

First Regular Session
Sixty-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 01-0015.01 Jerry Barry

SENATE BILL 01-087

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A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF POST-VIABILITY ABORTIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Prohibits any person from intentionally, knowingly, or recklessly performing an abortion on a viable unborn child, unless the abortion is performed by a physician who:

- Reasonably believes that the abortion is necessary to prevent the death or a substantial and irreversible impairment of a major bodily function of the woman; or
- Reasonably believes that the unborn child is not viable.

Except in the case of a medical emergency, prior to performing an abortion after the first 19 weeks of pregnancy, requires a physician to

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.

certify in writing whether the fetus is viable.

If a fetus is viable, except in the case of a medical emergency, prior to performing an abortion, requires:

- The attending physician to certify in writing and a second physician to concur in writing that the procedure is necessary to prevent a substantial impairment of the life or physical health of the pregnant woman; and
- The procedure to be performed in a hospital; and
- A second physician to be present during the procedure who will take control of and provide immediate medical care if the infant is born alive; and
- Both physicians take all reasonable steps in keeping with good medical practice to preserve the life and health of the viable unborn infant.

States that a person who violates the statutory section, in addition to any other crime, commits criminal post-viability abortion and defines that crime as a class 1 misdemeanor. Requires a 30-day mandatory minimum jail sentence for a first offense and a 90-day mandatory minimum jail sentence for second or subsequent offenses. Establishes that the pregnant woman may not be prosecuted for complicity or conspiracy to commit criminal post-viability abortion.

States that a fetus born alive shall be treated as a person under the law and that a certificate of birth be filed. Requires a death certificate to be filed if the infant later dies.

Allows the pregnant woman and her husband, if married, to state in writing that, if the child is born alive, they do not wish to keep the child. Provides that the county department of social services shall have temporary custody of the child.

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

2 **SECTION 1.** Part 1 of article 6 of title 18, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

4 **18-6-102.5. Justified medical termination of pregnancies after**
5 **viability.** (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE
6 "VIALE CHILD PROTECTION ACT".

7 (2) FOR PURPOSES OF THIS SECTION:

8 (a) "ABORTION" MEANS THE USE OF ANY MEANS TO TERMINATE THE
9 CLINICALLY DIAGNOSABLE PREGNANCY OF A WOMAN WITH KNOWLEDGE

1 THAT THE TERMINATION BY THOSE MEANS MAY, WITH REASONABLE
2 LIKELIHOOD, CAUSE THE DEATH OF THE UNBORN CHILD; EXCEPT THAT
3 "ABORTION" SHALL NOT MEAN THE USE OF AN INTRAUTERINE DEVICE OR
4 BIRTH CONTROL PILL TO INHIBIT OR PREVENT OVULATION, FERTILIZATION,
5 OR THE IMPLANTATION OF A FERTILIZED OVUM WITHIN THE UTERUS.

6 (b) "FERTILIZATION" MEANS THE FUSION OF A HUMAN
7 SPERMATOZOON WITH A HUMAN OVUM.

8 (c) "GESTATIONAL AGE" MEANS THE AGE OF AN UNBORN CHILD AS
9 CALCULATED FROM THE FIRST DAY OF THE LAST MENSTRUAL PERIOD OF THE
10 PREGNANT WOMAN.

11 (d) "HOSPITAL" MEANS AN INSTITUTION LICENSED PURSUANT TO
12 ARTICLE 3 OF TITLE 25, C.R.S.

13 (e) "LIVE BIRTH", WHEN USED WITH REGARD TO A HUMAN BEING,
14 MEANS THAT THE HUMAN BEING WAS COMPLETELY EXPELLED OR
15 EXTRICATED FROM HIS OR HER MOTHER AND, AFTER SUCH SEPARATION,
16 BREATHED OR SHOWED EVIDENCE OF ANY OF THE FOLLOWING:

- 17 (I) BEATING OF THE HEART;
- 18 (II) PULSATION OF THE UMBILICAL CORD;
- 19 (III) DEFINITE MOVEMENT OF VOLUNTARY MUSCLES; OR
- 20 (IV) ANY BRAIN WAVE ACTIVITY.

