

JAN 19 2023

---

---

# A BILL FOR AN ACT

RELATING TO CHILDREN.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the State has a  
2 paramount interest in protecting all human life. Any infant  
3 born alive, even after an attempted abortion, is a legal person  
4 for all purposes under the state and federal constitutions and  
5 other state and federal laws. The legislature also finds that  
6 nationwide, more than six thousand abortions per year reportedly  
7 occur after twenty weeks of gestation, a time during which a  
8 fetus could be viable. While most states do not have reporting  
9 requirements for failed abortions, in Canada, four hundred and  
10 ninety-one cases were reported over a nine-year period where  
11 live births after attempted abortions resulted in subsequent  
12 neonatal deaths. Absent proper legal protection, newborns who  
13 unexpectedly survive an abortion procedure may be denied  
14 life-saving or life-sustaining medical care and left to die.

15           The legislature further finds that protecting an infant  
16 whose live birth occurred despite an attempted abortion does not  
17 infringe on a woman's right to choose or to obtain an abortion



1 under existing state or federal laws. It similarly does not  
2 interfere with the ability of licensed health care professionals  
3 to provide legal abortions.

4 Accordingly, the purpose of this Act is to protect the life  
5 and well-being of all infants who survive abortion attempts in  
6 the State by:

7 (1) Requiring healthcare providers to provide medically  
8 appropriate and reasonable life-saving and  
9 life sustaining medical care and treatment to all  
10 infants born alive; and

11 (2) Establishing penalties for failing to provide infants  
12 born alive with reasonable and appropriate medical  
13 care.

14 SECTION 2. The Hawaii Revised Statutes is amended by  
15 adding a new chapter to be appropriately designated and to read  
16 as follows:

17 **"CHAPTER**

18 **ABORTION SURVIVORS PROTECTION ACT**

19 **§ -1 Definitions.** For purposes of this chapter, unless  
20 the context requires otherwise:



1 "Abortion" means the use or prescription of any instrument,  
2 machine, drug, or any other substance or device to  
3 intentionally:

4 (1) End the life of the unborn child of a woman known to  
5 be pregnant; or

6 (2) Terminate the pregnancy of a woman known to be  
7 pregnant, with an intention other than to:

8 (A) Produce a live birth and preserve the life and  
9 health of the child born alive after viability;  
10 or

11 (B) Remove a dead unborn child.

12 "Attempt" means, with respect to abortion, conduct that,  
13 under the circumstances as the actor believes them to be,  
14 constitutes a substantial step in the course of conduct planned  
15 to culminate in an abortion.

16 "Born alive" or "live birth" means the complete expulsion  
17 or extraction of a viable infant from his or her mother,  
18 regardless of the infant's stage of gestational development, who  
19 after expulsion or extraction, whether or not the umbilical cord  
20 has been cut or the placenta is attached, shows evidence of  
21 life, including:



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

7 "Consent" means the voluntary agreement or acquiescence by  
8 a person of age and with the requisite mental capacity who is  
9 not under duress or coercion and who has knowledge or  
10 understanding of the act or action to which the person agrees or  
11 acquiesces.

12 "Healthcare provider" means any person providing aid or  
13 assistance to a physician or nurse, or any person authorized to  
14 provide healthcare to the mother during an abortion.

15 "Infant" means a human child who has been completely  
16 expelled or extracted from the mother, regardless of the  
17 infant's stage of gestational development, until the age of  
18 thirty days post-birth.

19 "Nurse" means a person who has been or is currently  
20 licensed under chapter 457.

21 "Physician" means:



1 (1) A physician or surgeon licensed to practice medicine  
2 or osteopathy pursuant to chapter 453; or

3 (2) A person who is not a licensed physician or surgeon  
4 but directly performs or attempts to perform an  
5 abortion.

6 "Unborn child" means a human fetus, beginning at  
7 fertilization, until the point of being born alive.

8 **§ -2 Requirements and responsibilities.** (a) No person  
9 shall deny or deprive an infant born alive of nourishment with  
10 the intent to cause or allow the death of the infant for any  
11 reason.

12 (b) No person shall deprive an infant born alive of  
13 medically appropriate and reasonable medical care and treatment  
14 or surgical care.

