

HB1133_L.001

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.HB14-1133 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, add part 9 to article
4 6 of title 18 as follows:

PART 9

WOMEN'S HEALTH DEFENSE ACT

7 **18-6-901. Short title.** THIS PART 9 MAY BE KNOWN AND CITED AS
8 THE "WOMEN'S HEALTH DEFENSE ACT".

9 **18-6-902. Legislative declaration.** (1) THE GENERAL ASSEMBLY
10 FINDS THAT:

11 (a) ABORTION CAN CAUSE BOTH SHORT- AND LONG-TERM SERIOUS
12 PHYSICAL AND PSYCHOLOGICAL COMPLICATIONS FOR WOMEN, INCLUDING
13 BUT NOT LIMITED TO: UTERINE PERFORATION, UTERINE SCARRING,
14 CERVICAL PERFORATION OR OTHER INJURY, INFECTION, BLEEDING,
15 HEMORRHAGE, BLOOD CLOTS, FAILURE TO ACTUALLY TERMINATE THE
16 PREGNANCY, INCOMPLETE ABORTION, PELVIC INFLAMMATORY DISEASE,
17 ENDOMETRITIS, MISSED ECTOPIC PREGNANCY, CARDIAC ARREST,
18 RESPIRATORY ARREST, RENAL FAILURE, METABOLIC DISORDER, SHOCK,
19 EMBOLISM, COMA, PLACENTA PREVIA IN SUBSEQUENT PREGNANCIES,
20 PRETERM DELIVERY IN SUBSEQUENT PREGNANCIES, FREE FLUID IN THE
21 ABDOMEN, ORGAN DAMAGE, ADVERSE REACTIONS TO ANESTHESIA AND
22 OTHER DRUGS, AND PSYCHOLOGICAL OR EMOTIONAL COMPLICATIONS SUCH
23 AS DEPRESSION, ANXIETY, SLEEPING DISORDERS, AND DEATH.

24 (b) ABORTION HAS A HIGHER MEDICAL RISK WHEN THE PROCEDURE
25 IS PERFORMED LATER IN PREGNANCY. COMPARED TO AN ABORTION AT
26 EIGHT WEEKS' GESTATION OR EARLIER, THE RELATIVE RISK INCREASES
27 EXPONENTIALLY AT HIGHER GESTATIONS. L. BARTLETT ET AL., RISK
28 FACTORS FOR LEGAL INDUCED ABORTION-RELATED MORTALITY IN THE
29 UNITED STATES, OBSTETRICS & GYNECOLOGY 103(4):729 (2004).

30 (c) IN FACT, THE INCIDENCE OF MAJOR COMPLICATIONS IS HIGHEST
31 AFTER TWENTY WEEKS' GESTATION. J. PREGLER & A. DeCHERNEY,
32 WOMEN'S HEALTH: PRINCIPLES AND CLINICAL PRACTICE 232 (2002).

33 (d) ACCORDING TO THE ALAN GUTTMACHER INSTITUTE, THE RISK
34 OF DEATH ASSOCIATED WITH ABORTION INCREASES WITH THE LENGTH OF
35 PREGNANCY, FROM ONE DEATH FOR EVERY ONE MILLION ABORTIONS AT OR
36 BEFORE EIGHT WEEKS GESTATION TO ONE PER 29,000 ABORTIONS AT
37 SIXTEEN TO TWENTY WEEKS AND ONE PER 11,000 ABORTIONS AT



1 TWENTY-ONE OR MORE WEEKS (CITING L. BARTLETT ET AL., RISK FACTORS
2 FOR LEGAL INDUCED ABORTION-RELATED MORTALITY IN THE UNITED
3 STATES, OBSTETRICS & GYNECOLOGY 103(4):729-737 (2004)).

4 (e) AFTER THE FIRST TRIMESTER, THE RISK OF HEMORRHAGE FROM
5 AN ABORTION, IN PARTICULAR, IS GREATER, AND THE RESULTANT
6 COMPLICATIONS MAY REQUIRE A HYSTERECTOMY, OTHER REPARATIVE
7 SURGERY, OR A BLOOD TRANSFUSION.

8 (f) THE GENERAL ASSEMBLY HAS A LEGITIMATE CONCERN FOR THE
9 PUBLIC'S HEALTH AND SAFETY. *WILLIAMSON V. LEE OPTICAL*, 348 U.S. 483,
10 486 (1985).

