
A BILL FOR AN ACT

RELATING TO HEALTH CARE.

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

1 SECTION 1. Chapter 323J, Hawaii Revised Statutes, is
2 amended by adding three new sections to be appropriately
3 designated and to read as follows:

4 **"S323J- Abusive litigation; prohibited; remedies.** (a)
5 If a person or entity, whether or not acting under the color of
6 law, engages in or attempts to engage in abusive litigation, or
7 attempts to enforce any order or judgment issued in connection
8 with any such abusive litigation, any aggrieved person may bring
9 a civil action in the circuit court of the circuit in which the
10 aggrieved person resides against that person or entity for:

11 (1) Injunctive relief;
12 (2) Actual damages, including the amount of any judgment
13 issued in connection with the abusive litigation;
14 (3) Expenses, costs, and reasonable attorney's fees
15 incurred in connection with the abusive litigation;
16 (4) Expenses, costs, and reasonable attorney's fees
17 incurred to bring an action under this section; and



1 (5) Punitive damages.

2 (b) Any civil action filed pursuant to this section shall
3 be filed within six years after the date the abusive litigation
4 is commenced, or if the person or entity is attempting to
5 enforce an order or a judgment, within six years after the date
6 enforcement is attempted.

7 (c) As used in this section:

8 "Abusive litigation" means any litigation or other legal
9 action, including civil, criminal, or administrative action,
10 brought against another person or entity for accessing,
11 receiving, providing, facilitating, or attempting to access,
12 receive, provide, or facilitate reproductive health care
13 services or gender-affirming health care services that are
14 lawful under the laws of this State.

15 "Aggrieved person" means:

16 (1) A person or entity against whom abusive litigation is
17 filed or prosecuted or against whom an order or
18 judgment issued in connection with such abusive
19 litigation is attempted to be enforced; or
20 (2) The employer or principal of a person against whom
21 abusive litigation is filed or prosecuted or against



1 whom an order or a judgment issued in connection with
2 such abusive litigation is attempted to be enforced if
3 the action that forms the basis of the abusive
4 litigation was performed within the scope of the
5 person's employment or agency relationship.

6 **S323J- Medical malpractice insurance; prohibited**

7 **actions.** (a) Any insurer that issues medical malpractice
8 insurance in the State shall not take a prohibited action
9 against an applicant for, or the named insured under, a medical
10 malpractice policy in this State solely because the applicant or
11 insured has provided, or assisted in the provision of,
12 reproductive health care services or gender-affirming health
13 care services or made a referral for reproductive health care
14 services or gender-affirming health care services; provided that
15 the care provided by the applicant or insured was consistent
16 with generally accepted standards of practice under the laws of
17 this State and did not otherwise violate the laws of this State.

18 (b) As used in this section, "prohibited action" means:

- 19 (1) Refusing to issue a medical malpractice policy;
- 20 (2) Canceling or terminating a medical malpractice policy;
- 21 (3) Refusing to renew a medical malpractice policy; or



1 (4) Imposing any sanctions, fines, penalties, rate
2 increases, or another type of unfavorable change.

3 **§323J- Health carriers; prohibitions.** No group health
4 plan or health insurance insurer offering or renewing a health
5 plan in this State shall terminate or refuse to renew a health
6 care contract with a participating health care provider on the
7 sole basis that the participating provider provides, or assists
8 in the provision of, reproductive health care services or
9 gender-affirming health care services."

10 SECTION 2. Chapter 323J, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**[+]CHAPTER 323J[+]**

13 **REPRODUCTIVE HEALTH CARE SERVICES AND GENDER-AFFIRMING HEALTH**
14 **CARE SERVICES**

15 **[+]§323J-1[+]** **Definitions.** As used in this chapter,
16 unless the context otherwise requires:

17 "Gender-affirming health care services" includes:

18 (1) Medically necessary health care that respects the
19 gender identity of the patient, as experienced and
20 defined by the patient, and may include the following
21 interventions to:



1 (A) Suppress the development of endogenous secondary
2 sex characteristics;
3 (B) Align the patient's appearance or physical body
4 with the patient's gender identity; or
5 (C) Alleviate symptoms of clinically significant
6 distress resulting from gender dysphoria, as
7 defined by the most recent edition of the
8 Diagnostic and Statistical Manual of Mental
9 Disorders; or
10 (2) Mental health care or behavioral health care that
11 respects the gender identity of the patient, as
12 experienced and defined by the patient, and may
13 include developmentally appropriate exploration and
14 integration of identity, reduction of distress,
15 adaptive coping, or strategies to increase family
16 acceptance.
17 "Person" includes an individual, partnership, joint
18 venture, corporation, association, business, trust, or any
19 organized group of persons or legal entity, or any combination
20 thereof.



1 "Reproductive health care services" includes all medical,
2 surgical, pharmaceutical, counseling, or referral services
3 relating to the human reproductive system, including but not
4 limited to services relating to pregnancy, contraception, or the
5 termination of a pregnancy.

6 ~~[+] §323J-2 [] Disclosures prohibited.] Protected health~~
7 ~~information; disclosure or use, when prohibited; covered~~
8 ~~entities; written consent.~~ (a) ~~[Except as provided in rules~~
9 ~~504, 504.1, and 505.5 of the Hawaii rules of evidence and~~
10 ~~subsection (b) or as authorized under the Health Insurance~~
11 ~~Portability and Accountability Act of 1996, P.L. 104-191, and~~
12 ~~federal regulations promulgated thereunder, in any civil action~~
13 ~~or any proceeding preliminary thereto or in any probate,~~
14 ~~legislative, or administrative proceeding, no covered entity, as~~
15 ~~defined in title 45 Code of Federal Regulations section 160.103,~~
16 ~~or as the same as may be from time to time amended or modified,~~
17 ~~shall disclose:~~

18 (1) ~~Any communication made to the covered entity, or any~~
19 ~~information obtained by the covered entity from a~~
20 ~~patient or the conservator, guardian, or other~~
21 ~~authorized legal representative of a patient relating~~



1 to reproductive health care services that are
2 permitted under the laws of the State; or
3 (2) Any information obtained by personal examination of a
4 patient relating to reproductive health care services
5 that are permitted under the laws of the State,
6 unless the patient or that patient's conservator, guardian, or
7 other authorized legal representative explicitly consents to the
8 disclosure in writing in the form of a release of protected
9 health information compliant with the federal Health Insurance
10 Portability and Accountability Act of 1996, P.L. 104-191, as
11 amended. A covered entity shall inform the patient or the
12 patient's conservator, guardian, or other authorized legal
13 representative of the patient's right to withhold the written
14 consent.

