

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0749.01 Shelby Ross x4510

HOUSE BILL 20-1098

HOUSE SPONSORSHIP

Williams D., Geitner, Sandridge, Holtorf, Baisley

SENATE SPONSORSHIP

(None),

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE PROHIBITION OF PERFORMING AN ABORTION AFTER
102 TWENTY-TWO WEEKS GESTATIONAL AGE EXCEPT IN LIMITED
103 CIRCUMSTANCES.

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://leg.colorado.gov>.)

The bill prohibits any person from intentionally or recklessly performing or attempting to perform an abortion on a person if the gestational age of the fetus is 22 weeks or older except in limited circumstances. Any person who performs or attempts to perform an abortion in violation of this section is guilty of a class 1 misdemeanor but

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

may only be subject to punishment by fine and not by jail time.
A woman who has an abortion is not subject to criminal penalties.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 9 to article
3 6 of title 18 as follows:

4 PART 9

5 LATE ABORTIONS PROHIBITED

6 **18-6-901. Legislative declaration.** (1) THE GENERAL ASSEMBLY
7 FINDS THAT:

8 (a) ABORTION AFTER TWENTY-TWO WEEKS POSES SUBSTANTIAL
9 RISK TO THE HEALTH AND LIFE OF THE PREGNANT WOMAN. THERE IS NOT
10 SUBSTANTIVE BIOLOGICAL DIFFERENCE BETWEEN A TWENTY-TWO WEEK
11 FETUS IN UTERO AND AN INFANT BORN AT TWENTY-TWO WEEKS, OTHER
12 THAN LOCATION.

13 (b) A WOMAN'S RISK FOR COMPLICATIONS AND DEATH FROM
14 ABORTION INCREASE WITH THE FETUS'S GESTATIONAL AGE;

15 (c) TEN PERCENT OF SECOND TRIMESTER ABORTIONS HAVE
16 COMPLICATIONS, AND ONE AND THREE-TENTHS TO ONE AND
17 SEVEN-TENTHS PERCENT OF SECOND TRIMESTER ABORTIONS HAVE
18 SERIOUS, LIFE-THREATENING COMPLICATIONS. THIRD TRIMESTER
19 ABORTIONS POSE AN EVEN GREATER RISK TO THE HEALTH AND LIFE OF THE
20 WOMAN.

21 (d) LATE SURGICAL ABORTIONS MAY BE ASSOCIATED WITH
22 PRE-TERM BIRTH AND LOW BIRTH WEIGHT INFANTS IN SUBSEQUENT
23 PREGNANCIES. PRE-TERM BIRTH AND LOW BIRTH WEIGHT ARE PRIMARY
24 DETERMINANTS OF INFANT MORTALITY.

25 (e) BEFORE TWENTY-TWO WEEKS:

1 (I) A FETUS CAN HEAR THE MOTHER'S VOICE AND RESPOND TO
2 TOUCH; AND

3 (II) A FETUS CAN UNDERGO CURATIVE FETAL SURGERY TO CORRECT
4 ANATOMIC ANOMALIES. SPECIALISTS IN FETAL SURGERY AND FETAL
5 ANESTHESIA TREAT THE FETUS AS A PATIENT INDEPENDENT FROM THE
6 MOTHER.

7 (f) BY TWENTY-TWO WEEKS:

8 (I) A MOTHER WILL TYPICALLY FEEL HER FETUS KICK;

9 (II) A FETUS MAY EXPERIENCE PAIN, AND SINCE NEUROINHIBITORY
10 PAIN PATHWAYS DEVELOP LATER IN FETAL DEVELOPMENT, THE PAIN MAY
11 BE PERCEIVED MORE INTENSELY BY THE FETUS; AND

12 (III) A FETUS HAS DEVELOPED SUFFICIENTLY TO LIVE OUTSIDE THE
13 UTERUS WITH ACTIVE MEDICAL TREATMENT. IN SOME MEDICAL CENTERS,
14 SEVENTY PERCENT OF FETUSES BORN AT TWENTY-TWO WEEKS SURVIVE.

15 (g) FETUSES AS YOUNG AS TWENTY-ONE WEEKS HAVE SURVIVED
16 WITH GOOD NEURODEVELOPMENTAL OUTCOMES.

17 (h) IN THE RARE INSTANCES OF FATAL FETAL ANOMALIES,
18 PERINATAL HOSPICE OFFERS A COMPASSIONATE, LIFE-AFFIRMING
19 ALTERNATIVE TO LATE ABORTION FOR THE MOTHER AND FAMILY.
20 PERINATAL HOSPICE MAY REDUCE THE NEGATIVE MENTAL HEALTH
21 EFFECTS OF LATE ABORTION WHEN IT IS A WANTED PREGNANCY.