15 (c) This section shall not be construed to prohibit an  
16 infant's parent or guardian from refusing to consent to medical  
17 treatment or surgical care that is not medically necessary or  
18 reasonable, including care or treatment that:

19 (1) Is not necessary to save the life of the infant;



1           (2) Has a potential risk of harm to the infant's life or  
2           health that outweighs the potential benefit to the  
3           infant of the treatment or care; or

4           (3) Will do no more than temporarily prolong the act of  
5           dying, as in the case of a non-viable infant, when  
6           death is imminent.

7           (d) The physician performing an abortion shall take all  
8 medically appropriate and reasonable steps to preserve the life  
9 and health of an infant born alive. If an abortion is performed  
10 in a hospital but a live birth nevertheless occurs, the  
11 physician attending the abortion shall provide immediate medical  
12 care to the infant, inform the mother of the live birth, and  
13 request transfer of the infant to an on-duty resident or  
14 emergency care physician who shall provide medically appropriate  
15 and reasonable care and treatment to the infant.

16           (e) If a physician is unable to perform the duties  
17 described in subsection (d) because the physician is assisting  
18 the woman on whom the abortion was performed, the attending  
19 physician's assistant, a nurse, or other healthcare provider  
20 shall assume the duties.



1 (f) Any infant born alive, including an infant born during  
2 an abortion procedure, shall be treated as a legal person under  
3 the laws of this State, having all legal rights to medically  
4 appropriate and reasonable care and treatment.

5 (g) If, before the abortion, the mother stated in writing  
6 that she does not wish to maintain custody of the infant in the  
7 event that the infant is born alive, and this writing is not  
8 retracted before the attempted abortion, the infant, if born  
9 alive, shall immediately become a ward under the care of the  
10 department of human services.

11 (h) No person shall use, or authorize the use of, any  
12 infant born alive for any type of scientific research or medical  
13 experimentation, except as necessary to protect the life and  
14 health of the infant born alive.

15 (i) Any physician, nurse, healthcare provider, or employee  
16 of a hospital, physician's office, or clinic, who has knowledge  
17 of a person's failure to comply with this section shall  
18 immediately report the non-compliance to law enforcement.

19 **§ -3 Criminal penalties.** (a) Any physician, nurse, or  
20 other healthcare provider who intentionally performs an overt  
21 act that kills an infant born alive shall be guilty of the



1 offense of murder in the second degree under section 707-701.5.

2 (b) Any physician, nurse, or other healthcare provider who  
3 recklessly fails to provide medically appropriate and reasonable  
4 care and treatment to an infant born alive where the infant dies  
5 as a result of that failure shall be guilty of the offense of  
6 manslaughter under section 707-702; provided that the mother of  
7 an infant born alive may not be prosecuted for conspiracy in or  
8 as an accomplice to a violation of this subsection.

9 (c) Any physician, nurse, healthcare provider, or person,  
10 including a parent or guardian, who conceals the corpse of an  
11 infant with the intent to conceal the fact of the infant's birth  
12 or to prevent the determination of whether the infant was born  
13 alive or dead shall be guilty of the offense of concealing the  
14 corpse of an infant under section 709-901.

15 (d) Any physician, nurse, healthcare provider, or person,  
16 including a parent or guardian, who knowingly violates  
17 section -2(h) shall be fined not more than \$10,000 or  
18 imprisoned not more than five years, or both.

19 **§ -4 Civil action.** (a) If an infant is born alive and  
20 a physician, nurse, or healthcare provider violates  
21 section -2(d), the woman upon whom the abortion was performed





1 or attempted may obtain appropriate relief through a civil  
2 action against any person who committed the violation.

3 (b) Appropriate relief in a civil action under this  
4 section shall include:

5 (1) Objective, verifiable money damages associated with  
6 the violation of section -2(d);

7 (2) Damages of up to three times the cost of the abortion  
8 or attempted abortion;

9 (3) Punitive damages; and

10 (4) Any other appropriate relief pursuant to applicable  
11 law.

12 (c) A criminal conviction under section -3 shall be  
13 admissible in a civil action as prima facie evidence of a  
14 failure to provide medically appropriate and reasonable care and  
15 treatment to an infant born alive.

16 (d) If a plaintiff prevails in a civil action under this  
17 section, the court shall award the plaintiff reasonable  
18 attorney's fees.