15 (b) Written consent of the patient or the patient's
16 conservator, guardian, or other authorized legal representative
17 shall not be required for the disclosure of the communication or
18 information:

19 (1) If the records relate to a patient who is a plaintiff
20 in a complaint pending before a court of competent
21 jurisdiction alleging health care negligence and a



1 request for records has been served on a named
2 defendant in that litigation;

3 (2) If the records are requested by a licensing authority,
4 as defined in section 436B-2, and the request is made
5 in connection with an investigation of a complaint to
6 the licensing authority and the records are related to
7 the complaint, unless the complaint is made solely on
8 the basis that the licensee, acting within the
9 licensee's scope of practice, provided reproductive
10 health care services that are lawful in this State;

11 (3) To the director of health for records of a patient of
12 a covered entity in connection with an investigation
13 of a complaint, if the records are related to the
14 complaint; or

15 (4) If child abuse, abuse of an individual who is sixty
16 years of age or older, abuse of an individual who is
17 physically disabled or incompetent, or abuse of an
18 individual with an intellectual disability is known or
19 in good faith suspected.]

20 No covered entity shall use or disclose protected health
21 information for purposes or activities relating to conducting a



1 criminal, civil, or administrative investigation into any person
2 for the mere act of seeking, obtaining, providing, or
3 facilitating reproductive health care services or gender-
4 affirming health care services, or for purposes or activities
5 relating to imposing criminal, civil, or administrative
6 liability on any person for the mere act of seeking, obtaining,
7 providing, or facilitating reproductive health care services or
8 gender-affirming health care services, where the reproductive
9 health care services or gender-affirming health care services
10 are:

11 (1) Lawful under the laws of this State; or
12 (2) Protected, required, or authorized by federal law,
13 including the United States Constitution, under the
14 circumstances in which such services are provided,
15 regardless of the state in which they are provided.

16 For purposes of this subsection, reproductive health care
17 services or gender-affirming health care services are presumed
18 lawful unless the covered entity has actual knowledge that the
19 reproductive health care services or gender-affirming health
20 care services were not lawful under the circumstances in which
21 they were provided, or factual information supplied by the



1 person requesting the use or disclosure of protected health
2 information that demonstrates a substantial factual basis that
3 the reproductive health care services or gender-affirming health
4 care services were not lawful under the specific circumstances
5 in which they were provided.

6 (b) When a covered entity receives a request for protected
7 health information relating to reproductive health care services
8 or gender-affirming health care services and the request is for:

9 (1) Health oversight activities, as described in title 45
10 Code of Federal Regulations section 164.512(d), as
11 that section may be amended or modified from time to
12 time;

13 (2) Judicial and administrative proceedings, as described
14 in title 45 Code of Federal Regulations section
15 164.512(e), as that section may be amended or modified
16 from time to time;

17 (3) Law enforcement purposes, as described in title 45
18 Code of Federal Regulations section 164.512(f), as
19 that section may be amended or modified from time to
20 time; or



1 (4) Coroners and medical examiners, as described in title
2 45 Code of Federal Regulations section 164.512(g)(1),
3 as that section may be amended or modified from time
4 to time,
5 the covered entity may disclose the requested protected health
6 information; provided that the covered entity obtains from the
7 person requesting the protected health information a written,
8 signed attestation that the disclosure is not otherwise
9 prohibited by subsection (a). Any person who knowingly provides
10 a false attestation under this section is guilty of a
11 misdemeanor.

12 (c) Nothing in this section shall be construed to impede
13 the lawful sharing of ~~medical records~~ protected health
14 information as [permitted by state or] required by federal law
15 or the [rules of the court, except in the case of a subpoena or
16 warrant issued by a court, government agency, or legislative
17 body of another state commanding the production, copying, or
18 inspection of medical records relating to reproductive health
19 care services.] laws of this State, or as authorized by the
20 patient or the patient's conservator, guardian, or other
21 authorized legal representative in a valid, written



1 authorization for the disclosure that complies with the federal
2 Health Insurance Portability and Accountability Act of 1996,
3 P.L. 104-191, as amended, and federal regulations promulgated
4 thereunder; provided that a covered entity shall inform the
5 patient or the patient's conservator, guardian, or other
6 authorized legal representative of the patient's right to
7 withhold the written consent.

8 (d) As used in this section:

9 "Covered entity" has the same meaning as in title 45 Code
10 of Federal Regulations section 160.103, as that section may be
11 amended or modified from time to time.

12 "Protected health information" has the same meaning as in
13 title 45 Code of Federal Regulations section 160.103, as that
14 section may be amended or modified from time to time.

15 **[+]§323J-3[+]** **Subpoenas; when allowed.** Notwithstanding
16 sections 624-27 and 624D-3 or any other law to the contrary, no
17 court or clerk of a court shall order the issuance of a subpoena
18 requested by an officer, appointed according to the laws or
19 usages of another state or government, or by any court of the
20 United States or of another state or government, in connection
21 with an out-of-state or interstate investigation or proceeding



1 relating to reproductive health care services [~~legally performed~~
2 ~~in the]~~ or gender-affirming health care services that are lawful
3 under the laws of this State.