11 (g) THE GENERAL ASSEMBLY HAS LEGITIMATE INTERESTS FROM
12 THE OUTSET OF PREGNANCY IN PROTECTING THE HEALTH OF WOMEN.
13 *PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA V. CASEY*, 505
14 U.S. 833, 847 (1992). MORE SPECIFICALLY, THE GENERAL ASSEMBLY "HAS
15 A LEGITIMATE CONCERN WITH THE HEALTH OF WOMEN WHO UNDERGO
16 ABORTIONS." *AKRON V. AKRON CTR. FOR REPRODUCTIVE HEALTH, INC.*, 462
17 U.S. 416, 428-29 (1983).

18 (h) FINALLY, THERE IS SUBSTANTIAL AND WELL-DOCUMENTED
19 MEDICAL EVIDENCE THAT AN UNBORN CHILD BY AT LEAST TWENTY WEEKS'
20 GESTATION HAS THE CAPACITY TO FEEL PAIN DURING AN ABORTION. K.
21 ANAND, PAIN AND ITS EFFECTS IN THE HUMAN NEONATE AND FETUS,
22 N.E.J.M. 317:1321 (1987).

23 (2) FOR THESE REASONS, THE GENERAL ASSEMBLY IS ADOPTING
24 THIS PART 9 TO:

25 (a) BASED ON THE DOCUMENTED RISKS TO WOMEN'S HEALTH,
26 PROHIBIT ABORTIONS AT OR AFTER TWENTY WEEKS' GESTATION EXCEPT IN
27 CASES OF A MEDICAL EMERGENCY;

28 (b) PROHIBIT ABORTIONS AT OR AFTER TWENTY WEEKS'
29 GESTATION, IN PART, BECAUSE OF THE PAIN FELT BY AN UNBORN CHILD;
30 AND

31 (c) DEFINE "MEDICAL EMERGENCY" TO ENCOMPASS "SIGNIFICANT
32 HEALTH RISKS", NAMELY ONLY THOSE CIRCUMSTANCES IN WHICH A
33 PREGNANT WOMAN'S LIFE OR A MAJOR, PHYSICAL BODILY FUNCTION IS
34 THREATENED. *GONZALES V. CARHART*, 550 U.S. 124, 161 (2007).

35 **18-6-903. Definitions.** AS USED IN THIS PART 9, UNLESS THE
36 CONTEXT OTHERWISE REQUIRES:

37 (1) "ABORTION" MEANS THE ACT OF USING OR PRESCRIBING ANY
38 INSTRUMENT, MEDICINE, DRUG, OR ANY OTHER SUBSTANCE, DEVICE, OR
39 MEANS WITH THE INTENT TO TERMINATE THE CLINICALLY DIAGNOSABLE
40 PREGNANCY OF A WOMAN WITH KNOWLEDGE THAT THE TERMINATION BY
41 THOSE MEANS WILL WITH REASONABLE LIKELIHOOD CAUSE THE DEATH OF

1 THE UNBORN CHILD. SUCH USE, PRESCRIPTION, OR MEANS IS NOT AN
2 ABORTION IF DONE WITH THE INTENT TO:

3 (a) SAVE THE LIFE OR PRESERVE THE HEALTH OF AN UNBORN
4 CHILD;

5 (b) REMOVE A DEAD, UNBORN CHILD CAUSED BY SPONTANEOUS
6 ABORTION; OR

7 (c) REMOVE AN ECTOPIC PREGNANCY.

8 (2) "ATTEMPT TO PERFORM" MEANS AN ACT OR OMISSION OF A
9 STATUTORILY REQUIRED ACT THAT, UNDER THE CIRCUMSTANCES AS THE
10 ACTOR BELIEVES THEM TO BE, CONSTITUTES A SUBSTANTIAL STEP IN A
11 COURSE OF CONDUCT PLANNED TO CULMINATE IN THE PERFORMANCE OR
12 INDUCTION OF AN ABORTION.

13 (3) "CONCEPTION" MEANS THE FUSION OF A HUMAN
14 SPERMATOZOON WITH A HUMAN OVUM.

15 (4) "GESTATIONAL AGE" MEANS THE TIME THAT HAS ELAPSED
16 SINCE THE FIRST DAY OF THE WOMAN'S LAST MENSTRUAL PERIOD.

17 (5) "MAJORBODILYFUNCTION" INCLUDES, BUT IS NOT LIMITED TO,
18 FUNCTIONS OF THE IMMUNE SYSTEM, NORMAL CELL GROWTH, AND
19 DIGESTIVE, BOWEL, BLADDER, NEUROLOGICAL, BRAIN, RESPIRATORY,
20 CIRCULATORY, ENDOCRINE, AND REPRODUCTIVE FUNCTIONS.

