



1           (A) After viability, to produce a live birth and  
2                    preserve the life and health of the child born  
3                    alive; or

4           (B) To remove a dead unborn child.

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

9           "Born alive" or "live birth" means the complete expulsion  
10 or extraction of an infant from the infant's mother, regardless  
11 of the state of gestational development, that after expulsion or  
12 extraction, whether or not the umbilical cord has been cut or  
13 the placenta is attached, shows evidence of life, including:

- 14           (1) Breathing;
- 15           (2) A heartbeat;
- 16           (3) Umbilical cord pulsations;
- 17           (4) Definite movement of voluntary muscles; or
- 18           (5) Any other evidence of life according to standard  
19            medical practice.

20           "Counseling" means counseling provided by a:

- 21           (1) Counselor licensed by the State; or



1 (2) Victim's rights advocate provided by a law enforcement  
2 agency.

3 "Dismemberment abortion":

4 (1) Means, with the purpose of causing the death of an  
5 unborn child, knowingly dismembering a living unborn  
6 child and extracting the unborn child, one piece at a  
7 time or intact but crushed, from the uterus through  
8 the use of clamps, grasping forceps, tongs, scissors  
9 or similar instruments that, through the convergence  
10 of two rigid levers, slice, crush, or grasp a portion  
11 of the unborn child's body in order to cut or rip it  
12 off or crush it; but

13 (2) Does not include an abortion that uses suction to  
14 dismember the body of the unborn child by sucking  
15 fetal parts into a collection container unless the  
16 actions described in paragraph (1) are used to cause  
17 the death of an unborn child but suction is  
18 subsequently used to extract fetal parts after the  
19 death of the unborn child.

20 "Facility" means any medical or counseling group, center,  
21 or clinic and includes the entire legal entity, including any



1 entity that controls, is controlled by, or is under common  
2 control with that facility.

3 "Fertilization" means the fusion of human spermatozoon with  
4 a human ovum.

5 "Fiscal year" means the period beginning July 1 of one  
6 calendar year to June 30 of the following calendar year.

7 "Medical treatment" means treatment provided at a hospital  
8 licensed by the State, at a medical clinic licensed by the  
9 State, or from a physician.

10 "Minor" means an individual under eighteen years of age.

11 "Pain-capable unborn child" means an unborn child that has  
12 attained a post-fertilization age at which the child is capable  
13 of experiencing pain.

14 "Perform", with respect to an abortion, includes inducing  
15 an abortion through a medical or chemical intervention including  
16 writing a prescription for a drug or device intended to result  
17 in an abortion.

18 "Physician" means a physician or surgeon licensed to  
19 practice medicine or osteopathy under chapter 453.

20 "Post-fertilization age" means the age of the unborn child  
21 as calculated from the time of fertilization.



1 "Probable post-fertilization age" means the age that, in  
2 reasonable medical judgment, will with reasonable probability be  
3 the post-fertilization age of the unborn child at the time the  
4 abortion is planned to be performed or induced.

5 "Reasonable medical judgment" means a medical judgment by a  
6 reasonably prudent physician who is knowledgeable about the case  
7 and the treatment possibilities with respect to the medical  
8 conditions involved.

9 "Unborn child" means an individual organism of the human  
10 species, beginning at fertilization, until the point of being  
11 born alive.

12 § -2 **General provisions.** Notwithstanding any law to the  
13 contrary, it shall be unlawful for any physician to perform an  
14 abortion or attempt to do so, unless in conformity with this  
15 chapter.

16 **PART II. ABORTIONS OF PAIN-CAPABLE UNBORN CHILDREN**

17 § -11 **Assessment of post-fertilization age.** (a) A  
18 physician performing or attempting an abortion shall first  
19 determine the probable post-fertilization age of the unborn  
20 child or reasonably rely upon a determination made by another  
21 physician. In making that determination, the physician shall



1 make inquiries of the pregnant woman and perform or cause to be  
2 performed medical examinations and tests that a reasonably  
3 prudent physician, knowledgeable about the case and the medical  
4 conditions involved, would consider necessary to make an  
5 accurate determination of post-fertilization age.