4 **[+]S323J-4[+] Agencies prohibited from providing**
5 **information or expending resources.** (a) No agency, as defined
6 in section 92F-3, or employee, appointee, officer, official, or
7 any other person acting on behalf of an agency shall provide any
8 nonpublic information or expend or use time, money, facilities,
9 property, equipment, personnel, or other resources in
10 furtherance of any out-of-state or interstate investigation or
11 proceeding seeking to impose civil or criminal liability upon a
12 person or entity for:

13 (1) ~~[The provision, seeking,]~~ Seeking, receiving, paying
14 ~~for, [receipt of,]~~ or inquiring about reproductive
15 health care services ~~[that are legal in the]~~ or
16 gender-affirming health care services that are lawful
17 under the laws of this State; [or]
18 (2) Providing or responding to an inquiry about
19 reproductive health care services or gender-affirming
20 health care services that are lawful under the laws of
21 this State;



1 [+] (3) Assisting ~~any person or entity providing,~~
2 ~~seeking, receiving, paying for, or responding to an~~
3 ~~inquiry about reproductive health care services that~~
4 ~~are legal in the State.] or aiding or abetting in any~~
5 ~~of the conduct described in paragraph (1) or (2); or~~
6 (4) Attempting or intending to engage in or providing
7 ~~material support for (or any other theory of~~
8 ~~vicarious, attempt, joint, several, or conspiracy~~
9 ~~liability derived therefrom) conduct described in~~
10 ~~paragraphs (1) to (3).~~

11 (b) This section shall not apply to any investigation or
12 proceeding where the conduct subject to potential liability
13 under the investigation or proceeding would be subject to
14 liability under the laws of this State if committed in this
15 State.

16 [+] §323J-5[+] **Prohibition on state action.** The State
17 shall not penalize, prosecute, or otherwise take adverse action
18 against an individual based on the individual's actual,
19 potential, perceived, or alleged pregnancy ~~or gender-affirming~~
20 ~~health care~~ outcomes. The State shall not penalize, prosecute,



1 or otherwise take adverse action against a person for aiding or
2 assisting [a]:

3 (1) A pregnant individual accessing reproductive health
4 care services [in accordance with] that are lawful
5 under the laws of [the] this State and with the
6 pregnant individual's voluntary consent[‐]; or

7 (2) An individual accessing gender-affirming health care
8 services that are lawful under the laws of this State
9 and with the individual's voluntary consent.

10 **[‐]S323J-6[‐] Denial of demands for surrender.**

11 Notwithstanding any provision of chapter 832 to the contrary,
12 the governor shall deny any demand made by the executive
13 authority of any state for the surrender of any person charged
14 with a crime under the laws of that state when the alleged crime
15 involves [~~the provision or receipt of,~~]:

16 (1) Seeking, receiving, paying for, or [assistance with,]
17 inquiring about reproductive health care services[‐]
18 or gender-affirming health care services;
19 (2) Providing or responding to an inquiry about
20 reproductive health care services or gender-affirming
21 health care services;



1 (3) Assisting or aiding or abetting in any of the conduct
2 described in paragraph (1) or (2); or
3 (4) Attempting or intending to engage in or providing
4 material support for (or any other theory of
5 vicarious, attempt, joint, several, or conspiracy
6 liability derived therefrom) conduct described in
7 paragraphs (1) to (3),
8 unless the acts forming the basis of the prosecution would also
9 constitute a criminal offense in this State. This section shall
10 not apply to demands made under Article IV, section 2, of the
11 United States Constitution.

12 **[t]§323J-7[] Laws contrary to the public policy of this**
13 **State.** (a) A law of another state authorizing a civil action
14 or criminal prosecution based on any of the following [is] shall
15 be declared to be contrary to the public policy of this State:
16 (1) Receiving, seeking, [or] paying for, or inquiring
17 about reproductive health care services~~[t]~~ or gender-
18 affirming health care services that are lawful under
19 the laws of this State;
20 (2) Providing or responding to an inquiry about
21 reproductive health care services~~[t]~~ or gender-



1 affirming health care services that are lawful under
2 the laws of this State;
3 (3) ~~Engaging in conduct that assists or aids or abets the~~
4 ~~provision or receipt of reproductive health care~~
5 ~~services;]~~ Assisting or aiding or abetting in any of
6 the conduct described in paragraph (1) or (2); or
7 (4) Attempting or intending to engage in or providing
8 material support for (or any other theory of
9 vicarious, attempt, joint, several or conspiracy
10 liability derived therefrom) conduct described in
11 paragraphs (1) to (3) [~~,~~
12 in accordance with the laws of this State].

13 (b) No law described in subsection (a) shall be applied to
14 a case or controversy heard in the courts of this State."

15 SECTION 3. Section 451J-11, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) The department shall deny, revoke, condition, or
18 suspend a license granted pursuant to this chapter on the
19 following grounds:

20 (1) Conviction by a court of competent jurisdiction of a
21 crime [~~which~~] that the department has determined, by



1 rules adopted pursuant to chapter 91, to be of a
2 nature that renders the person convicted unfit to
3 practice marriage and family therapy[†], except when
4 the conviction was based on the provision or
5 assistance in receipt or provision of gender-affirming
6 health care services, as defined in section 323J-1, so
7 long as the provision or assistance in receipt or
8 provision of the services was in accordance with the
9 laws of this State or would have been in accordance
10 with the laws of this State if it occurred within this
11 State;

12 (2) Failing to report in writing to the director any
13 disciplinary decision related to the provision of
14 mental health services issued against the licensee or
15 the applicant in any jurisdiction within thirty days
16 of the disciplinary decision, or within thirty days of
17 licensure;

18 (3) Violation of recognized ethical standards for marriage
19 and family therapists or licensed marriage and family
20 therapists as set by the association;



1 (4) Fraud or misrepresentation in obtaining or renewing a
2 license, including making a false certification of
3 compliance with the continuing education requirement
4 set forth in section 451J-10;

5 (5) Revocation, suspension, or other disciplinary action
6 by any state or federal agency against a licensee or
7 applicant for any reason provided under this
8 section~~[+]~~, except when the revocation, suspension, or
9 other disciplinary action was based on the provision
10 or assistance in receipt or provision of gender-
11 affirming health care services, as defined in section
12 323J-1, so long as the provision or assistance in
13 receipt or provision of the services was in accordance
14 with the laws of this State or would have been in
15 accordance with the laws of this State if it occurred
16 within this State; or

17 (6) Other just and sufficient cause that renders a person
18 unfit to practice marriage and family therapy."

