

## #80-Abortion of Viable Fetus

1 **Ballot Title:** An amendment to the Colorado Revised Statutes concerning the  
2 regulation of late-term abortions, and, in connection therewith, defining "abortion" as  
3 the use of any means to terminate a person's pregnancy with knowledge that the  
4 termination by those means will, with reasonable likelihood, cause the death of the  
5 person's unborn offspring; defining "late-term" abortion as an abortion of a fetus that  
6 has attained that stage of fetal development when its life may be continued indefinitely  
7 outside the womb by natural or artificial life supportive systems; prohibiting the  
8 performance of a late-term abortion unless the abortion is based on a medical  
9 emergency; imposing certain requirements on a late-term abortion that is based on a  
10 medical emergency; imposing criminal sanctions for knowingly or recklessly performing  
11 a late-term abortion in violation of the measure; requiring a physician who performs a  
12 late-term abortion to file with the department of public health and environment a report  
13 concerning the abortion; and requiring each facility in Colorado in which a late-term  
14 abortion is performed to file with the department of public health and environment a  
15 quarterly report concerning the late-term abortions performed in the facility.

### 16 **Text of Proposal:**

17 *Be it Enacted by the People of the State of Colorado:*

18 **SECTION 1.** Title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF  
19 A NEW ARTICLE to read:

20 **12-37.3-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE  
21 REQUIRES:

22 (1) "ABORTION" MEANS THE USE OF ANY MEANS TO TERMINATE A PERSON'S  
23 PREGNANCY WITH KNOWLEDGE THAT THE TERMINATION BY THOSE MEANS WILL, WITH  
24 REASONABLE LIKELIHOOD, CAUSE THE DEATH OF THE PERSON'S UNBORN OFFSPRING.

25 (2) A "LATE-TERM ABORTION" IS AN ABORTION OF A FETUS THAT HAS ATTAINED  
26 THAT STAGE OF FETAL DEVELOPMENT WHEN ITS LIFE MAY BE CONTINUED INDEFINITELY  
27 OUTSIDE THE WOMB BY NATURAL OR ARTIFICIAL LIFE-SUPPORTIVE SYSTEMS.  
28 PARTIAL-BIRTH ABORTIONS ARE INCLUDED IN THIS DEFINITION OF LATE-TERM ABORTION  
29 IF THE FETUS THAT IS SO ABORTED HAS ATTAINED THAT STAGE OF FETAL DEVELOPMENT  
30 WHEN ITS LIFE MAY BE CONTINUED INDEFINITELY OUTSIDE THE WOMB BY NATURAL OR  
31 ARTIFICIAL LIFE-SUPPORTIVE SYSTEMS.

32 (3) A "MEDICAL EMERGENCY" IS A CONDITION THAT, ON THE BASIS OF THE

1       PHYSICIAN'S GOOD-FAITH CLINICAL JUDGMENT, SO COMPLICATES THE MEDICAL  
2       CONDITION OF A PREGNANT WOMAN AS TO NECESSITATE A MEDICAL PROCEDURE TO  
3       PREVENT THE PREGNANT WOMAN'S DEATH OR FOR WHICH A DELAY WILL CREATE A  
4       SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY  
5       FUNCTION.

6               **12-37.3-102. Prohibition on performing a late-term abortion.** (1) A PERSON  
7       SHALL NOT PERFORM A LATE-TERM ABORTION. A PERSON VIOLATES THIS SUBSECTION (1)  
8       IF HE OR SHE KNOWINGLY PERFORMS A LATE-TERM ABORTION OR PERFORMS A LATE-  
9       TERM ABORTION WITH RECKLESS DISREGARD OF WHETHER THE ABORTION IS A LATE-  
10      TERM ABORTION.

11              (2) PERFORMING A LATE-TERM ABORTION IS A CLASS 4 FELONY AND, UPON  
12      CONVICTION THEREOF, THE CONVICTED PERSON MAY BE SENTENCED FOR THE VIOLATION  
13      AS SET FORTH IN SECTION 18-1.3-401, C.R.S.

14              (3) IT SHALL BE AN AFFIRMATIVE DEFENSE TO PERFORMING A LATE-TERM  
15      ABORTION THAT THE PERSON PERFORMED THE ABORTION BASED ON A DOCUMENTED  
16      MEDICAL EMERGENCY.

