

JAN 15 2025

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# A BILL FOR AN ACT

RELATING TO CHILDREN.

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

1           SECTION 1. The legislature finds that the State has a  
2 paramount interest in protecting all human life. Any infant  
3 born alive, even after an attempted abortion, is a legal person  
4 for all purposes under the state and federal constitutions and  
5 other state and federal laws. The legislature also finds that,  
6 nationwide, more than six thousand abortions per year reportedly  
7 occur after twenty weeks of gestation, a time during which a  
8 fetus could be viable. While most states do not have reporting  
9 requirements for failed abortions, in Canada, four hundred and  
10 ninety-one cases were reported over a nine-year period where  
11 live births after attempted abortions resulted in subsequent  
12 neonatal deaths. Absent proper legal protection, newborns who  
13 unexpectedly survive an abortion may be denied life-saving or  
14 life-sustaining medical care and left to die.

15           The legislature further finds that protecting an infant  
16 whose live birth occurred despite an attempted abortion does not  
17 infringe on a woman's right to choose or to obtain an abortion



1 under existing state or federal laws. It similarly does not  
2 interfere with the ability of licensed health care professionals  
3 to provide legal abortions.

4 Accordingly, the purpose of this Act is to protect the life  
5 and well-being of all infants who survive abortion attempts in  
6 the State by:

7 (1) Requiring healthcare providers to provide medically  
8 appropriate and reasonable life-saving and  
9 life-sustaining medical treatment to all infants born  
10 alive; and

11 (2) Establishing penalties for failing to provide infants  
12 born alive with reasonable and appropriate medical  
13 care.

14 SECTION 2. The Hawaii Revised Statutes is amended by  
15 adding a new chapter to be appropriately designated and to read  
16 as follows:

17 **"CHAPTER**

18 **ABORTION SURVIVORS PROTECTION ACT**

19 § -1 **Definitions.** For purposes of this chapter, unless  
20 the context requires otherwise:



1 "Abortion" means the use or prescription of any instrument,  
2 machine, drug, or any other substance or device to  
3 intentionally:

4 (1) End the life of the unborn child of a woman known to  
5 be pregnant; or

6 (2) Terminate the pregnancy of a woman known to be  
7 pregnant, with an intention other than to:

8 (A) Produce a live birth and preserve the life and  
9 health of the child born alive after viability;  
10 or

11 (B) Remove a dead unborn child.

12 "Attempt" means, with respect to abortion, conduct that,  
13 under the circumstances as the actor believes them to be,  
14 constitutes a substantial step in the course of conduct planned  
15 to culminate in an abortion.

16 "Born alive" or "live birth" means the complete expulsion  
17 or extraction of a viable infant from the infant's mother,  
18 regardless of the infant's stage of gestational development, who  
19 after expulsion or extraction, whether or not the umbilical cord  
20 has been cut or the placenta is attached, shows evidence of  
21 life, including:



- 1 (1) Breathing;
- 2 (2) A heartbeat;
- 3 (3) Umbilical cord pulsations;
- 4 (4) Definite movement of voluntary muscles; or
- 5 (5) Any other evidence of life according to standard
- 6 medical practice.

7 "Consent" means the voluntary agreement or acquiescence by  
8 a person of age and with the requisite mental capacity who is  
9 not under duress or coercion and who has knowledge or  
10 understanding of the act or action to which the person agrees or  
11 acquiesces.

12 "Healthcare provider" means any person providing aid or  
13 assistance to a physician or nurse, or any person authorized to  
14 provide healthcare to the mother during an abortion.

15 "Infant" means a human child who has been completely  
16 expelled or extracted from the mother, regardless of the  
17 infant's stage of gestational development, until the age of  
18 thirty days post-birth.

19 "Nurse" means a person who has been or is currently  
20 licensed under chapter 457.

21 "Physician" means:



1 (1) A physician or surgeon licensed to practice medicine  
2 or osteopathy pursuant to chapter 453; or

3 (2) A person who is not a licensed physician or surgeon  
4 but directly performs or attempts to perform an  
5 abortion.

6 "Unborn child" means a human fetus, beginning at  
7 fertilization, until the point of being born alive.

8 § -2 **Requirements and responsibilities.** (a) No person  
9 shall deny or deprive an infant born alive of nourishment with  
10 the intent to cause or allow the death of the infant for any  
11 reason.

12 (b) No person shall deprive an infant born alive of  
13 medically appropriate and reasonable medical care and treatment  
14 or surgical care.