19 SECTION 4. Section 451J-12, Hawaii Revised Statutes, is
20 amended to read as follows:



1 **"§451J-12 Confidentiality and privileged communications.**

2 No person licensed as a marriage and family therapist or any
3 associate marriage and family therapist, nor any of the person's
4 employees or associates, shall be required to disclose any
5 information that the person may have acquired in rendering
6 marriage and family therapy services except in the following
7 circumstances:

8 (1) As required by law;

9 (2) To prevent a clear and immediate danger to a person or
10 persons;

11 (3) In the course of a civil, criminal, or disciplinary
12 action arising from the therapy where the therapist is
13 a defendant[+], except when the civil, criminal, or
14 disciplinary action by another state or federal agency
15 is based on the provision or assistance in receipt or
16 provision of gender-affirming health care services, as
17 defined in section 323J-1, so long as the provision or
18 assistance in receipt or provision of the services was
19 in accordance with the laws of this State or would
20 have been in accordance with the laws of this State if
21 it occurred within this State;



1 (4) In a criminal proceeding where the client is a
2 defendant and the use of the privilege would violate
3 the defendant's right to a compulsory process of the
4 right to present testimony and witnesses in the
5 defendant's own behalf;

6 (5) In accordance with the terms of a client's previously
7 written waiver of the privilege; or

8 (6) Where more than one person in a family jointly
9 receives therapy and each ~~family member~~ person who
10 is legally competent executes a written waiver~~[+ in]~~.
11 In that instance, a marriage and family therapist or
12 an associate marriage and family therapist may
13 disclose information received from any ~~family member~~
14 person in accordance with the terms of the person's
15 waiver."

16 SECTION 5. Section 453-8, Hawaii Revised Statutes, is
17 amended by amending subsections (a), (b), and (c) to read as
18 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, an
4 abortion that is unlawful under the laws of this State
5 or that would be unlawful under the laws of this State
6 if performed within this State;

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

9 (3) 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) 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;



- (5) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
- (6) Procuring a license through fraud, misrepresentation, or deceit, or knowingly permitting an unlicensed person to perform activities requiring a license;
- (7) Professional misconduct, hazardous negligence causing bodily injury to another, or manifest incapacity in the practice of medicine or surgery;
- (8) Incompetence or multiple instances of negligence, including but not limited to the consistent use of medical service, which is inappropriate or unnecessary;
- (9) Conduct or practice contrary to recognized standards of ethics of the medical profession as adopted by the Hawaii Medical Association, the American Medical Association, the Hawaii Association of Osteopathic Physicians and Surgeons, or the American Osteopathic Association;
- (10) Violation of the conditions or limitations upon which a limited or temporary license is issued;



1 (11) Revocation, suspension, or other disciplinary action
2 by another state or federal agency of a license,
3 certificate, or medical privilege, except when the
4 revocation, suspension, or other disciplinary action
5 was based on the provision or assistance in receipt or
6 provision of ~~medical,]:~~
7 (A) Medical, surgical, pharmaceutical, counseling, or
8 referral services relating to the human
9 reproductive system, including but not limited to
10 services relating to pregnancy, contraception, or
11 the termination of a pregnancy[; or
12 (B) Gender-affirming health care services, as defined
13 in section 323J-1,
14 so long as the provision or assistance in receipt or
15 provision of the services was in accordance with the
16 laws of this State or would have been in accordance
17 with the laws of this State if it occurred within this
18 State;
19 (12) Conviction, whether by nolo contendere or otherwise,
20 of a penal offense substantially related to the
21 qualifications, functions, or duties of a physician or



osteopathic physician, notwithstanding any statutory provision to the contrary, except when the conviction was based on the provision or assistance in receipt or provision of [medical,]:

17 (13) Violation of chapter 329, the uniform controlled
18 substances act, or any rule adopted thereunder except
19 as provided in section 329-122;

20 (14) Failure to report to the board, in writing, any
21 disciplinary decision issued against the licensee or



13 (1) Physical and mental evaluation of the applicant by a
14 licensed physician or osteopathic physician approved
15 by the board;

16 (2) Probation, including conditions of probation as
17 requiring observation of the licensee by an
18 appropriate group or society of licensed physicians,
19 osteopathic physicians, or surgeons;

20 (3) Limitation of the license by restricting the fields of
21 practice in which the licensee may engage;



1 (4) Further education or training or proof of performance
2 competency; and
3 (5) Limitation of the medical practice of the licensee in
4 any reasonable manner to assure the safety and welfare
5 of the consuming public;
6 provided that the board shall not impose as a condition for
7 licensure any of the requirements pursuant to this subsection if
8 the disciplinary action related to the practice of medicine
9 taken against the applicant was based on the provision or
10 assistance in receipt or provision of medical, surgical,
11 pharmaceutical, counseling, or referral services relating to the
12 human reproductive system, including but not limited to services
13 relating to pregnancy, contraception, or the termination of a
14 pregnancy, or the provision or assistance in receipt or
15 provision of gender-affirming health care services, as defined
16 in section 323J-1, so long as the provision or assistance in
17 receipt or provision of the services was in accordance with the
18 laws of this State or would have been in accordance with the
19 laws of this State if it occurred within this State.
20 (c) Notwithstanding any other law to the contrary, the
21 board may deny a license to any applicant who has been



1 disciplined by another state or federal agency, except on the
2 basis of discipline for the provision or assistance in receipt
3 or provision of medical, surgical, pharmaceutical, counseling,
4 or referral services relating to the human reproductive system,
5 including but not limited to services relating to pregnancy,
6 contraception, or the termination of a pregnancy, or the
7 provision or assistance in receipt or provision of gender-
8 affirming health care services, as defined in section 323J-1, so
9 long as the provision or assistance in receipt or provision of
10 the services was in accordance with the laws of this State or
11 would have been in accordance with the laws of this State if it
12 occurred within this State. Any final order of discipline taken
13 pursuant to this subsection shall be a matter of public record."

