



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB2177

Introduced 2/7/2023, by Rep. Adam M. Niemerg

SYNOPSIS AS INTRODUCED:

New Act

Creates the Infant Born Alive Protection Act. Provides that any physician who intentionally performs an abortion when there is a reasonable likelihood or possibility of sustained survival of the fetus outside the womb shall utilize the method most likely to preserve the life and health of the fetus, and that failure to do so is a Class 3 felony. Prohibits the performance or inducement of an abortion when the fetus is viable unless there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for any child born alive as a result of the abortion. Provides that any living individual organism of the species homo sapiens who has been born alive is legally an individual under the Criminal Code of 2012. Provides that a Class 3 felony is committed when a physician under specified circumstances intentionally, knowingly, or recklessly fails to exercise the same conduct to preserve the life and health of a child as would be required for a child born alive at the same gestational age. Provides that nothing in the Act requires a physician to employ a method of abortion which, in the medical judgment of the physician, would increase medical risk to the mother. Except in specified circumstances, requires specified persons to inform a woman upon whom an abortion is to be performed when an anesthetic or analgesic is available for use to abolish or alleviate organic pain caused to the fetus by the particular method of abortion to be employed and provides that failure to do so is a Class B misdemeanor.

LRB103 26042 LNS 52397 b

A BILL FOR

1 AN ACT concerning health.

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

4 Section 1. Short title. This Act may be cited as the Infant
5 Born Alive Protection Act.

6 Section 5. Method of abortion.

7 (a) Any physician who intentionally performs an abortion
8 when, in his or her medical judgment based on the particular
9 facts of the case before him or her, there is a reasonable
10 likelihood of sustained survival of the fetus outside the
11 womb, with or without artificial support, shall utilize that
12 method of abortion which, of those he or she knows to be
13 available, is, in his or her medical judgment, most likely to
14 preserve the life and health of the fetus.

15 (b) The physician shall certify in writing, on a form
16 prescribed by the Department of Public Health, the available
17 methods considered and the reasons for choosing the method
18 employed.

19 (c) Any physician who intentionally, knowingly, or
20 recklessly violates the provisions of subsection (a) commits a
21 Class 3 felony.

22 Section 10. Additional physician.

1 (a) No abortion shall be performed or induced when the
2 fetus is viable unless there is in attendance a physician
3 other than the physician performing or inducing the abortion
4 who shall take control of and provide immediate medical care
5 for any child born alive as a result of the abortion. This
6 requirement shall not apply when, in the medical judgment of
7 the physician performing or inducing the abortion based on the
8 particular facts of the case before him or her, there exists a
9 medical emergency; in such a case, the physician shall
10 describe the basis of this judgment on the form prescribed by
11 the Department of Public Health. Any physician who
12 intentionally performs or induces such an abortion and who
13 intentionally, knowingly, or recklessly fails to arrange for
14 the attendance of such a second physician in violation of this
15 subsection commits a Class 3 felony.

16 (b) Subsequent to the abortion, if a child is born alive,
17 the physician required by subsection (a) to be in attendance
18 shall exercise the same degree of professional skill, care,
19 and diligence to preserve the life and health of the child as
20 would be required of a physician providing immediate medical
21 care to a child born alive at the same gestational age. Any
22 such physician who intentionally, knowingly, or recklessly
23 violates this subsection commits a Class 3 felony.

24 Section 15. Living individuals. The law of this State
25 shall not be construed to imply that any living individual

1 organism of the species homo sapiens who has been born alive is
2 not an individual under the Criminal Code of 2012.

3 Section 20. Reasonable possibility of sustained survival.

4 (a) Any physician who intentionally performs an abortion
5 when, in his or her medical judgment based on the particular
6 facts of the case before him or her, there is a reasonable
7 possibility of sustained survival of the fetus outside the
8 womb, with or without artificial support, shall utilize that
9 method of abortion which, of those he or she knows to be
10 available, is, in his or her medical judgment, most likely to
11 preserve the life and health of the fetus.

12 (b) The physician shall certify in writing, on a form
13 prescribed by the Department of Public Health, the available
14 methods considered and the reasons for choosing the method
15 employed.

16 (c) Any physician who intentionally, knowingly, or
17 recklessly violates the provisions of subsection (a) commits a
18 Class 3 felony.

19 Section 25. Increased medical risk to the mother. Nothing
20 in this Act requires a physician to employ a method of abortion
21 which, in the medical judgment of the physician performing the
22 abortion based on the particular facts of the case before him
23 or her, would increase medical risk to the mother.

1 Section 30. Alleviating organic pain to a fetus.

2 (a) When the fetus is viable and when there exists
3 reasonable medical certainty that (i) the particular method of
4 abortion to be employed will cause organic pain to the fetus,
5 and (ii) use of an anesthetic or analgesic would abolish or
6 alleviate organic pain to the fetus caused by the particular
7 method of abortion to be employed, then the physician who is to
8 perform the abortion or his or her agent or the referring
9 physician or his or her agent shall inform the woman upon whom
10 the abortion is to be performed that such an anesthetic or
11 analgesic is available, if he or she knows it to be available,
12 for use to abolish or alleviate organic pain caused to the
13 fetus by the particular method of abortion to be employed. Any
14 person who performs an abortion with knowledge that any such
15 reasonable medical certainty exists and that such an
16 anesthetic or analgesic is available, and intentionally fails
17 to so inform the woman or to ascertain that the woman has been
18 so informed commits a Class B misdemeanor.

19 (b) The requirements of this Section shall not apply:

20 (1) when, in the medical judgment of the physician who
21 is to perform the abortion or the referring physician,
22 based upon the particular facts of the case before him or
23 her:

24 (A) there exists a medical emergency; or

25 (B) the administration of such an anesthetic or
26 analgesic would decrease a possibility of sustained

1 survival of the fetus apart from the body of the
2 mother, with or without artificial support; or

3 (2) when the physician who is to perform the abortion
4 administers an anesthetic or an analgesic to the woman or
5 the fetus and he or she knows there exists reasonable
6 medical certainty that such use will abolish organic pain
7 caused to the fetus during the course of the abortion.

8 Section 35. Rules. The Department of Public Health shall
9 adopt any rules necessary for the administration and
10 enforcement of this Act.