

**93RD GENERAL ASSEMBLY****State of Illinois****2003 and 2004**

Introduced 2/6/2004, by Richard J. Winkel Jr., William R.
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SYNOPSIS AS INTRODUCED:

720 ILCS 510/5	from Ch. 38, par. 81-25
720 ILCS 510/6	from Ch. 38, par. 81-26
720 ILCS 510/10	from Ch. 38, par. 81-30

Amends the Illinois Abortion Law of 1975. Provides that before a physician performs an abortion on a woman the physician has reason to believe is carrying a fetus of 20 or more weeks gestational age, the physician shall first determine if the fetus is viable by using and exercising that degree of care, skill, and proficiency commonly exercised by the ordinary skillful, careful, and prudent physician. Provides that an abortion of a viable fetus may be performed or induced only when 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 as a result of the abortion. Provides that an abortion shall not be performed when the fetus is viable except in a hospital, on an inpatient basis, with measures for life support available if the child is born alive. Provides exceptions in cases of medical emergencies. Provides that violations of these provisions are punishable as a Class 3 felony.

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CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning abortions.

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 5, 6, and 10 as follows:

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

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

14 (1.5) Before a physician performs an abortion on a woman
15 the physician has reason to believe is carrying a fetus of 20
16 or more weeks gestational age, the physician shall first
17 determine if the fetus is viable by using and exercising that
18 degree of care, skill, and proficiency commonly exercised by
19 the ordinary skillful, careful, and prudent physician. In
20 making the determination of viability, the physician shall
21 perform or cause to be performed those medical examinations and
22 tests that are necessary to make findings of the gestational
23 age, weight, and lung maturity of the fetus, except when, in
24 the physician's medical judgment, those tests would not be
25 useful in determining viability or would be dangerous to the
26 mother or the unborn child, in which case, the physician shall
27 describe the basis of the medical judgment and include it in
28 the medical record of the mother. If tests are performed, the
29 physician shall enter those findings and the determination of
30 viability in the medical record of the mother. The requirement
31 of determining viability does not apply when, in the medical
32 judgment of the physician performing or inducing the abortion

1 based on the particular facts of the case before the physician,
2 there exists a medical emergency that prevents compliance with
3 determining viability; in that case, the physician shall
4 describe the basis of the medical judgment and include it in
5 the medical record of the mother. A physician who
6 intentionally, knowingly, or recklessly violates this
7 subsection (1.5) commits a Class 3 felony.

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

14 (3) An abortion of a viable fetus may be performed or
15 induced only when there is in attendance a physician (other
16 than the physician performing or inducing the abortion) who
17 shall take control of and provide immediate medical care for
18 any child born as a result of the abortion. The requirement of
19 a second attending physician does not apply when, in the
20 medical judgment of a physician performing or inducing the
21 abortion based on the particular facts of the case before the
22 physician, there exists a medical emergency that prevents
23 having a second physician in attendance; in that case, the
24 physician shall describe the basis of that medical judgment and
25 include it in the medical record of the mother. A physician who
26 intentionally, knowingly, or recklessly fails to arrange for
27 the attendance of a second physician in violation of this
28 subsection (3) commits a Class 3 felony.

29 (4) An abortion shall not be performed when the fetus is
30 viable except in a hospital, on an inpatient basis, with
31 measures for life support available if the child is born alive.
32 This requirement does not apply when, in the medical judgment
33 of the physician performing the abortion, based on the
34 particular facts of the case, a medical emergency exists that
35 would prevent compliance. In the case of a medical emergency,
36 the physician shall describe the basis of the medical judgment

1 and include it in the medical record of the mother. Any
2 physician who intentionally, knowingly, or recklessly violates
3 this subsection (4) is guilty of a Class 3 felony.

