A BILL FOR AN ACT

CONCERNING CREATION OF THE "BORN-ALIVE INFANT PROTECTION ACT".

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 prohibits a person from denying or depriving an infant of nourishment with the intent to cause or allow the death of the infant for any reason. A person is prohibited from depriving an infant of medically appropriate and reasonable medical care or treatment unless the medical care:

! Is not necessary to save the life of the infant;
Has a potential risk to the infant's life or health that outweighs the potential benefit of the medical care; or

Is treatment that will do no more than temporarily prolong the act of dying when death is imminent.

The bill requires a physician performing an abortion to take all medically appropriate and reasonable steps to preserve the life of a born-alive infant. A person is prohibited from using a born-alive infant for any type of scientific research or other kind of experimentation unless it is necessary to protect or preserve the life and health of a born-alive infant. The bill prohibits infanticide.

The bill provides that a born-alive infant is a legal person under the law with the same rights to medically appropriate and legal care and treatment.

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

SECTION 1. In Colorado Revised Statutes, add article 3.7 to title 18 as follows:

ARTICLE 3.7

Born-alive Infant Protection Act

18-3.7-101. Short title. This article shall be known and may be cited as the "Born-alive Infant Protection Act".

18-3.7-102. Legislative declaration. (1) The general assembly finds and determines:

(a) The state of Colorado has a paramount interest in protecting all human life;

(b) If an attempted abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of this state;

(c) It is not an infringement upon a woman's right to terminate her pregnancy for this state to assert its interest in protecting an infant whose live birth occurred as the result of an attempted abortion; and
(d) WITHOUT PROPER LEGAL PROTECTION, NEWLY BORN INFANTS
WHO HAVE SURVIVED ATTEMPTED ABORTIONS HAVE BEEN DENIED
APPROPRIATE LIFE-SAVING OR LIFE-SUSTAINING MEDICAL CARE AND
TREATMENT AND HAVE BEEN LEFT TO DIE.

(2) ACCORDINGLY, IT IS THE PURPOSE OF THIS ARTICLE TO:
(a) ENSURE THE PROTECTION AND PROMOTION OF THE HEALTH AND
WELL-BEING OF ALL INFANTS BORN ALIVE IN THIS STATE; AND
(b) MANDATE THAT HEALTH CARE PROVIDERS GIVE MEDICALLY
APPROPRIATE AND REASONABLE LIFE-SAVING AND LIFE-SUSTAINING
MEDICAL CARE AND TREATMENT TO ALL BORN-ALIVE INFANTS.

18-3.7-103. Definitions. As used in this article, unless the
context otherwise requires:

(1) "ABORTION" MEANS THE ACT OF USING OR PRESCRIBING ANY
INSTRUMENT, MEDICINE, DRUG, OR ANY OTHER SUBSTANCE, DEVICE, OR
MEANS WITH THE INTENT TO TERMINATE THE CLINICALLY DIAGNOSABLE
PREGNANCY OF A WOMAN WITH KNOWLEDGE THAT THE TERMINATION BY
THOSE MEANS WILL WITH REASONABLE LIKELIHOOD CAUSE THE DEATH OF
THE UNBORN CHILD. SUCH USE, PRESCRIPTION, OR MEANS IS NOT AN
ABORTION IF DONE WITH THE INTENT TO:

(a) SAVE THE LIFE OR PRESERVE THE HEALTH OF THE UNBORN
CHILD;
(b) REMOVE A DEAD UNBORN CHILD CAUSED BY SPONTANEOUS
ABORTION; OR
(c) REMOVE AN ECTOPIC PREGNANCY.

(2) "BORN ALIVE" OR "LIVE BIRTH" MEANS THE COMPLETE OR
PARTIAL EXPULSION OR EXTRACTION OF AN INFANT FROM HIS OR HER
MOTHER, REGARDLESS OF THE STATE OF GESTATIONAL DEVELOPMENT,
THAT, AFTER EXPULSION OR EXTRACTION, WHETHER OR NOT THE
UMBILICAL CORD HAS BEEN CUT OR THE PLACENTA IS ATTACHED, AND
REGARDLESS OF WHETHER THE EXPULSION OR EXTRACTION OCCURS AS A
RESULT OF NATURAL OR INDUCED LABOR, CESAREAN SECTION, OR INDUCED
ABORTION, SHOWS ANY EVIDENCE OF LIFE, INCLUDING BUT NOT LIMITED
TO ONE OR MORE OF THE FOLLOWING:

(a) BREATHING;

(b) A HEARTBEAT;

(c) UMBILICAL CORD PULSATION; OR

(d) DEFINITE MOVEMENT OF VOLUNTARY MUSCLES.