15 (c) This section shall not be construed to prohibit an  
16 infant's parent or guardian from refusing to consent to medical  
17 treatment or surgical care that is not medically necessary or  
18 reasonable, including care or treatment that:

19 (1) Is not necessary to save the life of the infant;



1           (2) Has a potential risk of harm to the infant's life or  
2           health that outweighs the potential benefit to the  
3           infant of the treatment or care; or

4           (3) Will do no more than temporarily prolong the act of  
5           dying, as in the case of a non-viable infant, when  
6           death is imminent.

7           (d) The physician performing an abortion shall take all  
8           medically appropriate and reasonable steps to preserve the life  
9           and health of an infant born alive. If an abortion is performed  
10          in a hospital but a live birth nevertheless occurs, the  
11          physician attending the abortion shall provide immediate medical  
12          care to the infant, inform the mother of the live birth, and  
13          request transfer of the infant to an on-duty resident or  
14          emergency care physician who shall provide medically appropriate  
15          and reasonable care and treatment to the infant.

16          (e) If a physician is unable to perform the duties  
17          described in subsection (d) because the physician is assisting  
18          the woman on whom the abortion was performed, the attending  
19          physician's assistant, a nurse, or other healthcare provider  
20          shall assume the duties.



1 (f) Any infant born alive, including an infant born during  
2 an abortion procedure, shall be treated as a legal person under  
3 the laws of this State, having all legal rights to medically  
4 appropriate and reasonable care and treatment.

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

11 (h) No person shall use, or authorize the use of, any  
12 infant born alive for any type of scientific research or medical  
13 experimentation, except as necessary to protect the life and  
14 health of the infant born alive.

15 (i) Any physician, nurse, healthcare provider, or employee  
16 of a hospital, physician's office, or clinic, who has knowledge  
17 of a person's failure to comply with this section shall  
18 immediately report the non-compliance to law enforcement.

19 § -3 **Criminal penalties.** (a) Any physician, nurse, or  
20 other healthcare provider who intentionally performs an overt



1 act that kills an infant born alive shall be guilty of the  
2 offense of murder in the second degree under section 707-701.5.

3 (b) Any physician, nurse, or other healthcare provider who  
4 recklessly fails to provide medically appropriate and reasonable  
5 care and treatment to an infant born alive where the infant dies  
6 as a result of that failure shall be guilty of the offense of  
7 manslaughter under section 707-702; provided that the other of  
8 an infant born alive may not be prosecuted for conspiracy in or  
9 as an accomplice to a violation of this subsection.

10 (c) Any physician, nurse, healthcare provider, or person,  
11 including a parent or guardian, who conceals the corpse of an  
12 infant with the intent to conceal the fact of the infant's birth  
13 or to prevent the determination of whether the infant was born  
14 alive or dead shall be guilty of the offense of concealing the  
15 corpse of any infant under section 709-901.

16 (d) Any physician, nurse, healthcare provider, or person,  
17 including a parent or guardian, who knowingly violates  
18 section -2(h) shall be fined not more than \$10,000 or  
19 imprisoned for not more than five years, or both.

20 § -4 **Civil action.** (a) If any infant is born alive and  
21 a physician, nurse, or healthcare provider violates





1 section -2(d), the woman upon whom the abortion was  
2 performed or attempted may obtain appropriate relief through a  
3 civil action against any person who committed the violation.

4 (b) Appropriate relief in a civil action under this  
5 section shall include:

6 (1) Objective, verifiable money damages associated with  
7 the violation of section -2(d);

8 (2) Damages of up to three times the cost of the abortion  
9 or attempted abortion or attempted abortion;

10 (3) Punitive damages; and

11 (4) Any other appropriate relief pursuant to applicable  
12 law.

13 (c) A criminal conviction under section -3 shall be  
14 admissible in a civil action as prima facie evidence of a  
15 failure to provide medically appropriate and reasonable care and  
16 treatment to an infant born alive.

17 (d) If a plaintiff prevails in a civil action under this  
18 section, the court shall award the plaintiff reasonable  
19 attorney's fees.

20 (e) If a defendant prevails in a civil action under this  
21 section and the court finds that the plaintiff's suit was



1 frivolous, the court shall award the defendant reasonable  
2 attorney's fees.

3 (f) Except as provided in subsection (e), no damages,  
4 attorney's fees, or other monetary relief may be assessed in a  
5 civil action under this section against the woman upon whom the  
6 abortion was performed.

7 § -5 **Professional disciplinary action.** Failure to  
8 comply with this chapter shall provide the basis for  
9 professional disciplinary action under chapters 453 and 457,  
10 including the suspension or revocation of the professional  
11 license of a physician, licensed nurse, registered nurse, or  
12 other licensed or regulated persons. Any person criminally  
13 convicted of a failure to comply with the requirements of this  
14 chapter shall automatically have the person's license suspended  
15 for a period of no less than one year.