14 SECTION 6. Section 453-8.6, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending subsection (a) to read:

17 "(a) Upon receipt of evidence of revocation, suspension,
18 or other disciplinary action against a licensee by another state
19 or federal agency, the board may issue an order imposing
20 disciplinary action upon the licensee on the following
21 conditions:



- 1 (1) The board shall serve the licensee with a proposed
2 order imposing disciplinary action as required by
3 chapter 91;
- 4 (2) The licensee shall have the right to request a hearing
5 pursuant to chapter 91 to show cause why the action
6 described in the proposed order should not be imposed;
- 7 (3) Any request for a hearing shall be made in writing and
8 filed with the board within twenty days after mailing
9 of the proposed order to the licensee; and
- 10 (4) If the licensee does not submit a written request for
11 a hearing within twenty days after mailing of the
12 proposed order, the board may issue a final order
13 imposing the disciplinary action described in the
14 proposed order;

15 provided that the board shall not issue an order imposing
16 disciplinary action upon the licensee if the revocation,
17 suspension, or other disciplinary action against a licensee by
18 another state was based on the provision or assistance in
19 receipt or provision of medical, surgical, pharmaceutical,
20 counseling, or referral services relating to the human
21 reproductive system, including but not limited to services



1 relating to pregnancy, contraception, or the termination of a
2 pregnancy, or the provision or assistance in receipt or
3 provision of gender-affirming health care services, as defined
4 in section 323J-1, so long as the provision or assistance in
5 receipt or provision of the services was in accordance with the
6 laws of this State or would have been in accordance with the
7 laws of this State if it occurred within this State."

8 2. By amending subsection (c) to read:

9 "(c) A licensee against whom the board has issued a
10 proposed order under this section shall be prohibited from
11 practicing in this State until the board issues a final order
12 if:

13 (1) The licensee was the subject of disciplinary action by
14 another state, except where the disciplinary action
15 against the licensee by another state was based on the
16 provision or assistance in receipt or provision of
17 [medical,]:

18 (A) Medical, surgical, pharmaceutical, counseling, or
19 referral services relating to the human
20 reproductive system, including but not limited to



1 services relating to pregnancy, contraception, or
2 the termination of a pregnancy[~~r~~]; or
3 (B) Gender-affirming health care services, as defined
4 in section 323J-1,

5 so long as the provision or assistance in receipt or
6 provision of the services was in accordance with the
7 laws of this State or would have been in accordance
8 with the laws of this State if it occurred within this
9 State; and

10 (2) The disciplinary action by another state prohibits the
11 licensee from practicing in that state."

12 SECTION 7. Section 453D-12, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) In addition to any other acts or conditions provided
15 by law, the director may refuse to renew, reinstate, or restore,
16 and may deny, revoke, suspend, or condition in any manner, any
17 license for any one or more of the following acts or conditions
18 on the part of a licensee or license applicant:

19 (1) Failing to meet or maintain the conditions and
20 requirements necessary to qualify for the granting of
21 a license;



- 1 (2) Engaging in false, fraudulent, or deceptive
2 advertising, or making untruthful or improbable
3 statements;
- 4 (3) Being addicted to, dependent on, or a habitual user of
5 a narcotic, barbiturate, amphetamine, hallucinogen,
6 opium, cocaine, or other drugs or derivatives of a
7 similar nature;
- 8 (4) Practicing the licensed profession while impaired by
9 alcohol, drugs, physical disability, or mental
10 instability;
- 11 (5) Procuring a license through fraud, misrepresentation,
12 or deceit;
- 13 (6) Aiding and abetting an unlicensed person to directly
14 or indirectly perform activities requiring a license;
- 15 (7) Professional misconduct, incompetence, gross
16 negligence, or manifest incapacity, in the practice of
17 the licensed profession;
- 18 (8) Engaging in conduct or practice contrary to recognized
19 standards of ethics for the licensed profession;
- 20 (9) Violating any condition or limitation upon which a
21 conditional or temporary license was issued;



1 (10) Engaging in business under a past or present license
2 issued pursuant to the licensing laws, in a manner
3 causing injury to one or more members of the public;

4 (11) Failing to comply with, observe, or adhere to any law
5 in a manner [such] that the director deems the
6 applicant or holder to be an unfit or improper person
7 to hold a license;

8 (12) Having had a license revoked or suspended, or having
9 been the subject of other disciplinary action, by
10 another state or a federal agency for any reason
11 provided by the licensing laws or this section[?],
12 except when the revocation, suspension, or other
13 disciplinary action was based on the provision or
14 assistance in receipt or provision of gender-affirming
15 health care services, as defined in section 323J-1, so
16 long as the provision or assistance in receipt or
17 provision of the services was in accordance with the
18 laws of this State or would have been in accordance
19 with the laws of this State if it occurred within this
20 State;



1 (13) Having been convicted of a crime, whether by nolo
2 contendere or otherwise, directly related to the
3 qualifications, functions, or duties of the licensed
4 profession[+], except when the revocation, suspension,
5 or other disciplinary action was based on the
6 provision or assistance in receipt or provision of
7 gender-affirming health care services, as defined in
8 section 323J-1, so long as the provision or assistance
9 in receipt or provision of the services was in
10 accordance with the laws of this State or would have
11 been in accordance with the laws of this State if it
12 occurred within this State;

13 (14) Failing to report in writing to the director any
14 disciplinary decision issued against the licensee or
15 applicant in another jurisdiction within thirty days
16 of the disciplinary decision;

17 (15) Employing, utilizing, or attempting to employ or
18 utilize, at any time, any person not licensed under
19 the licensing laws where licensure is required; or

20 (16) Violating this chapter, chapter 436B, or any rule or
21 order of the director."