22 (i) LATE ABORTION TECHNIQUES INCLUDE DILATION AND
23 EVACUATION, IN WHICH A FETUS IS REMOVED BY DISARTICULATION AND
24 DISMEMBERMENT FROM THE UTERUS IN THE SECOND TRIMESTER, AND
25 INDUCTION ABORTION. IN DILATION AND EXTRACTION, OR INTACT
26 DILATION AND EVACUATION, THE FETAL BRAINS ARE REMOVED TO
27 DECOMPRESS THE FETAL HEAD, WHICH FACILITATES EXTRACTION OF THE

1 OTHERWISE INTACT FETUS. DURING AN INDUCTION ABORTION, A FETUS IS
2 KILLED BY TRANSECTION OF THE UMBILICAL CORD OR BY INJECTION OF
3 DIGOXIN OR POTASSIUM CHLORIDE PRIOR TO THE INDUCTION OF LABOR
4 AND DELIVERY OF THE DEAD FETUS. EVERY LATE ABORTION TECHNIQUE
5 AFTER TWENTY-TWO WEEKS CAN BE ANTICIPATED TO INFLICT FETAL PAIN.
6 DEPENDING ON WHICH TECHNIQUE IS UTILIZED, THE DEATH CAN OCCUR
7 OVER A PERIOD OF MINUTES TO HOURS.

8 (2) CURRENTLY, IN THE STATE OF COLORADO, AN ABORTION CAN
9 BE PERFORMED AT ANY TIME DURING PREGNANCY. THEREFORE, THE
10 GENERAL ASSEMBLY FINDS AND DECLARES THAT THE STATE OF COLORADO
11 HAS A COMPELLING INTEREST IN PROTECTING BOTH THE HEALTH OF THE
12 PREGNANT WOMAN AND THE LIFE OF THE DEVELOPED FETUS BY
13 PROHIBITING ABORTION AFTER TWENTY-TWO WEEKS GESTATIONAL AGE.

14 **18-6-902. Definitions.** AS USED IN THIS PART 9, UNLESS THE
15 CONTEXT OTHERWISE REQUIRES:

16 (1) "ABORTION" MEANS THE ACT OF USING OR PRESCRIBING ANY
17 INSTRUMENT, MEDICINE, DRUG, OR ANY OTHER SUBSTANCE, DEVICE, OR
18 MEANS WITH THE INTENT TO TERMINATE THE PREGNANCY OF A WOMAN
19 KNOWN TO BE PREGNANT OR WITH THE INTENT TO KILL THE UNBORN CHILD
20 OF A WOMAN KNOWN TO BE PREGNANT. ANY USE, PRESCRIPTION, OR
21 MEANS IS NOT AN ABORTION IF DONE WITH THE INTENT TO:

22 (a) SAVE THE LIFE OR PRESERVE THE HEALTH OF THE EMBRYO OR
23 FETUS;

24 (b) REMOVE A DEAD EMBRYO OR FETUS CAUSED BY MISCARRIAGE;

25 OR

26 (c) REMOVE AN ECTOPIC PREGNANCY.

27 (2) "GESTATIONAL AGE" MEANS THE TIME THAT HAS ELAPSED

1 FROM THE FIRST DAY OF THE WOMAN'S LAST MENSTRUAL PERIOD.

2 (3) "PHYSICIAN" MEANS A PHYSICIAN LICENSED TO PRACTICE
3 MEDICINE IN THE STATE OF COLORADO PURSUANT TO ARTICLE 240 OF
4 TITLE 12.

5 (4) "PROBABLE GESTATIONAL AGE" MEANS, WITH REASONABLE
6 PROBABILITY AND USING BEST MEDICAL PRACTICES, IN THE JUDGMENT OF
7 THE PHYSICIAN, WHAT WILL BE THE GESTATIONAL AGE OF THE UNBORN
8 CHILD AT THE TIME AN ABORTION IS PLANNED TO BE PERFORMED.

9 (5) "TWENTY-TWO WEEKS" MEANS TWENTY-TWO WEEKS, ZERO
10 DAYS GESTATIONAL AGE.