17              (4) THE PERSON WHO IS TO PERFORM THE ABORTION SHALL USE HIS OR HER GOOD-  
18      FAITH CLINICAL JUDGMENT TO DETERMINE BEFORE THE ABORTION WHETHER IT IS OR IS  
19      NOT A LATE-TERM ABORTION.

20              (5) THE PERSON WHO IS TO PERFORM AN ABORTION SHALL DOCUMENT THE BASIS  
21      OF HIS OR HER GOOD-FAITH CLINICAL JUDGMENT THAT THE PARTICULAR ABORTION IS OR  
22      IS NOT A LATE-TERM ABORTION.

23              (6) WHEN A WOMAN IS AT THAT TIME IN HER PREGNANCY THAT SHE COULD  
24      POSSIBLY HAVE A LATE-TERM ABORTION, AND SHE HAS A MEDICAL EMERGENCY, THE  
25      PHYSICIAN TREATING HER SHALL TRY TO PROTECT THE LIFE OF THE FETUS. IF THE  
26      MEDICAL EMERGENCY MAKES TERMINATION OF THE PREGNANCY AN ADVISABLE  
27      TREATMENT FOR THE MEDICAL EMERGENCY, A SECOND PHYSICIAN IS REQUIRED TO BE IN  
28      ATTENDANCE TO CARE FOR THE FETUS. THE PREGNANT WOMAN'S PHYSICIAN MUST USE  
29      THE PREGNANCY-TERMINATING MEDICAL PROCEDURE, WHETHER THE INDUCEMENT OF  
30      VAGINAL DELIVERY, CAESARIAN SECTION, ABORTION, OR OTHER PREGNANCY-  
31      TERMINATING MEDICAL PROCEDURE, THAT PROVIDES THE BEST OPPORTUNITY FOR FETAL  
32      SURVIVAL.

33              (7) THE PREGNANT WOMAN'S PHYSICIAN SHALL NOT HAVE TO USE THE  
34      PREGNANCY-TERMINATING MEDICAL PROCEDURE THAT PROVIDES THE BEST  
35      OPPORTUNITY FOR FETAL SURVIVAL OVER OTHER PREGNANCY -TERMINATING MEDICAL  
36      PROCEDURES IF SUCH A PROCEDURE POSES A SIGNIFICANTLY GREATER RISK OF THE

1 PREGNANT WOMAN'S DEATH OR THE SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF  
2 A MAJOR BODILY FUNCTION.

3 **12-37.3-103. Reports. (1) REPORTS BY PHYSICIANS.** FOR THE PURPOSE OF  
4 PROMOTION OF MATERNAL HEALTH AND LIFE BY ADDING TO THE SUM OF MEDICAL AND  
5 PUBLIC HEALTH KNOWLEDGE THROUGH THE COMPILATION OF RELEVANT DATA, AND TO  
6 PROMOTE THE STATE OF COLORADO'S INTEREST IN PROTECTION OF THE UNBORN CHILD,  
7 ANY PHYSICIAN WHO HAS PERFORMED A LATE-TERM ABORTION OR ABORTIONS MUST FILE  
8 A REPORT OF EACH SUCH ABORTION PERFORMED TO THE DEPARTMENT OF PUBLIC HEALTH  
9 AND ENVIRONMENT ON FORMS PRESCRIBED BY IT. SUCH REPORTS SHALL BE SENT TO THE  
10 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WITHIN THIRTY DAYS OF THE  
11 ABORTION THAT IS TO BE REPORTED. THE REPORT FORMS SHALL NOT IDENTIFY THE  
12 INDIVIDUAL PATIENT BY NAME AND SHALL INCLUDE THE FOLLOWING INFORMATION:

13 (a) IDENTIFICATION OF THE PHYSICIAN WHO PERFORMED THE ABORTION, AND  
14 THE FACILITY WHERE THE ABORTION WAS PERFORMED AND OF THE REFERRING  
15 PHYSICIAN, AGENCY OR SERVICE, IF ANY;

16 (b) THE COUNTY AND STATE IN WHICH THE PATIENT RESIDES;

17 (c) THE PATIENT'S AGE;

18 (d) THE NUMBER OF PRIOR PREGNANCIES AND PRIOR ABORTIONS OF THE PATIENT;

19 (e) THE GESTATIONAL AGE OF THE UNBORN CHILD AT THE TIME OF THE  
20 ABORTION;

21 (f) THE TYPE OF PROCEDURE PERFORMED AND THE DATE OF THE ABORTION;

