

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-1074.01 Michael Dohr x4347

HOUSE BILL 14-1388

HOUSE SPONSORSHIP

Foote and Pettersen,

SENATE SPONSORSHIP

Steadman,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A CIVIL CAUSE OF ACTION FOR DAMAGES THAT RESULT**
102 **FROM AN UNLAWFUL TERMINATION OF A PREGNANCY AT ANY**
103 **TIME PRIOR TO BIRTH CAUSED BY AT LEAST RECKLESS CONDUCT**
104 **WITHOUT ESTABLISHING LEGAL PERSONHOOD AT ANY TIME**
105 **PRIOR TO A LIVE BIRTH.**

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/bills summaries>.)

The bill creates a civil cause of action as a remedy for a woman

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.

who suffers an intentionally, knowingly, or recklessly unlawful termination of her pregnancy. The standard of proof is a preponderance of the evidence. The allowable damages are:

- ! Her own economic damages;
- ! Her own noneconomic damages; and
- ! Exemplary damages.

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.

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) The purpose of this act is to provide a civil remedy that may
5 be invoked when a woman suffers an unlawful termination of her
6 pregnancy;

7 (b) Nothing in this act shall be construed to confer legal
8 personhood, or any rights associated with that status, upon a human being
9 at any time prior to birth;

10 (c) Nothing in this act shall be construed to create a cause of
11 action against a woman arising from her own actions, or inactions, that
12 result in an injury to her pregnancy; and

13 (d) Nothing in this act shall be construed to create a cause of
14 action against a health care institution or health care professional engaged
15 in providing health care services to a patient or to alter, amend, or in any
16 way limit the "Health Care Availability Act", article 64 of title 13,
17 Colorado Revised Statutes.

18 **SECTION 2.** In Colorado Revised Statutes, **add** part 12 to article
19 21 of title 13 as follows:

20 **PART 12**

1 DAMAGES FOR UNLAWFUL
2 TERMINATION OF PREGNANCY

3 **13-21-1201. Short title.** THIS PART 12 IS KNOWN AND MAY BE
4 CITED AS THE "CIVIL REMEDY FOR UNLAWFUL TERMINATION OF
5 PREGNANCY ACT".

6 **13-21-1202. Legislative declaration.** THE GENERAL ASSEMBLY
7 HEREBY DECLARES THAT THE PURPOSE OF THIS PART 12 IS TO PROVIDE AN
8 APPROPRIATE CIVIL REMEDY TO A WOMAN WHO SUFFERS AN UNLAWFUL
9 TERMINATION OF HER PREGNANCY, WITHOUT ESTABLISHING THE LEGAL
10 PERSONHOOD OF AN UNBORN HUMAN BEING.

11 **13-21-1203. Definitions.** AS USED IN THIS PART 12, UNLESS THE
12 CONTEXT OTHERWISE REQUIRES:

13 (1) "CONSENT" HAS THE SAME MEANING AS PROVIDED IN SECTION
14 18-1-505, C.R.S.

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

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

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

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

23 (6) "UNLAWFUL TERMINATION OF PREGNANCY" MEANS THE
24 TERMINATION OF A PREGNANCY BY ANY MEANS OTHER THAN BIRTH OR A
25 MEDICAL PROCEDURE, INSTRUMENT, AGENT, OR DRUG FOR WHICH THE
26 CONSENT OF THE PREGNANT WOMAN, OR A PERSON AUTHORIZED BY LAW
27 TO ACT ON HER BEHALF, HAS BEEN OBTAINED, OR FOR WHICH THE

1 PREGNANT WOMAN'S CONSENT IS IMPLIED BY LAW.

2 **13-21-1204. Construction.** NOTHING IN THIS PART 12 SHALL BE
3 CONSTRUED TO CONFER THE STATUS OF "PERSON" UPON A HUMAN
4 EMBRYO, FETUS, OR UNBORN CHILD AT ANY STAGE OF DEVELOPMENT
5 PRIOR TO LIVE BIRTH.

6 **13-21-1205. Damages - woman injured by the unlawful**
7 **termination of a pregnancy.** (1) A WOMAN MAY BRING AN ACTION FOR
8 DAMAGES IN ACCORDANCE WITH THIS PART 12 AGAINST ANY PERSON WHO
9 INTENTIONALLY, KNOWINGLY, OR RECKLESSLY CAUSED AN UNLAWFUL
10 TERMINATION OF HER PREGNANCY.

11 (2) (a) THE ACTION AUTHORIZED IN THIS SECTION IS IN ADDITION
12 TO, AND DOES NOT LIMIT OR AFFECT, OTHER ACTIONS AVAILABLE BY
13 STATUTE OR COMMON LAW, BEFORE OR AFTER THE EFFECTIVE DATE OF
14 THIS PART 12.

15 (b) NOTHING IN THIS PART 12 IS INTENDED TO ALTER, REPLACE,
16 LIMIT, SUPERSEDE, OR IN ANY WAY RESTRICT ANY PROVISION OF THE
17 "HEALTH CARE AVAILABILITY ACT", ARTICLE 64 OF THIS TITLE, OR ANY
18 SUCCESSOR STATUTE.

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

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

23 (a) HER OWN ECONOMIC DAMAGES;

24 (b) HER OWN NONECONOMIC DAMAGES; AND

25 (c) EXEMPLARY DAMAGES TO THE EXTENT PERMITTED BY SECTION
26 13-21-102, OR ANY SUCCESSOR STATUTE.

27 **13-21-1206. Exceptions to liability.** (1) NOTHING IN THIS PART

1 12 SHALL CREATE LIABILITY FOR DAMAGES, OR PERMIT A CAUSE OF
2 ACTION, AGAINST:

3 (a) A HEALTH CARE INSTITUTION, AS DEFINED IN SECTION
4 13-64-202 (3), TO THE EXTENT THAT THE HEALTH CARE INSTITUTION IS
5 ENGAGED IN PROVIDING HEALTH CARE SERVICES TO A PREGNANT WOMAN
6 WITH HER CONSENT OR WHERE HER CONSENT IS IMPLIED BY LAW; OR

7 (b) A HEALTH CARE PROFESSIONAL, AS DEFINED IN SECTION
8 13-64-202 (4) (a), TO THE EXTENT THAT THE HEALTH CARE PROFESSIONAL
9 IS ENGAGED IN PROVIDING HEALTH CARE SERVICES TO A PREGNANT
10 WOMAN WITH HER CONSENT OR WHERE HER CONSENT IS IMPLIED BY LAW.

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

14 **13-21-1207. Limitation of actions - three years.** ANY ACTION
15 BROUGHT UNDER THIS PART 12 MUST BE COMMENCED WITHIN THREE
16 YEARS AFTER THE CAUSE OF ACTION ACCRUES AND NOT THEREAFTER. FOR
17 PURPOSES OF THIS PART 12, A CAUSE OF ACTION ACCRUES WHEN A WOMAN
18 HAS REASON TO KNOW THAT HER PREGNANCY WAS UNLAWFULLY
19 TERMINATED.

20 **SECTION 3. Effective date - applicability.** This act takes effect
21 July 1, 2014, and applies to causes of action accruing on or after said
22 date.

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