A BILL FOR AN ACT

RELATING TO CHILDREN.

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

SECTION 1. The legislature finds that the State has a paramount interest in protecting all human life. Accordingly, any infant born alive, even after an attempted abortion, is a legal person for all purposes under the federal and state constitutions, and under other federal and state laws. The legislature also finds that nationwide, nearly six thousand abortions reportedly occurred after twenty weeks of 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, newborn infants who have unexpectedly survived an abortion procedure may be denied appropriate 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 in spite of an attempted abortion does not infringe on a woman's right to choose or obtain an abortion.
under existing federal or state law, or interfere with the
ability of licensed health care professionals to provide legal
abortions.

The purpose of this Act is to ensure the protection and
promotion of the health and well-being of all infants who
survive abortion attempts in the State by:

(1) Mandating that healthcare providers provide medically
appropriate and reasonable life-saving and life-
sustaining medical care and treatment to all born-
alive infants; and

(2) Establishing penalties for failing to provide that
medical care and treatment.

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

"CHAPTER

ABORTION SURVIVORS PROTECTION ACT

§ -1 Definitions. For the purposes of this chapter,
unless the context requires otherwise:
"Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device to intentionally:

1. End the life of the unborn child of a woman known to be pregnant;

2. Terminate the pregnancy of a woman known to be pregnant, with an intention other than:
   - After viability, to produce a live birth and preserve the life and health of the child born alive;
   - To remove a dead unborn child.

"Attempt", with respect to abortion, means conduct that under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in performing an abortion.

"Born alive" or "live birth" means the complete expulsion or extraction of a viable infant from his or her mother, 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 evidence of life, including:
(1) Breathing;
(2) A heartbeat;
(3) Umbilical cord pulsations;
(4) Definite movement of voluntary muscles; or
(5) Any other evidence of life according to standard medical practice.

"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 the person agreed or acquiesced.

"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 human child who has been completely expelled or extracted from the child's 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:
(1) A physician or surgeon licensed to practice medicine
   or osteopathy pursuant to chapter 453; or
(2) A person who is not a physician or surgeon so licensed
   but nevertheless directly performs or attempts to
   perform an abortion.

"Unborn child" means a human fetus, beginning at
fertilization, until the point of being born alive.

§ -2 Requirements and responsibilities. (a) A person
shall not deny or deprive an infant born alive of nourishment
with the intent to cause or allow the death of the infant for
any reason.

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

(c) This section shall not be construed to prohibit an
infant's parent or guardian from refusing to give consent to
medical treatment or surgical care that is not medically
necessary or reasonable, including care or treatment that:

(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) Will do no more than temporarily prolong the act of dying, as in the case of non-viable infant, 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 an infant born alive. If an abortion is performed in a hospital but a live birth nevertheless occurs, 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 is performed in a hospital but a live birth nevertheless occurs, 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) is unable to perform the duties of subsection (d) because the physician is
assisting the woman on whom the abortion was performed, an
attending physician's assistant, nurse, or other healthcare
provider shall assume the duties outlines in subsection (d).

(f) Any infant born alive, 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.

(g) If, before the abortion, the mother has stated in
writing that she does not wish to maintain custody of the infant
in the event that the infant is born alive, and this writing is
not retracted before the attempted abortion, the infant, if born
alive, shall immediately 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 infant born alive.

(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 this section shall
immediately report the failure to law enforcement.
§ -3 Criminal penalties. (a) Any physician, nurse, or other healthcare provider who intentionally performs an overt act that kills an infant born alive shall be guilty of the offense 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 an infant born alive, where, as a result of that failure, the infant dies, shall be guilty of the offense of manslaughter under section 707-702.

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

(d) Any physician, nurse, other healthcare provider, or person, including a parent or guardian, who knowingly violates section -2(h) shall be fined not more than $10,000 or imprisoned not more than five years, or both.
(e) The mother of a child born alive may not be prosecuted for conspiracy in or as an accomplice to violating subsection (b).

§ 4 Civil action. (a) If a child is born alive and a healthcare provider violates section 2(d), the woman upon whom the abortion was performed or attempted may, in a civil action against any person who committed the violation, obtain appropriate relief. Any civil action may be based on a claim that the death of or injury to the infant born alive was a result of simple negligence, gross negligence, wantonness, willfulness, intentional conduct or another violation of the legal standard of care.

(b) Appropriate relief in a civil action under this section includes:

(1) Objective verifiable money damages occasioned by the violation of subsection 2(d);

(2) Damages up to three times the cost of the abortion or attempted abortion;

(3) Punitive damages; and

(4) Other appropriate relief pursuant to applicable law.
(c) Any conviction under section -3 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.

(d) The court shall award a reasonable attorney’s fee as part of the costs to a prevailing plaintiff in a civil action under this section.

(e) If a defendant in a civil action under this subsection prevails and the court finds that the plaintiff's suit was frivolous, the court shall award a reasonable attorney’s fee in favor of the defendant against the plaintiff.

(f) Except as provided in subsection (e), in a civil action under this section, no damages, attorney’s fee or other monetary relief may be assessed against the woman upon whom the abortion was performed.

§ -5 Professional disciplinary action. 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 appropriate chapter, 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 natural persons at any point before being born alive.

(b) Nothing in this chapter shall be construed to affect existing federal or state law regarding abortion. Nothing in this chapter shall be construed to restrict a woman's right to obtain an abortion pursuant to applicable law, nor shall it be construed to restrict the ability of any licensed healthcare providers to perform an abortion in accordance with applicable law.

(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 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) Failure to comply with chapter ;

(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 permanent cure for an incurable disease; or

(C) Making any untruthful and improbable statement in advertising one's medical or surgical practice or business;
[+4+] (5) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;

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

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

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

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

[+9+] (10) Conduct or 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;

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;

Violation of chapter 329, the uniform controlled
substances act, or any rule adopted thereunder except
as provided in section 329-122;

Failure to report to the board, in writing, any
disciplinary decision issued against the licensee or
the applicant in another jurisdiction within thirty
days after the disciplinary decision is issued; or
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) to read 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 licensed 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 incompetency;

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

(7) Wilful 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;

(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;

(12) Failure to comply with chapter _____;

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

[+13+] (14) Violation of chapter 329, the uniform controlled
substances act, or any rule adopted thereunder except
as provided in section 329-122."

SECTION 5. Section 709-901, Hawaii Revised Statutes, 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] the child's birth or to
prevent a determination of whether [it] the child was born dead
or alive.

(2) If an abortion as defined in section _____-1 is
attempted but a live birth nevertheless occurs, the surviving
infant shall be considered a new-born child for the purposes of
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. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2020; provided that the amendments made to section 457-12, Hawaii Revised Statutes, by section 4 of this Act shall not be repealed when that section is reenacted on June 30, 2023, pursuant to section 6 of Act 66, Session Laws of Hawaii 2017.

INTRODUCED BY: Kurt Fevella

[Signature]

[Introduced by: signatures]
Report Title:
Abortion Survivors; Born Alive Infant; Penalties

Description:
Ensures the protection and promotion of the health and well-being of all infants born alive in the State. Mandates medically appropriate and reasonable life-saving and life-sustaining medical care and treatment to all born alive infants. Establishes civil and criminal penalties.

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