

STAND. COM. REP. NO. 1079

Honolulu, Hawaii

MAR 03 2023

RE: S.B. No. 1
S.D. 2

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2023
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 1, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO HEALTH CARE,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Repeal the requirement that abortions, including aspiration abortions performed by advance practice registered nurses, be performed at certain locations;
- (2) Clarify that a patient has the right to choose to obtain an abortion, or, if necessary to protect the life or health of the patient, to terminate the pregnancy and the State shall not deny or interfere with these rights;
- (3) Define "abortion" and "nonviable fetus";
- (4) Prohibit a covered entity from disclosing certain communication or information relating to reproductive health care services;
- (5) Prohibit the issuance of a subpoena in connection with an out-of-state proceeding relating to reproductive health care services legally performed in the State;



- (6) Prohibit agencies from providing information or expending resources in the furtherance of interstate investigations or proceedings relating to reproductive health care services;
- (7) Prohibit the State from penalizing, prosecuting, or otherwise taking adverse action based on pregnancy outcomes or for aiding or assisting a pregnant individual accessing reproductive health care services;
- (8) Require the Governor to deny any demand for surrender of a person charged with a crime involving reproductive health care services unless the conduct constitutes a crime in the State;
- (9) Enumerate laws contrary to public policy and prohibit their application as rules of decision in the courts;
- (10) Prohibit the issuance of a summons for persons to testify in another state with regard to lawful reproductive health care services;
- (11) Clarify under various licensing statutes that the provision or assistance in receipt or provision of medical, surgical, pharmaceutical, counseling, or referral services related to the human reproductive system cannot form a basis for disciplinary action;
- (12) Prohibit the enforcement of a judgment or order arising from a foreign penal civil action or other penal law with respect to reproductive health care services; and
- (13) Amend the definition of "medical care and services" so that a minor may consent to receive, without any other person's consent, surgery or any treatment to induce abortion.

Your Committee received testimony in support of this measure from the Department of the Attorney General; Department of Human Services; Hawai'i Civil Rights Commission; Hawai'i State Commission on the Status of Women; one member of the Hawai'i County Council; Women's Caucus of the Democratic Party of Hawai'i; Hawaii Friends of Civil Rights; Stonewall Caucus of the Democratic Party of



Hawai'i; American Association of University Women of Hawaii; Imua Alliance; AlohaCare; Hawaii Medical Services Association; Hawai'i Section of the American College of Obstetricians and Gynecologists; Planned Parenthood Alliance Advocates - Hawai'i; Early Childhood Action Strategy; Hawaii Academy of Physician Assistants; Patsy T. Mink Political Action Committee; Hawaii Medical Association; Kaiser Permanente Hawai'i; Hawai'i Women Lawyers; Hawaii Maternal and Infant Health Collaborative; Healthcare Association of Hawaii; Hawai'i State Center for Nursing; Hawai'i State Coalition Against Domestic Violence; Unite Here! Local 5; Papa Ola Lokahi; Hawai'i Association of Professional Nurses; Japanese American Citizens League; Fujiwara and Rosenbaum, LLC; Pride at Work - Hawaii; and fifty-three individuals. Your Committee received testimony in opposition to this measure from Hawaii Family Forum and one individual. Your Committee received comments on this measure from the Hawaii Medical Board and one individual.

Your Committee finds that the people of the State have a long tradition of protecting an individual's right to privacy and bodily autonomy independently of, and more broadly than, the United States Constitution. In 1970, Hawai'i became the first state in the nation to decriminalize abortion with the enactment of Act 1, Session Laws of Hawaii 1970. In 1978, the 1978 Hawaii State Constitutional Convention proposed, and the electorate approved, an amendment to explicitly codify the right to privacy in article I, section 6, of the Hawaii State Constitution. However, your Committee further finds that existing developments in the legal landscape threaten the State's policy to protect an individual's right to privacy and personal autonomy over their body within state boundaries. In June 2022, the Supreme Court of the United States held in *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228 (2022), that the United States Constitution does not confer a right to an abortion. *Dobbs* overrules *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), and the nearly fifty years of federal precedent regarding reproductive rights. The impact of *Dobbs* has resulted in many states either banning or severely restricting access to abortion.

Your Committee also finds that during the previous administration, Governor Ige issued Executive Order 22-5 on October 11, 2022, which outlined the Governor's policy to limit



cooperation with other states in investigations, proceedings, or warrants involving the provision of reproductive health care services in the State, provided that the provision of the reproductive health care service is legal in the State. This measure codifies and expands on that policy.

Your Committee has amended this measure by:

- (1) Adding language to the legislative findings to support the measure;
- (2) Specifying that a licensed physician assistant may provide medication or aspiration abortion care in the first trimester of pregnancy;
- (3) Specifying that the State shall not deny or interfere with a pregnant person's right to (a) choose to obtain an abortion or (b) if necessary to protect the life or health of the pregnant person, to terminate a pregnancy;
- (4) Specifying that a covered entity, as defined in title 45 Code of Federal Regulations section 160.103, is not prohibited from disclosing communication or information relating to reproductive health care services as authorized under the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, and federal regulations promulgated thereunder;
- (5) Excepting a warrant issued by a court, government agency, or legislative body of another state commanding the production, copying, or inspection of medical records relating to reproductive health care services from the lawful sharing of medical records and applying these criteria to subpoenas;
- (6) Specifying that no court or clerk of a court shall order the issuance of a subpoena requested by an officer, appointed according to the laws or usages of another state or government, or by any court of the United States or of another state or government, in connection with an out-of-state or interstate investigation or proceeding relating to reproductive health care services legally performed in the State;



- (7) Specifying that agencies are prohibited from providing information or expending resources in the furtherance of out-of-state or interstate investigations or proceedings upon a person or entity paying for or assisting in paying for reproduction health care services in the State;
- (8) Deleting language that would have specified that the Governor is not required to deny any demand for surrender if the person who is the subject of the demand for surrender was physically present in the requesting state at the time of the commission of the alleged crime and thereafter fled from that state, and instead specifying that the Governor is not required to deny any demand for surrender made under Article IV, section 2, of the United States Constitution;
- (9) Specifying that a law of another state authorizing a civil action or criminal prosecution based on a person paying for reproductive health care services is contrary to the public policy of the State;
- (10) Specifying that a law of another state authorizing a civil action or criminal prosecution based on certain reproductive health care services is contrary to the public policy of the State in accordance with the laws of the State;
- (11) Specifying that no judge shall issue a summons in a case where prosecution is pending, or where a grand jury investigation has commenced or is about to commence for a criminal violation of a law of another state involving paying for reproductive health care services; and
- (12) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 1, S.D. 2.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



KARL RHOADS, Chair