19 (e) If a defendant prevails in a civil action under this  
20 section and the court finds that the plaintiff's suit was



1 frivolous, the court shall award the defendant reasonable  
2 attorney's fees.

3 (f) Except as provided in subsection (e), no damages,  
4 attorney's fees, or other monetary relief may be assessed in a  
5 civil action under this section against the woman upon whom the  
6 abortion was performed.

7 **§ -5 Professional disciplinary action.** Failure to  
8 comply with this chapter shall provide the basis for  
9 professional disciplinary action under chapters 453 and 457,  
10 including the suspension or revocation of the professional  
11 license of a physician, licensed nurse, registered nurse, or  
12 other licensed or regulated persons. Any person criminally  
13 convicted of a failure to comply with the requirements of this  
14 chapter shall automatically have the person's license suspected  
15 for a period of no less than one year.

16 **§ -6 Construction.** Nothing in this chapter shall be  
17 construed to:

18 (1) Affirm, deny, expand, or contract any legal status or  
19 legal right applicable to natural persons at any point  
20 before the person is born alive;



- 1           (2) Affect existing state or federal laws regarding
- 2           abortion;
- 3           (3) Restrict a woman's right to obtain an abortion
- 4           pursuant to applicable law;
- 5           (4) Restrict the ability of any licensed physician, nurse,
- 6           or healthcare provider to perform an abortion in
- 7           accordance with applicable law;
- 8           (5) Create or recognize a right to abortion; or
- 9           (6) Alter generally accepted medical standards."

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

12           "(a) In addition to any other actions authorized by law,  
13 any license to practice medicine and surgery may be revoked,  
14 limited, or suspended by the board at any time in a proceeding  
15 before the board, or may be denied, for any cause authorized by  
16 law, including but not limited to the following:

- 17           (1) Procuring, or aiding or abetting in procuring, a
- 18           criminal abortion;
- 19           (2) Failing to comply with chapter \_\_\_\_\_ ;
- 20           [+2+] (3) Employing any person to solicit patients for
- 21           one's self;



# S.B. NO. 266

- 1        [~~+3+~~] (4) Engaging in false, fraudulent, or deceptive  
2        advertising, including but not limited to:
- 3        (A) Making excessive claims of expertise in one or  
4        more medical specialty fields;
- 5        (B) Assuring a permanent cure for an incurable  
6        disease; or
- 7        (C) Making any untruthful and improbable statement in  
8        advertising one's medical or surgical practice or  
9        business;
- 10       [~~+4+~~] (5) Being habituated to the excessive use of drugs or  
11       alcohol; or being addicted to, dependent on, or a  
12       habitual user of a narcotic, barbiturate, amphetamine,  
13       hallucinogen, or other drug having similar effects;
- 14       [~~+5+~~] (6) Practicing medicine while the ability to practice  
15       is impaired by alcohol, drugs, physical disability, or  
16       mental instability;
- 17       [~~+6+~~] (7) Procuring a license through fraud,  
18       misrepresentation, or deceit, or knowingly permitting  
19       an unlicensed person to perform activities requiring a  
20       license;



- 1       ~~[(7)]~~ (8) Professional misconduct, hazardous negligence  
2           causing bodily injury to another, or manifest  
3           incapacity in the practice of medicine or surgery;
- 4       ~~[(8)]~~ (9) Incompetence or multiple instances of negligence,  
5           including but not limited to the consistent use of  
6           medical service, which is inappropriate or  
7           unnecessary;
- 8       ~~[(9)]~~ (10) Conduct or practice contrary to recognized  
9           standards of ethics of the medical profession as  
10          adopted by the Hawaii Medical Association, the  
11          American Medical Association, the Hawaii Association  
12          of Osteopathic Physicians and Surgeons, or the  
13          American Osteopathic Association;
- 14       ~~[(10)]~~ (11) Violation of the conditions or limitations upon  
15          which a limited or temporary license is issued;
- 16       ~~[(11)]~~ (12) Revocation, suspension, or other disciplinary  
17          action by another state or federal agency of a  
18          license, certificate, or medical privilege;
- 19       ~~[(12)]~~ (13) Conviction, whether by nolo contendere or  
20          otherwise, of a penal offense substantially related to  
21          the qualifications, functions, or duties of a



