
A BILL FOR AN ACT

RELATING TO BORN ALIVE INFANTS.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER A**

5 **BORN ALIVE INFANT PROTECTION ACT**

6 **§ A-1 Short title.** This chapter may be cited as the
7 Born Alive Infant Protection Act.

8 **§ A-2 Findings and purpose.** The legislature finds that
9 the State of Hawaii has a paramount interest in protecting all
10 human life, and if an attempted abortion results in the live
11 birth of an infant, the infant is a legal person for all
12 purposes under the Constitution and laws of this State. The
13 legislature further finds that over ten thousand abortions
14 nationwide annually reportedly occur after twenty weeks'
15 gestation, a time during which a fetus could be viable.
16 Further, a British study found that one hundred and three live



1 births occurred over a ten year period that resulted in
2 subsequent neonatal deaths after an attempted abortion. Without
3 proper legal protection, new-born infants who have unexpectedly
4 survived an abortion procedure may be denied appropriate life-
5 saving or life-sustaining medical care and treatment and be left
6 to die.

7 The legislature further finds that protecting an infant
8 whose live birth occurred as the result of an attempted abortion
9 does not infringe on a woman's right to choose or obtain an
10 abortion of a nonviable fetus, or an abortion that is necessary
11 to protect the life or health of the mother.

12 The purpose of this Act is to ensure the protection and
13 promotion of the health and well-being of all infants born alive
14 as a result of an abortion performed in the State, to mandate
15 that healthcare providers give medically appropriate and
16 reasonable life-saving and life-sustaining medical care and
17 treatment to all such born alive infants and to provide
18 penalties for failure to provide medically appropriate and
19 reasonable life-saving and life-sustaining medical care and
20 treatment to all such born alive infants.



1 **§ A-3 Application.** This chapter shall only apply to
2 abortions that result in live births.

3 **§ A-4 Definitions.** As used in this chapter:

4 "Abortion" has the same meaning as in section 453-16.

5 "Born alive" or "live birth" means the complete expulsion
6 or extraction of an infant from his or her mother as a result of
7 an abortion, regardless of the state of gestational development,
8 that, after expulsion or extraction, whether or not the
9 umbilical cord has been cut or the placenta is attached, shows
10 any evidence of life, including, but not limited to, one or more
11 of the following:

12 (1) Breathing;

13 (2) A heartbeat;

14 (3) Umbilical cord pulsation; or

15 (4) Definite movement of voluntary muscles.

16 "Consent" means the voluntary agreement or acquiescence by
17 a person of age and with the requisite mental capacity who is
18 not under duress or coercion and who has knowledge or
19 understanding of the act or action to which he or she has agreed
20 or acquiesced.



1 "Facility" or "medical facility" means any public or
2 private hospital, clinic, center, medical school, medical
3 training institution, healthcare facility, physician's office,
4 infirmary, dispensary, ambulatory surgical treatment center, or
5 other institution or location wherein medical care is provided
6 to any person.

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

10 "Infant" means a child of the species *homo sapiens* who has
11 been completely expelled or extracted from his or her mother,
12 regardless of the stage of gestational development, until the
13 age of thirty days post birth.

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

16 "Physician" means a person who has been or is currently
17 licensed to practice medicine or osteopathy under chapter 453.

18 "Premature" or "preterm" means occurring prior to the
19 thirty-seventh week of gestation.

20 **§ A-5 Requirements and responsibilities.** (a) A person
21 shall not deny or deprive a born alive infant of nourishment



1 with the intent to cause or allow the death of the infant for
2 any reason, including, but not limited to:

3 (1) The infant was born with a handicap; or

4 (2) The infant is not wanted by the parent(s) or
5 guardian(s).

6 (b) A person shall not deprive a born alive infant of
7 medically appropriate and reasonable medical care and treatment
8 or surgical care.