1 SECTION 8. Section 453D-13, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"S453D-13 Confidentiality and privileged communications.**

4 No person licensed as a mental health counselor or an associate
5 mental health counselor, nor any of the person's employees or
6 associates, shall be required to disclose any information that
7 the person may have acquired in rendering mental health
8 counseling services, except in the following circumstances:

9 (1) As required by law;

10 (2) To prevent a clear and imminent danger to a person or
11 persons;

12 (3) In accordance with the terms of a previously written
13 waiver of the privilege where the waiver is executed
14 by the client or by the client's legally recognized
15 representative;

16 (4) Where more than one person jointly receives counseling
17 and each person who is legally competent executes a
18 written waiver. In that instance, information may be
19 disclosed from any person in accordance with that
20 person's waiver; or



1 (5) In the course of a disciplinary action or pursuant to
2 a duly authorized subpoena issued by the
3 department [–], except when the disciplinary action by
4 another federal or state agency is based on the
5 provision or assistance in receipt or provision of
6 gender-affirming health care services, as defined in
7 section 323J-1, so long as the provision or assistance
8 in receipt or provision of the services was in
9 accordance with the laws of this State or would have
10 been in accordance with the laws of this State if it
11 occurred within this State."

12 SECTION 9. Section 457-12, Hawaii Revised Statutes, is
13 amended by amending subsections (a) and (b) to read as follows:

14 "(a) In addition to any other actions authorized by law,
15 the board shall have the power to deny, revoke, limit, or
16 suspend any license to practice nursing as a registered nurse or
17 as a licensed practical nurse applied for or issued by the board
18 in accordance with this chapter, and to fine or to otherwise
19 discipline a licensee for any cause authorized by law, including
20 but not limited to the following:



- 1 (1) Fraud or deceit in procuring or attempting to procure
- 2 a license to practice nursing as a registered nurse or
- 3 as a licensed practical nurse;
- 4 (2) Gross immorality;
- 5 (3) Unfitness or incompetence by reason of negligence,
- 6 habits, or other causes;
- 7 (4) Habitual intemperance, addiction to, or dependency on
- 8 alcohol or other habit-forming substances;
- 9 (5) Mental incompetence;
- 10 (6) Unprofessional conduct as defined by the board in
- 11 accordance with its own rules;
- 12 (7) Wilful or repeated violation of any of the provisions
- 13 of this chapter or any rule adopted by the board;
- 14 (8) Revocation, suspension, limitation, or other
- 15 disciplinary action by another state of a nursing
- 16 license, except when the revocation, suspension,
- 17 limitation, or other disciplinary action by another
- 18 state was based on the provision or assistance in
- 19 receipt or provision of medical,]:
- 20 (A) Medical, surgical, pharmaceutical, counseling, or
- 21 referral services relating to the human



1 reproductive system, including but not limited to
2 services relating to pregnancy, contraception, or
3 the termination of a pregnancy[~~r~~]; or
4 (B) Gender-affirming health care services, as defined
5 in section 323J-1,
6 so long as the provision or assistance in receipt or
7 provision of the services was in accordance with the
8 laws of this State or would have been in accordance
9 with the laws of this State if it occurred within this
10 State;
11 (9) Conviction, whether by nolo contendere or otherwise,
12 of a penal offense substantially related to the
13 qualifications, functions, or duties of a nurse,
14 notwithstanding any statutory provision to the
15 contrary, except when the conviction was based on the
16 provision or assistance in receipt or provision of
17 [medical,]:
18 (A) Medical, surgical, pharmaceutical, counseling, or
19 referral services relating to the human
20 reproductive system, including but not limited to



10 (10) Failure to report to the board any disciplinary action
11 taken against the licensee in another jurisdiction
12 within thirty days after the disciplinary action
13 becomes final;

14 (11) Submitting to or filing with the board any notice,
15 statement, or other document required under this
16 chapter[~~, which~~] that is false or untrue or contains
17 any material misstatement of fact, including a false
18 attestation of compliance with continuing competency
19 requirements; or

20 (12) Violation of the conditions or limitations upon which
21 any license is issued.



6 (1) Medical, surgical, pharmaceutical, counseling, or
7 referral services relating to the human reproductive
8 system, including but not limited to services relating
9 to pregnancy, contraception, or the termination of a
10 pregnancy []; or

11 (2) Gender-affirming health care services, as defined in
12 section 323J-1,

13 so long as the provision or assistance in receipt or provision
14 of the services was in accordance with the laws of this State or
15 would have been in accordance with the laws of this State if it
16 occurred within this State. Any final order entered pursuant to
17 this subsection shall be a matter of public record."

18 SECTION 10. Section 457-12.5, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By amending subsection (a) to read:



1 "(a) Upon receipt of evidence of revocation, suspension,
2 or other disciplinary action against a licensee in another
3 state, the board may issue an order imposing disciplinary action
4 upon the licensee on the following conditions:

5 (1) The board shall serve the licensee with a proposed
6 order imposing disciplinary action as required by
7 chapter 91;
8 (2) The licensee shall have the right to request a hearing
9 pursuant to chapter 91 to show cause why the action
10 described in the proposed order should not be imposed;
11 (3) Any request for a hearing shall be made in writing and
12 filed with the board within twenty days after mailing
13 of the proposed order to the licensee; and
14 (4) If the licensee does not submit a written request for
15 a hearing within twenty days after mailing of the
16 proposed order, the board shall issue a final order
17 imposing the disciplinary action described in the
18 proposed order;

19 provided that the board shall not issue an order imposing
20 disciplinary action upon the licensee if the revocation,
21 suspension, or other disciplinary action against a licensee by



1 another state was based on the provision or assistance in
2 receipt or provision of medical, surgical, pharmaceutical,
3 counseling, or referral services relating to the human
4 reproductive system, including but not limited to services
5 relating to pregnancy, contraception, or the termination of a
6 pregnancy, or the provision or assistance in receipt or
7 provision of gender-affirming health care services, as defined
8 in section 323J-1, so long as the provision or assistance in
9 receipt or provision of the services was in accordance with the
10 laws of this State or would have been in accordance with the
11 laws of this State if it occurred within this State."