21 (6) "MEDICAL EMERGENCY" MEANS A CONDITION IN WHICH AN
22 ABORTION IS NECESSARY TO PRESERVE THE LIFE OF THE PREGNANT
23 WOMAN WHOSE LIFE IS ENDANGERED BY A PHYSICAL DISORDER, PHYSICAL
24 ILLNESS, OR PHYSICAL INJURY, INCLUDING A LIFE-ENDANGERING PHYSICAL
25 CONDITION CAUSED BY OR ARISING FROM THE PREGNANCY ITSELF, OR
26 WHEN CONTINUATION OF THE PREGNANCY WILL CREATE A SERIOUS RISK
27 OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY
28 FUNCTION OF THE PREGNANT WOMAN.

29 (7) "MEDICAL FACILITY" MEANS ANY PUBLIC OR PRIVATE
30 HOSPITAL, CLINIC, CENTER, MEDICAL SCHOOL, MEDICAL TRAINING
31 INSTITUTION, HEALTH CARE FACILITY, PHYSICIAN'S OFFICE, INFIRMARY,
32 DISPENSARY, AMBULATORY SURGICAL TREATMENT CENTER, OR OTHER
33 INSTITUTION OR LOCATION WHEREIN MEDICAL CARE IS PROVIDED TO ANY
34 PERSON.

35 (8) "PHYSICIAN" MEANS ANY PERSON LICENSED TO PRACTICE
36 MEDICINE IN THIS STATE, INCLUDING MEDICAL DOCTORS AND DOCTORS OF
37 OSTEOPATHY.

38 (9) "PREGNANT" OR "PREGNANCY" MEANS THAT FEMALE
39 REPRODUCTIVE CONDITION OF HAVING AN UNBORN CHILD IN THE WOMAN'S
40 UTERUS.

41 (10) "PROBABLE GESTATIONAL AGE" MEANS WHAT, IN



1 REASONABLE MEDICAL JUDGMENT, WILL WITH REASONABLE PROBABILITY
2 BE THE GESTATIONAL AGE OF THE UNBORN CHILD AT THE TIME THE
3 ABORTION IS CONSIDERED, PERFORMED, OR ATTEMPTED.

4 (11) "REASONABLE MEDICAL JUDGMENT" MEANS THAT MEDICAL
5 JUDGMENT THAT WOULD BE MADE BY A REASONABLY PRUDENT PHYSICIAN
6 IN THE COMMUNITY, KNOWLEDGEABLE ABOUT THE CASE AND THE
7 TREATMENT POSSIBILITIES WITH RESPECT TO THE MEDICAL CONDITION
8 INVOLVED.

9 (12) "UNBORN CHILD" MEANS THE OFFSPRING OF HUMAN BEINGS
10 FROM CONCEPTION UNTIL BIRTH.

11 **18-6-904. Prohibition.** (1) EXCEPT IN THE CASE OF A MEDICAL
12 EMERGENCY, A PHYSICIAN OR PERSON SHALL NOT PERFORM, INDUCE, OR
13 ATTEMPT AN ABORTION UNLESS THE PHYSICIAN OR THE REFERRING
14 PHYSICIAN HAS FIRST MADE A DETERMINATION OF THE PROBABLE
15 GESTATIONAL AGE OF THE UNBORN CHILD. IN MAKING SUCH A
16 DETERMINATION, THE PHYSICIAN OR REFERRING PHYSICIAN SHALL MAKE
17 SUCH INQUIRIES OF THE PREGNANT WOMAN AND PERFORM OR CAUSE TO BE
18 PERFORMED ALL SUCH MEDICAL EXAMINATIONS, IMAGING STUDIES, AND
19 TESTS AS A REASONABLY PRUDENT PHYSICIAN IN THE COMMUNITY,
20 KNOWLEDGEABLE ABOUT THE MEDICAL FACTS AND CONDITIONS OF BOTH
21 THE WOMAN AND THE UNBORN CHILD INVOLVED, WOULD CONSIDER
22 NECESSARY TO PERFORM AND CONSIDER IN MAKING AN ACCURATE
23 DIAGNOSIS WITH RESPECT TO GESTATIONAL AGE.

24 (2) EXCEPT IN A MEDICAL EMERGENCY, A PHYSICIAN OR PERSON
25 SHALL NOT KNOWINGLY PERFORM, INDUCE, OR ATTEMPT TO PERFORM AN
26 ABORTION UPON A PREGNANT WOMAN WHEN THE PROBABLE GESTATIONAL
27 AGE OF HER UNBORN CHILD HAS BEEN DETERMINED TO BE AT LEAST
28 TWENTY WEEKS.