9 (c) The requirements of this section shall not be
10 construed to prevent an infant's parent(s) or guardian(s) from
11 refusing to give consent to medical treatment or surgical care
12 which is not medically necessary or reasonable, including care
13 or treatment which:

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

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

18 (3) Is treatment that will do no more than temporarily
19 prolong the act of dying when death is imminent.

20 (d) The physician performing an abortion shall take all
21 medically appropriate and reasonable steps to preserve the life



1 and health of a born alive infant. If an abortion performed in
2 a hospital results in a live birth, the physician attending the
3 abortion shall provide immediate medical care to the infant,
4 inform the mother of the live birth, and request transfer of the
5 infant to an on-duty resident or emergency care physician who
6 shall provide medically appropriate and reasonable care and
7 treatment to the infant.

8 If an abortion performed in a facility other than a
9 hospital results in a live birth, the physician attending the
10 abortion shall provide immediate medical care to the infant and
11 call 9-1-1 for an emergency transfer of the infant to a hospital
12 that shall provide medically appropriate and reasonable care and
13 treatment to the infant.

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

20 (f) Any born alive infant including one born in the course
21 of an abortion procedure shall be treated as a legal person



1 under the laws of this State, with the same rights to medically
2 appropriate and reasonable care and treatment. Birth and death
3 certificates shall be issued accordingly.

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

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

14 **§ A-6 Criminal penalties.** (a) Any physician, nurse, or
15 other healthcare provider who intentionally or knowingly fails
16 to provide medically appropriate and reasonable care and
17 treatment to a born alive infant, where, as a result of that
18 failure, the infant dies, shall be guilty of the offense of
19 murder in the second degree under section 707-701.5.

20 (b) Any physician, nurse, or other healthcare provider who
21 recklessly fails to provide medically appropriate and reasonable



1 care and treatment to a born alive infant, where, as a result of
2 that failure, the infant dies, shall be guilty of the offense of
3 manslaughter under section 707-702.

4 (c) If any physician, nurse, other healthcare provider, or
5 person, including the parent(s) or guardian(s), conceals the
6 corpse of the infant with the intent to conceal the fact of its
7 birth or to prevent a determination of whether it was alive,
8 that person shall be guilty of the offense of concealing the
9 corpse of an infant under section 709-901.

10 (d) Any physician, nurse, other healthcare provider, or
11 person, including the parent(s) or guardian(s), knowingly
12 violates section A-5(h) of this chapter shall be fined not more
13 than \$10,000 or imprisoned not more than five years, or both.

14 (e) Unless otherwise indicated, the parent(s) or
15 guardian(s) of a born alive infant shall not be held criminally
16 or civilly liable for the actions of a physician, nurse, or
17 other healthcare provider that are in violation of this chapter
18 and to which the parent(s) or guardian(s) did not give consent.

19 **§ A-7 Civil and administrative action.** (a) Any
20 conviction under this chapter shall be admissible in a civil
21 suit as *prima facie* evidence of a failure to provide medically



1 appropriate and reasonable care and treatment to a born alive
2 infant. Any civil action may be based on a claim that the death
3 of or injury to the born alive infant was a result of simple
4 negligence, gross negligence, wantonness, willfulness,
5 intentional conduct, or another violation of the legal standard
6 of care.

7 (b) Failure to comply with the requirements of this
8 chapter shall provide a basis for professional disciplinary
9 action under chapter 453, chapter 457, or any other chapter
10 appropriate, or any appropriate combination thereof, for the
11 suspension or revocation of any license for physicians, licensed
12 and registered nurses, or other licensed or regulated persons.
13 Any conviction of any person for any failure to comply with the
14 requirements of this chapter shall result in the automatic
15 suspension of his or her license for a period of no less than
16 one year.

17 **§ A-8 Construction.** (a) Nothing in this chapter shall
18 be construed to affirm, deny, expand, or contract any legal
19 status or legal right applicable to any member of the species
20 *homo sapiens* at any point prior to being born alive.



1 (b) Nothing in this chapter shall be construed to affect
2 existing federal or state law regarding abortion.

3 (c) Nothing in this chapter shall be construed as creating
4 or recognizing a right to abortion.

