

Second Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0648.01 Michael Dohr x4347

HOUSE BILL 14-1324

---

HOUSE SPONSORSHIP

Pettersen and Foote,

SENATE SPONSORSHIP

Steadman,

---

House Committees  
Judiciary

Senate Committees

---

A BILL FOR AN ACT

101 CONCERNING DAMAGES THAT RESULT FROM A CIVIL CAUSE OF ACTION  
102 FOR UNLAWFUL TERMINATION OF A PREGNANCY CAUSED BY AT  
103 LEAST RECKLESS CONDUCT.

---

Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

The bill creates a civil cause of action as the sole civil remedy for a woman who suffers an intentionally, knowingly, or recklessly unlawful termination of her pregnancy. The standard of proof for the suit is a preponderance of the evidence. The allowable damages are:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

- ! Economic damages, including but not limited to the cost of treatment and rehabilitation, medical expenses, and any other pecuniary loss proximately caused by the unlawful termination of her pregnancy;
- ! Noneconomic damages, including but not limited to pain and suffering, disfigurement, loss of enjoyment, loss of companionship and consortium, and other nonpecuniary loss proximately caused by the unlawful termination of her pregnancy;
- ! Exemplary damages;
- ! Reasonable attorney fees incurred as a result of bringing an action under this section;
- ! Costs of suit, including but not limited to expenses for expert witnesses and expenses for investigative services to determine the identity of the defendant and the location of assets of the defendant; and
- ! Interest.

The bill provides exceptions to liability for various medical personnel. The bill requires a case to be filed within 3 years of the cause of action arising and does not require a criminal conviction for a case to proceed.

The bill amends the wrongful death statute to define "person" as a human being who had been born and was alive at the time of the act.

---

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 hereby finds and declares that:

4 (a) In 2013, the general assembly enacted House Bill 13-1154 and  
5 thereby established a comprehensive set of criminal sanctions with which  
6 prosecutors may charge an individual who intentionally, knowingly,  
7 recklessly, or, in certain circumstances, carelessly terminates a woman's  
8 pregnancy without her consent;

9 (b) Justice requires that, in addition to criminal penalties,  
10 appropriate civil remedies also be available to a woman who suffers the  
11 unlawful termination of her pregnancy;

12 (c) This purpose may be accomplished by providing a woman who

1 has suffered the unlawful termination of a pregnancy with a civil cause  
2 of action, exclusive of all others, while refraining from conferring legal  
3 personhood upon an embryo or fetus for purposes of Colorado's wrongful  
4 death statute or for any other purpose;

5 (d) Therefore, nothing in this act shall be construed to confer legal  
6 personhood, or any rights associated with that status, upon a human being  
7 at any time prior to live birth;

8 (e) This act clarifies that the term "person" as used in the  
9 "Colorado Wrongful Death Act", section 13-21-202, Colorado Revised  
10 Statutes, does not include an unborn human being;

11 (f) This act is intended to, and shall, supersede any contrary  
12 judicial construction of Colorado law, including, without limitation, the  
13 Colorado court of appeals' decision in *Gonzales v. Mascarenas*, 190 P.3d  
14 826 (Colo. App. 2008);

15 (g) Further, nothing in this act shall be construed to create a cause  
16 of action against a woman arising from her own actions that result in the  
17 termination of her pregnancy; and

18 (h) Finally, nothing in this act shall be construed to create a cause  
19 of action against a health care provider engaged in providing health care  
20 services to a patient.

21 **SECTION 2.** In Colorado Revised Statutes, **add** part 12 to article  
22 21 of title 13 as follows:

23 PART 12

24 DAMAGES FOR UNLAWFUL

25 TERMINATION OF PREGNANCY

26 **13-21-1201. Short title.** THIS PART 12 IS KNOWN AND MAY BE  
27 CITED AS THE "DAMAGES FOR UNLAWFUL TERMINATION OF PREGNANCY

1 ACT."

2 **13-21-1202. Legislative declaration.** THE GENERAL ASSEMBLY  
3 HEREBY DECLARES THAT THE PURPOSE OF THIS PART 12 IS TO PROVIDE AN  
4 APPROPRIATE AND EXCLUSIVE CIVIL REMEDY TO WOMEN FOR DAMAGES  
5 CAUSED BY THE UNLAWFUL TERMINATION OF A PREGNANCY IN THIS STATE.