6 (b) If the probable post-fertilization age of the unborn  
7 child is at least twenty weeks, the child shall be considered a  
8 pain-capable unborn child.

9 § -12 **Prohibition of abortion of pain-capable unborn**  
10 **child; exceptions.** (a) Except as provided in subsection (b),  
11 an abortion shall not be performed or attempted if, as  
12 determined pursuant to the assessment performed under  
13 section -11, the unborn child is a pain-capable unborn child.

14 (b) Subsection (a) shall not apply if:  
15 (1) In reasonable medical judgment, the abortion is  
16 necessary to save the life of a pregnant woman whose  
17 life is endangered by a physical disorder, physical  
18 illness, or physical injury, including a life-  
19 endangering physical condition caused by or arising  
20 from the pregnancy itself, but not including  
21 psychological or emotional conditions;



1           (2) The pregnancy is the result of rape against an adult  
2           woman who, at least forty-eight hours before the  
3           abortion, has obtained:

4           (A) Counseling for the rape; or

5           (B) Medical treatment for the rape or for an injury  
6           related to the rape;

7           (3) The pregnancy is the result of rape against an adult  
8           woman and the rape has been reported at any time  
9           before the abortion to a law enforcement agency; or

10          (4) The pregnancy is a result of rape against a minor or  
11          incest against a minor, and the rape or incest has  
12          been reported at any time before the abortion to any:

13          (A) Government agency authorized to act on reports of  
14          child abuse; or

15          (B) Law enforcement agency;

16 provided that the unborn child is sedated or aborted before any  
17 dismemberment of the child's body is made.

18           **§ -13 Requirement as to manner of procedure performed.**

19 Notwithstanding the definitions of "abortion" and "attempt" in  
20 section -1, a physician terminating or attempting to  
21 terminate a pregnancy pursuant to an exception provided under



1 section -12(b) may do so only in a manner that, in reasonable  
2 medical judgment, provides the best opportunity for the unborn  
3 child to survive.

4 § -14 Documentation requirements. (a) A physician who  
5 performs or attempts to perform an abortion on an adult woman  
6 pursuant to an exception provided by section -12(b)(2) shall,  
7 before the abortion, place in the patient medical file  
8 documentation from a:

- 9 (1) Hospital licensed by the State or operated under  
10 authority of a federal agency;
- 11 (2) Medical clinic licensed by the State or operated under  
12 authority of a federal agency;
- 13 (3) Personal physician licensed by the State;
- 14 (4) Counselor licensed by the State; or
- 15 (5) Victim's rights advocate provided by a law enforcement  
16 agency,

17 that the adult woman seeking the abortion obtained medical  
18 treatment or counseling for the rape or for an injury related to  
19 the rape.

20 (b) A physician who performs or attempts to perform an  
21 abortion on an adult woman pursuant to an exception provided by



1 section -12(b)(3) shall, before the abortion, place in the  
2 patient medical file documentation from the law enforcement  
3 agency to which the rape was reported.

4 (c) A physician who performs or attempts to perform an  
5 abortion on a minor pursuant to an exception provided under  
6 section -12(b)(4) shall, before the abortion, place in the  
7 patient medical file documentation from the government agency or  
8 law enforcement agency to which the rape or incest of the minor  
9 was reported.

10 (d) Section 622-58 shall apply to the documentation  
11 required under this section.

12 § -15 **Informed consent.** (a) A physician who intends to  
13 perform or attempt to perform an abortion of a pain-capable  
14 unborn child pursuant to section -12(b) shall not commence  
15 the abortion procedure without first providing the woman seeking  
16 the abortion a disclosure form that shall include:

17 (1) A statement by the physician indicating the probable  
18 post-fertilization age of the pain-capable unborn  
19 child;

20 (2) A statement by the physician that the unborn child,  
21 due to the child's stage of development at that



1 post-fertilization age, is capable of experiencing  
2 pain;

3 (3) A statement that state law authorizes an abortion  
4 after twenty weeks fetal age only if the mother's life  
5 is endangered by a physical disorder, physical  
6 illness, or physical injury; when the pregnancy was  
7 the result of rape; or when the pregnancy was the  
8 result of an act of incest against a minor;

9 (4) A statement that the abortion must be performed by the  
10 method most likely to allow the child to be born alive  
11 unless this would cause significant risk to the  
12 mother; and

13 (5) A statement that these requirements are binding upon  
14 the physician and all other medical personnel who are  
15 subject to criminal and civil penalties, and that a  
16 woman on whom an abortion has been performed may take  
17 civil action if these requirements are not followed.