21 (f) "MEDICAL EMERGENCY" MEANS A CONDITION THAT, ON THE
22 BASIS OF THE PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO
23 COMPLICATES A PREGNANCY AS TO NECESSITATE THE IMMEDIATE ABORTION
24 OF A WOMAN'S PREGNANCY TO AVERT HER DEATH OR FOR WHICH A DELAY
25 WILL CAUSE SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE
26 IMPAIRMENT OF A MAJOR BODILY FUNCTION.

27 (g) "PREGNANT" MEANS THE FEMALE REPRODUCTIVE CONDITION OF

1 HAVING A DEVELOPING FETUS IN THE BODY AND COMMENCES WITH
2 FERTILIZATION.

3 (h) "UNBORN CHILD" AND "FETUS" EACH MEANS AN INDIVIDUAL
4 ORGANISM OF THE SPECIES HOMO SAPIENS FROM FERTILIZATION UNTIL LIVE
5 BIRTH.

6 (i) "VIABLE" AND "VIABILITY" MEANS THAT STAGE OF FETAL
7 DEVELOPMENT WHEN, IN THE JUDGMENT OF THE PHYSICIAN BASED UPON
8 THE PARTICULAR FACTS OF THE CASE BEFORE HIM OR HER AND IN LIGHT OF
9 THE MOST ADVANCED MEDICAL TECHNOLOGY AND INFORMATION
10 AVAILABLE TO HIM OR HER, THERE IS A REASONABLE LIKELIHOOD OF
11 SUSTAINED SURVIVAL OF THE UNBORN CHILD OUTSIDE OF THE BODY OF HIS
12 OR HER MOTHER WITH OR WITHOUT ARTIFICIAL SUPPORT.

13 (3) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS
14 SUBSECTION (3), NO PERSON SHALL INTENTIONALLY, KNOWINGLY, OR
15 RECKLESSLY PERFORM OR INDUCE AN ABORTION WHEN AN UNBORN CHILD
16 IS VIABLE.

17 (b) (I) IT SHALL NOT BE A VIOLATION OF PARAGRAPH (a) OF THIS
18 SUBSECTION (3) IF AN ABORTION IS PERFORMED BY A PHYSICIAN AND THAT
19 PHYSICIAN REASONABLY BELIEVES THAT IT IS NECESSARY TO PREVENT
20 EITHER THE DEATH OF THE PREGNANT WOMAN OR THE SUBSTANTIAL AND
21 IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION OF THE WOMAN.
22 NO ABORTION SHALL BE DEEMED AUTHORIZED UNDER THIS SUBPARAGRAPH
23 (I) IF PERFORMED ON THE BASIS OF A CLAIM OR DIAGNOSIS THAT THE
24 WOMAN WILL ENGAGE IN CONDUCT THAT WOULD RESULT IN HER DEATH OR
25 IN SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY
26 FUNCTION.

27 (II) IT SHALL NOT BE A VIOLATION OF PARAGRAPH (a) OF THIS

1 SUBSECTION (3) IF THE ABORTION IS PERFORMED BY A PHYSICIAN AND THAT
2 PHYSICIAN REASONABLY BELIEVES, AFTER MAKING A DETERMINATION OF
3 THE VIABILITY OF THE UNBORN CHILD IN COMPLIANCE WITH SUBSECTION
4 (6) OF THIS SECTION, THAT THE UNBORN CHILD IS NOT VIABLE.

5 (4) EXCEPT IN THE CASE OF A MEDICAL EMERGENCY THAT, IN THE
6 REASONABLE MEDICAL JUDGMENT OF THE PHYSICIAN PERFORMING THE
7 ABORTION, PREVENTS COMPLIANCE WITH A PARTICULAR REQUIREMENT OF
8 THIS SUBSECTION (4), NO ABORTION WHICH IS AUTHORIZED UNDER
9 PARAGRAPH (b) OF SUBSECTION (3) OF THIS SECTION SHALL BE PERFORMED
10 UNLESS EACH OF THE FOLLOWING CONDITIONS IS MET:

