

STAND. COM. REP. NO.

563

Honolulu, Hawaii

FEB 17 2023

RE: S.B. No. 896
S.D. 1

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

Sir:

Your Committees on Health and Human Services and Commerce and Consumer Protection, to which was referred S.B. No. 896 entitled:

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

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit a covered entity, as defined in the federal Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as amended, from disclosing communication or information relating to reproductive health care services;
- (2) 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;
- (3) Prohibit agencies from providing information or expending resources in the furtherance of interstate investigations or proceedings relating to reproductive health care services;
- (4) Prohibit the State from penalizing, prosecuting, or otherwise taking adverse action based on pregnancy outcomes or aiding or assisting a pregnant individual with accessing reproductive health care services;



- (5) 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;
- (6) Enumerate laws contrary to public policy and prohibit their application as rules of decision in the courts;
- (7) Prohibit the issuance of a summons for persons in the State to testify in another state with regards to lawful reproductive health care services;
- (8) 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; and
- (9) 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.

Your Committees received testimony in support of this measure from the Department of Human Services; Hawaii Medical Board; Board of Nursing; Board of Chiropractic; Board of Pharmacy; two members of the Kaua'i County Council; Office of the Prosecuting Attorney for the County of Kaua'i; Hawai'i Section of the American College of Obstetricians and Gynecologists; Hawai'i State Center for Nursing; Hawai'i State Coalition Against Domestic Violence; Planned Parenthood Alliance Advocates - Hawai'i; Stonewall Caucus of the Democratic Party of Hawai'i; American Association of University Women of Hawaii; Hawai'i Friends of Civil Rights; Pride at Work Hawai'i; Hawaii Medical Association; Hawai'i Association of Professional Nurses; Rainbow Family 808.com Inc.; Hawai'i Women Lawyers; Midwives Alliance of Hawaii; Democratic Party of Hawai'i Women's Caucus; Save Medicaid Hawaii; Hawaii Association of Health Plans; Healthcare Association of Hawaii; and fifty-seven individuals. Your Committees received testimony in opposition to this measure from eleven individuals. Your Committees received comments on this measure from the Department of Health, Office of



Information Practices, Board of Psychology, Board of Naturopathic Medicine, Hawaii Medical Service Association, and one individual.

Your Committees find that Hawaii has been and remains at the forefront of efforts to protect the right to privacy and personal autonomy independently of, and more broadly than, the United States Constitution. This is evidenced by the State being the first in the nation to decriminalize abortion through its enactment of Act 1, Session Laws of Hawaii 1970, codified at section 453-16, Hawaii Revised Statutes. Your Committees further find that the Hawaii State Constitution was amended in 1978 to include a separate and distinct section, Article I, section 6, that recognizes the people's right to privacy and requires the Legislature to take affirmative steps to implement this right. In discussing this amendment, the delegates to the 1978 Constitutional Convention found that "this privacy concept encompasses the notion that in certain highly personal and intimate matters, the individual should be afforded freedom of choice absent a compelling state interest" and that privacy is "a fundamental right subject to interference only when a compelling state interest is demonstrated." Comm. of the Whole Rep. No. 15 in 1 Proceedings of the Constitutional Convention of Hawaii of 1978 (1980), at 1024. Recognizing this fundamental right, existing state law 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 that is necessary to protect the life or health of the female.

While Hawaii has been a long-time leader in protecting reproductive health care rights, your Committees find that the landscape in the remainder of the country is rapidly changing. In *Dobbs v. Jackson Women's Health Org.*, 142 S.Ct. 2228 (2022), the Supreme Court of the United States overruled nearly fifty years of precedent regarding reproductive rights and bodily autonomy, including *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), by holding that the United States Constitution does not provide a right to abortion and that the authority to regulate abortion must be returned to the people and their elected representatives. In response to *Dobbs*, an increasing number of states have enacted state laws that ban abortion or severely restrict access thereto, including laws allowing enforcement through private, civil lawsuits. In addition, lawmakers in conservative states have



threatened to pass laws that would reach across state lines and seek to penalize healthcare providers in other states who provided abortion-related care to their residents. These laws aim to restrict the residents of those states from not only accessing basic healthcare in their own state, but also from traveling out-of-state for abortion care. This measure will bolster the State's policy to protect an individual's right to privacy and bodily autonomy within state boundaries.