1           physician or osteopathic physician, notwithstanding  
2           any statutory provision to the contrary;  
3       ~~[(13)]~~ (14) Violation of chapter 329, the uniform controlled  
4           substances act, or any rule adopted thereunder except  
5           as provided in section 329-122;  
6       ~~[(14)]~~ (15) Failure to report to the board, in writing, any  
7           disciplinary decision issued against the licensee or  
8           the applicant in another jurisdiction within thirty  
9           days after the disciplinary decision is issued; or  
10       ~~[(15)]~~ (16) Submitting to or filing with the board any  
11           notice, statement, or other document required under  
12           this chapter, which is false or untrue or contains any  
13           material misstatement or omission of fact."

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

16           "(a) In addition to any other actions authorized by law,  
17 the board shall have the power to deny, revoke, limit, or  
18 suspend any license to practice nursing as a registered nurse or  
19 as a licensed practical nurse applied for or issued by the board  
20 in accordance with this chapter, and to fine or to otherwise



1 discipline a licensee for any cause authorized by law, including  
2 [~~but not limited to the following~~]:

- 3 (1) Fraud or deceit in procuring or attempting to procure  
4 a license to practice nursing as a registered nurse or  
5 as a licensed practical nurse;
- 6 (2) Gross immorality;
- 7 (3) Unfitness or incompetence by reason of negligence,  
8 habits, or other causes;
- 9 (4) Habitual intemperance, addiction to, or dependency on  
10 alcohol or other habit-forming substances;
- 11 (5) Mental incompetence;
- 12 (6) Unprofessional conduct as defined by the board in  
13 accordance with its own rules;
- 14 (7) Wilful or repeated violation of any of the provisions  
15 of this chapter or any rule adopted by the board;
- 16 (8) Revocation, suspension, limitation, or other  
17 disciplinary action by another state of a nursing  
18 license;
- 19 (9) Conviction, whether by nolo contendere or otherwise,  
20 of a penal offense substantially related to the  
21 qualifications, functions, or duties of a nurse,



- 1           notwithstanding any statutory provision to the  
2           contrary;
- 3       (10) Failure to report to the board any disciplinary action  
4           taken against the licensee in another jurisdiction  
5           within thirty days after the disciplinary action  
6           becomes final;
- 7       (11) Submitting to or filing with the board any notice,  
8           statement, or other document required under this  
9           chapter, which is false or untrue or contains any  
10          material misstatement of fact, including a false  
11          attestation of compliance with continuing competency  
12          requirements;
- 13       (12) Violation of chapter \_\_\_\_\_ ;
- 14       ~~(12)~~ (13) Violation of the conditions or limitations upon  
15          which any license is issued; or
- 16       ~~(13)~~ (14) Violation of chapter 329, the uniform controlled  
17          substances act, or any rule adopted thereunder except  
18          as provided in section 329-122."

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





1           "§709-901   **Concealing the corpse of an infant.**   (1)   A  
2 person commits the offense of concealing the corpse of an infant  
3 if the person conceals the corpse of a new-born child with  
4 intent to conceal the fact of [~~its~~] the child's birth or to  
5 prevent a determination of whether [~~it~~] the child was born dead  
6 or alive.

7           (2) If an abortion as defined in section -1 is attempted  
8 but a live birth occurs, the surviving infant shall be  
9 considered a new-born child for purposes of this section.

10          [~~+2~~] (3) Concealing the corpse of an infant is a  
11 misdemeanor."

12          SECTION 6. This Act does not affect rights and duties that  
13 matured, penalties that were incurred, and proceedings that were  
14 begun before its effective date.

15          SECTION 7. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17          SECTION 8. This Act shall take effect on July 1, 2023;  
18 provided that the amendments made to section 457-12, Hawaii  
19 Revised Statutes, by section 4 of this Act shall not be repealed



# S.B. NO. 266

1 when that section is reenacted on June 30, 2023, pursuant to  
2 section 6 of Act 66, Session Laws of Hawaii 2017.

3

INTRODUCED BY:

*Kurt Fevella*



# S.B. NO. 266

**Report Title:**

Abortion Survivors; Infants Born Alive; Penalties

**Description:**

Requires medically appropriate and reasonable life-saving and life-sustaining medical care and treatment for all born alive infants. Establishes 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.*