11 (a) THE PHYSICIAN PERFORMING THE ABORTION CERTIFIES IN
12 WRITING THAT, BASED UPON HIS OR HER MEDICAL EXAMINATION OF THE
13 PREGNANT WOMAN AND HIS OR HER MEDICAL JUDGMENT, THE ABORTION
14 IS NECESSARY TO PREVENT EITHER THE DEATH OF THE PREGNANT WOMAN
15 OR A SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A
16 MAJOR BODILY FUNCTION;

17 (b) SUCH PHYSICIAN'S JUDGMENT WITH RESPECT TO THE NECESSITY
18 FOR THE ABORTION HAS BEEN CONCURRED BY ONE OTHER LICENSED
19 PHYSICIAN WHO CERTIFIES IN WRITING THAT, BASED UPON HIS OR HER
20 MEDICAL EXAMINATION OF THE PREGNANT WOMAN AND HIS OR HER
21 MEDICAL JUDGMENT, THE ABORTION IS NECESSARY TO PREVENT EITHER THE
22 DEATH OF THE PREGNANT WOMAN OR A SERIOUS RISK OF SUBSTANTIAL AND
23 IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION;

24 (c) THE ABORTION IS PERFORMED IN A HOSPITAL;

25 (d) THE PHYSICIAN, BOTH BEFORE AND DURING THE PROCEDURE,
26 TERMINATES THE PREGNANCY IN A MANNER THAT PROVIDES THE BEST
27 OPPORTUNITY FOR THE UNBORN CHILD TO SURVIVE, UNLESS THE PHYSICIAN

1 DETERMINES IN HIS OR HER GOOD FAITH MEDICAL JUDGMENT, THAT
2 TERMINATION OF THE PREGNANCY IN THAT MANNER POSES A
3 SIGNIFICANTLY GREATER RISK OF EITHER THE DEATH OF THE PREGNANT
4 WOMAN OR THE SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR
5 BODILY FUNCTION OF THE WOMAN THAN WOULD OTHER AVAILABLE
6 METHODS;

7 (e) THE PHYSICIAN ARRANGES FOR THE ATTENDANCE, IN THE SAME
8 ROOM IN WHICH THE MEDICAL PROCEDURE TO TERMINATE THE PREGNANCY
9 IS TO BE COMPLETED, OF A SECOND PHYSICIAN WHO SHALL TAKE CONTROL
10 OF THE CHILD IMMEDIATELY AFTER COMPLETE EXTRACTION FROM THE
11 MOTHER AND SHALL PROVIDE IMMEDIATE MEDICAL CARE FOR THE CHILD,
12 TAKING ALL REASONABLE STEPS NECESSARY TO PRESERVE THE CHILD'S LIFE
13 AND HEALTH.

14 (5) (a) IN ADDITION TO ANY OTHER CRIME, ANY PERSON WHO
15 VIOLATES A PROVISION OF THIS SECTION COMMITS CRIMINAL
16 POST-VIABILITY ABORTION. CRIMINAL POST-VIABILITY ABORTION IS A
17 CLASS 1 MISDEMEANOR; EXCEPT THAT, IN ADDITION TO ANY OTHER
18 PENALTY PROVIDED BY SECTION 18-1-106, FOR A FIRST OFFENSE A PERSON
19 SHALL BE SENTENCED TO A THIRTY-DAY MANDATORY MINIMUM JAIL
20 SENTENCE AND FOR A SECOND OR SUBSEQUENT OFFENSE A PERSON SHALL
21 BE SENTENCED TO A NINETY-DAY MANDATORY MINIMUM JAIL SENTENCE.

22 (b) ANY PERSON WHO VIOLATES SUBSECTION (3) OF THIS SECTION
23 MAY BE CHARGED WITH MURDER OR MANSLAUGHTER, AS THOSE CRIMES
24 ARE DEFINED IN PART 1 OF ARTICLE 3 OF THIS TITLE, AND, UPON
25 CONVICTION THEREOF, MAY BE PUNISHED ACCORDINGLY.