12 2. By amending subsection (c) to read:

13 "(c) A licensee against whom the board has issued a
14 proposed order under this section shall be prohibited from
15 practicing in this State until the board issues a final order
16 if:

17 (1) The licensee was the subject of disciplinary action by
18 another state, except where the disciplinary action
19 against the licensee by another state was based on the
20 provision or assistance in receipt or provision of
21 medical;



15 SECTION 11. Section 461-21.5, Hawaii Revised Statutes, is
16 amended as follows:

17 1. By amending subsection (a) to read:

18 " (a) Upon receipt of evidence of revocation, suspension,

19 or other disciplinary action against a licensee by another state

20 or federal agency, the board may issue an order imposing



1 disciplinary action upon the licensee on the following
2 conditions:

3 (1) The board shall serve the licensee with a proposed
4 order imposing disciplinary action as required by
5 chapter 91;

6 (2) The licensee shall have the right to request a hearing
7 pursuant to chapter 91 to show cause why the action
8 described in the proposed order should not be imposed;

9 (3) Any request for a hearing shall be made in writing and
10 filed with the board within twenty days after mailing
11 of the proposed order to the licensee; and

12 (4) If the licensee does not submit a written request for
13 a hearing within twenty days after mailing of the
14 proposed order, the board shall issue a final order
15 imposing the disciplinary action described in the
16 proposed order;

17 provided that the board shall not issue an order imposing
18 disciplinary action upon the licensee if the revocation,
19 suspension, or other disciplinary action against a licensee by
20 another state was based on the provision or assistance in
21 receipt or provision of medical, surgical, pharmaceutical,



1 counseling, or referral services relating to the human
2 reproductive system, including but not limited to services
3 relating to pregnancy, contraception, or the termination of a
4 pregnancy, or the provision or assistance in receipt or
5 provision of gender-affirming health care services, as defined
6 in section 323J-1, so long as the provision or assistance in
7 receipt or provision of the services was in accordance with the
8 laws of this State or would have been in accordance with the
9 laws of this State if it occurred within this State."

10 2. By amending subsection (c) to read:

11 "(c) A licensee against whom the board has issued a
12 proposed order under this section shall be prohibited from
13 practicing in this State until the board issues a final order
14 if:

15 (1) The licensee was the subject of disciplinary action by
16 another state, except where the disciplinary action
17 against the licensee by another state was based on the
18 provision or assistance in receipt or provision of
19 [medical,]:

20 (A) Medical, surgical, pharmaceutical, counseling, or
21 referral services relating to the human



1 reproductive system, including but not limited to
2 services relating to pregnancy, contraception, or
3 the termination of a pregnancy[~~r~~]; or

4 (B) Gender-affirming health care services, as defined
5 in section 323J-1,

6 so long as the provision or assistance in receipt or
7 provision of the services was in accordance with the
8 laws of this State or would have been in accordance
9 with the laws of this State if it occurred within this
10 State; and

11 (2) The disciplinary action by another state prohibits the
12 licensee from practicing in that state."

13 SECTION 12. Section 465-13, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) In addition to any other actions authorized by law,
16 the board shall refuse to grant a license to any applicant and
17 may revoke or suspend any license, or may place a license or
18 [~~may~~] put a license holder on conditional probation, for any
19 cause authorized by law, including but not limited to the
20 following:



- 1 (1) Professional misconduct, gross carelessness, manifest
- 2 incapacity, or incompetency in the practice of
- 3 psychology;
- 4 (2) Violation of this chapter by the applicant within one
- 5 year of the application, or violation of this chapter
- 6 by a license holder any time the license is valid;
- 7 (3) Any unethical practice of psychology as defined by the
- 8 board in accordance with its own rules;
- 9 (4) Fraud or deception in applying for or procuring a
- 10 license to practice psychology as defined in section
- 11 465-1;
- 12 (5) Conviction of a crime substantially related to the
- 13 qualifications, functions, or duties of
- 14 psychologists[+], except when the conviction was based
- 15 on the provision or assistance in receipt or provision
- 16 of gender-affirming health care services, as defined
- 17 in section 323J-1, so long as the provision or
- 18 assistance in receipt or provision of the services was
- 19 in accordance with the laws of this State or would
- 20 have been in accordance with the laws of this State if
- 21 it occurred within this State;



- 1 (6) Wilful unauthorized communication of information
2 received in professional confidence;
- 3 (7) The suspension, revocation, or imposition of
4 probationary conditions by another state of a license
5 or certificate to practice psychology issued by that
6 state if the act for which the disciplinary action was
7 taken constitutes a violation of this chapter;
- 8 (8) The commission of any dishonest, corrupt, or
9 fraudulent act or any act of sexual abuse, or sexual
10 relations with a client, or sexual misconduct that is
11 substantially related to the qualifications,
12 functions, or duties of a psychologist;
- 13 (9) Harassment, intimidation, or abuse, sexual or
14 otherwise, of a client or patient;
- 15 (10) Exercising undue influence in the manner as to exploit
16 the client, patient, student, or supervisee for
17 financial or other personal advantage to the
18 practitioner or a third party;
- 19 (11) Conviction of fraud in filing medicaid claims or
20 conviction of fraud in filing claims to any third
21 party payor, for which a copy of the record of



conviction, certified by the clerk of the court
entering the conviction, shall be conclusive evidence;

(12) Aiding or abetting any unlicensed person to engage in
the practice of psychology;

(13) Repeated acts of excessive treatment or use of
diagnostic procedures as determined by the standard of
the local community of licensees;

(14) Inability to practice psychology with reasonable skill
and safety to patients or clients by reason of
illness, inebriation, or excessive use of any
substance, or as a result of any mental or physical
condition;

(15) Conviction of any crime or offense that reflects the
inability of the practitioner to practice psychology
with due regard for the health and safety of clients
or patients;

(16) Use of untruthful or deceptive or improbable
statements concerning the licensee's qualifications or
the effects or results of proposed treatment;



10 SECTION 13. Section 636C-9, Hawaii Revised Statutes, is
11 amended to read as follows:

12 " [+]§636C-9[+] Enforcement of foreign penal civil actions
13 relating to protected reproductive health care services[-] or
14 protected gender-affirming health care services. (a) No
15 judgment or other order arising from a foreign penal civil
16 action or other penal law banning, restricting, burdening,
17 punishing, penalizing, or otherwise interfering with the
18 provision of protected reproductive health care services or
19 protected gender-affirming health care services shall be
20 enforced in this State.

