A BILL FOR AN ACT

RELATING TO BORN ALIVE INFANTS.

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

SECTION 1. The legislature finds that the State of Hawaii has a paramount interest in protecting all human life, and if an attempted abortion results in the live birth of an infant, the infant is a legal person for all purposes under the Constitution and laws of this State. The legislature further finds that nearly six thousand abortions nationwide annually reported occur after twenty weeks gestation, a time during which a fetus could be viable. Further, Canadian statistics report that four hundred and ninety-one live births occurred over a nine year period that resulted in subsequent neonatal deaths after an attempted abortion. Without proper legal protection, new-born infants who have unexpectedly survived an abortion procedure may be denied appropriated life-saving or life-sustaining medical care and treatment and be left to die.

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

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

SECTION 2. This Act shall be known and may be cited as the "Born Alive Infant Protection Act".

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

"CHAPTER

Born Alive Infant Protection Act

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

§ -2 Definitions. As used in this chapter:
"Abortion" has the same meaning as in section 453-16.

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

1. Breathing;
2. A heartbeat;
3. Umbilical cord pulsation; or
4. Definite movement of voluntary muscles.

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

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

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

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

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

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

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

§ 3 Requirements and responsibilities. (a) A person shall not deny or deprive a born alive infant of nourishment with the intent to cause or allow the death of the infant for any reason, including, but not limited to:

(1) The infant was born with a handicap; or
(2) The infant is not wanted by the parent(s) or Guardian(s).

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

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

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

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

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

(d) The physician performing an abortion shall take all medically appropriate and reasonable steps to preserve the life and health of a born alive infant. If an abortion performed in a hospital results in a live birth, the physician attending the abortion shall provide immediate medical care to the infant,
inform the mother of the live birth, and request transfer of the
infant to an on-duty resident or emergency care physician who
shall provide medically appropriate and reasonable care and
treatment to the infant.

If an abortion performed in a facility other than a
hospital results in a live birth, the physician attending the
abortion shall provide medically appropriate and reasonable care
and treatment to the infant.

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

(f) Any born alive infant including one born in the course
of an abortion procedure shall be treated as a legal person
under the laws of this State, with the same rights to medically
appropriate and reasonable care and treatment. Birth and death
certificates shall be issued accordingly.

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

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

(i) Any physician, nurse, other healthcare provider, or
employee of a hospital, a physician's office or clinic who has
knowledge of failure to comply with the requirements of this
section shall immediately report the failure to law enforcement.

§ -4 Criminal Penalties. (a) Any physician, nurse, or
other healthcare provider medically appropriate and reasonable
care and treatment to a born alive infant, where, as a result of
that failure, the infant dies, shall be guilty of the offence of
murder in the second degree under section 707-701.5.

(b) Any physician, nurse, or other healthcare provider who
recklessly fails to provide medically appropriate and reasonable
care and treatment to a born alive infant, where, as a result of
that failure, the infant dies, shall be guilty of the offence of
manslaughter under section 707-702.

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

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

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

§ -5 Civil and administrative action. (a) Any
conviction under this chapter shall be admissible in a civil
suit as prima facie evidence of a failure to provide medically
appropriate and reasonable care and treatment to a born alive
infant. Any civil action may be based on a claim that the death of or injury to the born alive infant was a result of simple negligence, gross negligence, wantonness, willfulness, intentional conduct or another violation of the legal standard of care.

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

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

(b) Nothing in this chapter shall be construed to affect existing federal or state law regarding abortion.
(c) Nothing in this chapter shall be construed as creating
or recognizing a right to abortion.
(d) Nothing in this chapter shall be construed to alter
generally accepted medical standards."

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 unless:
(1) The abortion is performed by a licensed physician or
surgeon, or by a licensed osteopathic physician and surgeon; and
(2) The abortion is performed in a hospital licensed by
the department of health or operated by the federal government
or an agent thereof, or in a clinic or physician's or
osteopathic 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 termination of a pregnancy of a viable fetus shall
be subject to the born alive infant protection act, chapter A.
(d) 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) Any person who knowingly violates subsection (a) shall be fined not more than $1,000 or imprisoned not more than five years, or both.

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

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

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

(1) Procuring, or aiding or abetting in procuring, a criminal abortion;

(2) Failing to comply with the requirements of the born alive infant protection act, chapter A.
(3) Employing any person to solicit patients for one's self;

(4) Engaging in false, fraudulent, or deceptive advertising, including but not limited to:
   (A) Making excessive claims of expertise in one or more medical specialty fields;
   (B) Assuring a permeant cure for an incurable disease; or
   (C) Making any untruthful and improbable statement in advertising one's medical or surgical practice or business;

(5) Being habituated to the excessive use of drugs or alcohol; or being addicted to, depended on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;

(6) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;

(7) Procuring a license through fraud, misrepresentation, or deceit, or knowingly permitting an unlicensed person to perform activities requiring a license;
Professional misconduct, hazardous negligence causing bodily injury to another, or manifest incapacity in the practice of medicine or surgery;

Incompetence or multiple instances of negligence, including but not limited to the consistent use of medical service, which is inappropriate or unnecessary;

Conduct of practice contrary to recognized standards of ethics of the medical profession as adopted by the Hawaii Medical Association, the American Medical Association, the Hawaii Association of Osteopathic Physicians and Surgeons, or the American Osteopathic Association;

Violation of the conditions or limitations upon which a limited or temporary license is issued;

Revocation, suspension, or other disciplinary action by another state or federal agency of a license, certificate, or medical privilege for reasons as provided in this section;

Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a physician or
osteopathic physician, notwithstanding any statutory provision
to the contrary.

(13) (14) Violation of chapter 329, the uniform
controlled substances act, or any rule adopted thereunder except
as provided in Section 329-122;

(14) (15) Failure to report to the board, in writing,
any disciplinary decision issued against the license or the
applicant in another jurisdiction within thirty days after the
disciplinary decision is issued; or

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

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

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

(1) Fraud or deceit in procuring or attempting to procure
a license to practice nursing as a registered nurse or as a
license practical nurse;

(2) Gross immorality;

(3) Unfitness or incompetence by reason of negligence,
habits, or other causes;

(4) Habitual intemperance, addiction to, or dependency on
alcohol or other habit-forming substances;

(5) Mental incompetence;

(6) Unprofessional conduct as defined by the board in
accordance with its own rules;

(7) Willful or repeated violation of any of the provisions
of this chapter or any rule adopted by the board;

(8) Revocation, suspension, limitation, or other
disciplinary action by another state of a nursing license for
reasons as provided in this section;

(9) Conviction, whether by nolo contendere or otherwise,
of a penal offense substantially related to the qualifications,
functions, or duties of a nurse, notwithstanding any statutory provision to the contrary;

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

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

(12) Failing to comply with the requirements of the born alive infant protection act; or

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

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

"§709-901 Concealing the corpse of an infant. (1) A person commits the offense of concealing the corpse of an infant if the person conceals the corpse of a new-born child with intent to conceal the fact of its birth or to prevent a determination of whether it was born dead or alive.
(2) If an attempted abortion results in a live birth under chapter A, the born alive infant shall be considered a new-born child under this section.

(3) Concealing the corpse of an infant is a misdemeanor."

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

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

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

SECTION 9. This Act shall take effect on July 1, 2019.
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.

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