29 **18-6-905. Reporting.** (1) ANY PHYSICIAN WHO PERFORMS AN
30 ABORTION PURSUANT TO SECTION 18-6-904 (2) SHALL REPORT, IN
31 WRITING, TO THE MEDICAL FACILITY IN WHICH THE ABORTION IS
32 PERFORMED THE REASONS FOR THE DETERMINATION THAT A MEDICAL
33 EMERGENCY EXISTED. THE PHYSICIAN'S WRITTEN REPORT SHALL BE
34 INCLUDED IN A WRITTEN REPORT FROM THE MEDICAL FACILITY TO THE
35 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT. IF THE ABORTION IS
36 NOT PERFORMED IN A MEDICAL FACILITY, THE PHYSICIAN SHALL REPORT,
37 IN WRITING, THE REASONS FOR THE DETERMINATION THAT A MEDICAL
38 EMERGENCY EXISTED AS PART OF A WRITTEN REPORT MADE BY THE
39 PHYSICIAN TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.
40 THE PHYSICIAN AND THE MEDICAL FACILITY SHALL RETAIN A COPY OF THE
41 WRITTEN REPORTS REQUIRED UNDER THIS SECTION FOR NOT LESS THAN



1 FIVE YEARS.

2 (2) FAILURE TO REPORT UNDER THIS SECTION DOES NOT SUBJECT
3 THE PHYSICIAN TO CRIMINAL OR CIVIL PENALTIES UNDER SECTIONS
4 18-6-906 AND 18-6-907.

5 (3) SUBSECTION (2) OF THIS SECTION DOES NOT PRECLUDE
6 SANCTIONS, DISCIPLINARY ACTION, OR ANY OTHER APPROPRIATE ACTION
7 BY THE COLORADO MEDICAL BOARD OR OTHER APPROPRIATE AGENCY.

8 **18-6-906. Criminal penalties.** ANY PERSON WHO KNOWINGLY
9 VIOLATES SECTION 18-6-904 IS GUILTY OF A CLASS 4 FELONY.

10 **18-6-907. Civil penalties.** (1) THE WOMAN, THE FATHER OF THE
11 UNBORN CHILD, IF MARRIED TO THE MOTHER AT THE TIME SHE RECEIVES
12 AN ABORTION IN VIOLATION OF SECTION 18-6-904, OR, IF THE MOTHER HAS
13 NOT ATTAINED EIGHTEEN YEARS OF AGE AT THE TIME OF THE ABORTION,
14 THE MATERNAL GRANDPARENTS OF THE UNBORN CHILD MAY IN A CIVIL
15 ACTION OBTAIN APPROPRIATE RELIEF, UNLESS THE PREGNANCY RESULTED
16 FROM THE PLAINTIFF'S CRIMINAL CONDUCT OR, IF BROUGHT BY THE
17 MATERNAL GRANDPARENTS, THE MATERNAL GRANDPARENTS CONSENTED
18 TO THE ABORTION.

19 (2) SUCH RELIEF SHALL INCLUDE:

20 (a) MONEY DAMAGES FOR ALL INJURIES, PSYCHOLOGICAL AND
21 PHYSICAL, OCCASIONED BY THE VIOLATION OF SECTION 18-6-904; AND

22 (b) STATUTORY DAMAGES EQUAL TO THREE TIMES THE COST OF
23 THE ABORTION PERFORMED IN VIOLATION OF SECTION 18-6-904.

24 **18-6-908. Review by Colorado medical board.** (1) A
25 PHYSICIAN-DEFENDANT ACCUSED OF AN OFFENSE UNDER SECTION
26 18-6-904 MAY SEEK A HEARING BEFORE THE COLORADO MEDICAL BOARD
27 AS TO WHETHER THE PHYSICIAN'S CONDUCT WAS NECESSARY TO SAVE THE
28 LIFE OF THE MOTHER WHOSE LIFE WAS ENDANGERED BY A PHYSICAL
29 DISORDER, PHYSICAL ILLNESS, OR PHYSICAL INJURY, INCLUDING A
30 LIFE-ENDANGERING PHYSICAL CONDITION CAUSED BY OR ARISING FROM
31 THE PREGNANCY ITSELF; OR AS TO WHETHER THE CONTINUATION OF THE
32 PREGNANCY WOULD HAVE CREATED A SERIOUS RISK OF SUBSTANTIAL AND
33 IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION OF THE
34 PREGNANT WOMAN.

