STAND. COM. REP. NO. 3073

Honolulu, Hawaii

MAR 24 2006

RE: H.B. No. 1242
H.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Third State Legislature
Regular Session of 2006
State of Hawaii

Sir:

Your Committee on Health, to which was referred H.B. No. 1242, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO SECTION 453-16, HAWAII REVISED STATUTES,"

begs leave to report as follows:

The purpose of this measure is to improve the health and safety of women by clarifying and eliminating outdated language in the statute dealing with the intentional termination of pregnancy while not changing rights that are currently protected under state and federal law.

Your Committee received testimony in support of this measure from the Commission on the Status of Women, the Community Alliance on Prisons, the Hawaii Women's Coalition, the American Civil Liberties Union, Hawaii Women Work, National Association of Social Workers, University of Hawaii Women's Studies Program, Planned Parenthood of Hawaii, Church of the Crossroads, Healthy Mothers Healthy Babies, and sixty-nine individuals. Your Committee received testimony in opposition to this measure from the Hawaii Catholic Conference, the Hawaii Family Forum, the Christian Voice of Hawaii, Hawaii Right to Life, Pro-Family Hawaii, and twenty-five individuals.

Your Committee finds that section 453-16, Hawaii Revised Statutes, which has not been revised since it was enacted in 1970, is unconstitutional as written and needs to be revised. The sole

purpose of this revision is to bring the statute into conformity with federal and state law.

Your Committee further finds that this measure will properly revise the unconstitutional portions of 453-16(a), Hawaii Revised Statutes, by including clinics and physicians' offices as safe, acceptable places for abortions to be performed and by removing the residency requirement.

Your Committee further finds that the hospital requirement under section 453-16(a)(2), Hawaii Revised Statutes, should be amended to conform with federal law and Hawaii's existing practices which have properly followed Supreme Court decisions. In *Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416 (1983), the Court invalidated a statute requiring a 24-hour waiting period prior to performing an abortion. The Court held that the State had not shown that any legitimate state interest was being served "by an arbitrary and inflexible waiting period." Similarly, the Court in *Doe v. Bolton*, 410 U.S. 179 (1973) applied the same standard to the Georgia statute requiring abortions be performed in a specially accredited hospital. The Court held that the standards must be legitimately related to the objective the State seeks to accomplish. The State's objective, to ensure the quality of the operation and the full protection of the patient, is not legitimately related to the requirement that all abortions are to be performed in an accredited hospital because no persuasive data was presented that only hospitals meet the State's interest. Conversely, there is a multitude of data showing that some facilities other than hospitals, such as clinics, are more than adequate to perform abortions safely if they have the staffing and equipment necessary to handle serious complications or have an arrangement with a nearby hospital to provide those services.

The United States Supreme Court has repeatedly struck down durational residency requirements. In *Doe,* addressing the Georgia law requiring proof of residency before an abortion can be performed, the Supreme Court held that the Privileges and Immunities Clause, Const. Art. IV, §2, protects individuals seeking medical services that are available in a state. The Court further held that a state law requiring residency for individuals seeking medical care within that state's borders was unconstitutional because it was not based on any policy of preserving state-supported facilities for residents and there was no evidence that the medical facilities were utilized to capacity

in caring for its residents. Accordingly, the ninety day residency requirement under 453-16(a)(3), Hawaii Revised Statutes, should be repealed to conform with federal law.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1242, H.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Judiciary and Hawaiian Affairs.

Respectfully submitted on
behalf of the members of the
Committee on Health,

ROSALYN H. BAKER, Chair

The Senate
Twenty-Third Legislature
State of Hawaii

Record of Votes of the Committee on Health (Bills and Resolutions)

Measure:*	Committee Referral:	Date:
HB 1242 HD1	HTH, JHW	3/20/06

☐ The committee is reconsidering its previous decision on this measure.

If so, then the previous decision was to: _____

The Recommendation is to:

☑ Pass, unamended (2312) ☐ Pass, with amendments (2311) ☐ Hold (2310) ☐ Recommit (2313)

Members	Ayes	Ayes(WR)	Nays	Excused
BAKER, Rosalyn H. (C)	✓			
CHUN OAKLAND, Suzanne (VC)	✓			
HANABUSA, Colleen	✓			
TSUTSUI, Shan S.	✓			
WHALEN, Paul				✓
TOTAL	4	0	0	1

Recommendation: ☑ Adopted ☐ Not Adopted

Chair's or Designee's Signature: Suzanne Chun Oakland

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*Do not list more than one measure per Record of Votes.