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

5 (720 ILCS 510/6) (from Ch. 38, par. 81-26)

6 Sec. 6. (1) (a) Any physician who intentionally performs an
7 abortion when, in his medical judgment based on the particular
8 facts of the case before him, there is a reasonable likelihood
9 of sustained survival of the fetus outside the womb, with or
10 without artificial support, shall utilize that method of
11 abortion which, of those he knows to be available, is in his
12 medical judgment most likely to preserve the life and health of
13 the fetus.

14 (b) The physician shall certify in writing, on a form
15 prescribed by the Department under Section 10 of this Act, the
16 available methods considered and the reasons for choosing the
17 method employed.

18 (c) Any physician who intentionally, knowingly, or
19 recklessly violates the provisions of Section 6(1)(a) commits a
20 Class 3 felony.

21 ~~(2) (a) No abortion shall be performed or induced when the~~
22 ~~fetus is viable unless there is in attendance a physician other~~
23 ~~than the physician performing or inducing the abortion who~~
24 ~~shall take control of and provide immediate medical care for~~
25 ~~any child born alive as a result of the abortion. This~~
26 ~~requirement shall not apply when, in the medical judgment of~~
27 ~~the physician performing or inducing the abortion based on the~~
28 ~~particular facts of the case before him, there exists a medical~~
29 ~~emergency; in such a case, the physician shall describe the~~
30 ~~basis of this judgment on the form prescribed by Section 10 of~~
31 ~~this Act. Any physician who intentionally performs or induces~~
32 ~~such an abortion and who intentionally, knowingly, or~~
33 ~~recklessly fails to arrange for the attendance of such a second~~
34 ~~physician in violation of Section 6(2)(a) commits a Class 3~~
35 ~~felony.~~

1 ~~(b)~~ Subsequent to the abortion, if a child is born alive,
2 the physician required by Section 5(3) ~~6(2)(a)~~ to be in
3 attendance shall exercise the same degree of professional
4 skill, care and diligence to preserve the life and health of
5 the child as would be required of a physician providing
6 immediate medical care to a child born alive in the course of a
7 pregnancy termination which was not an abortion. Any such
8 physician who intentionally, knowingly, or recklessly violates
9 Section 6(2) ~~(b)~~ commits a Class 3 felony.

10 (3) The law of this State shall not be construed to imply
11 that any living individual organism of the species homo sapiens
12 who has been born alive is not an individual under the
13 "Criminal Code of 1961," approved July 28, 1961, as amended.

14 (4) (a) Any physician who intentionally performs an
15 abortion when, in his medical judgment based on the particular
16 facts of the case before him, there is a reasonable possibility
17 of sustained survival of the fetus outside the womb, with or
18 without artificial support, shall utilize that method of
19 abortion which, of those he knows to be available, is in his
20 medical judgment most likely to preserve the life and health of
21 the fetus.

22 (b) The physician shall certify in writing, on a form
23 prescribed by the Department under Section 10 of this Act, the
24 available methods considered and the reasons for choosing the
25 method employed.

26 (c) Any physician who intentionally, knowingly, or
27 recklessly violates the provisions of Section 6(4) (a) commits a
28 Class 3 felony.

29 (5) Nothing in Section 6 requires a physician to employ a
30 method of abortion which, in the medical judgment of the
31 physician performing the abortion based on the particular facts
32 of the case before him, would increase medical risk to the
33 mother.

34 (6) When the fetus is viable and when there exists
35 reasonable medical certainty (a) that the particular method of
36 abortion to be employed will cause organic pain to the fetus,