35 (2) THE FINDINGS ON THIS ISSUE ARE ADMISSIBLE AT THE CIVIL
36 AND CRIMINAL TRIALS OF THE PHYSICIAN-DEFENDANT. UPON A MOTION OF
37 THE PHYSICIAN-DEFENDANT, THE COURT SHALL DELAY THE BEGINNING OF
38 THE TRIAL FOR NOT MORE THAN THIRTY DAYS TO PERMIT SUCH A HEARING
39 TO TAKE PLACE.

40 **18-6-909. Penalties for medical facilities.** (1) A MEDICAL
41 FACILITY REQUIRED TO BE LICENSED PURSUANT TO SECTION 25-3-101 (1),



1 C.R.S., IN WHICH AN ABORTION IS PERFORMED OR INDUCED IN VIOLATION
2 OF SECTION 18-6-904 IS SUBJECT TO IMMEDIATE REVOCATION OF ITS
3 LICENSE BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

4 (2) A MEDICAL FACILITY REQUIRED TO BE LICENSED PURSUANT TO
5 SECTION 25-3-101 (1), C.R.S., IN WHICH AN ABORTION IS PERFORMED OR
6 INDUCED IN VIOLATION OF SECTION 18-6-904 IS NOT ELIGIBLE TO RECEIVE
7 ANY STATE MONEYS FOR THREE YEARS AND SHALL BE REIMBURSE THE
8 STATE FOR MONEYS RECEIVED DURING THE FISCAL YEAR IN WHICH THE
9 ABORTION IN VIOLATION OF SECTION 18-6-904 WAS PERFORMED.

10 **18-6-910. Prosecutorial exclusion.** A WOMAN UPON WHOM AN
11 ABORTION IS PERFORMED OR INDUCED IN VIOLATION OF SECTION 18-6-904
12 MAY NOT BE PROSECUTED FOR A CONSPIRACY TO VIOLATE SECTION
13 18-6-904.

14 **18-6-911. Construction.** (1) NOTHING IN THIS PART 9 SHALL BE
15 CONSTRUED AS CREATING OR RECOGNIZING A RIGHT TO ABORTION.

16 (2) IT IS NOT THE INTENTION OF THIS PART 9 TO MAKE LAWFUL AN
17 ABORTION THAT IS CURRENTLY UNLAWFUL.

18 **18-6-912. Severability.** ANY PROVISION OF THIS PART 9 HELD TO
19 BE INVALID OR UNENFORCEABLE BY ITS TERMS, OR AS APPLIED TO ANY
20 PERSON OR CIRCUMSTANCE, SHALL BE CONSTRUED SO AS TO GIVE IT THE
21 MAXIMUM EFFECT PERMITTED BY LAW, UNLESS SUCH HOLDING SHALL BE
22 ONE OF UTTER INVALIDITY OR UNENFORCEABILITY, IN WHICH EVENT SUCH
23 PROVISION SHALL BE DEEMED SEVERABLE HEREFROM AND SHALL NOT
24 AFFECT THE REMAINDER HEREOF OR THE APPLICATION OF SUCH PROVISION
25 TO OTHER PERSONS NOT SIMILARLY SITUATED OR TO OTHER, DISSIMILAR
26 CIRCUMSTANCES.

27 **18-6-913. Right of intervention.** THE GENERAL ASSEMBLY BY
28 JOINT RESOLUTION MAY APPOINT ONE OR MORE OF ITS MEMBERS WHO
29 SPONSORED OR COSPONSORED THE BILL CREATING THIS PART 9 IN HIS OR
30 HER OFFICIAL CAPACITY, TO INTERVENE AS A MATTER OF RIGHT IN ANY
31 CASE IN WHICH THE CONSTITUTIONALITY OF THIS LAW IS CHALLENGED.

32 **SECTION 2. Potential appropriation.** Pursuant to section
33 2-2-703, Colorado Revised Statutes, any bill that results in a net increase
34 in periods of imprisonment in the state correctional facilities must include
35 an appropriation of moneys that is sufficient to cover any increased
36 capital construction and operational costs for the first five fiscal years in
37 which there is a fiscal impact. Because this act may increase periods of
38 imprisonment, this act may require a five-year appropriation.

39 **SECTION 3. Effective date - applicability.** This act takes effect
40 July 1, 2014, and applies to offenses committed on or after said date.



1 **SECTION 4. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety."

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