

JAN 25 2023

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# A BILL FOR AN ACT

RELATING TO REPRODUCTIVE HEALTH CARE.

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

1           SECTION 1. The legislature finds that Hawaii has a long  
2 tradition of protecting a person's right to privacy and bodily  
3 autonomy independently of, and more broadly than, the federal  
4 constitution. In 1970, Hawaii became the first state in the  
5 nation to decriminalize abortion with the enactment of Act 1,  
6 Session Laws of Hawaii 1970. In 1978, the Hawaii state  
7 constitutional convention proposed, and the electorate approved,  
8 an amendment to explicitly codify the right to privacy in  
9 article I, section 6 of the Hawaii State Constitution.  
10 Article I, section 6 of the Hawaii constitution requires the  
11 legislature to take "affirmative steps" to implement the right  
12 to privacy. The legislature took affirmative steps in 2006 by  
13 enacting Act 35, Session Laws of Hawaii 2006 (Act 35), which  
14 established that the State shall not deny or interfere with a  
15 pregnant person's right to choose or obtain an abortion of a  
16 nonviable fetus, or an abortion that is necessary to protect a  
17 pregnant person's life or health. Act 35 also repealed the



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1 outdated requirement that a person who seeks an abortion in the  
2 State must be a Hawaii resident for at least ninety days.

3       The legislature recognizes that, despite these protections,  
4 ongoing developments in the legal landscape threaten the State's  
5 policy of protecting a person's right to exercise privacy and  
6 personal autonomy within the State's boundaries. In June 2022,  
7 the United States Supreme Court held in *Dobbs v. Jackson Women's*  
8 *Health Organization*, 142 S.Ct. 2228 (2022), that the United  
9 States Constitution does not confer a federal right to an  
10 abortion. Dobbs overruled *Roe v. Wade*, 410 U.S. 113 (1973), and  
11 *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505  
12 U.S. 833 (1992), and overturned almost fifty years of federal  
13 precedent regarding reproductive rights. As a result of the  
14 Dobbs decision, many states have either banned or severely  
15 restricted access to abortion.

16       It is the policy of this State that the rights of equality,  
17 liberty, and privacy guaranteed under article I, sections 3, 5,  
18 and 6 of the Hawaii State Constitution are fundamental rights  
19 and include each person's fundamental right to make reproductive  
20 health care decisions about the person's own body and the right  
21 to decide whether to bear a child or obtain an abortion.



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1           The legislature finds that, while Hawaii offers some of the  
2 country's broadest protections for abortion rights, state law  
3 still contains archaic provisions that threaten criminal  
4 punishment for some health care providers who are engaging in  
5 safe and basic health care. According to available sources, no  
6 health care provider has ever been charged under these outdated  
7 statutes. The legislature also intends to provide clarity by  
8 ensuring statutory consistency across state abortion statutes.  
9 In 2021, Act 3, Session Laws of Hawaii 2021, was enacted to  
10 allow advanced practice registered nurses to provide medication  
11 and aspiration abortion care. Statutory consistency between the  
12 chapters that address physicians and nurses will leave no doubt  
13 that the intent of the legislature is to ensure that advanced  
14 practice registered nurses may legally provide abortion care.

15           Accordingly, the purpose of this Act is to strengthen and  
16 protect inclusive access to abortion and the full range of  
17 sexual and reproductive health care by clarifying existing law.

## PART I

18           SECTION 2. Section 453-16, Hawaii Revised Statutes, is  
19 amended to read as follows:  
20



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1           "§453-16 Intentional termination of pregnancy;

2   ~~[penalties;]~~ patient rights; refusal to perform. (a) [No

3   ~~abortion shall be performed in this State unless:~~

4           ~~(1) The abortion is performed by a] A licensed physician~~  
5                   ~~or surgeon[7] or [by a] licensed osteopathic physician~~  
6                   ~~and surgeon[7 and~~

7           ~~(2) The abortion is performed in a hospital licensed by~~  
8                   ~~the department of health or operated by the federal~~  
9                   ~~government or an agency thereof, or in a clinic or~~  
10                  ~~physician's or osteopathic physician's office.~~

11           ~~(b) Abortion shall mean an operation to intentionally~~  
12   ~~terminate the pregnancy of a nonviable fetus. The termination~~  
13   ~~of a pregnancy of a viable fetus is not included in this~~  
14   ~~section.~~

15           ~~(e)] may provide abortion care.~~

16           ~~(b) Notwithstanding any law to the contrary, a patient has~~  
17   ~~the right to choose to obtain an abortion, or to terminate a~~  
18   ~~pregnancy if the termination is necessary to protect the life or~~  
19   ~~health of the patient. The State shall not deny or interfere~~  
20   ~~with [a female's right to choose or obtain an abortion of a~~



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1 ~~nonviable fetus or an abortion that is necessary to protect the~~  
2 ~~life or health of the female.~~

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

6 ~~(e)]~~ these rights.

