

Original #80

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C.G.
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Be it Enacted by the People of the State of Colorado:

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

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

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

(2) A "VIABLE FETUS" IS A FETUS THAT HAS ATTAINED THAT STAGE OF FETAL DEVELOPMENT WHEN ITS LIFE MAY BE CONTINUED INDEFINITELY OUTSIDE THE WOMB BY NATURAL OR ARTIFICIAL LIFE-SUPPORTIVE SYSTEMS.

(3) A "MEDICAL EMERGENCY" IS A CONDITION THAT, ON THE BASIS OF THE PHYSICIAN'S GOOD-FAITH CLINICAL JUDGMENT, SO COMPLICATES THE MEDICAL CONDITION OF A PREGNANT WOMAN AS TO NECESSITATE A MEDICAL PROCEDURE TO PREVENT THE PREGNANT WOMAN'S DEATH OR FOR WHICH A DELAY WILL CREATE A SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

12-37.3-102. Prohibition on performing a post-viability abortion.

(1) A PERSON SHALL NOT PERFORM AN ABORTION ON A VIABLE FETUS. A PERSON VIOLATES THIS SUBSECTION (1) IF HE OR SHE KNOWINGLY PERFORMS THE ABORTION OF A VIABLE FETUS OR PERFORMS THE ABORTION OF A VIABLE FETUS WITH RECKLESS DISREGARD OF WHETHER THE FETUS IS VIABLE.

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

(3) IT SHALL BE AN AFFIRMATIVE DEFENSE TO PERFORMING AN ABORTION ON A VIABLE FETUS THAT THE PERSON PERFORMED THE ABORTION BASED ON A DOCUMENTED MEDICAL EMERGENCY.

(4) THE PERSON WHO IS TO PERFORM THE ABORTION SHALL USE HIS OR HER GOOD-FAITH CLINICAL JUDGMENT TO DETERMINE BEFORE THE ABORTION WHETHER A PARTICULAR FETUS IS A VIABLE FETUS.

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

(6) WHEN A WOMAN PREGNANT WITH A VIABLE FETUS HAS A MEDICAL EMERGENCY, THE PHYSICIAN TREATING HER MUST TRY TO PROTECT THE LIFE OF THE FETUS. IF THE MEDICAL EMERGENCY MAKES TERMINATION OF THE PREGNANCY AN ADVISABLE TREATMENT FOR THE MEDICAL EMERGENCY, A SECOND PHYSICIAN IS REQUIRED TO BE IN ATTENDANCE TO CARE FOR THE FETUS. THE PREGNANT WOMAN'S PHYSICIAN MUST USE THE PREGNANCY-TERMINATING MEDICAL PROCEDURE, WHETHER THE INDUCEMENT OF VAGINAL DELIVERY, CAESARIAN SECTION, ABORTION, OR OTHER PREGNANCY-TERMINATING MEDICAL PROCEDURE, THAT PROVIDES THE BEST OPPORTUNITY FOR FETAL SURVIVAL.

(7) THE PREGNANT WOMAN'S PHYSICIAN WILL NOT HAVE TO USE THE PREGNANCY-TERMINATING MEDICAL PROCEDURE THAT PROVIDES THE BEST OPPORTUNITY FOR FETAL SURVIVAL OVER OTHER PREGNANCY-TERMINATING MEDICAL PROCEDURES IF SUCH A PROCEDURE POSES A SIGNIFICANTLY GREATER RISK OF THE PREGNANT WOMAN'S DEATH OR THE SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A MAJOR BODILY FUNCTION.

(8) KNOWINGLY PERFORMING AN ABORTION IN VIOLATION OF SUBSECTION (6) OF THIS SECTION OR PERFORMING AN ABORTION IN VIOLATION OF SUBSECTION (6) OF THIS SECTION IN RECKLESS DISREGARD OF THE PROVISIONS OF SUBSECTION (6) OF THIS SECTION IS A CLASS 1 MISDEMEANOR AND, UPON CONVICTION THEREFOR, THE CONVICTED PERSON MAY BE SENTENCED FOR THE VIOLATION AS SET FORTH IN SECTION 18-1.3-501, C.R.S.

12-37.3-103. Reports.

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

- (a) IDENTIFICATION OF THE PHYSICIAN WHO PERFORMED THE ABORTION, AND THE FACILITY WHERE THE ABORTION WAS PERFORMED AND OF THE REFERRING PHYSICIAN, AGENCY OR SERVICE, IF ANY;
- (b) THE COUNTY AND STATE IN WHICH THE PATIENT RESIDES;
- (c) THE PATIENT'S AGE;
- (d) THE NUMBER OF PRIOR PREGNANCIES AND PRIOR ABORTIONS OF THE PATIENT;
- (e) THE GESTATIONAL AGE OF THE UNBORN CHILD AT THE TIME OF THE ABORTION;
- (f) THE TYPE OF PROCEDURE PERFORMED AND THE DATE OF THE ABORTION;
- (g) PREEXISTING MEDICAL CONDITIONS OF THE PATIENT WHICH WOULD COMPLICATE THE PREGNANCY, IF ANY, AND IF KNOWN, ANY MEDICAL COMPLICATION WHICH RESULTED FROM THE ABORTION ITSELF;

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

(i) THE WEIGHT OF THE ABORTED FETUS; AND

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

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

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

12-37.3-104. Severability.

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

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