11 **18-6-903. Abortion after twenty-two weeks gestational age**
12 **prohibited.** (1) **Unlawful conduct.** NOTWITHSTANDING ANY OTHER
13 PROVISION OF LAW, EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS
14 SECTION, IT IS UNLAWFUL FOR ANY PERSON TO INTENTIONALLY OR
15 RECKLESSLY PERFORM OR ATTEMPT TO PERFORM AN ABORTION ON ANY
16 OTHER PERSON IF THE PROBABLE GESTATIONAL AGE OF THE FETUS IS AT
17 LEAST TWENTY-TWO WEEKS.

18 (2) **Assessment of gestational age.** A PHYSICIAN WHO PERFORMS
19 OR ATTEMPTS TO PERFORM AN ABORTION SHALL FIRST MAKE A
20 DETERMINATION OF THE PROBABLE GESTATIONAL AGE. IN MAKING A
21 DETERMINATION, THE PHYSICIAN SHALL MAKE INQUIRIES OF THE
22 PREGNANT WOMAN AND PERFORM OR CAUSE TO BE PERFORMED ANY
23 MEDICAL EXAMINATION OR TESTS THAT A REASONABLY PRUDENT
24 PHYSICIAN, KNOWLEDGEABLE ABOUT THE CASE AND THE MEDICAL
25 CONDITIONS INVOLVED, WOULD CONSIDER NECESSARY TO MAKE AN
26 ACCURATE DETERMINATION OF THE GESTATIONAL AGE.

27 (3) **Exception.** (a) NOTWITHSTANDING THE PROVISIONS OF THIS

1 SECTION AND ANY OTHER PROVISION TO THE CONTRARY, IT IS NOT A
2 VIOLATION OF SUBSECTION (1) OF THIS SECTION IF, IN THE REASONABLE
3 MEDICAL JUDGMENT OF THE PHYSICIAN, AN ABORTION IS IMMEDIATELY
4 REQUIRED TO SAVE THE LIFE OF A PREGNANT WOMAN, RATHER THAN AN
5 EXPEDITED DELIVERY OF THE LIVING FETUS, AND IF THE PREGNANT
6 WOMAN'S LIFE IS THREATENED BY A PHYSICAL DISORDER, PHYSICAL
7 ILLNESS, OR PHYSICAL INJURY, INCLUDING A LIFE-ENDANGERING PHYSICAL
8 CONDITION CAUSED BY OR ARISING FROM THE PREGNANCY ITSELF, BUT
9 NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS.

10 (b) IF A PHYSICIAN PERFORMS AN ABORTION PURSUANT TO
11 SUBSECTION (3)(a) OF THIS SECTION, THE PHYSICIAN MAY REASONABLY
12 RELY UPON AN ASSESSMENT OF GESTATIONAL AGE MADE BY ANOTHER
13 PHYSICIAN INSTEAD OF ABIDING BY THE PROVISIONS OF SUBSECTION (2) OF
14 THIS SECTION.

15 (4) **Penalties.** ANY PERSON WHO INTENTIONALLY OR RECKLESSLY
16 PERFORMS OR ATTEMPTS TO PERFORM AN ABORTION IN VIOLATION OF
17 SUBSECTION (1) OR (2) OF THIS SECTION IS GUILTY OF A CLASS 1
18 MISDEMEANOR BUT IS ONLY SUBJECT TO PUNISHMENT BY FINE AND NOT BY
19 JAIL TIME.

20 (5) **No criminal penalties for women.** A WOMAN ON WHOM AN
21 ABORTION IS PERFORMED OR A PERSON WHO FILLS A PRESCRIPTION OR
22 PROVIDES EQUIPMENT USED IN AN ABORTION DOES NOT VIOLATE THIS PART
23 9 AND CANNOT BE CHARGED WITH A CRIME IN CONNECTION THEREWITH.

24 **SECTION 2.** In Colorado Revised Statutes, 12-240-121, **add**
25 (1)(gg) as follows:

26 **12-240-121. Unprofessional conduct - definitions.**

27 (1) "Unprofessional conduct" as used in this article 240 means:

1 (gg) A VIOLATION OF PART 9 OF ARTICLE 6 OF TITLE 18.

2 **SECTION 3.** In Colorado Revised Statutes, 12-240-125, **add**
3 (8.5) as follows:

4 **12-240-125. Disciplinary action by board - rules.** (8.5) IF THE
5 BOARD FINDS A LICENSEE COMMITTED UNPROFESSIONAL CONDUCT IN
6 VIOLATION OF SECTION 12-240-121 (1)(gg), THE BOARD SHALL SUSPEND
7 THE LICENSEE'S LICENSE FOR AT LEAST THREE YEARS.

8 **SECTION 4. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2020 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.