Your Committees acknowledge the concerns raised by the Office of Information Practices that the section in this measure that specifically relates to disclosure of information by government agencies and employees is so broad as to create a conflict with the open record requirements of the Uniform Information Practices Act, codified at chapter 92F, Hawaii Revised Statutes. Your Committees find that this issue raises concerns that merit further consideration and requests that your Committee on Judiciary further examine this issue.

Your Committees have also heard the testimony of the Hawaii Medical Board requesting that the measure include language that would provide licensees and applicants under the purview of the Hawaii Medical Board the same protection given to licensees and applicants under the purview of the State Board of Nursing and Board of Pharmacy of the State.

Accordingly, your Committees have amended this measure by:

- (1) Amending the definition of "person" to include an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons or legal entity, or any combination thereof;
- (2) Inserting language prohibiting the Hawaii Medical Board to impose disciplinary action on a licensee or deny a license to any applicant on grounds that a disciplinary action was taken against the individual by another state, if the disciplinary action of the other state was based on the provision of services relating to the human reproductive system that was in accordance with the laws of this State or would have been in accordance with the laws of this State if it occurred within this State;



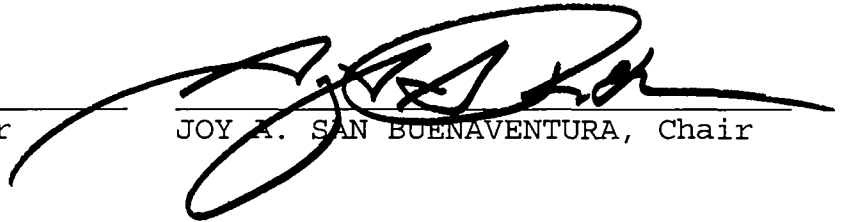
- (3) Inserting an effective date of December 31, 2050, to encourage further discussion; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Health and Human Services and Commerce and Consumer Protection that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 896, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 896, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on behalf of the members of the Committees on Health and Human Services and Commerce and Consumer Protection,



JERRETT KEOHOKALOLE, Chair

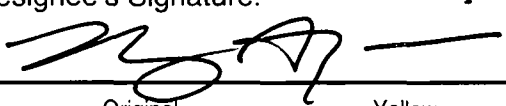


JOY A. SAN BUENAVENTURA, Chair



The Senate
 Thirty-Second Legislature
 State of Hawai'i

Record of Votes
Committee on Health and Human Services
HHS

Bill / Resolution No.:*	Committee Referral:	Date:
SB 896	HHS/CPN, JDC	02/01/2023
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____		
The Recommendation is:		
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310
<input type="checkbox"/> Recommit 2313		
Members	Aye	Aye (WR)
Nay	Excused	
SAN BUENAVENTURA, Joy A. (C)	✓	
AQUINO, Henry J.C. (VC)	✓	
MORIWAKI, Sharon Y.	✓	
SHIMABUKURO, Maile S.L.	✓	
AWA, Brenton		✓
TOTAL	4	1
Recommendation:		
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted		
Chair's or Designee's Signature:		
		
Distribution:		
Original	Yellow	Pink
File with Committee Report	Clerk's Office	Drafting Agency
		Goldenrod
		Committee File Copy

*Only one measure per Record of Votes

The Senate
 Thirty-Second Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:*	Committee Referral:	Date:
SB 896	HHS/CPN, JDC	2/1/23

The Committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312
 Pass, with amendments 2311
 Hold 2310
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
KEOHOKALOLE, Jarrett (C)	✓			
FUKUNAGA, Carol (VC)	✓			
MCKELVEY, Angus L.K.	✓			
RICHARDS, III, Herbert M. "Tim"				✓
AWA, Brenton			✓	
TOTAL	3	0	1	1

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature:


Distribution: Original Yellow Pink Goldenrod
 File with Committee Report Clerk's Office Drafting Agency Committee File Copy

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