(3) "CONSENT" MEANS THE VOLUNTARY AGREEMENT OR
ACQUIESCENCE BY A PERSON OF AGE AND WITH THE REQUISITE MENTAL
CAPACITY WHO IS NOT UNDER DURESS OR COERCION AND WHO HAS
KNOWLEDGE OR UNDERSTANDING OF THE ACT OR ACTION TO WHICH HE OR
SHE HAS AGREED OR ACQUIESCED.

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

(5) "INFANT" MEANS A CHILD OF THE SPECIES HOMO SAPIENS THAT
HAS BEEN PARTIALLY OR COMPLETELY EXPULSED OR EXTRACTED FROM HIS
OR HER MOTHER, REGARDLESS OF THE STAGE OF GESTATIONAL
DEVELOPMENT, UNTIL THE AGE OF THIRTY DAYS AFTER BIRTH.

(6) "PHYSICIAN" MEANS A PERSON LICENSED TO PRACTICE
MEDICINE IN THE STATE OF COLORADO. THIS TERM INCLUDES MEDICAL
DOCTORS AND DOCTORS OF OSTEOPATHY.

(7) "PREMATURE" OR "PRETERM" MEANS OCCURRING PRIOR TO THE THIRTY-SEVENTH WEEK OF GESTATION.

18-3.7-104. REQUIREMENTS AND RESPONSIBILITIES. (1) A PERSON SHALL NOT DENY OR DEPRIVE AN INFANT OF NOURISHMENT WITH THE INTENT TO CAUSE OR ALLOW THE DEATH OF THE INFANT FOR ANY REASON, INCLUDING BUT NOT LIMITED TO:

(a) THE INFANT WAS BORN WITH A DISABILITY;
(b) THE INFANT IS NOT WANTED BY THE PARENT OR GUARDIAN; OR
(c) THE INFANT IS BORN ALIVE BY NATURAL OR ARTIFICIAL MEANS.

(2) A PERSON SHALL NOT DEPRIVE AN INFANT OF MEDICALLY APPROPRIATE AND REASONABLE MEDICAL CARE AND TREATMENT OR SURGICAL CARE.

(3) THE REQUIREMENTS OF THIS SECTION SHALL NOT BE CONSTRUED TO PREVENT AN INFANT'S PARENT OR GUARDIAN FROM REFUSING TO GIVE CONSENT TO MEDICAL TREATMENT OR SURGICAL CARE THAT IS NOT MEDICALLY NECESSARY OR REASONABLE, INCLUDING CARE OR TREATMENT THAT EITHER:

(a) IS NOT NECESSARY TO SAVE THE LIFE OF THE INFANT;
(b) HAS A POTENTIAL RISK TO THE INFANT'S LIFE OR HEALTH THAT OUTWEIGHS THE POTENTIAL BENEFIT TO THE INFANT OF THE TREATMENT OR CARE; OR
(c) IS TREATMENT THAT WILL DO NO MORE THAN TEMPORARILY PROLONG THE ACT OF DYING WHEN DEATH IS IMMINENT.

(4)(a) THE PHYSICIAN PERFORMING AN ABORTION MUST TAKE ALL MEDICALLY APPROPRIATE AND REASONABLE STEPS TO PRESERVE THE LIFE AND HEALTH OF A BORN-ALIVE INFANT. IF AN ABORTION PERFORMED IN A
HOSPITAL RESULTS IN A LIVE BIRTH, THE PHYSICIAN ATTENDING THE
ABORTION SHALL PROVIDE IMMEDIATE MEDICAL CARE TO THE INFANT,
INFORM THE MOTHER OF THE LIVE BIRTH, AND REQUEST TRANSFER OF THE
INFANT TO A RESIDENT, ON-DUTY OR EMERGENCY CARE PHYSICIAN, OR
OTHER SUITABLE MEDICAL PROFESSIONAL WHO SHALL PROVIDE
MEDICALLY APPROPRIATE AND REASONABLE MEDICAL CARE AND
TREATMENT TO THE INFANT.

(b) IF AN ABORTION PERFORMED IN A FACILITY OTHER THAN A
HOSPITAL RESULTS IN A LIVE BIRTH, A PHYSICIAN ATTENDING THE
ABORTION SHALL PROVIDE IMMEDIATE MEDICAL CARE TO THE INFANT AND
CALL 911 FOR AN EMERGENCY TRANSFER OF THE INFANT TO A HOSPITAL
THAT SHALL PROVIDE MEDICALLY APPROPRIATE AND REASONABLE CARE
AND TREATMENT TO THE INFANT.

