

1 neonatal deaths after an attempted abortion. Without proper
2 legal protection, new-born infants who have unexpectedly
3 survived an abortion procedure may be denied appropriate life-
4 saving or life-sustaining medical care and treatment and be left
5 to die.

6 The legislature further finds that protecting an infant
7 whose live birth occurred as the result of an attempted abortion
8 does not infringe on a woman's right to choose or obtain an
9 abortion of a nonviable fetus, or an abortion that is necessary
10 to protect the life or health of the mother.

11 The purpose of this Act is to ensure the protection and
12 promotion of the health and well-being of all infants born alive
13 as a result of an abortion performed in the State, to mandate
14 that healthcare providers give medically appropriate and
15 reasonable life-saving and life-sustaining medical care and
16 treatment to all such born alive infants and to provide
17 penalties for failure to provide medically appropriate and
18 reasonable life-saving and life-sustaining medical care and
19 treatment to all such born alive infants.

20 **SA-3 Application.** This chapter shall only apply to
21 abortions that result in live births.



1 **§A-4 Definitions.** As used in this chapter:
2 "Abortion" has the same meaning as in section 453-16.
3 "Born alive" or "live birth" means the complete expulsion
4 or extraction of an infant from his or her mother as a result of
5 an abortion, regardless of the state of gestational development,
6 that, after expulsion or extraction, whether or not the
7 umbilical cord has been cut or the placenta is attached, shows
8 any evidence of life, including, but not limited to, one or more
9 of the following:
10 (1) Breathing;
11 (2) A heartbeat;
12 (3) Umbilical cord pulsation; or
13 (4) Definite movement of voluntary muscles.
14 "Consent" means the voluntary agreement or acquiescence by
15 a person of age and with the requisite mental capacity who is
16 not under duress or coercion and who has knowledge or
17 understanding of the act or action to which he or she has agreed
18 or acquiesced.
19 "Facility" or "medical facility" means any public or
20 private hospital, clinic, center, medical school, medical
21 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 **§A-5 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 requirements of this section shall not be
7 construed to prevent an infant's parent(s) or guardian(s) from
8 refusing to give consent to medical treatment or surgical care
9 which is not medically necessary or reasonable, including care
10 or treatment 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
14 infant of the 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 immediate medical care to the infant and
8 call 9-1-1 for an emergency transfer of the infant to a hospital
9 that shall provide medically appropriate and reasonable care and
10 treatment to the infant.

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

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



1 (g) If, before the abortion, the mother has stated in
2 writing that she does not wish to keep the infant in the event
3 that the abortion results in a live birth, and this writing is
4 not retracted before the attempted abortion, the infant, if born
5 alive, shall immediately upon birth become a ward under the care
6 of the department of human services.

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

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

15 **§A-6 Criminal penalties.** (a) Any physician, nurse, or
16 other healthcare provider who intentionally or knowingly fails
17 to provide medically appropriate and reasonable care and
18 treatment to a born alive infant, where, as a result of that
19 failure, the infant dies, shall be guilty of the offense of
20 murder in the second degree under section 707-701.5.



1 (b) Any physician, nurse, or other healthcare provider who
2 recklessly fails to provide medically appropriate and reasonable
3 care and treatment to a born alive infant, where, as a result of
4 that failure, the infant dies, shall be guilty of the offense of
5 manslaughter under section 707-702.

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

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

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



1 **§A-7 Civil and administrative action.** (a) Any conviction
2 under this chapter shall be admissible in a civil suit as *prima*
3 *facie* evidence of a failure to provide medically appropriate and
4 reasonable care and treatment to a born alive infant. Any civil
5 action may be based on a claim that the death of or injury to
6 the born alive infant was a result of simple negligence, gross
7 negligence, wantonness, willfulness, intentional conduct, or
8 another violation of the legal standard of care.

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

19 **§A-8 Construction.** (a) Nothing in this chapter shall be
20 construed to affirm, deny, expand, or contract any legal status



1 or legal right applicable to any member of the species *homo*
2 *sapiens* at any point prior to being born alive.

3 (b) Nothing in this chapter shall be construed to affect
4 existing federal or state law regarding abortion.

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

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

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

11 "**§453-16 Intentional termination of pregnancy; penalties;**
12 **refusal to perform.** (a) No abortion shall be performed in this
13 State unless:

14 (1) The abortion is performed by a licensed physician or
15 surgeon, or by a licensed osteopathic physician and
16 surgeon; and

17 (2) The abortion is performed in a hospital licensed by
18 the department of health or operated by the federal
19 government or an agency thereof, or in a clinic or
20 physician's or osteopathic 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 termination of a pregnancy of a viable fetus shall
6 be subject to the born alive infant protection act, chapter A.

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

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

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

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

19 "(a) In addition to any other actions authorized by law,
20 any license to practice medicine and surgery may be revoked,
21 limited, or suspended by the board at any time in a proceeding



1 before the board, or may be denied, for any cause authorized by
2 law, including but not limited to the following:

3 (1) Procuring, or aiding or abetting in procuring, a
4 criminal abortion;

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

7 [~~2~~] (3) Employing any person to solicit patients for
8 one's self;

9 [~~3~~] (4) Engaging in false, fraudulent, or deceptive
10 advertising, including but not limited to:

11 (A) Making excessive claims of expertise in one or
12 more medical specialty fields;

13 (B) Assuring a permanent cure for an incurable
14 disease; or

15 (C) Making any untruthful and improbable statement in
16 advertising one's medical or surgical practice or
17 business;

18 [~~4~~] (5) Being habituated to the excessive use of drugs or
19 alcohol; or being addicted to, dependent on, or a
20 habitual user of a narcotic, barbiturate, amphetamine,
21 hallucinogen, or other drug having similar effects;



