



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2384

by Rep. Patrick Windhorst

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Abortion Law of 1975. Provides that except in the case of a medical emergency, a physician or person may not knowingly perform, induce, or attempt to perform an abortion upon a pregnant woman when the probable gestational age of her unborn child has been determined to be viable. Provides that the woman, the father of the unborn child if married to the mother at the time she receives an abortion in violation of the Act, or, if the mother has not attained the age of 18 years at the time of the abortion, or both, the maternal grandparents of the unborn child, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or, if brought by the maternal grandparents, the maternal grandparents consented to the abortion. Provides that a medical facility licensed under the Ambulatory Surgical Treatment Center Act or the Hospital Licensing Act in which an abortion is performed or induced in violation of the Act shall be subject to immediate revocation of its license by the Department of Public Health. Provides that a medical facility licensed under the Ambulatory Surgical Treatment Center Act or the Hospital Licensing Act in which an abortion is performed or induced in violation of the Act shall lose all State funding for 2 years and shall reimburse the State for moneys or grants received from the State by the medical facility for the fiscal year in which the abortion in violation of the Act was performed.

LRB101 09441 SLF 54539 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Abortion Law of 1975 is amended by
5 changing Sections 2, 5, 10, and 14 and by adding Sections 1.1,
6 1.2, 11.2, 11.3, 11.4, and 11.5 as follows:

7 (720 ILCS 510/1.1 new)

8 Sec. 1.1. Legislative findings and purposes.

9 (1) The General Assembly of the State of Illinois does
10 solemnly declare and find that:

11 (a) Abortion can cause serious physical and
12 psychological (both short-term and long-term)
13 complications for women, including but not limited to:
14 uterine perforation, uterine scarring, cervical
15 perforation or other injury, infection, bleeding,
16 hemorrhage, blood clots, failure to actually terminate the
17 pregnancy, incomplete abortion (retained tissue), pelvic
18 inflammatory disease, endometritis, missed ectopic
19 pregnancy, cardiac arrest, respiratory arrest, renal
20 failure, metabolic disorder, shock, embolism, coma,
21 placenta previa in subsequent pregnancies, preterm birth
22 in subsequent pregnancies, free fluid in the abdomen, organ
23 damage, adverse reactions to anesthesia and other drugs,

1 psychological or emotional complications including
2 depression, anxiety, sleeping disorders, an increased risk
3 of breast cancer, and death.

4 (b) Abortion has a higher medical risk when the
5 procedure is performed later in pregnancy. Compared to an
6 abortion at 8 weeks gestation or earlier, the relative risk
7 increases exponentially at higher gestations (L. Bartlett
8 et al., Risk factors for legal induced abortion-related
9 mortality in the United States, OBSTETRICS & GYNECOLOGY
10 103(4):729 (2004)).

11 (c) In fact, the incidence of major complications is
12 highest after 20 weeks of gestation (J. Pregler & A.
13 DeCherney, WOMEN'S HEALTH: PRINCIPLES AND CLINICAL
14 PRACTICE 232 (2002)).

15 (d) According to the Alan Guttmacher Institute, the
16 risk of death associated with abortion increases with the
17 length of pregnancy, from one death for every one million
18 abortions at or before eight weeks gestation to one per
19 29,000 abortions at 16 to 20 weeks gestation and one per
20 11,000 abortions at 21 or more weeks gestation (citing L.
21 Bartlett et al., Risk factors for legal induced
22 abortion-related mortality in the United States,
23 OBSTETRICS & GYNECOLOGY 103(4):729-737 (2004)).

24 (e) After the first trimester, the risk of hemorrhage
25 from an abortion, in particular, is greater, and the
26 resultant complications may require a hysterectomy, other

1 reparative surgery, or a blood transfusion.

2 (f) The State of Illinois has a legitimate concern for
3 the public's health and safety (Williamson v. Lee Optical,
4 348 U.S. 483, 486 (1955)).

5 (g) The State of Illinois "has legitimate interests
6 from the outset of pregnancy in protecting the health of
7 women" (Planned Parenthood of Southeastern Pennsylvania v.
8 Casey, 505 U.S. 833, 847 (1992)). More specifically, the
9 State of Illinois "has a legitimate concern with the health
10 of women who undergo abortions" (Akron v. Akron Ctr. for
11 Reproductive Health, Inc., 462 U.S. 416, 428-29 (1983)).