26 (c) THE PREGNANT WOMAN SHALL NOT BE PROSECUTED UNDER THIS
27 SECTION FOR CONSPIRACY PURSUANT TO SECTION 18-2-201 OR COMPLICITY

1 UNDER SECTION 18-1-603.

2 (d) NO HOSPITAL, PROFESSIONAL CORPORATION, HEALTH PLAN
3 CARRIER, OR OTHER ENTITY EMPLOYING, CONTRACTING OR AFFILIATED
4 WITH, OR SUBJECT TO THE CONTROL OF A PHYSICIAN WHO VIOLATES THIS
5 SECTION SHALL BE LIABLE OR RESPONSIBLE FOR SUCH PHYSICIAN'S ACTIONS
6 OR VIOLATION.

7 (6) EXCEPT IN THE CASE OF A MEDICAL EMERGENCY, PRIOR TO
8 PERFORMING AN ABORTION UPON A WOMAN SUBSEQUENT TO HER FIRST
9 NINETEEN WEEKS OF PREGNANCY, THE PHYSICIAN SHALL DETERMINE
10 WHETHER IN HIS OR HER GOOD FAITH MEDICAL JUDGMENT, THE CHILD IS
11 VIABLE. WHEN THE PHYSICIAN HAS DETERMINED THAT THE CHILD IS
12 VIABLE, HE OR SHE SHALL REPORT THE BASIS FOR HIS OR HER
13 DETERMINATION THAT THE ABORTION IS NECESSARY TO PREVENT EITHER
14 THE DEATH OF THE PREGNANT WOMAN OR THE SUBSTANTIAL AND
15 IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION OF THE WOMAN.
16 WHEN THE PHYSICIAN HAS DETERMINED THAT A CHILD IS NOT VIABLE
17 AFTER THE FIRST NINETEEN WEEKS OF PREGNANCY, HE OR SHE SHALL
18 REPORT THE BASIS FOR SUCH DETERMINATION.

19 (7) ANY FETUS BORN ALIVE SHALL BE TREATED AS A PERSON UNDER
20 THE LAW, AND A CERTIFICATE OF BIRTH SHALL BE FILED AS REQUIRED BY
21 SECTION 25-2-112, C.R.S., CERTIFYING THE INFANT'S BIRTH. IF THE INFANT
22 SUBSEQUENTLY DIES, A CERTIFICATE OF DEATH SHALL BE FILED AS
23 REQUIRED BY SECTION 25-2-110, C.R.S.

24 (8) IF, BEFORE THE ABORTION OR MEDICAL PROCEDURE TO
25 TERMINATE A PREGNANCY, THE WOMAN AND HER HUSBAND, IF MARRIED,
26 HAVE STATED IN WRITING THAT THEY DO NOT WISH TO KEEP THE INFANT IN
27 THE EVENT THAT THE PROCEDURE RESULTS IN A LIVE BIRTH, AND THIS

1 WRITING IS NOT RETRACTED BEFORE THE PROCEDURE, THE COUNTY
2 DEPARTMENT OF SOCIAL SERVICES IN THE COUNTY OR CITY AND COUNTY IN
3 WHICH THE PROCEDURE WAS PERFORMED SHALL TAKE TEMPORARY LEGAL
4 CUSTODY OF THE INFANT.

5 (9) (a) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO
6 REQUIRE ANY PHYSICIAN OR HOSPITAL TO PERFORM AN ABORTION THAT IS
7 CONTRARY TO THE PHYSICIAN'S RELIGIOUS BELIEFS OR THE RELIGIOUS
8 TENETS OF THE HOSPITAL.

9 (b) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS RATIFYING,
10 GRANTING, OR OTHERWISE ESTABLISHING A RIGHT TO AN ABORTION
11 INDEPENDENTLY OF ANY OTHER REGULATION, STATUTE, OR COURT
12 DECISION THAT MAY NOW OR HEREAFTER LIMIT OR ABRIDGE THE RIGHT TO
13 AN ABORTION.

14 **SECTION 2. Effective date - applicability.** This act shall take
15 effect upon passage, and shall apply to offenses committed on or after said
16 date.

17 **SECTION 3. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.