

Hawaii

Shield Law Fact Sheet

AUGUST 2024

Hawaii's shield laws provide protections against out-of-state investigations and prosecutions, professional discipline, civil liability, and disclosure of medical information related to reproductive health care services. Currently, Hawaii's shield laws lack protections for health care providers' professional liability insurance. Hawaii does not yet provide shield law protections for gender-affirming care.

PROTECTION AGAINST OUT-OF-STATE INVESTIGATIONS AND PROSECUTIONS

Protection Barring State Agency/Employee Assistance

State agencies or people acting on their behalf may not provide any information or expend any resources in furtherance of an out-of-state or interstate investigation or proceeding seeking to impose liability upon a person or entity for providing, receiving, seeking, paying for, or assisting in reproductive health care services legal in Hawaii.¹

Protection against Extradition and Arrests

The Governor must deny any demand to surrender a person charged by another state with an alleged crime involving the provision or receipt of, paying for, or assistance with reproductive health care lawful in Hawaii, unless the person fled from the state demanding their surrender.²

¹ SB 1 (Haw. 2023) (Haw. Rev. Stat. § 323J-4).

² SB 1 (Haw. 2023) (Haw. Rev. Stat. § 323J-6).

Protection against Issuance of Search Warrants, Subpoenas, and Witness Summons

Courts may not order the issuance of a subpoena in connection with an out-of-state proceeding relating to reproductive health care services legally performed in Hawaii.³ Additionally, judges may not issue a summons in a case related to the criminal violation of another state’s law involving the provision, paying for, receipt of, or assistance with reproductive health care services lawful in Hawaii.⁴

PROTECTION FROM PROFESSIONAL DISCIPLINE

Protection against Adverse Actions related to Providers’ Licenses and Other Board Discipline

The boards governing medicine and surgery, nursing, and pharmacy may not impose discipline or deny, revoke, limit, or suspend a provider’s license to practice based on discipline imposed by another state or federal agency if based on the provider’s provision or assistance in health care services relating to pregnancy, contraception, or the termination of pregnancy lawfully performed in Hawaii or that would be legal if they occurred in Hawaii.⁵

PROTECTION AGAINST CIVIL LIABILITY

Protection against Application or Enforcement of Another State’s Laws or Judgments in Hawaii State Court

Hawaii courts may not apply another state’s laws authorizing a civil action or criminal prosecution for receiving, seeking, paying for, providing, assisting, or aiding or abetting the provision of reproductive health care services.⁶ Additionally, Hawaii courts may not enforce a judgment or order arising from an out-of-state penal action banning, restricting, burdening, punishing, penalizing, or otherwise interfering with the provision of reproductive health care services—including relating to pregnancy, contraception, or termination of a pregnancy—that are lawful in Hawaii or would be lawful if performed in Hawaii.⁷

³ SB 1 (Haw. 2023) (Haw. Rev. Stat. § 323J-3).

⁴ SB 1 (Haw. 2023) (Haw. Rev. Stat. § 836-2).

⁵ SB 1 (Haw. 2023) (Haw. Rev. Stat. §§ 453-8, 453-8.6, 457-12, 461-21.5).

⁶ SB 1 (Haw. 2023) (Haw. Rev. Stat. § 636C-9).

⁷ SB 1 (Haw. 2023) (Haw. Rev. Stat. § 323J-7). Hawaii’s shield laws do not appear to provide for a “clawback lawsuit” to recover damages from litigation in another state related to protected care.

PRIVACY OF MEDICAL INFORMATION AND OTHER DATA RELATED TO ABORTION

Protection Against Disclosure of Medical Information

Health plans, health care clearinghouses, and health care providers who electronically transmit any health information may not disclose any patient communication or information obtained by examination of a patient relating to reproductive health care services permitted under Hawaii law without the written consent of the patient or their legal representative in any civil action or probate, legislative, or administrative proceeding.⁸

⁸ SB 1 (Haw. 2023) (Haw. Rev. Stat. § 323J-2).

ABOUT THE CENTER ON REPRODUCTIVE HEALTH, LAW, AND POLICY (CRHLP)

CRHLP is a nationwide think tank and research center created to meet the current national crisis in access to abortion while working towards long-term solutions to advance reproductive justice. CRHLP conducts analysis and research for legal, policy, and narrative change and serves as a trusted hub for convening and engaging academics, advocates, health care providers, policy makers, and community members to reimagine the landscape of reproductive health law and policy. CRHLP also trains the reproductive law and policy leaders of tomorrow. CRHLP is committed to the highest standards of independent inquiry, academic excellence, and rigor. Research findings and conclusions are never altered to accommodate other interests, including those of funders, other organizations, or government bodies and officials.

For more information

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To receive pro bono legal assistance on questions related to the shield laws or other reproductive rights or justice issues, email: larj@law.ucla.edu