5 (d) Nothing in this chapter shall be construed to alter
6 generally accepted medical standards."

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

9 **"§453-16 Intentional termination of pregnancy; penalties;**
10 **refusal to perform.** (a) No abortion shall be performed in this
11 State unless:

12 (1) The abortion is performed by a licensed physician or
13 surgeon, or by a licensed osteopathic physician and
14 surgeon; and

15 (2) The abortion is performed in a hospital licensed by
16 the department of health or operated by the federal
17 government or an agency thereof, or in a clinic or
18 physician's or osteopathic physician's office.

19 (b) Abortion shall mean an operation to intentionally
20 terminate the pregnancy of a nonviable fetus. [~~The termination~~



1 ~~of a pregnancy of a viable fetus is not included in this~~
2 ~~section.]~~

3 (c) The termination of a pregnancy of a viable fetus shall
4 be subject to the born alive infant protection act, chapter A.

5 [~~e~~] (d) The State shall not deny or interfere with a
6 female's right to choose or obtain an abortion of a nonviable
7 fetus or an abortion that is necessary to protect the life or
8 health of the female.

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

12 [~~e~~] (f) Nothing in this section shall require any
13 hospital or any person to participate in an abortion nor shall
14 any hospital or any person be liable for a refusal."

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

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



- 1 (1) Procuring, or aiding or abetting in procuring, a
- 2 criminal abortion;
- 3 (2) Failing to comply with the requirements of the born
- 4 alive infant protection act, chapter A.
- 5 ~~[-2-]~~ (3) Employing any person to solicit patients for
- 6 one's self;
- 7 ~~[-3-]~~ (4) Engaging in false, fraudulent, or deceptive
- 8 advertising, including but not limited to:
- 9 (A) Making excessive claims of expertise in one or
- 10 more medical specialty fields;
- 11 (B) Assuring a permanent cure for an incurable
- 12 disease; or
- 13 (C) Making any untruthful and improbable statement in
- 14 advertising one's medical or surgical practice or
- 15 business;
- 16 ~~[-4-]~~ (5) Being habituated to the excessive use of drugs or
- 17 alcohol; or being addicted to, dependent on, or a
- 18 habitual user of a narcotic, barbiturate, amphetamine,
- 19 hallucinogen, or other drug having similar effects;



- 1 [~~+5~~] (6) Practicing medicine while the ability to practice
2 is impaired by alcohol, drugs, physical disability, or
3 mental instability;
- 4 [~~+6~~] (7) Procuring a license through fraud,
5 misrepresentation, or deceit, or knowingly permitting
6 an unlicensed person to perform activities requiring a
7 license;
- 8 [~~+7~~] (8) Professional misconduct, hazardous negligence
9 causing bodily injury to another, or manifest
10 incapacity in the practice of medicine or surgery;
- 11 [~~+8~~] (9) Incompetence or multiple instances of negligence,
12 including but not limited to the consistent use of
13 medical service, which is inappropriate or
14 unnecessary;
- 15 [~~+9~~] (10) Conduct or practice contrary to recognized
16 standards of ethics of the medical profession as
17 adopted by the Hawaii Medical Association, the
18 American Medical Association, the Hawaii Association
19 of Osteopathic Physicians and Surgeons, or the
20 American Osteopathic Association;



- 1 ~~[(10)]~~ (11) Violation of the conditions or limitations upon
2 which a limited or temporary license is issued;
- 3 ~~[(11)]~~ (12) Revocation, suspension, or other disciplinary
4 action by another state or federal agency of a
5 license, certificate, or medical privilege for reasons
6 as provided in this section;
- 7 ~~[(12)]~~ (13) Conviction, whether by nolo contendere or
8 otherwise, of a penal offense substantially related to
9 the qualifications, functions, or duties of a
10 physician or osteopathic physician, notwithstanding
11 any statutory provision to the contrary;
- 12 ~~[(13)]~~ (14) Violation of chapter 329, the uniform controlled
13 substances act, or any rule adopted thereunder except
14 as provided in section 329-122;
- 15 ~~[(14)]~~ (15) Failure to report to the board, in writing, any
16 disciplinary decision issued against the licensee or
17 the applicant in another jurisdiction within thirty
18 days after the disciplinary decision is issued; or
- 19 ~~[(15)]~~ (16) Submitting to or filing with the board any
20 notice, statement, or other document required under



1 this chapter, which is false or untrue or contains any
2 material misstatement or omission of fact."

