

Amendment __
Late-term Abortions

1 **Amendment __ is a proposed amendment to the Colorado statutes that:**

- 2 ◆ makes performing a late-term abortion a crime, except in the case of a medical
3 emergency;
- 4 ◆ requires a second doctor be present to care for the fetus when a late-term
5 abortion is medically necessary; and
- 6 ◆ requires doctors and facilities to report information on late-term abortions to
7 the state.

8 **Summary and Analysis**

9 U.S. Supreme Court decisions on abortion allow states to impose restrictions on
10 late-term abortions so long as these restrictions do not endanger the health of the woman.
11 Current state law does not limit when an abortion can be performed. Amendment __
12 makes it a crime to perform an abortion if the fetus is able to live outside the womb. If a
13 pregnant woman's medical condition would likely result in her death or permanent injury,
14 a late-term abortion is permitted.

15 *When can an abortion be performed under Amendment __?* Doctors may
16 continue to perform abortions up to the point when the fetus can live outside the womb
17 with or without artificial life-support. The point at which a fetus meets this standard varies
18 among pregnancies and must be determined by a doctor, but most often occurs sometime
19 between the 20th and 27th week of pregnancy. Childbirth generally occurs at 40 weeks
20 gestation.

21 If a doctor determines that an abortion is required to prevent a woman's death or
22 prevent permanent harm to her health, a doctor may perform an abortion at any time.
23 However, the doctor must try to protect the life of the fetus during a late-term abortion by
24 choosing the procedure that provides the best opportunity for fetal survival, unless it
25 significantly increases the risk of harm to the woman. In addition, a second doctor must
26 be present to care for the fetus.

27 *What are the penalties for performing a late-term abortion?* Amendment __
28 specifies that performing a late-term abortion is a class four felony with a penalty of two
29 to six years imprisonment, or a fine of up to \$500,000, or both. The woman is not
30 penalized for having a late-term abortion.

1 **Reporting requirements.** Amendment __ requires a doctor who performs a late-
2 term abortion to file a report with the state within 30 days. The report must include
3 information about the doctor, the patient, the fetus, and the basis for the decision to
4 perform a late-term abortion. Facilities are also required to report the number of late-term
5 abortions performed quarterly.

6 **Arguments For**

7 1) Late-term abortions are unethical because the aborted fetuses are capable of living
8 outside of the womb. The proposal requires doctors to err on the side of life and protect
9 fetuses that are sufficiently developed to survive outside of the womb. The only event
10 separating a viable fetus from being considered a person is delivery. In instances when a
11 fetus is capable of living outside of the womb, the fetus should be delivered and allowed
12 to live.

13 2) The proposal does not create an undue burden on a woman's right to choose to have an
14 abortion. A woman may still choose to have an abortion in the earlier weeks of pregnancy
15 prior to viability of the fetus. Most Colorado women who choose to have an abortion do
16 so in the first 20 weeks of pregnancy. Late-term abortions will still be permitted in cases
17 where the mother's life or health is endangered.

18 **Arguments Against**

19 1) The proposal interferes in the doctor/patient relationship. For example, a woman may
20 seek a late-term abortion because the fetus has developed a severe medical problem that
21 could not be diagnosed earlier in the pregnancy. In such situations, a doctor, in
22 consultation with the woman, should determine the best course of action. Under the
23 proposal, the state, not the woman and her doctor, decides what is best for the woman and
24 the fetus.

25
26 2) The proposal subjects doctors to criminal prosecution for performing abortions based
27 upon the viability of the fetus, a constantly changing and undefinable standard. The point
28 at which a fetus is able to live outside of the womb is subject to medical interpretation, yet
29 under the proposal, a doctor could go to jail if others disagree with his or her medical
30 judgment. Because of the potential for criminal prosecution, doctors may be unwilling to
31 perform any abortions.

32 **Estimate of Fiscal Impact**