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## 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. Accordingly,  
3 any infant born alive, even after an attempted abortion, is a  
4 legal person for all purposes under the federal and state  
5 constitutions, and under other federal and state laws. The  
6 legislature also finds that in 2020, the Center for Disease  
7 Control reported 4,382 abortions occurred at twenty-one weeks or  
8 later. Without proper legal protection, newborn infants who  
9 have unexpectedly survived an abortion procedure may be denied  
10 appropriate life-saving or life-sustaining medical care and  
11 treatment and be left to die.

12           The legislature further finds that protecting an infant  
13 whose live birth occurred in spite of an attempted abortion does  
14 not infringe on a woman's right to choose or obtain an abortion  
15 under existing federal or state law, or interfere with the  
16 ability of licensed health care professionals to provide legal  
17 abortions.





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

3 (A) After viability, to produce a live birth and  
4 preserve the life and health of the child born  
5 alive; or

6 (B) To remove a dead unborn child.

7 "Attempt", with respect to abortion, means conduct that  
8 under the circumstances as the actor believes them to be,  
9 constitutes a substantial step in a course of conduct planned to  
10 culminate in performing an abortion.

11 "Born alive" or "live birth" means the complete expulsion  
12 or extraction of a viable infant from his or her mother,  
13 regardless of the state of gestational development, that after  
14 expulsion or extraction, whether or not the umbilical cord has  
15 been cut or the placenta is attached, shows evidence of life,  
16 including:

17 (1) Breathing;

18 (2) A heartbeat;

19 (3) Umbilical cord pulsations;

20 (4) Definite movement of voluntary muscles; or



1           (5) Any other evidence of life according to standard  
2                    medical practice.

3           "Consent" means the voluntary agreement or acquiescence by  
4 a person of age and with the requisite mental capacity who is  
5 not under duress or coercion and who has knowledge or  
6 understanding of the act or action to which the person agreed or  
7 acquiesced.

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

11           "Infant" means a human child who has been completely  
12 expelled or extracted from the child's mother regardless of the  
13 stage of gestational development, until the age of thirty days  
14 post birth.

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

17           "Physician" means:

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



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

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

6 § -2 **Requirements and responsibilities.** (a) A person  
7 shall not deny or deprive an infant born alive of nourishment  
8 with the intent to cause or allow the death of the infant for  
9 any reason.

10 (b) A person shall not deprive an infant born alive of  
11 medically appropriate and reasonable medical care and treatment  
12 or surgical care.

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

- 17 (1) Is not necessary to save the life of the infant;  
18 (2) Has a potential risk of harm to the infant's life or  
19 health that outweighs the potential benefit to the  
20 infant of the treatment or care; or



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

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

13           If an abortion is performed in a hospital but a live birth  
14 nevertheless occurs, the physician attending the abortion shall  
15 provide medically appropriate and reasonable care and treatment  
16 to the infant.

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



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

5 (g) If, before the abortion, the mother has stated in  
6 writing that she does not wish to maintain custody of the infant  
7 in the event that the infant is born alive, and this writing is  
8 not 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 to be used, any born  
12 alive infant for any type of scientific research or other kind  
13 of experimentation, except as necessary to protect the life and  
14 health of the infant born alive.

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

19 § -3 **Criminal penalties.** (a) Any physician, nurse, or  
20 other healthcare provider who intentionally performs an overt



1 act that kills an infant born alive shall be guilty of the  
2 offense of murder in the second degree under section 707-701.5.

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

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

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

18 (e) The mother of a child born alive may not be prosecuted  
19 for conspiracy in or as an accomplice to violating subsection

20 (b) .



1           §   -4 Civil action. (a) If a child is born alive and a  
2 healthcare provider violates section       -2(d), the woman upon  
3 whom the abortion was performed or attempted may, in a civil  
4 action against any person who committed the violation, obtain  
5 appropriate relief. Any civil action may be based on a claim  
6 that the death of or injury to the infant born alive was a  
7 result of simple negligence, gross negligence, wantonness,  
8 willfulness, intentional conduct or another violation of the  
9 legal standard of care.