12 (h) In addition, there is substantial and
13 well-documented medical evidence that an unborn child by at
14 least 20 weeks gestation has the capacity to feel pain
15 during an abortion (K. Anand, Pain and its effects in the
16 human neonate and fetus, N.E.J.M. 317:1321 (1987)).

17 (i) Pain receptors (nociceptors) are present
18 throughout the unborn child's entire body no later than 18
19 weeks gestation.

20 (j) By 10 weeks gestation, the unborn child reacts to
21 touch.

22 (k) In the unborn child, application of such painful
23 stimuli is associated with significant increases in stress
24 hormones known as the stress response.

25 (l) Subjection to such painful stimuli is associated
26 with long-term harmful neurodevelopmental effects, such as

1 altered pain sensitivity and, possibly, emotional,
2 behavioral, and learning disabilities later in life.

3 (m) For the purposes of surgery on unborn children,
4 fetal anesthesia is routinely administered and is
5 associated with a decrease in stress hormones compared to
6 their level when painful stimuli are applied without the
7 anesthesia.

8 (n) The position, asserted by some medical experts,
9 that the unborn child is incapable of experiencing pain
10 until a point later in pregnancy than 20 weeks gestation
11 predominantly rests on the assumption that the ability to
12 experience pain depends on the cerebral cortex and requires
13 nerve connections between the thalamus and the cortex.
14 However, recent medical research and analysis, especially
15 since 2007, provides strong evidence for the conclusion
16 that a functioning cortex is not necessary to experience
17 pain.

18 (o) Substantial evidence indicates that children born
19 missing the bulk of the cerebral cortex, those with
20 hydranencephaly, nevertheless experience pain.

21 (p) In adults, stimulation or ablation of the cerebral
22 cortex does not alter pain perception, while stimulation or
23 ablation of the thalamus does.

24 (g) Substantial evidence indicates that structures
25 used for pain processing in early development differ from
26 those of adults, using different neural elements available

1 at specific times during development, such as the
2 subcortical plate, to fulfill the role of pain processing.

3 (r) The position, asserted by some medical experts,
4 that the unborn child remains in a coma-like sleep state
5 that precludes the unborn child experiencing pain is
6 inconsistent with the documented reaction of unborn
7 children to painful stimuli and with the experience of
8 fetal surgeons who have found it necessary to sedate the
9 unborn child with anesthesia to prevent the unborn child
10 from thrashing about in reaction to invasive surgery.

11 (s) A fetus is viable at or about 24 weeks of
12 gestation.

13 (2) Based on the findings in subsection (1), the General
14 Assembly's purposes in enacting this amendatory Act of the
15 101st General Assembly are to:

16 (a) Based on the documented risks to women's health,
17 prohibit abortions at or after fetal viability, except in
18 cases of a medical emergency.

19 (b) Prohibit abortions at or after fetal viability, in
20 part, because of the pain felt by an unborn child.

21 (c) Define "medical emergency" to encompass
22 "significant health risks", namely only those
23 circumstances in which a pregnant woman's life or a major
24 bodily function is threatened (Gonzales v. Carhart, 550
25 U.S. 124, 161 (2007)).

1 (720 ILCS 510/1.2 new)

2 Sec. 1.2. Construction.

3 (a) Nothing in this Act shall be construed as creating or
4 recognizing a right to an abortion.

5 (b) It is not the intention of this Act to make lawful an
6 abortion that is currently unlawful.

7 (720 ILCS 510/2) (from Ch. 38, par. 81-22)

8 Sec. 2. Unless the language or context clearly indicates a
9 different meaning is intended, the following words or phrases
10 for the purpose of this Law shall be given the meaning ascribed
11 to them:

12 (1) "Viable" or "viability" ~~"Viability"~~ means that stage of
13 fetal development when, in the medical judgment of the
14 attending physician based on the particular facts of the case
15 before him, there is a reasonable likelihood of sustained
16 survival of the fetus outside the womb, with or without
17 artificial support.

18 (2) "Physician" means any person licensed to practice
19 medicine in all its branches under the Illinois Medical
20 Practice Act of 1987, as amended, including a doctor of
21 osteopathy.

22 (3) "Department" means the Department of Public Health,
23 State of Illinois.