3 SECTION 4. Section 457-12, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§457-12 Discipline; grounds; proceedings; hearings.** (a)

6 In addition to any other actions authorized by law, the board
7 shall have the power to deny, revoke, limit, or suspend any
8 license to practice nursing as a registered nurse or as a
9 licensed practical nurse applied for or issued by the board in
10 accordance with this chapter, and to fine or to otherwise
11 discipline a licensee for any cause authorized by law, including
12 but not limited to the following:

- 13 (1) Fraud or deceit in procuring or attempting to procure
14 a license to practice nursing as a registered nurse or
15 as a licensed practical nurse;
- 16 (2) Gross immorality;
- 17 (3) Unfitness or incompetence by reason of negligence,
18 habits, or other causes;
- 19 (4) Habitual intemperance, addiction to, or dependency on
20 alcohol or other habit-forming substances;
- 21 (5) Mental incompetence;



- 1 (6) Unprofessional conduct as defined by the board in
2 accordance with its own rules;
- 3 (7) Wilful or repeated violation of any of the provisions
4 of this chapter or any rule adopted by the board;
- 5 (8) Revocation, suspension, limitation, or other
6 disciplinary action by another state of a nursing
7 license for reasons as provided in this section;
- 8 (9) Conviction, whether by nolo contendere or otherwise,
9 of a penal offense substantially related to the
10 qualifications, functions, or duties of a nurse,
11 notwithstanding any statutory provision to the
12 contrary;
- 13 (10) Failure to report to the board any disciplinary action
14 taken against the licensee in another jurisdiction
15 within thirty days after the disciplinary action
16 becomes final;
- 17 (11) Submitting to or filing with the board any notice,
18 statement, or other document required under this
19 chapter, which is false or untrue or contains any
20 material misstatement of fact, including a false



1 attestation of compliance with continuing competency
2 requirements; or

3 (12) Failing to comply with the requirements of the born
4 alive infant protection act, chapter A.

5 ~~[(12)]~~ (13) Violation of the conditions or limitations upon
6 which any license is issued.

7 (b) Any fine imposed by the board after a hearing in
8 accordance with chapter 91 shall be no less than \$100 and no
9 more than \$1,000 for each violation.

10 (c) The remedies or penalties provided by this chapter are
11 cumulative to each other and to the remedies or penalties
12 available under all other laws of this State."

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

15 "**§709-901 Concealing the corpse of an infant.** (1) A
16 person commits the offense of concealing the corpse of an infant
17 if the person conceals the corpse of a new-born child with
18 intent to conceal the fact of its birth or to prevent a
19 determination of whether it was born dead or alive.



1 (2) If an attempted abortion results in a live birth under
2 chapter A, the born alive infant shall be considered a new-born
3 child under this section.

4 [~~2~~] (3) Concealing the corpse of an infant is a
5 misdemeanor."

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

9 SECTION 7. In codifying the new sections added by sections
10 2, 3, 4, and 5 of this Act, the revisor of statutes shall
11 substitute appropriate section numbers for the letters used in
12 designating the new sections in this Act.

13 SECTION 8. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 9. This Act shall take effect on July 1, 2016.

16

INTRODUCED BY:



H.B. NO. 2763

Report Title:

Born Alive Infant; Abortion; Penalties.

Description:

Ensures the protection and promotion of the health and well-being of all infants born alive the State. Mandates medically appropriate and reasonable life-saving and life-sustaining medical care and treatment to all born alive infants. Provides 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.