- 1 [~~(5)~~] (6) Practicing medicine while the ability to practice
2 is impaired by alcohol, drugs, physical disability, or
3 mental instability;
- 4 [~~(6)~~] (7) Procuring a license through fraud,
5 misrepresentation, or deceit, or knowingly permitting
6 an unlicensed person to perform activities requiring a
7 license;
- 8 [~~(7)~~] (8) Professional misconduct, hazardous negligence
9 causing bodily injury to another, or manifest
10 incapacity in the practice of medicine or surgery;
- 11 [~~(8)~~] (9) Incompetence or multiple instances of negligence,
12 including but not limited to the consistent use of
13 medical service, which is inappropriate or
14 unnecessary;
- 15 [~~(9)~~] (10) Conduct or practice contrary to recognized
16 standards of ethics of the medical profession as
17 adopted by the Hawaii Medical Association, the
18 American Medical Association, the Hawaii Association
19 of Osteopathic Physicians and Surgeons, or the
20 American Osteopathic Association;



- 1 [~~(10)~~] (11) Violation of the conditions or limitations upon
- 2 which a limited or temporary license is issued;
- 3 [~~(11)~~] (12) Revocation, suspension, or other disciplinary
- 4 action by another state or federal agency of a
- 5 license, certificate, or medical privilege for reasons
- 6 as provided in this section;
- 7 [~~(12)~~] (13) Conviction, whether by nolo contendere or
- 8 otherwise, of a penal offense substantially related to
- 9 the qualifications, functions, or duties of a
- 10 physician or osteopathic physician, notwithstanding
- 11 any statutory provision to the contrary;
- 12 [~~(13)~~] (14) Violation of chapter 329, the uniform controlled
- 13 substances act, or any rule adopted thereunder except
- 14 as provided in section 329-122;
- 15 [~~(14)~~] (15) Failure to report to the board, in writing, any
- 16 disciplinary decision issued against the licensee or
- 17 the applicant in another jurisdiction within thirty
- 18 days after the disciplinary decision is issued; or
- 19 [~~(15)~~] (16) Submitting to or filing with the board any
- 20 notice, statement, or other document required under



1 this chapter, which is false or untrue or contains any
2 material misstatement or omission of fact."

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

5 "(a) In addition to any other actions authorized by law,
6 the board shall have the power to deny, revoke, limit, or
7 suspend any license to practice nursing as a registered nurse or
8 as a licensed practical nurse applied for or issued by the board
9 in accordance with this chapter, and to fine or to otherwise
10 discipline a licensee for any cause authorized by law, including
11 but not limited to the following:

12 (1) Fraud or deceit in procuring or attempting to procure
13 a license to practice nursing as a registered nurse or
14 as a licensed practical nurse;

15 (2) Gross immorality;

16 (3) Unfitness or incompetence by reason of negligence,
17 habits, or other causes;

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

20 (5) Mental incompetence;



- 1 (6) Unprofessional conduct as defined by the board in
2 accordance with its own rules;
- 3 (7) Wilful or repeated violation of any of the provisions
4 of this chapter or any rule adopted by the board;
- 5 (8) Revocation, suspension, limitation, or other
6 disciplinary action by another state of a nursing
7 license for reasons as provided in this section;
- 8 (9) Conviction, whether by nolo contendere or otherwise,
9 of a penal offense substantially related to the
10 qualifications, functions, or duties of a nurse,
11 notwithstanding any statutory provision to the
12 contrary;
- 13 (10) Failure to report to the board any disciplinary action
14 taken against the licensee in another jurisdiction
15 within thirty days after the disciplinary action
16 becomes final;
- 17 (11) Submitting to or filing with the board any notice,
18 statement, or other document required under this
19 chapter, which is false or untrue or contains any
20 material misstatement of fact, including a false



1 attestation of compliance with continuing competency
2 requirements; [~~or~~]

3 (12) Failing to comply with the requirements of the born
4 alive infant protection act, chapter A; or

5 [~~(12)~~] (13) Violation of the conditions or limitations upon
6 which any license is issued."

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

9 "**§709-901 Concealing the corpse of an infant.** (1) A
10 person commits the offense of concealing the corpse of an infant
11 if the person conceals the corpse of a new-born child with
12 intent to conceal the fact of its birth or to prevent a
13 determination of whether it was born dead or alive.

14 (2) If an attempted abortion results in a live birth under
15 chapter A, the born alive infant shall be considered a new-born
16 child under this section.

17 [~~(2)~~] (3) Concealing the corpse of an infant is a
18 misdemeanor."

19 SECTION 6. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



H.B. NO. 1368

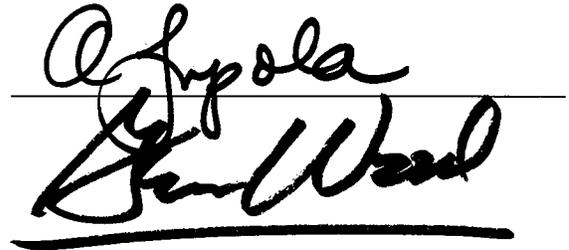
1 SECTION 7. In codifying the new sections added by sections
2 2, 3, 4, and 5 of this Act, the revisor of statutes shall
3 substitute appropriate section numbers for the letters used in
4 designating the new sections in this Act.

5 SECTION 8. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act shall take effect on July 1, 2017.

8

INTRODUCED BY:

The image shows two handwritten signatures in black ink. The top signature is 'A. Lopez' and the bottom signature is 'Ben Ward'. Both signatures are written over a horizontal line that extends from the 'INTRODUCED BY:' text to the right.

JAN 24 2017



H.B. NO. 1368

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.