24 (4) "Abortion" means the use of any instrument, medicine,
25 drug or any other substance or device to terminate the

1 pregnancy of a woman known to be pregnant with an intention
2 other than to increase the probability of a live birth, to
3 preserve the life or health of the child after live birth, or
4 to remove a dead fetus.

5 (5) "Fertilization" and "conception" each mean the
6 fertilization of a human ovum by a human sperm, which shall be
7 deemed to have occurred at the time when it is known a
8 spermatozoon has penetrated the cell membrane of the ovum.

9 (6) "Fetus" and "unborn child" each mean an individual
10 organism of the species homo sapiens from fertilization until
11 live birth.

12 (7) "Abortifacient" means any instrument, medicine, drug,
13 or any other substance or device which is known to cause fetal
14 death when employed in the usual and customary use for which it
15 is manufactured, whether or not the fetus is known to exist
16 when such substance or device is employed.

17 (8) "Born alive", "live born", and "live birth", when
18 applied to an individual organism of the species homo sapiens,
19 each mean he or she was completely expelled or extracted from
20 his or her mother and after such separation breathed or showed
21 evidence of any of the following: beating of the heart,
22 pulsation of the umbilical cord, or definite movement of
23 voluntary muscles, irrespective of the duration of pregnancy
24 and whether or not the umbilical cord has been cut or the
25 placenta is attached.

26 (9) "Attempt to perform" means an act or omission of a

1 statutorily required act that, under the circumstances as the
2 actor believes them to be, constitutes a substantial step in a
3 course of conduct planned to culminate in the performance or
4 induction of an abortion.

5 (10) "Conception" means the fusion of a human spermatozoon
6 with a human ovum.

7 (11) "Gestational age" means the time that has elapsed
8 since the first day of the woman's last menstrual period.

9 (12) "Major bodily function" includes, but is not limited
10 to, functions of the immune system, normal cell growth, and
11 digestive, bowel, bladder, neurological, brain, respiratory,
12 circulatory, endocrine, and reproductive functions.

13 (13) "Medical facility" means any public or private
14 hospital, clinic, center, medical school, medical training
15 institution, healthcare facility, physician's office,
16 infirmary, or dispensary.

17 (14) "Pregnant" or "pregnancy" means that female
18 reproductive condition of having an unborn child in the woman's
19 uterus.

20 (15) "Probable gestational age" means what, in reasonable
21 medical judgment, will with reasonable probability be the
22 gestational age of the unborn child at the time the abortion is
23 considered, performed, or attempted.

24 (16) "Reasonable medical judgment" means that medical
25 judgment that would be made by a reasonably prudent physician,
26 knowledgeable about the case and the treatment possibilities

1 with respect to the medical condition or conditions involved.

2 (Source: P.A. 85-1209.)

3 (720 ILCS 510/5) (from Ch. 38, par. 81-25)

4 Sec. 5. (1) (Blank). ~~When the fetus is viable no~~
5 ~~abortion shall be performed unless in the medical judgment of~~
6 ~~the attending or referring physician, based on the particular~~
7 ~~facts of the case before him, it is necessary to preserve the~~
8 ~~life or health of the mother. Intentional, knowing, or reckless~~
9 ~~failure to conform to the requirements of subsection (1) of~~
10 ~~Section 5 is a Class 2 felony.~~

11 (2) (Blank). ~~When the fetus is viable the physician shall~~
12 ~~certify in writing, on a form prescribed by the Department~~
13 ~~under Section 10 of this Law, the medical indications which, in~~
14 ~~his medical judgment based on the particular facts of the case~~
15 ~~before him, warrant performance of the abortion to preserve the~~
16 ~~life or health of the mother.~~

17 (3) Except in the case of a medical emergency as
18 specifically defined in subsection (5), no abortion shall be
19 performed, induced, or attempted unless the attending or
20 referring physician has first made a determination of the
21 viability of the unborn child. In making the determination, the
22 attending or referring physician shall make the inquiries of
23 the pregnant woman and perform or cause to be performed all the
24 medical examinations, imaging studies, and tests as a
25 reasonably prudent physician, knowledgeable about the medical

1 facts and conditions of both the woman and the unborn child
2 involved, would consider necessary to perform and consider in
3 making an accurate diagnosis with respect to viability.

4 (4) Except in the case of a medical emergency as
5 specifically defined in subsection (5), a physician or person
6 may not knowingly perform, induce, or attempt to perform an
7 abortion upon a pregnant woman when her unborn child has been
8 determined to be viable. Intentional, knowing, or reckless
9 failure to conform to the requirements of this subsection (4)
10 is a Class 2 felony.