(5) IF THE PHYSICIAN DESCRIBED IN SUBSECTION (4) OF THIS
SECTION IS UNABLE TO PERFORM THE DUTIES IN SAID SUBSECTION (4)
BECAUSE HE OR SHE IS ASSISTING THE WOMAN ON WHOM THE ABORTION
WAS PERFORMED, THEN AN ATTENDING PHYSICIAN'S ASSISTANT, NURSE, OR
OTHER HEALTHCARE PROVIDER MUST ASSUME THE DUTIES OUTLINED IN
SUBSECTION (4) OF THIS SECTION.

(6) ANY BORN-ALIVE INFANT, INCLUDING ONE BORN IN THE
COURSE OF AN ABORTION PROCEDURE, SHALL BE TREATED AS A LEGAL
PERSON UNDER THE LAWS OF THIS STATE, WITH THE SAME RIGHTS TO
MEDICALLY APPROPRIATE AND REASONABLE CARE AND TREATMENT, AND,
IF DEATH OCCURS, BIRTH AND DEATH CERTIFICATES SHALL BE ISSUED
ACCORDINGLY.

(7) IF, BEFORE THE ABORTION, THE MOTHER HAS STATED IN
WRITING THAT SHE DOES NOT WISH TO KEEP THE INFANT IN THE EVENT
THAT THE ABORTION RESULTS IN A LIVE BIRTH, AND THIS WRITING IS NOT RETRACTED BEFORE THE ATTEMPTED ABORTION, THE INFANT, IF BORN ALIVE, SHALL IMMEDIATELY UPON BIRTH HAVE HIS OR HER CUSTODY AND GUARDIANSHIP TRANSFERRED TO THE COUNTY DEPARTMENT OF SOCIAL SERVICES.

(8) A PERSON SHALL NOT USE ANY BORN-ALIVE INFANT FOR ANY TYPE OF SCIENTIFIC RESEARCH OR OTHER KIND OF EXPERIMENTATION EXCEPT AS NECESSARY TO PROTECT OR PRESERVE THE LIFE AND HEALTH OF THE BORN-ALIVE INFANT.

18-3.7-105. Infanticide - definitions. (1) "INFANTICIDE" MEANS ANY DELIBERATE ACT THAT:

(a) IS INTENDED TO KILL AN INFANT WHO HAS BEEN BORN ALIVE;

AND

(b) DOES KILL SUCH INFANT.

(2) ANY PHYSICIAN, NURSE, OR OTHER HEALTH CARE PROVIDER WHO DELIBERATELY FAILS TO PROVIDE MEDICALLY APPROPRIATE AND REASONABLE CARE AND TREATMENT TO A BORN-ALIVE INFANT, AND AS A RESULT OF THAT FAILURE, THE INFANT DIES, SHALL BE GUILTY OF THE CRIME OF INFANTICIDE.

18-3.7-106. Exceptions. The parent or guardian of a BORN-ALIVE INFANT WILL NOT BE HELD CRIMINALLY OR CIVILLY LIABLE FOR THE ACTIONS OF A PHYSICIAN, NURSE, OR OTHER HEALTH CARE PROVIDER THAT IS IN VIOLATION OF THIS ARTICLE.

18-3.7-107. Criminal penalties. (1) ANY PHYSICIAN, NURSE OR OTHER HEALTH CARE PROVIDER WHO INTENTIONALLY, KNOWINGLY, OR NEGLIGENTLY FAILS TO PROVIDE MEDICALLY APPROPRIATE AND REASONABLE CARE AND TREATMENT TO A BORN-ALIVE INFANT IN THE
COURSE OF AN ATTEMPTED ABORTION AS REQUIRED BY SECTION 18-3.7-104 IS GUILTY OF A CLASS 3 FELONY AND, UPON CONVICTION, SHALL BE SENTENCED PURSUANT TO THE PROVISIONS OF SECTION 18-1.3-401.

(2) ANY PERSON FOUND GUILTY OF THE CRIME OF INFANTICIDE PURSUANT TO SECTION 18-3.7-105 IS GUILTY OF A CLASS 3 FELONY AND, UPON CONVICTION, SHALL BE SENTENCED PURSUANT TO THE PROVISIONS OF SECTION 18-1.3-401.

(3) ANY VIOLATION OF SECTION 18-3.7-104 (8) IS A CLASS 3 FELONY AND, UPON CONVICTION, SHALL BE PUNISHED PURSUANT TO THE PROVISIONS OF SECTION 18-1.3-401.

