

---

---

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

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



1 abortion of a nonviable fetus, or an abortion that is necessary  
2 to protect the life or health of the mother.

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

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

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

17                               **"CHAPTER**

18                                       **Born Alive Infant Protection Act**

19       § -1 **Application.** This chapter shall only apply to  
20 abortions that result in live births.

21       § -2 **Definitions.** As used in this chapter:



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

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

9 (1) Breathing;

10 (2) A heartbeat;

11 (3) Umbilical cord pulsation; or

12 (4) Definite movement of voluntary muscles.

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

18 "Facility" or "medical facility" means any public or  
19 private hospital, clinic, center medical school, medical  
20 training institution, healthcare facility, physician's office,



1 Infirmary, dispensary, ambulatory surgical treatment center, or  
2 other institution or location wherein medical care is provided  
3 to any person.

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

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

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

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

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

17 § -3 **Requirements and responsibilities.** (a) A person  
18 shall not deny or deprive a born alive infant of nourishment  
19 with the intent to cause or allow the death of the infant for  
20 any reason, including, but not limited to:

21 (1) The infant was born with a handicap: or



1           (2) The infant is not wanted by the parent(s) or  
2 Guardian(s).

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

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

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

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

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

17           (d) The physician performing an abortion shall take all  
18 medically appropriate and reasonable steps to preserve the life  
19 and health of a born alive infant. If an abortion performed in  
20 a hospital results in a live birth, the physician attending the  
21 abortion shall provide immediate medical care to the infant,



1 inform the mother of the live birth, and request transfer of the  
2 infant to an on-duty resident or emergency care physician who  
3 shall provide medically appropriate and reasonable care and  
4 treatment to the infant.

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

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

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

20 (g) If, before the abortion, the mother has stated in  
21 writing that she does not wish to keep the infant in the event



1 that the abortion results in a live birth, and this writing is  
2 not retracted before the attempted abortion, the infant, if born  
3 alive, shall immediately upon birth become a ward under the care  
4 of the department of human services.

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

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

13 **§ -4 Criminal Penalties.** (a) Any physician, nurse, or  
14 other healthcare provider medically appropriate and reasonable  
15 care and treatment to a born alive infant, where, as a result of  
16 that failure, the infant dies, shall be guilty of the offence of  
17 murder in the second degree under section 707-701.5.

18 (b) Any physician, nurse, or other healthcare provider who  
19 recklessly fails to provide medically appropriate and reasonable  
20 care and treatment to a born alive infant, where, as a result of



1 that failure, the infant dies, shall be guilty of the offence of  
2 manslaughter under section 707-702.

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

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

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

18 § -5 Civil and administrative action. (a) Any  
19 conviction under this chapter shall be admissible in a civil  
20 suit as *prima facie* evidence of a failure to provide medically  
21 appropriate and reasonable care and treatment to a born alive





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

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

16 § -6 Construction. (a) Nothing in this chapter shall be  
17 construed to affirm, deny, expand, or contract any legal status  
18 or legal right applicable to any member of the species *homo*  
19 *sapiens* at any point prior to being born alive.

20 (b) Nothing in this chapter shall be construed to affect  
21 existing federal or state law regarding abortion



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

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

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

7 "§453-16 Intentional termination of pregnancy; penalties;  
8 refusal to perform. (a) No abortion shall be performed in this  
9 State unless:

10 (1) The abortion is performed by a licensed physician or  
11 surgeon, or by a licensed osteopathic physician and surgeon; and

12 (2) The abortion is performed in a hospital licensed by  
13 the department of health or operated by the federal government  
14 or an agent thereof, or in a clinic or physician's or  
15 osteopathic physician's office.

16 (b) Abortion shall mean an operation to intentionally  
17 terminate the pregnancy of a nonviable fetus. [~~The termination  
18 of a pregnancy of a viable fetus is not included in this  
19 section.~~]

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



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

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

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

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

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

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

20           (2) Failing to comply with the requirements of the born  
21 alive infant protection act, chapter A.



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 permeant 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 business;

11           ~~[(4)]~~ (5) Being habituated to the excessive use of drugs  
12 or alcohol; or being addicted to, depended on, or a habitual user  
13 of a narcotic, barbiturate, amphetamine, hallucinogen, or other  
14 drug having similar effects;

15           ~~[(5)]~~ (6) Practicing medicine while the ability to  
16 practice is impaired by alcohol, drugs, physical disability, or  
17 mental instability;

18           ~~[(6)]~~ (7) Procuring a license through fraud,  
19 misrepresentation, or deceit, or knowingly permitting an  
20 unlicensed person to perform activities requiring a license;



1           ~~[(7)]~~ (8) Professional misconduct, hazardous negligence  
2 causing bodily injury to another, or manifest incapacity in the  
3 practice of medicine or surgery;

4           ~~[(8)]~~ (9) Incompetence or multiple instances of  
5 negligence, including but not limited to the consistent use of  
6 medical service, which is inappropriate or unnecessary;

7           ~~[(9)]~~ (10) Conduct of practice contrary to recognized  
8 standards of ethics of the medical profession as adopted by the  
9 Hawaii Medical Association, the American Medical Association,  
10 the Hawaii Association of Osteopathic Physicians and Surgeons,  
11 or the American Osteopathic Association;

12           ~~[(10)]~~ (11) Violation of the conditions or limitations  
13 upon which a limited or temporary license is issued;

14           ~~[(11)]~~ (12) Revocation, suspension, or other disciplinary  
15 action by another state or federal agency of a license,  
16 certificate, or medical privilege for reasons as provided in  
17 this section;

18           ~~[(12)]~~ (13) Conviction, whether by nolo contendere or  
19 otherwise, of a penal offense substantially related to the  
20 qualifications, functions, or duties of a physician or



1 osteopathic physician, notwithstanding any statutory provision  
2 to the contrary.

3 ~~[(13)]~~ (14) Violation of chapter 329, the uniform  
4 controlled substances act, or any rule adopted thereunder except  
5 as provided in Section 329-122;

6 ~~[(14)]~~ (15) Failure to report to the board, in writing,  
7 any disciplinary decision issued against the license or the  
8 applicant in another jurisdiction within thirty days after the  
9 disciplinary decision is issued; or

10 ~~[(15)]~~ (16) Submitting to or filing with the board any  
11 notice, statement, or other document required under this  
12 chapter, which is false or untrue or contains any material  
13 misstatement or omission of fact."

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

16 "(a) In addition to any other actions authorized by  
17 law, the board shall have the power to deny, revoke, limit, or  
18 suspend any license to practice nursing as a registered nurse or  
19 as a licensed practical nurse applied for or issued by the board  
20 in accordance with this Chapter, and to fine or to otherwise



1 discipline a licensee for any cause authorized by law, including  
2 but not limited to the following:

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

6 (2) Gross immorality;

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

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

11 (5) Mental incompetence;

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

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

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

19 (9) Conviction, whether by nolo contendere or otherwise,  
20 of a penal offense substantially related to the qualifications,



1 functions, or duties of a nurse, notwithstanding any statutory  
2 provision to the contrary;

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

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

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

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

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

17 "§709-901 **Concealing the corpse of an infant.** (1) A  
18 person commits the offense of concealing the corpse of an infant  
19 if the person conceals the corpse of a new-born child with  
20 intent to conceal the fact of its birth or to prevent a  
21 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, 2019.

16

INTRODUCED BY:

Jim Wesel  
Rida P. Calanilla Arakawa  
Mark  
Rob McDaniel  
James B. King

JAN 23 2019



# H.B. NO. 1184

**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.*