21 (b) As used in this section:



1 "Foreign penal civil action" means an action authorized by
2 the law of a state, or of any municipality or other governmental
3 entity within a state, other than this State, the essential
4 character and effect of which is to punish an offense against
5 the public justice of that state, municipality, or other
6 governmental entity.

7 "Gender-affirming health care services" has the same
8 meaning as in section 323J-1.

9 "Protected gender-affirming health care services" means
10 gender-affirming health care services that are protected under
11 the Hawaii State Constitution or are otherwise lawful under the
12 laws of this State or that would be constitutionally protected
13 or otherwise lawful if performed within this State.

14 "Protected reproductive health care services" means
15 medical, surgical, pharmaceutical, counseling, or referral
16 services relating to the human reproductive system, including
17 but not limited to services relating to pregnancy,
18 contraception, or termination of a pregnancy, that are protected
19 under the Hawaii State Constitution or otherwise lawful under
20 the laws of this State or that would be constitutionally
21 protected or otherwise lawful if performed within this State."



1 SECTION 14. Section 836-2, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§836-2 Summoning witness in this State to testify in**
4 **another state.** (a) If a judge of a court of record in any
5 state [~~which~~] that by its laws has made provision for commanding
6 persons within that state to attend and testify in this State
7 certifies under the seal of that court that there is a criminal
8 prosecution pending in that court, or that a grand jury
9 investigation has commenced or is about to commence, that a
10 person in this State is a material witness in the prosecution or
11 grand jury investigation, and that the person's presence will be
12 required for a specified number of days, upon presentation of
13 the certificate to any judge of a court of record in this State
14 in the judicial district in which the person is, the judge shall
15 fix a time and place for a hearing, and shall make an order
16 directing the witness to appear at a time and place certain for
17 the hearing.

18 (b) If at a hearing the judge determines that the witness
19 is material and necessary, that it will not cause undue hardship
20 to the witness to be compelled to attend and testify in the
21 prosecution or a grand jury investigation in the other state,



1 and that the laws of the state in which the prosecution is
2 pending, or grand jury investigation has commenced or is about
3 to commence, and of any other state through which the witness
4 may be required to pass by ordinary course of travel, will give
5 to the witness protection from arrest and the service of civil
6 and criminal process, the judge shall issue a summons, with a
7 copy of the certificate attached, directing the witness to
8 attend and testify in the court where the prosecution is
9 pending, or where a grand jury investigation has commenced or is
10 about to commence at a time and place specified in the summons[,
11 except]; provided that no judge shall issue a summons in a case
12 where prosecution is pending, or where a grand jury
13 investigation has commenced or is about to commence for a
14 criminal violation of a law of another state involving [the
15 provision,]:

16 (1) Seeking, receiving, paying for, [receipt of, or
17 ~~assistance with] or inquiring about~~ reproductive
18 health care services [as defined in section 323J-1] or
19 gender-affirming health care services;



1 (2) Providing or responding to an inquiry about
2 reproductive health care services or gender-affirming
3 health care services;
4 (3) Assisting or aiding or abetting in any of the conduct
5 described in paragraph (1) or (2); or
6 (4) Attempting or intending to engage in or providing
7 material support for (or any other theory of
8 vicarious, attempt, joint, several, or conspiracy
9 liability derived therefrom) conduct described in
10 paragraphs (1) to (3),
11 unless the acts forming the basis of the prosecution or
12 investigation would also constitute an offense in this State.
13 In any hearing, the certificate shall be *prima facie* evidence of
14 all the facts stated therein.
15 (c) If the certificate recommends that the witness be
16 taken into immediate custody and delivered to an officer of the
17 requesting state to assure the witness' attendance in the
18 requesting state, the judge may, in lieu of notification of the
19 hearing, direct that the witness be forthwith brought before the
20 judge for the hearing; and the judge at the hearing being
21 satisfied of the desirability of the custody and delivery, for



1 which determination the certificate shall be *prima facie* proof
2 of the desirability may, in lieu of issuing subpoena or summons,
3 order that the witness be forthwith taken into custody and
4 delivered to an officer of the requesting state.

5 (d) If the witness, who is summoned pursuant to this
6 section, after being paid or tendered by some properly
7 authorized person a sum equivalent to the cost of round-trip air
8 fare to the place where the prosecution is pending and \$30 for
9 each day, that the witness is required to travel and attend as a
10 witness, fails without good cause to attend and testify as
11 directed in the summons, the witness shall be punished in the
12 manner provided for the punishment of any witness who disobeys a
13 summons issued from a court of record in this State.

14 (e) As used in this section:

15 "Gender-affirming health care services" has the same
16 meaning as in section 323J-1.

17 "Reproductive health care services" has the same meaning as
18 in section 323J-1."

19 SECTION 15. If any provision of this Act, or the
20 application thereof to any person or circumstance, is held
21 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 SECTION 16. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 17. This Act shall take effect on July 1, 2026.

7

INTRODUCED BY: 



S.B. NO. 2868

Report Title:

Gender-Affirming Health Care Services; Reproductive Health Care Services; Protections; Abusive Litigation; Medical Malpractice Insurance; Health Carriers; Protected Health Information; Covered Entities

Description:

Expands the protections established under Act 2, SLH 2023, to include gender-affirming health care services, including clarifying permitted disclosures of protected health information to address changes in federal regulations. Establishes protections against abusive litigation. Prohibits medical malpractice insurers and health carriers from taking certain adverse actions against health care providers solely on the basis that the health care provider provides lawful reproductive health care services or gender-affirming care services.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