16 § -6 **Construction.** Nothing in this chapter shall be  
17 construed to:

18 (1) Affirm, deny, expand, or contract any legal status or  
19 legal right applicable to natural persons at any point  
20 before the person is born alive;



- 1           (2) Affect existing state or federal laws regarding
- 2           abortion;
- 3           (3) Restrict a woman's right to obtain an abortion
- 4           pursuant to applicable law;
- 5           (4) Restrict the ability of any licensed physician, nurse,
- 6           or healthcare provider to perform an abortion in
- 7           accordance with applicable law;
- 8           (5) Create or recognize a right to abortion; or
- 9           (6) Alter generally accepted medical standards."

10           SECTION 3. Section 453-8, Hawaii Revised Statutes, is  
11 amended by amending subsection (a) to read as follows:

12           "(a) In addition to any other actions authorized by law,  
13 any license to practice medicine and surgery may be revoked,  
14 limited, or suspended by the board at any time in a proceeding  
15 before the board, or may be denied, for any cause authorized by  
16 law, including but not limited to the following:

- 17           (1) Procuring, or aiding or abetting in procuring, an
- 18           abortion that is unlawful under the laws of this State
- 19           or that would be unlawful under the laws of this State
- 20           if performed within this State;
- 21           (2) Failure to comply with chapter \_\_\_\_\_ ;



- 1        ~~[(2)]~~ (3)    Employing any person to solicit patients for  
2                          one's self;
- 3        ~~[(3)]~~ (4)    Engaging in false, fraudulent, or deceptive  
4                          advertising, including but not limited to:
- 5                          (A)    Making excessive claims of expertise in one or  
6    more medical specialty fields;
- 7                          (B)    Assuring a permanent cure for an incurable  
8    disease; or
- 9                          (C)    Making any untruthful and improbable statement in  
10    advertising one's medical or surgical practice or  
11    business;
- 12        ~~[(4)]~~ (5)    Being habituated to the excessive use of drugs or  
13                          alcohol; or being addicted to, dependent on, or a  
14                          habitual user of a narcotic, barbiturate, amphetamine,  
15                          hallucinogen, or other drug having similar effects;
- 16        ~~[(5)]~~ (6)    Practicing medicine while the ability to practice  
17                          is impaired by alcohol, drugs, physical disability, or  
18                          mental instability;
- 19        ~~[(6)]~~ (7)    Procuring a license through fraud,  
20                          misrepresentation, or deceit, or knowingly permitting



1 an unlicensed person to perform activities requiring a  
2 license;

3 [~~7~~] (8) Professional misconduct, hazardous negligence  
4 causing bodily injury to another, or manifest  
5 incapacity in the practice of medicine or surgery;

6 [~~8~~] (9) Incompetence or multiple instances of negligence,  
7 including but not limited to the consistent use of  
8 medical service, which is inappropriate or  
9 unnecessary;

10 [~~9~~] (10) Conduct or practice contrary to recognized  
11 standards of ethics of the medical profession as  
12 adopted by the Hawaii Medical Association, the  
13 American Medical Association, the Hawaii Association  
14 of Osteopathic Physicians and Surgeons, or the  
15 American Osteopathic Association;

16 [~~10~~] (11) Violation of the conditions or limitations upon  
17 which a limited or temporary license is issued;

18 [~~11~~] (12) Revocation, suspension, or other disciplinary  
19 action by another state or federal agency of a  
20 license, certificate, or medical privilege, except  
21 when the revocation, suspension, or other disciplinary



1 action was based on the provision or assistance in  
2 receipt or provision of medical, surgical,  
3 pharmaceutical, counseling, or referral services  
4 relating to the human reproductive system, including  
5 but not limited to services relating to pregnancy,  
6 contraception, or the termination of a pregnancy, so  
7 long as the provision or assistance in receipt or  
8 provision of the services was in accordance with the  
9 laws of this State or would have been in accordance  
10 with the laws of this State if it occurred within this  
11 State;

12 [~~(12)~~] (13) Conviction, whether by nolo contendere or  
13 otherwise, of a penal offense substantially related to  
14 the qualifications, functions, or duties of a  
15 physician or osteopathic physician, notwithstanding  
16 any statutory provision to the contrary, except when  
17 the conviction was based on the provision or  
18 assistance in receipt or provision of medical,  
19 surgical, pharmaceutical, counseling, or referral  
20 services relating to the human reproductive system,  
21 including but not limited to services relating to



