A BILL FOR AN ACT

RELATING TO SECTION 453-16, HAWAII REVISED STATUTES.

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 the right of reproductive choice 3 independently of, and more broadly than, the federal constitution. In 1970, three years before the United States 4 5 Supreme Court's decision in Roe v. Wade, 410 U.S. 113 (1973), Hawaii became one of the first states to repeal its law 6 7 criminalizing abortion. In addition, article I, section 6 of the Hawaii State Constitution includes an explicit right to 8 9 privacy: 10 The right of the people to privacy is recognized and shall not be infringed without the 11 12 showing of a compelling state interest. legislature shall take affirmative steps to 13 14 implement this right. 15 To make clear that the right to reproductive choice is protected as a fundamental right under the Hawaii State 16

Constitution, the committee of the whole explained during the

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1978 constitutional convention that:

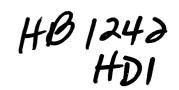
1	"By amending the Constitution to include a
2	separate and distinct privacy right, it is the
3	intent of your Committee to insure that privacy is
4	treated as a fundamental right for purposes of
5	constitutional analysis [T]his privacy
6	concept encompasses the notion that in certain
7	highly personal and intimate matters, the
8	individual should be afforded freedom of choice
9	absent a compelling state interest." (Committee
10	of the Whole Rep. No. 15, in 1 Proceedings of the
11	Constitutional Convention of Hawaii of 1978, at
12	1024 (1980)).
13	To date, however, the legislature has not taken
14	"affirmative steps" to amend outdated language in the abortion
15	statutes to ensure full access to abortion services. The
16	legislature finds that the existing residency requirement
17	violates the United States Constitution's privileges and
18	immunities clause and is, therefore, unconstitutional and
19	invalid. The legislature further finds that the hospital
20	requirement is unenforceable during the first trimester under
21	Roe v. Wade, according to Attorney General Opinion number 74-17

1	The purpose of this Act is to clarify or eliminate outdated
2	statutory language while not expanding those rights that are
3	currently protected under state and federal law.
4	SECTION 2. Section 453-16, Hawaii Revised Statutes, is
5	amended to read as follows:
6	"[+]§453-16[+] Intentional termination of pregnancy;
7	penalties; refusal to perform. (a) No abortion shall be
8	performed in this [State] state unless:
9	(1) [Such] The abortion is performed by a licensed
10	physician or surgeon, or by a licensed osteopathic
11	physician and surgeon; and
12	(2) [Such] <u>The</u> abortion is performed in a hospital
13	licensed by the department of health or operated by
14	the federal government or an agency thereof[; and
15	(3) The woman upon whom such abortion is to be performed
16	is domiciled in this State or has been physically
17	present in this State for at least ninety days
18	immediately preceding such abortion. The affidavit of
19	such a woman shall be prima facie evidence of
20	compliance with this requirement.] ,or in a clinic or
21	physician's office.

- 1 (b) Abortion shall mean an operation to intentionally
- 2 terminate the pregnancy of a nonviable fetus. The termination
- 3 of a pregnancy of a viable fetus is not included in this
- 4 section.
- 5 (c) The State shall not deny or interfere with a female's
- 6 right to choose or obtain an abortion of a nonviable fetus or an
- 7 abortion that is necessary to protect the life or health of the
- 8 female.
- 9 [(c)] (d) Any person who knowingly violates [this section]
- 10 subsection (a) shall be fined not more than \$1,000 or imprisoned
- 11 not more than five years, or both.
- 12 [(d)] (e) Nothing in this section shall require any
- 13 hospital or any person to participate in [such] an abortion nor
- 14 shall any hospital or any person be liable for [such] a
- 15 refusal."
- 16 SECTION 3. Statutory material to be repealed is bracketed
- 17 and stricken. New statutory material is underscored.
- 18 SECTION 4. This Act shall take effect upon its approval.

Report Title:

Intentional Termination of Pregnancy



Description:

Prohibits the State from denying or interfering with a female's right to choose or obtain an abortion of a nonviable fetus or an abortion necessary to protect the female's life or health. Repeals residency requirement for abortions. Permits abortions to be performed in clinics and physician's offices. (HB1242 HD1)