11 (5) In this Act only, "medical emergency" means a condition
12 in which an abortion is necessary to preserve the life of the
13 pregnant woman whose life is endangered by a physical disorder,
14 physical illness, or physical injury, including a
15 life-endangering physical condition caused by or arising from
16 the pregnancy itself, or when continuation of the pregnancy
17 will create a serious risk of substantial and irreversible
18 impairment of a major bodily function (as specifically defined
19 in subsection (12) of Section 2) of the pregnant woman.

20 (6) Any physician who performs an abortion under subsection
21 (5) shall certify in writing, on a form prescribed by the
22 Department under Section 10 of this Law, the reason or reasons
23 for the determination that a medical emergency existed. The
24 physician and the medical facility shall retain a copy of the
25 written reports required under this Section for not less than 5
26 years.

1 Failure to report under this Section does not subject the
2 physician to criminal or civil penalties under Sections 11 and
3 11.3. Subsection (5) does not preclude sanctions, disciplinary
4 action, or any other appropriate action by the Illinois State
5 Medical Disciplinary Board.

6 (Source: P.A. 83-1128.)

7 (720 ILCS 510/10) (from Ch. 38, par. 81-30)

8 Sec. 10. A report of each abortion performed shall be made
9 to the Department on forms prescribed by it. Such report forms
10 shall not identify the patient by name, but by an individual
11 number to be noted in the patient's permanent record in the
12 possession of the physician, and shall include information
13 concerning:

14 (1) Identification of the physician who performed the
15 abortion and the facility where the abortion was performed
16 and a patient identification number;

17 (2) State in which the patient resides;

18 (3) Patient's date of birth, race and marital status;

19 (4) Number of prior pregnancies;

20 (5) Date of last menstrual period;

21 (6) Type of abortion procedure performed;

22 (7) Complications and whether the abortion resulted in
23 a live birth;

24 (8) The date the abortion was performed;

25 (9) Medical indications for any abortion performed

1 when the fetus was viable;

2 (10) The information required by Sections 6(1)(b) and
3 6(4)(b) of this Act, if applicable;

4 (11) Basis for any medical judgment that a medical
5 emergency existed when required under Sections 5(6),
6 6(2)(a) and 6(6) and when required to be reported in
7 accordance with this Section by any provision of this Law;
8 and

9 (12) The pathologist's test results pursuant to
10 Section 12 of this Act.

11 Such form shall be completed by the hospital or other
12 licensed facility, signed by the physician who performed the
13 abortion or pregnancy termination, and transmitted to the
14 Department not later than 10 days following the end of the
15 month in which the abortion was performed.

16 In the event that a complication of an abortion occurs or
17 becomes known after submission of such form, a correction using
18 the same patient identification number shall be submitted to
19 the Department within 10 days of its becoming known.

20 The Department may prescribe rules and regulations
21 regarding the administration of this Law and shall prescribe
22 regulations to secure the confidentiality of the woman's
23 identity in the information to be provided under the "Vital
24 Records Act". All reports received by the Department shall be
25 treated as confidential and the Department shall secure the
26 woman's anonymity. Such reports shall be used only for

1 statistical purposes.

2 Upon 30 days public notice, the Department is empowered to
3 require reporting of any additional information which, in the
4 sound discretion of the Department, is necessary to develop
5 statistical data relating to the protection of maternal or
6 fetal life or health, or is necessary to enforce the provisions
7 of this Law, or is necessary to develop useful criteria for
8 medical decisions. The Department shall annually report to the
9 General Assembly all statistical data gathered under this Law
10 and its recommendations to further the purpose of this Law.

11 The requirement for reporting to the General Assembly shall
12 be satisfied by filing copies of the report as required by
13 Section 3.1 of the General Assembly Organization Act, and
14 filing such additional copies with the State Government Report
15 Distribution Center for the General Assembly as is required
16 under paragraph (t) of Section 7 of the State Library Act.

17 (Source: P.A. 100-1148, eff. 12-10-18.)

18 (720 ILCS 510/11.2 new)

19 Sec. 11.2. Prosecutorial exclusion. A woman upon whom an
20 abortion in violation of this Act is performed or induced may
21 not be prosecuted under this Act for a conspiracy to violate
22 subsection (4) of Section 5.