18-3.7-108. Civil and administrative action. (1) IN ADDITION TO WHATEVER REMEDIES ARE AVAILABLE UNDER THE STATUTORY LAW OF THIS STATE, FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE SHALL:

(a) PROVIDE A BASIS FOR A CIVIL ACTION FOR COMPENSATORY AND PUNITIVE DAMAGES. ANY CONVICTION UNDER THIS ARTICLE SHALL BE ADMISSIBLE IN A CIVIL SUIT AS PRIMA FACIE EVIDENCE OF A FAILURE TO PROVIDE MEDICALLY APPROPRIATE AND REASONABLE CARE AND TREATMENT TO A BORN-ALIVE INFANT. ANY CIVIL ACTION MAY BE BASED ON A CLAIM THAT THE DEATH OF OR INJURY TO THE BORN-ALIVE INFANT WAS A RESULT OF GROSS NEGLIGENCE, WANTONNESS, WILLFULNESS, INTENTIONAL CONDUCT, OR ANOTHER VIOLATION OF THE LEGAL STANDARD OF CARE.

(b) PROVIDE A BASIS FOR PROFESSIONAL DISCIPLINARY ACTION UNDER TITLE 12, C.R.S., FOR THE SUSPENSION OR REVOCATION OF ANY LICENSE FOR PHYSICIANS, LICENSED AND REGISTERED NURSES, OR OTHER
LICENSED OR REGULATED PERSONS. ANY CONVICTION OF ANY PERSON FOR
ANY FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE
SHALL RESULT IN THE AUTOMATIC SUSPENSION OF HIS OR HER LICENSE FOR
A PERIOD OF AT LEAST ONE YEAR AND SAID LICENSE SHALL BE REINSTATED
AFTER THAT TIME ONLY UNDER SUCH CONDITIONS AS THE APPROPRIATE
REGULATORY OR LICENSING BODY SHALL REQUIRE TO ENSURE
COMPLIANCE WITH THIS ARTICLE.

(c) PROVIDE A BASIS FOR RECOVERY FOR THE PARENT OF THE
INFANT, OR THE PARENT OR GUARDIAN OF THE MOTHER IF THE MOTHER IS
A MINOR, FOR THE WRONGFUL DEATH OF THE INFANT UNDER PART 2 OF
ARTICLE 21 OF TITLE 13, C.R.S., WHETHER OR NOT THE INFANT WAS
VIABLE AT THE TIME THE ABORTION WAS PERFORMED.

18-3.7-109. Construction. (1) NOTHING IN THIS ARTICLE SHALL
BE CONSTRUED TO AFFIRM, DENY, EXPAND, OR CONTRACT ANY LEGAL
STATUS OR LEGAL RIGHT APPLICABLE TO ANY MEMBER OF THE SPECIES
HOMO SAPIENS AT ANY POINT PRIOR TO BEING BORN ALIVE, AS DEFINED IN
SECTION 18-3.7-103.

(2) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO AFFECT
EXISTING FEDERAL OR STATE LAW REGARDING ABORTION.

(3) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED AS CREATING
OR RECOGNIZING A RIGHT TO ABORTION.

(4) NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO ALTER
GENERALLY ACCEPTED MEDICAL STANDARDS.

18-3.7-110. Severability. ANY PROVISION OF THIS ARTICLE HELD
TO BE INVALID OR UNENFORCEABLE BY ITS TERMS, OR AS APPLIED TO ANY
PERSON OR CIRCUMSTANCE, SHALL BE CONSTRUED SO AS TO GIVE IT THE
MAXIMUM EFFECT PERMITTED BY LAW, UNLESS SUCH HOLDING SHALL BE
ONE OF UTTER INVALIDITY OR UNENFORCEABILITY, IN WHICH EVENT SUCH 
PROVISION SHALL BE DEEMED SEVERABLE HEREFROM AND SHALL NOT 
AFFECT THE REMAINDER HEREOF OR THE APPLICATION OF SUCH PROVISION 
to other persons situated or to other dissimilar circumstances.

18-3.7-111. Right of intervention. The General Assembly, by 
joint resolution, may appoint one or more of its members, who 
sponsored or cosponsored House Bill 15-_____, enacted in 2015, in 
his or her official capacity, to intervene as a matter of right in 
any case in which the constitutionality of this article is 
challenged.

SECTION 2. Potential appropriation. Pursuant to section 
2-2-703, C.R.S., any bill that results in a net increase in periods of 
imprisonment in the state correctional facilities must include an 
appropriation of moneys that is sufficient to cover any increased capital 
construction and operational costs for the first five fiscal years in which 
there is a fiscal impact. Because this act may increase periods of 
imprisonment, this act may require a five-year appropriation.

SECTION 3. Effective date - applicability. This act takes effect 
July 1, 2015, and applies to offenses committed on or after said date.

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