22 (g) PREEXISTING MEDICAL CONDITIONS OF THE PATIENT WHICH WOULD  
23 COMPLICATE THE PREGNANCY, IF ANY, AND IF KNOWN, ANY MEDICAL COMPLICATION  
24 WHICH RESULTED FROM THE ABORTION ITSELF;

25 (h) THE BASIS FOR THE MEDICAL JUDGMENT OF THE PHYSICIAN WHO PERFORMED  
26 THE ABORTION THAT THE ABORTION WAS NECESSARY TO PREVENT EITHER THE DEATH  
27 OF THE PREGNANT PATIENT OR THE SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A  
28 MAJOR BODILY FUNCTION OF THE PATIENT, WHEN AN ABORTION HAS BEEN PERFORMED  
29 BY A PHYSICIAN WHO DETERMINED A MEDICAL EMERGENCY EXISTED;

30 (i) THE WEIGHT OF THE ABORTED FETUS; AND

31 (j) THE BASIS BY WHICH THE PHYSICIAN PERFORMING THE ABORTION  
32 DETERMINED THE GESTATIONAL AGE OF THE FETUS.

1           (2) **PENALTY.** A PHYSICIAN WHO IS LATE IN COMPLYING WITH THE REPORTING  
2 REQUIREMENTS OF SUBSECTION (1) OF THIS SECTION SHALL BE FINED ONE HUNDRED  
3 DOLLARS FOR EACH DAY AND FOR EACH REPORT WHEN AN ABORTION REPORT REMAINS  
4 DUE BUT UNFILED.

5           (3) **REPORTS BY FACILITY.** EVERY FACILITY IN WHICH A LATE-TERM ABORTION  
6 IS PERFORMED WITHIN THE STATE OF COLORADO DURING ANY QUARTER YEAR SHALL  
7 FILE WITH THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT A  
8 REPORT SHOWING THE TOTAL NUMBER OF LATE-TERM ABORTIONS PERFORMED WITHIN  
9 THE HOSPITAL OR OTHER FACILITY DURING THAT QUARTER YEAR. QUARTER YEARS ARE  
10 TO BE MEASURED AS QUARTER YEARS OF THE CALENDAR, AND THUS ARE CONSTITUTED  
11 BY THE PERIODS, JANUARY THROUGH MARCH, APRIL THROUGH JUNE, JULY THROUGH  
12 SEPTEMBER, AND OCTOBER THROUGH DECEMBER. THE REPORTS REQUIRED UNDER THIS  
13 SUBSECTION SHALL BE FILED BY NO LATER THAN THIRTY DAYS AFTER EACH QUARTER  
14 YEAR HAS PASSED. A FACILITY REQUIRED UNDER THIS SUBSECTION TO FILE REPORTS IS  
15 SUBJECT TO A FINE OF ONE HUNDRED DOLLARS PER DAY FOR LATENESS IN FILING ANY  
16 REPORT OR REPORTS DUE HEREUNDER. ANY REPORT SHALL BE AVAILABLE FOR PUBLIC  
17 INSPECTION AND COPYING. THESE REPORTS SHALL BE SUBMITTED ON A FORM  
18 PRESCRIBED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

19           **12-37.3-104. Severability.**

20           IF ANY ONE OR MORE PROVISION, SECTION, SUBSECTION, SENTENCE, CLAUSE,  
21 PHRASE OR WORD OF THIS ARTICLE OR THE APPLICATION THEREOF TO ANY PERSON OR  
22 CIRCUMSTANCE IS FOUND TO BE UNCONSTITUTIONAL, THE SAME IS HEREBY DECLARED  
23 TO BE SEVERABLE AND THE BALANCE OF THIS ARTICLE SHALL REMAIN EFFECTIVE  
24 NOTWITHSTANDING SUCH UNCONSTITUTIONALITY. THE PEOPLE OF THE STATE OF  
25 COLORADO HEREBY DECLARE THAT THEY WOULD HAVE PASSED THIS ARTICLE, AND EACH  
26 PROVISION, SECTION, SUBSECTION, SENTENCE, CLAUSE, PHRASE OR WORD THEREOF,  
27 IRRESPECTIVE OF THE FACT THAT ANY ONE OR MORE PROVISION, SECTION, SUBSECTION,  
28 SENTENCE, CLAUSE, PHRASE OR WORD BE DECLARED UNCONSTITUTIONAL.

29           **SECTION 2. Effective date - applicability.** This act shall take effect January 1, 2007,  
30 and shall apply to offenses and acts committed on or after said date.