that is necessary to protect the life ~~[or health]~~
21 of the female.



1 (d) Any person who knowingly violates subsection [~~a~~]
 2 (a) (1) or (2) shall be fined not more than \$1,000 or imprisoned
 3 not more than five years, or both. Any person who violates
 4 subsection (a) (3) shall be subject to the penalties established
 5 in chapter .

6 (e) Nothing in this section shall require any hospital or
 7 any person to participate in an abortion nor shall any hospital
 8 or any person be liable for a refusal."

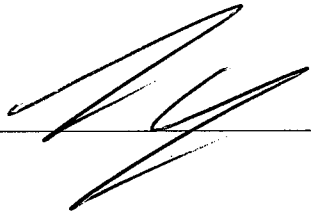
9 SECTION 3. This Act does not affect rights and duties that
 10 matured, penalties that were incurred, and proceedings that were
 11 begun before its effective date.

12 SECTION 4. Statutory material to be repealed is bracketed
 13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act shall take effect on July 1, 2023.

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INTRODUCED BY:



JAN 20 2023



H.B. NO. 685

Report Title:

Abortion; Fetal Heartbeat; Women's Rights Bill; Prohibitions, Exceptions

Description:

Prohibits the abortion of a fetus that contains a fetal heartbeat. Provides certain exceptions. Establishes penalties.

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