A BILL FOR AN ACT

CONCERNING THE ENFORCEMENT OF THE RIGHTS OF A LIVING CHILD AFTER AN ABORTION.

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 establishes a physician-patient relationship between a child born alive after or during an abortion and the physician who performed or attempted to perform the abortion. The bill requires the physician to exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious physician would render to any other child born...
alive at the same gestational age and requires that the child born alive be immediately transferred to a hospital. The bill creates a civil penalty of $100,000 for a violation enforceable by the attorney general, makes a violation a class 3 felony, and makes a conviction unprofessional conduct for licensing purposes.

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

SECTION 1. In Colorado Revised Statutes, add 12-240-146 as follows:


(1) A PHYSICIAN-PATIENT RELATIONSHIP IS ESTABLISHED BETWEEN A CHILD BORN ALIVE AFTER OR DURING AN ABORTION AND THE PHYSICIAN WHO PERFORMED OR ATTEMPTED TO PERFORM THE ABORTION. THE PHYSICIAN MUST EXERCISE THE SAME DEGREE OF PROFESSIONAL SKILL, CARE, AND DILIGENCE TO PRESERVE THE LIFE AND HEALTH OF THE CHILD AS A REASONABLY DILIGENT AND CONSCIENTIOUS PHYSICIAN WOULD RENDER TO ANY OTHER CHILD BORN ALIVE AT THE SAME GESTATIONAL AGE. FOR PURPOSES OF THIS SUBSECTION (1), "PROFESSIONAL SKILL, CARE, AND DILIGENCE" REQUIRES THAT THE PHYSICIAN WHO PERFORMED OR ATTEMPTED THE ABORTION ENSURES THAT THE CHILD BORN ALIVE IS IMMEDIATELY TRANSFERRED TO A HOSPITAL.

(2) A WOMAN ON WHOM AN ABORTION IS PERFORMED OR ATTEMPTED TO BE PERFORMED MAY NOT BE HELD LIABLE PURSUANT TO THIS SECTION.

(3) (a) A PHYSICIAN WHO VIOLATES SUBSECTION (1) OF THIS SECTION BY FAILING TO PROVIDE THE APPROPRIATE MEDICAL TREATMENT TO A CHILD BORN ALIVE AFTER OR DURING AN ABORTION OR AN ATTEMPTED ABORTION IS LIABLE TO THE STATE FOR A CIVIL PENALTY OF NOT LESS THAN ONE HUNDRED THOUSAND DOLLARS. THE ATTORNEY
GENERAL MAY BRING A SUIT TO COLLECT THE PENALTY. IN ADDITION TO
THE CIVIL PENALTY, THE ATTORNEY GENERAL MAY RECOVER REASONABLE
ATTORNEY'S FEES. THE CIVIL PENALTY DESCRIBED IN THIS SUBSECTION
(3)(a) IS IN ADDITION TO ANY OTHER RECOVERY AUTHORIZED UNDER
OTHER LAW.

(b) A PHYSICIAN OR HEALTH CARE PRACTITIONER WHO VIOLATES
SUBSECTION (1) OF THIS SECTION BY FAILING TO PROVIDE THE
APPROPRIATE MEDICAL TREATMENT TO A CHILD BORN ALIVE AFTER OR
DURING AN ABORTION OR AN ATTEMPTED ABORTION COMMITS A CLASS 3
FELONY.

(4) (a) A PERSON WHO HAS KNOWLEDGE OF A FAILURE TO COMPLY
WITH THIS SECTION SHALL REPORT IT TO THE ATTORNEY GENERAL. THE
IDENTITY AND ANY PERSONALLY IDENTIFIABLE INFORMATION OF THE
PERSON REPORTING THE FAILURE TO COMPLY WITH THIS SECTION IS
CONFIDENTIAL.

(b) A PERSON WHO FAILS TO COMPLY WITH SUBSECTION (4)(a) OF
THIS SECTION COMMITS A CLASS 1 MISDEMEANOR.

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

12-240-121. Unprofessional conduct - definitions.
(1) "Unprofessional conduct" as used in this article 240 means:
(gg) A CONVICTION FOR VIOLATING SECTION 12-240-146,
REGARDING THE PHYSICIAN-PATIENT RELATIONSHIP OF A CHILD BORN
ALIVE AFTER OR DURING AN ABORTION.

SECTION 3. Potential appropriation. Pursuant to section
2-2-703, C.R.S., any bill that results in a net increase in periods of
imprisonment in state correctional facilities must include an appropriation
of money that is sufficient to cover any increased capital construction, any
operational costs, and increased parole costs that are the result of the bill
for the department of corrections in each of the first five years following
the effective date of the bill. Because this act may increase periods of
imprisonment, this act may require a five-year appropriation.

SECTION 4. Applicability. This act applies to violations or
offenses committed on or after the effective date of this act.

SECTION 5. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate
preservation of the public peace, health, or safety.