18 (b) The abortion disclosure form shall be signed in person  
19 by the woman seeking the abortion, who shall indicate whether or  
20 not she understands the contents of the form. If she does not  
21 understand the contents of the form, the abortion shall not be



1 performed, unless the exception under section -16 applies.  
 2 The physician performing the abortion and a witness shall also  
 3 sign the form. The physician shall maintain the form in the  
 4 patient's medical file.

5 (c) Section 622-58 shall apply to the form required under  
 6 this section.

7 § -16 **Additional exception.** If, in reasonable medical  
 8 judgement, compliance with section -13, section -15, or  
 9 both, would pose a greater risk of:

- 10 (1) The death of the pregnant woman; or
- 11 (2) The substantial and irreversible physical impairment
- 12 of a major bodily function, not including
- 13 psychological or emotional conditions, of the pregnant
- 14 woman,

15 the physician shall be exempt from section -13 or from  
 16 section -15, or both, to the extent necessary to avoid the  
 17 death or impairment.

18 § -17 **Exclusion of certain facilities.** Notwithstanding  
 19 the definitions of the terms "counseling" and "medical  
 20 treatment" in section -1, the counseling or medical treatment  
 21 provided by a facility that performs abortions shall not be



1 valid for the purposes of the exception provided under  
2 section -12(b)(2), unless that facility is a hospital.

3 § -18 Data collection. (a) Any physician who performs  
4 or attempts an abortion described in section -12(b)(2) shall  
5 submit an annual summary of all those abortions to the  
6 department of health not later than sixty days after the end of  
7 each calendar year.

8 (b) Each annual summary shall include the number of  
9 abortions performed or attempted on an unborn child who had a  
10 post-fertilization age of twenty weeks or more and specify the  
11 following for each abortion performed or attempted pursuant to  
12 exception under section -12(b)(2):

- 13 (1) The probable post-fertilization age of the unborn
- 14 child;
- 15 (2) The method used to carry out the abortion;
- 16 (3) The location where the abortion was conducted;
- 17 (4) The exception under section -12(b)(2) under which
- 18 the abortion was conducted; and
- 19 (5) Any incident of live birth that occurred in spite of
- 20 an attempted abortion.



1 (c) A summary required under this section shall not  
2 contain personal identifying patient information and shall be  
3 submitted in compliance with federal and state laws requiring  
4 patient privacy.

5 (d) The department of health shall prepare an annual  
6 report providing statistics for the most recently completed  
7 fiscal year, compiled from all of the summaries made to the  
8 department under this section. The department shall ensure that  
9 none of the information included in the public reports could  
10 reasonably lead to the identification of any pregnant woman upon  
11 whom an abortion was performed or attempted. The annual report  
12 shall be submitted to the legislature no later than twenty days  
13 prior to the convening of each regular legislative session. The  
14 department shall also make the report available to the general  
15 public.

16 **PART III. DISMEMBERMENT ABORTIONS**

17 **§ -21 Dismemberment abortions prohibited; exception.**

18 (a) Except as provided in this section, no physician in this  
19 State shall perform a dismemberment abortion.

20 (b) Subsection (a) shall not apply if the dismemberment  
21 abortion is necessary to save the life of a mother whose life is



1 endangered by a physical disorder, physical illness, or physical  
2 injury, including a life-endangering physical condition caused  
3 by or arising from the pregnancy itself, but not including  
4 psychological or emotional conditions.

5       **§ -22 Construction.** Section -21 shall not be  
6 construed to prohibit an abortion not otherwise prohibited by  
7 this chapter or other state law, if performed by a method other  
8 than dismemberment abortion.