6 **13-21-1203. Definitions.** AS USED IN THIS PART 12, UNLESS THE  
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "CONSENT" HAS THE SAME MEANING AS PROVIDED IN SECTION  
9 18-1-505, C.R.S.

10 (2) "INTENTIONALLY" HAS THE SAME MEANING AS PROVIDED IN  
11 SECTION 18-1-501 (5), C.R.S.

12 (3) "KNOWINGLY" HAS THE SAME MEANING AS PROVIDED IN  
13 SECTION 18-1-501 (6), C.R.S.

14 (4) "PREGNANCY" MEANS THE PRESENCE OF AN IMPLANTED  
15 HUMAN EMBRYO OR FETUS WITHIN THE UTERUS OF A WOMAN.

16 (5) "RECKLESSLY" HAS THE SAME MEANING AS PROVIDED IN  
17 SECTION 18-1-501 (8), C.R.S.

18 (6) "UNLAWFUL TERMINATION OF PREGNANCY" HAS THE SAME  
19 MEANING AS PROVIDED IN SECTION 18-3.5-101 (6), C.R.S.

20 **13-21-1204. Damages - women injured by the unlawful**  
21 **termination of a pregnancy.** (1) A WOMAN WHO SUFFERS THE  
22 UNLAWFUL TERMINATION OF HER PREGNANCY MAY BRING AN ACTION  
23 AGAINST ANY PERSON WHO INTENTIONALLY, KNOWINGLY, OR RECKLESSLY  
24 CAUSED THE UNLAWFUL TERMINATION OF HER PREGNANCY.

25 (2) (a) THE ACTION AUTHORIZED IN THIS SECTION IS IN ADDITION  
26 TO, AND DOES NOT LIMIT OR AFFECT, OTHER ANY ACTIONS AVAILABLE BY  
27 STATUTE OR COMMON LAW, NOW OR IN THE FUTURE.

1 (b) NOTHING IN THIS PART 12 IS INTENDED TO ALTER, REPLACE,  
2 LIMIT, SUPERSEDE, OR IN ANY WAY RESTRICT ANY PROVISION OF THE  
3 "HEALTH CARE AVAILABILITY ACT", ARTICLE 64 OF TITLE 13, OR ANY  
4 SUCCESSOR STATUTE.

5 (3) THE STANDARD OF PROOF FOR ESTABLISHING LIABILITY UNDER  
6 THIS SECTION IS PROOF BY A PREPONDERANCE OF THE EVIDENCE.

7 (4) A WOMAN ENTITLED TO BRING AN ACTION UNDER THIS SECTION  
8 MAY RECOVER THE FOLLOWING DAMAGES:

9 (a) HER ECONOMIC DAMAGES, INCLUDING BUT NOT LIMITED TO THE  
10 COST SHE INCURS FOR TREATMENT AND REHABILITATION, MEDICAL  
11 EXPENSES, AND ANY OTHER PECUNIARY LOSS SHE SUFFERS THAT IS  
12 PROXIMATELY CAUSED BY THE UNLAWFUL TERMINATION OF HER  
13 PREGNANCY;

14 (b) HER NONECONOMIC DAMAGES, INCLUDING BUT NOT LIMITED  
15 TO PAIN AND SUFFERING, DISFIGUREMENT, LOSS OF ENJOYMENT, LOSS OF  
16 COMPANIONSHIP AND CONSORTIUM, AND OTHER NONPECUNIARY LOSS SHE  
17 SUFFERS THAT IS PROXIMATELY CAUSED BY THE UNLAWFUL TERMINATION  
18 OF HER PREGNANCY, SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION  
19 13-21-102.5;

