A BILL FOR AN ACT

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

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

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

PART 9

LATE ABORTIONS PROHIBITED

18-6-901. Legislative declaration. (1) The general assembly finds that:

(a) Abortion after twenty-two weeks poses substantial risk to the health and life of the pregnant woman. There is not substantive biological difference between a twenty-two week fetus in utero and an infant born at twenty-two weeks, other than location.

(b) A woman's risk for complications and death from abortion increase with the fetus's gestational age;

(c) Ten percent of second trimester abortions have complications, and one and three-tenths to one and seven-tenths percent of second trimester abortions have serious, life-threatening complications. Third trimester abortions pose an even greater risk to the health and life of the woman.

(d) Late surgical abortions may be associated with pre-term birth and low birth weight infants in subsequent pregnancies. Pre-term birth and low birth weight are primary determinants of infant mortality.

(e) Before twenty-two weeks:
A fetus can hear the mother's voice and respond to touch; and

A fetus can undergo curative fetal surgery to correct anatomical anomalies. Specialists in fetal surgery and fetal anesthesia treat the fetus as a patient independent from the mother.

By twenty-two weeks:

A mother will typically feel her fetus kick;

A fetus may experience pain, and since neuroinhibitory pain pathways develop later in fetal development, the pain may be perceived more intensely by the fetus; and

A fetus has developed sufficiently to live outside the uterus with active medical treatment. In some medical centers, seventy percent of fetuses born at twenty-two weeks survive.

Fetuses as young as twenty-one weeks have survived with good neurodevelopmental outcomes.

In the rare instances of fatal fetal anomalies, perinatal hospice offers a compassionate, life-affirming alternative to late abortion for the mother and family. Perinatal hospice may reduce the negative mental health effects of late abortion when it is a wanted pregnancy.

Late abortion techniques include dilation and evacuation, in which a fetus is removed by disarticulation and dismemberment from the uterus in the second trimester, and induction abortion. In dilation and extraction, or intact dilation and evacuation, the fetal brains are removed to decompress the fetal head, which facilitates extraction of the
OTHERWISE INTACT FETUS. DURING AN INDUCTION ABORTION, A FETUS IS KILLED BY TRANSECTION OF THE UMBILICAL CORD OR BY INJECTION OF DIGOXIN OR POTASSIUM CHLORIDE PRIOR TO THE INDUCTION OF LABOR AND DELIVERY OF THE DEAD FETUS. EVERY LATE ABORTION TECHNIQUE AFTER TWENTY-TWO WEEKS CAN BE ANTICIPATED TO INFLECT FETAL PAIN. DEPENDING ON WHICH TECHNIQUE IS UTILIZED, THE DEATH CAN OCCUR OVER A PERIOD OF MINUTES TO HOURS.

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

18-6-902. Definitions. As used in this Part 9, unless the context otherwise requires:

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

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

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

or

(c) REMOVE AN ECTOPIC PREGNANCY.

(2) "GESTATIONAL AGE" MEANS THE TIME THAT HAS ELAPSED
FROM THE FIRST DAY OF THE WOMAN'S LAST MENSTRUAL PERIOD.

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

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

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

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

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

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

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

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

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

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 VIOLATION OF PART 9 OF ARTICLE 6 OF TITLE 18.

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

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

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