9                                   **PART IV. PENALTIES; REMEDIES**

10       **§ -31 Criminal penalties; bar to prosecution.** (a) A  
11 physician who violates part II, except section -18, shall be  
12 guilty of a class C felony.

13       (b) A physician who violates section -18 shall be  
14 guilty of a violation.

15       (c) A physician who violates part III shall be guilty of a  
16 class C felony; provided that the maximum term of imprisonment  
17 shall be not more than two years.

18       (d) A woman upon whom an abortion is performed may not be  
19 prosecuted for conspiracy in or as an accomplice to violating  
20 this chapter.



1           §   -32   **Civil remedies.**   (a)   A woman upon whom an  
2 abortion has been performed or attempted in violation of any  
3 provision of this chapter may obtain appropriate relief in a  
4 civil action against any person who committed the violation.

5           (b)   A parent of a minor upon whom an abortion has been  
6 performed or attempted under an exception provided for in  
7 section     -12(b)(4), and that was performed in violation of any  
8 provision of this chapter may obtain appropriate relief in a  
9 civil action against any person who committed the violation,  
10 unless the pregnancy resulted from the plaintiff's criminal  
11 conduct.

12           (c)   Appropriate relief in a civil action under this  
13 section includes:

- 14           (1)   Objective verifiable money damages for all injuries,  
15                psychological and physical, occasioned by the  
16                violation;
- 17           (2)   Damages up to three times the cost of the abortion or  
18                attempted abortion;
- 19           (3)   Punitive damages; and
- 20           (4)   Other appropriate relief pursuant to applicable law.



1 (d) The court shall award reasonable attorney's fees as  
2 part of the costs to a prevailing plaintiff in a civil action  
3 under this section.

4 (e) If a defendant in a civil action under this section  
5 prevails and the court finds that the plaintiff's suit was  
6 frivolous, the court shall award reasonable attorney's fees in  
7 favor of the defendant against the plaintiff.

8 (f) Except as provided in subsection (e), in a civil  
9 action under this section, no damages, attorney's fees, or other  
10 monetary relief may be assessed against the woman upon whom the  
11 abortion was performed or attempted."

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

14 **"§453-16 Intentional termination of pregnancy; penalties;**  
15 **refusal to perform.** (a) No abortion shall be performed in this  
16 State unless:

17 (1) The abortion is performed by a licensed physician or  
18 surgeon, or by a licensed osteopathic physician and  
19 surgeon; [~~and~~]

20 (2) The abortion is performed in a hospital licensed by  
21 the department of health or operated by the federal



1 government or an agency thereof, or in a clinic or  
2 physician's or osteopathic physician's office~~(-)~~; and

3 (3) The abortion complies with chapter \_\_\_\_\_ .

4 (b) ~~[Abortion]~~ "Abortion" shall ~~[mean an operation to~~  
5 ~~intentionally terminate the pregnancy of a nonviable fetus. The~~  
6 ~~termination of a pregnancy of a viable fetus is not included in~~  
7 ~~this section.]~~ have the same meaning as in section \_\_\_\_\_ -1.

8 (c) The State shall not deny or interfere with a female's  
9 right to choose or obtain an abortion ~~[of a nonviable fetus or~~  
10 ~~an abortion]~~ that is necessary to protect the life ~~[or health]~~  
11 of the female.

12 (d) Any person who knowingly violates subsection ~~[-(a)]~~  
13 (a) (1) or (2) shall be fined not more than \$1,000 or imprisoned  
14 not more than five years, or both. Any person who violates  
15 subsection (a) (3) shall be subject to the penalties established  
16 in chapter \_\_\_\_\_ .

17 (e) Nothing in this section shall require any hospital or  
18 any person to participate in an abortion nor shall any hospital  
19 or any person be liable for refusing to participate in an  
20 abortion."



1 SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 5. This Act shall take effect on July 1, 2023.

7

INTRODUCED BY: Kurt Feilke



# S.B. NO. 254

**Report Title:**

Abortion; Pain Capable; Dismemberment; Prohibitions; Exceptions

**Description:**

Prohibits the abortion of a fetus that is capable of feeling pain. Prohibits abortions by dismemberment. Provides certain exceptions. Establishes penalties.

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