23 (720 ILCS 510/11.3 new)

24 Sec. 11.3. Civil remedies.

1 (1) The woman, the father of the unborn child if married to
2 the mother at the time she receives an abortion in violation of
3 this Act, or, if the mother has not attained the age of 18
4 years at the time of the abortion, or both, the maternal
5 grandparents of the unborn child, may in a civil action obtain
6 appropriate relief, unless the pregnancy resulted from the
7 plaintiff's criminal conduct or, if brought by the maternal
8 grandparents, the maternal grandparents consented to the
9 abortion.

10 (2) The relief shall include:

11 (a) money damages for all psychological and physical
12 injuries occasioned by the violation of this Act; and

13 (b) statutory damages equal to 3 times the cost of the
14 abortion performed in violation of this Act.

15 (720 ILCS 510/11.4 new)

16 Sec. 11.4. Review by Medical Board.

17 (1) A physician defendant accused of violating this Act may
18 seek a hearing before the Illinois State Medical Disciplinary
19 Board as to whether the physician's conduct was necessary to
20 save the life of the mother whose life was endangered by a
21 physical disorder, physical illness, or physical injury,
22 including a life-endangering physical condition caused by or
23 arising from the pregnancy itself; or as to whether the
24 continuation of the pregnancy would have created a serious risk
25 of substantial and irreversible impairment of a major bodily

1 function (as specifically defined in subsection (12) of Section
2 2) of the pregnant woman, or both.

3 (2) The findings on this issue are admissible at the
4 criminal and civil trials of the physician defendant. Upon a
5 motion of the physician defendant, the court shall delay the
6 beginning of the trial or trials for not more than 30 days to
7 permit the hearing to take place.

8 (720 ILCS 510/11.5 new)

9 Sec. 11.5. Penalties for medical facilities.

10 (1) A medical facility licensed under the Ambulatory
11 Surgical Treatment Center Act or the Hospital Licensing Act in
12 which an abortion is performed or induced in violation of this
13 Act shall be subject to immediate revocation of its license by
14 the Department.

15 (2) A medical facility licensed under the Ambulatory
16 Surgical Treatment Center Act or the Hospital Licensing Act in
17 which an abortion is performed or induced in violation of this
18 Act shall lose all State funding for 2 years and shall
19 reimburse the State for moneys or grants received by the
20 medical facility from the State for the fiscal year in which
21 the abortion in violation of this Act was performed.

22 (720 ILCS 510/14) (from Ch. 38, par. 81-34)

23 Sec. 14. (1) If any provision, word, phrase or clause of
24 this Act or the application thereof to any person or

1 circumstance shall be held invalid, such invalidity shall not
2 affect the provisions, words, phrases, clauses or application
3 of this Act which can be given effect without the invalid
4 provision, word, phrase, clause, or application, and to this
5 end the provisions, words, phrases, and clauses of this Act are
6 declared to be severable.

7 (2) Within 60 days from the time this Section becomes law,
8 the Department shall issue regulations pursuant to Section 10.
9 Insofar as Section 10 requires registration under the "Vital
10 Records Act", it shall not take effect until such regulations
11 are issued. The Department shall make available the forms
12 required under Section 10 within 30 days of the time this
13 Section becomes law. No requirement that any person report
14 information to the Department shall become effective until the
15 Department has made available the forms required under Section
16 10. All other provisions of this amended Law shall take effect
17 immediately upon enactment.

18 (3) The General Assembly, by joint resolution, may appoint
19 one or more of its members, who sponsored or cosponsored this
20 Act in his or her official capacity, to intervene as a matter
21 of right in any case in which the constitutionality of this
22 amendatory Act of the 101st General Assembly is challenged.

23 (Source: P.A. 83-1128.)

1 INDEX

2 Statutes amended in order of appearance

3 720 ILCS 510/1.1 new

4 720 ILCS 510/1.2 new

5 720 ILCS 510/2 from Ch. 38, par. 81-22

6 720 ILCS 510/5 from Ch. 38, par. 81-25

7 720 ILCS 510/10 from Ch. 38, par. 81-30

8 720 ILCS 510/11.2 new

9 720 ILCS 510/11.3 new

10 720 ILCS 510/11.4 new

11 720 ILCS 510/11.5 new

12 720 ILCS 510/14 from Ch. 38, par. 81-34