

A Bill for an Act Relating to Section 453-16, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that Hawaii has a long tradition of protecting the right of reproductive choice independently of, and more broadly than, the federal constitution. In 1970, three years before the United States Supreme Court's decision in *Roe v. Wade*, 410 U.S. 113 (1973), Hawaii became one of the first states to repeal its law criminalizing abortion. In addition, article I, section 6 of the Hawaii State Constitution includes an explicit right to privacy:

The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

To make clear that the right to reproductive choice is protected as a fundamental right under the Hawaii State Constitution, the committee of the whole explained during the 1978 constitutional convention that:

“By amending the Constitution to include a separate and distinct privacy right, it is the intent of your Committee to insure that privacy is treated as a fundamental right for purposes of constitutional analysis . . . [T]his privacy concept encompasses the notion that in certain highly personal and intimate matters, the individual should be afforded freedom of choice absent a compelling state interest.” (Committee of the Whole Rep. No. 15, in 1 *Proceedings of the Constitutional Convention of Hawaii of 1978*, at 1024 (1980)).

To date, however, the legislature has not taken “affirmative steps” to amend outdated language in the abortion statutes to ensure full access to abortion services. The legislature finds that the existing residency requirement violates the United States Constitution's privileges and immunities clause and is, therefore, unconstitutional and invalid. The legislature further finds that the hospital requirement is unenforceable during the first trimester under *Roe v. Wade*, according to Attorney General Opinion number 74-17.

The purpose of this Act is to clarify or eliminate outdated statutory language while not expanding those rights that are currently protected under state and federal law.

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

“~~[§453-16]~~ **Intentional termination of pregnancy; penalties; refusal to perform.** (a) No abortion shall be performed in this [State] state unless:

- (1) ~~[Such]~~ The abortion is performed by a licensed physician or surgeon, or by a licensed osteopathic physician and surgeon; and
- (2) ~~[Such]~~ The abortion is performed in a hospital licensed by the department of health or operated by the federal government or an agency thereof~~;~~ and
- (3) ~~The woman upon whom such abortion is to be performed is domiciled in this State or has been physically present in this State for at least~~

~~ninety days immediately preceding such abortion. The affidavit of such a woman shall be prima facie evidence of compliance with this requirement, or in a clinic or physician's office.~~

(b) Abortion shall mean an operation to intentionally terminate the pregnancy of a nonviable fetus. The termination of a pregnancy of a viable fetus is not included in this section.

(c) The State shall not deny or interfere 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.

~~[(e)]~~ (d) Any person who knowingly violates ~~[this section]~~ subsection (a) shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

~~[(d)]~~ (e) Nothing in this section shall require any hospital or any person to participate in ~~[such]~~ an abortion nor shall any hospital or any person be liable for ~~[such]~~ a refusal.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 26, 2006.)