20 (c) EXEMPLARY DAMAGES TO THE EXTENT PERMITTED BY SECTION  
21 13-21-102;

22 (d) REASONABLE ATTORNEY FEES INCURRED AS A RESULT OF  
23 BRINGING AN ACTION UNDER THIS SECTION; AND

24 (e) COSTS OF SUIT INCURRED BY THE WOMAN, INCLUDING BUT NOT  
25 LIMITED TO EXPENSES FOR EXPERT WITNESSES AND EXPENSES FOR  
26 INVESTIGATIVE SERVICES TO DETERMINE THE IDENTITY OF THE DEFENDANT  
27 AND THE LOCATION OF ASSETS OF THE DEFENDANT; AND

1 (f) INTEREST IN ACCORDANCE WITH SECTION 13-21-101.

2 **13-21-1205. Exceptions to liability.** (1) A PERSON ENGAGED IN  
3 PROVIDING MEDICAL, OSTEOPATHIC, SURGICAL, MENTAL HEALTH, DENTAL,  
4 NURSING, OPTOMETRIC, HEALING, WELLNESS, OR PHARMACEUTICAL CARE;  
5 FURNISHING INPATIENT OR OUTPATIENT HOSPITAL OR CLINIC SERVICES;  
6 FURNISHING TELEMEDICINE SERVICES; OR FURNISHING ANY SERVICE  
7 RELATED TO ASSISTED REPRODUCTION OR GENETIC TESTING IS NOT LIABLE  
8 FOR DAMAGES UNDER THIS PART 12.

9 (2) NOTHING IN THIS PART 12 IMPOSES LIABILITY FOR DAMAGES  
10 UPON A WOMAN FOR ACTS SHE ENGAGES IN WITH RESPECT TO HER OWN  
11 PREGNANCY.

12 **13-21-1206. Absence of criminal unlawful termination of**  
13 **pregnancy conviction.** THE ABSENCE OF A CONVICTION UNDER ARTICLE  
14 3.5 OF TITLE 18, C.R.S., DOES NOT BAR AN ACTION UNDER THIS PART 12.

15 **13-21-1207. Limitation of actions - three years.** ANY ACTION  
16 BROUGHT UNDER THIS PART 12 MUST BE COMMENCED WITHIN THREE  
17 YEARS AFTER THE CAUSE OF ACTION ACCRUES AND NOT THEREAFTER. FOR  
18 PURPOSES OF THIS PART 12, A CAUSE OF ACTION ACCRUES WHEN A WOMAN  
19 HAS REASON TO KNOW THAT HER PREGNANCY WAS UNLAWFULLY  
20 TERMINATED.

21 **SECTION 3.** In Colorado Revised Statutes, **amend** 13-21-202 as  
22 follows:

23 **13-21-202. Action notwithstanding death - definitions.** (1)  
24 When the death of a person is caused by a wrongful act, neglect, or  
25 default of another, and the act, neglect, or default is such as would, if  
26 death had not ensued, have entitled the party injured to maintain an action  
27 and recover damages in respect thereof, then, and in every such case, the

1 person who or the corporation which would have been liable, if death had  
2 not ensued, shall be liable in an action for damages notwithstanding the  
3 death of the party injured.

4 (2) "PERSON", WHEN REFERRING TO THE INDIVIDUAL WHOSE  
5 DEATH WAS CAUSED BY A WRONGFUL ACT, NEGLIGENCE, OR DEFAULT, MEANS  
6 A HUMAN BEING WHO HAD BEEN BORN AND WAS ALIVE AT THE TIME OF  
7 THE WRONGFUL ACT, NEGLIGENCE, OR DEFAULT.

8 **SECTION 4. Effective date - applicability.** This act takes effect  
9 July 1, 2014, and applies to causes of action accruing on or after said  
10 date.

11 **SECTION 5. Safety clause.** The general assembly hereby finds,  
12 determines, and declares that this act is necessary for the immediate  
13 preservation of the public peace, health, and safety.