10           (b) Appropriate relief in a civil action under this  
11 section includes:

- 12           (1) Objective verifiable money damages occasioned by the  
13               violation of subsection       -2(d);
- 14           (2) Damages up to three times the cost of the abortion or  
15               attempted abortion;
- 16           (3) Punitive damages; and
- 17           (4) Other appropriate relief pursuant to applicable law.

18           (c) Any conviction under section       -3 shall be admissible  
19 in a civil suit as prima facie evidence of a failure to provide  
20 medically appropriate and reasonable care and treatment to a  
21 born alive infant.



1 (d) The court shall award a reasonable attorney's fee as  
2 part of the costs to a prevailing plaintiff in a civil action  
3 under this section.

4 (e) If a defendant in a civil action under this subsection  
5 prevails and the court finds that the plaintiff's suit was  
6 frivolous, the court shall award a reasonable attorney's fee in  
7 favor of the defendant against the plaintiff.

8 (f) Except as provided in subsection (e), in a civil  
9 action under this section, no damages, attorney's fee or other  
10 monetary relief may be assessed against the woman upon whom the  
11 abortion was performed.

12 § -5 **Professional disciplinary action.** Failure to  
13 comply with the requirements of this chapter shall provide a  
14 basis for professional disciplinary action under chapter 453,  
15 chapter 457, or any other appropriate chapter, or any  
16 appropriate combination thereof, for the suspension or  
17 revocation of any license for physicians, licensed and  
18 registered nurses, or other licensed or regulated persons. Any  
19 conviction of any person for any failure to comply with the  
20 requirements of this chapter shall result in the automatic



1 suspension of his or her license for a period of no less than  
2 one year.

3       **§ -6 Construction.** (a) Nothing in this chapter shall  
4 be construed to affirm, deny, expand, or contract any legal  
5 status or legal right applicable to natural persons at any point  
6 before being born alive.

7       (b) Nothing in this chapter shall be construed to affect  
8 existing federal or state law regarding abortion. Nothing in  
9 this chapter shall be construed to restrict a woman's right to  
10 obtain an abortion pursuant to applicable law, nor shall it be  
11 construed to restrict the ability of any licensed healthcare  
12 providers to perform an abortion in accordance with applicable  
13 law.

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

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

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

20       "(a) In addition to any other actions authorized by law,  
21 any license to practice medicine and surgery may be revoked,



1 limited, or suspended by the board at any time in a proceeding  
2 before the board, or may be denied, for any cause authorized by  
3 law, including [~~but not limited to the following~~]:

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

6 (2) Failure to comply with chapter ;

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

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

- 10 (1) Fraud or deceit in procuring or attempting to procure  
11 a license to practice nursing as a registered nurse or  
12 as a licensed practical nurse;
- 13 (2) Gross immorality;
- 14 (3) Unfitness or incompetence by reason of negligence,  
15 habits, or other causes;
- 16 (4) Habitual intemperance, addiction to, or dependency on  
17 alcohol or other habit-forming substances;
- 18 (5) Mental incompetence;
- 19 (6) Unprofessional conduct as defined by the board in  
20 accordance with its own rules;



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





# H.B. NO. 1402

1 SECTION 6. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 7. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect on July 1, 2025;  
7 provided that the amendments made to section 457-12, Hawaii  
8 Revised Statutes, by section 4 of this Act shall not be repealed  
9 when that section is reenacted on June 30, 2025, pursuant to  
10 section 6 of Act 66, Session Laws of Hawaii 2017.

11

INTRODUCED BY



JAN 23 2025



# H.B. NO. 1402

**Report Title:**

Abortion Survivors; Born Alive Infant; Penalties

**Description:**

Ensures the protection and promotion of the health and well-being of all infants born alive in the State. Mandates medically appropriate and reasonable life-saving and life-sustaining medical care and treatment to all born alive infants. Establishes civil and criminal penalties.

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