1 pregnancy, contraception, or the termination of a  
2 pregnancy, so long as the provision or assistance in  
3 receipt or provision of the services was in accordance  
4 with the laws of this State or would have been in  
5 accordance with the laws of this State if it occurred  
6 within this State;

7 [~~(13)~~] (14) Violation of chapter 329, the uniform controlled  
8 substances act, or any rule adopted thereunder except  
9 as provided in section 329-122;

10 [~~(14)~~] (15) Failure to report to the board, in writing, any  
11 disciplinary decision issued against the licensee or  
12 the applicant in another jurisdiction within thirty  
13 days after the disciplinary decision is issued; or

14 [~~(15)~~] (16) Submitting to or filing with the board any  
15 notice, statement, or other document required under  
16 this chapter, which is false or untrue or contains any  
17 material misstatement or omission of fact."

18 SECTION 4. Section 457-12, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) In addition to any other actions authorized by law,  
21 the board shall have the power to deny, revoke, limit, or



1 suspend any license to practice nursing as a registered nurse or  
2 as a licensed practical nurse applied for or issued by the board  
3 in accordance with this chapter, and to fine or to otherwise  
4 discipline a licensee for any cause authorized by law, including  
5 ~~[but not limited to the following]:~~

- 6 (1) Fraud or deceit in procuring or attempting to procure  
7 a license to practice nursing as a registered nurse or  
8 as a licensed practical nurse;
- 9 (2) Gross immorality;
- 10 (3) Unfitness or incompetence by reason of negligence,  
11 habits, or other causes;
- 12 (4) Habitual intemperance, addiction to, or dependency on  
13 alcohol or other habit-forming substances;
- 14 (5) Mental incompetence;
- 15 (6) Unprofessional conduct as defined by the board in  
16 accordance with its own rules;
- 17 (7) Wilful or repeated violation of any of the provisions  
18 of this chapter or any rule adopted by the board;
- 19 (8) Revocation, suspension, limitation, or other  
20 disciplinary action by another state of a nursing  
21 license, except when the revocation, suspension,





1           limitation, or other disciplinary action by another  
2           state was based on the provision or assistance in  
3           receipt or provision of medical, surgical,  
4           pharmaceutical, counseling, or referral services  
5           relating to the human reproductive system, including  
6           but not limited to services relating to pregnancy,  
7           contraception, or the termination of a pregnancy, so  
8           long as the provision or assistance in receipt or  
9           provision of the services was in accordance with the  
10          laws of this State or would have been in accordance  
11          with the laws of this State if it occurred within this  
12          State;

- 13          (9) Conviction, whether by nolo contendere or otherwise,  
14          of a penal offense substantially related to the  
15          qualifications, functions, or duties of a nurse,  
16          notwithstanding any statutory provision to the  
17          contrary, except when the conviction was based on the  
18          provision or assistance in receipt or provision of  
19          medical, surgical, pharmaceutical, counseling, or  
20          referral services relating to the human reproductive  
21          system, including but not limited to services relating



1 to pregnancy, contraception, or the termination of a  
 2 pregnancy, so long as the provision or assistance in  
 3 receipt or provision of the services was in accordance  
 4 with the laws of this State or would have been in  
 5 accordance with the laws of this State if it occurred  
 6 within this State;

7 (10) Failure to report to the board any disciplinary action  
 8 taken against the licensee in another jurisdiction  
 9 within thirty days after the disciplinary action  
 10 becomes final;

11 (11) Submitting to or filing with the board any notice,  
 12 statement, or other document required under this  
 13 chapter, which is false or untrue or contains any  
 14 material misstatement of fact, including a false  
 15 attestation of compliance with continuing competency  
 16 requirements; [~~or~~]

17 (12) Violation of chapter \_\_\_\_\_ ; or

18 [~~(12)~~] (13) Violation of the conditions or limitations upon  
 19 which any license is issued."

20 SECTION 5. Section 709-901, Hawaii Revised Statutes, is  
 21 amended to read as follows:



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

7           (2) If an abortion, as defined in section       -1, is  
 8 attempted but a live birth occurs, the surviving infant shall be  
 9 considered a new-born child for purposes of this section.

10           [~~2~~] (3) Concealing the corpse of an infant is a  
 11 misdemeanor."

12           SECTION 6. This Act does not affect rights and duties that  
 13 matured, penalties that were incurred, and proceedings that were  
 14 begun before its effective date.

15           SECTION 7. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

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

18

INTRODUCED BY: *Kurt Fovell*



# S.B. NO. 213

**Report Title:**

Abortion Survivor; Infant Born Alive; Penalties

**Description:**

Requires medically appropriate and reasonable life-saving and life-sustaining medical care and treatment for all infants born alive. Establishes civil and 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.*