1 and (b) that use of an anesthetic or analgesic would abolish or
2 alleviate organic pain to the fetus caused by the particular
3 method of abortion to be employed, then the physician who is to
4 perform the abortion or his agent or the referring physician or
5 his agent shall inform the woman upon whom the abortion is to
6 be performed that such an anesthetic or analgesic is available,
7 if he knows it to be available, for use to abolish or alleviate
8 organic pain caused to the fetus by the particular method of
9 abortion to be employed. Any person who performs an abortion
10 with knowledge that any such reasonable medical certainty
11 exists and that such an anesthetic or analgesic is available,
12 and intentionally fails to so inform the woman or to ascertain
13 that the woman has been so informed commits a Class B
14 misdemeanor. The foregoing requirements of subsection (6) of
15 Section 6 shall not apply (a) when in the medical judgment of
16 the physician who is to perform the abortion or the referring
17 physician based upon the particular facts of the case before
18 him: (i) there exists a medical emergency, or (ii) the
19 administration of such an anesthetic or analgesic would
20 decrease a possibility of sustained survival of the fetus apart
21 from the body of the mother, with or without artificial
22 support, or (b) when the physician who is to perform the
23 abortion administers an anesthetic or an analgesic to the woman
24 or the fetus and he knows there exists reasonable medical
25 certainty that such use will abolish organic pain caused to the
26 fetus during the course of the abortion.

27 (7) No person shall sell or experiment upon a fetus
28 produced by the fertilization of a human ovum by a human sperm
29 unless such experimentation is therapeutic to the fetus thereby
30 produced. Intentional violation of this section is a Class A
31 misdemeanor. Nothing in this subsection (7) is intended to
32 prohibit the performance of in vitro fertilization.

33 (8) No person shall intentionally perform an abortion with
34 knowledge that the pregnant woman is seeking the abortion
35 solely on account of the sex of the fetus. Nothing in Section
36 6(8) shall be construed to proscribe the performance of an

1 abortion on account of the sex of the fetus because of a
2 genetic disorder linked to that sex. If the application of
3 Section 6(8) to the period of pregnancy prior to viability is
4 held invalid, then such invalidity shall not affect its
5 application to the period of pregnancy subsequent to viability.
6 (Source: P.A. 84-1001.)

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 and
16 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 a
23 live birth;

24 (8) The date the abortion was performed;

25 (9) Medical indications for any abortion performed when the
26 fetus was viable;

27 (10) The information required by Sections 6(1)(b) and
28 6(4)(b) of this Act, if applicable;

29 (11) Basis for any medical judgment that a medical
30 emergency existed when required under Sections 5(1.5), 5(3),
31 5(4), ~~6(2)(a)~~ and 6(6) and when required to be reported in
32 accordance with this Section by any provision of this Law; and

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

35 Such form shall be completed by the hospital or other

1 licensed facility, signed by the physician who performed the
2 abortion or pregnancy termination, and transmitted to the
3 Department not later than 10 days following the end of the
4 month in which the abortion was performed.

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

9 The Department may prescribe rules and regulations
10 regarding the administration of this Law and shall prescribe
11 regulations to secure the confidentiality of the woman's
12 identity in the information to be provided under the "Vital
13 Records Act". All reports received by the Department shall be
14 treated as confidential and the Department shall secure the
15 woman's anonymity. Such reports shall be used only for
16 statistical purposes.

17 Upon 30 days public notice, the Department is empowered to
18 require reporting of any additional information which, in the
19 sound discretion of the Department, is necessary to develop
20 statistical data relating to the protection of maternal or
21 fetal life or health, or is necessary to enforce the provisions
22 of this Law, or is necessary to develop useful criteria for
23 medical decisions. The Department shall annually report to the
24 General Assembly all statistical data gathered under this Law
25 and its recommendations to further the purpose of this Law.

26 The requirement for reporting to the General Assembly shall
27 be satisfied by filing copies of the report with the Speaker,
28 the Minority Leader and the Clerk of the House of
29 Representatives and the President, the Minority Leader and the
30 Secretary of the Senate and the Legislative Research Unit, as
31 required by Section 3.1 of "An Act to revise the law in
32 relation to the General Assembly", approved February 25, 1874,
33 as amended, and filing such additional copies with the State
34 Government Report Distribution Center for the General Assembly
35 as is required under paragraph (t) of Section 7 of the State
36 Library Act.

1 (Source: P.A. 84-1438.)