7 (c) Nothing in this section shall require any hospital or  
8 any person to participate in an abortion nor shall any hospital  
9 or any person be liable for a refusal.

10 (d) For purposes of this section:

11 "Abortion" means an intentional termination of the  
12 pregnancy of a nonviable fetus.

13 "Nonviable fetus" means a fetus that does not have a  
14 reasonable likelihood of sustained survival outside of the  
15 uterus."

16 SECTION 3. Section 457-8.7, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "[~~§~~457-8.7~~]~~ **Advanced practice registered nurses;**  
19 **abortions by medication or aspiration; [~~penalties;~~] patient**  
20 **rights; refusal to perform.** (a) Notwithstanding section 453-16  
21 or any other law to the contrary, an advanced practice



1 registered nurse may provide medication or aspiration abortion  
2 care in the first trimester of pregnancy, so long as the  
3 advanced practice registered nurse:

- 4 (1) Has prescriptive authority;
- 5 (2) Practices within the advanced practice registered  
6 nurse's practice specialty; and
- 7 (3) Has a valid, unencumbered license obtained in  
8 accordance with this chapter[~~+~~ and
- 9 ~~(4) The aspiration abortion is performed in a hospital~~  
10 ~~licensed by the department of health or operated by~~  
11 ~~the federal government or an agency thereof, or in a~~  
12 ~~clinic or advance practice registered nurse's office].~~

13 [~~(b)~~ ~~Abortion shall mean an intentional termination of the~~  
14 ~~pregnancy of a nonviable fetus. The termination of a pregnancy~~  
15 ~~of a viable fetus is not included in this section.~~

16 ~~(e)]~~ (b) Notwithstanding any law to the contrary, a  
17 patient has the right to choose to obtain an abortion, or to  
18 terminate a pregnancy if the termination is necessary to protect  
19 the life or health of the patient. The State shall not deny or  
20 interfere with ~~[a female's right to choose or obtain an abortion~~



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

3 ~~(d) Any person who knowingly violates subsection (a) shall~~  
4 ~~be fined no more than \$1,000 or imprisoned no more than five~~  
5 ~~years, or both.~~

6 ~~(e)] these rights.~~

7 (c) Nothing in this section shall require any hospital or  
8 any person to participate in an abortion, nor shall any hospital  
9 or any person be liable for a refusal.

10 (d) For purposes of this section, "abortion" has the same  
11 meaning as defined in section 453-16."

12 PART II

13 SECTION 4. Section 577A-1, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§577A-1 Definitions.** For the purpose of this chapter,  
16 the following terms shall be defined as follows:

17 "Family planning services" includes counseling and medical  
18 care designed to facilitate family planning.

19 "Medical care and services" means services related to the  
20 diagnosis, examination, and administration of medication [~~is~~]  
21 for the treatment and prevention of [~~venereal diseases,~~]



1 sexually transmitted infections; pregnancy[~~7~~]; and family  
2 planning services. [~~It shall not include surgery or any~~  
3 ~~treatment to induce abortion.]~~

4 "Minor" [~~shall be~~] means any person [~~from the age of~~  
5 ~~fourteen to seventeen inclusive.]~~ under the age of eighteen.

6 "Sexually transmitted infection" means an infection that is  
7 commonly transmitted through sexual contact, including but not  
8 limited to human immunodeficiency virus infection."

9 PART III

10 SECTION 5. If any provision of this Act, or the  
11 application thereof to any person or circumstance, is held  
12 invalid, the invalidity does not affect other provisions or  
13 applications of the Act that can be given effect without the  
14 invalid provision or application, and to this end the provisions  
15 of this Act are severable.

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

19 SECTION 7. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.



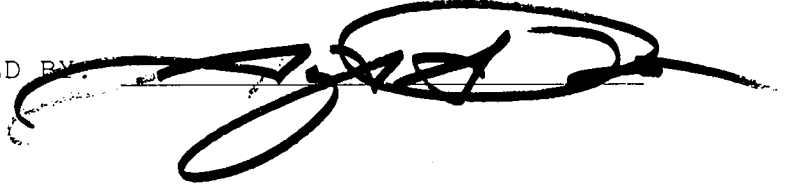


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1 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY

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**Report Title:**

Reproductive Health Care Services

**Description:**

Explicitly provides that a patient has a right to choose to obtain an abortion, or terminate a pregnancy if the termination is necessary to protect the patient's life or health. Repeals criminal penalties for violations of certain abortion provisions. Clarifies which health care providers may provide abortion care.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

