

**NOTE: In addition to the highlighted changes below, in response to the Legislative Council Services comments, formatting was also modified to comply with standard drafting practice – such as the use of small caps.**

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**END LATE TERM ABORTIONS IN COLORADO**

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**BE IT ENACTED BY THE PEOPLE 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-TERM ABORTIONS PROHIBITED**

**18-6-901. Declaration of the People.**

- (1) **THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT:**
  - (a) THERE IS SUBSTANTIAL MEDICAL EVIDENCE THAT AN UNBORN CHILD IS CAPABLE OF EXPERIENCING PAIN BY 22 WEEKS GESTATION. AT THIS TIME, THE UNBORN CHILD REACTS TO STIMULI THAT WOULD BE RECOGNIZED AS PAINFUL IF APPLIED TO AN ADULT HUMAN, FOR EXAMPLE, BY RECOILING AND SWIMMING AWAY.
  - (b) MODERN MEDICAL SCIENCE HAS THE ABILITY TO TREAT A CHILD WHO IS BORN ALIVE AT 22 WEEKS GESTATION, AND THESE CHILDREN SURVIVE IN HOSPITALS ACROSS THE NATION.
  - (c) THE STATE OF COLORADO AND THE PEOPLE OF COLORADO HAVE A COMPELLING STATE INTEREST IN PROTECTING THE LIVES OF CHILDREN WHO FEEL PAIN AND WHO CAN SURVIVE OUTSIDE THE WOMB.

**18-6-902. Definitions. AS USED IN THIS PART 9:**

- (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. SUCH 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.

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

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

(4) "22 WEEKS" MEANS 22 WEEKS, 0 DAYS GESTATIONAL AGE.

### **18-6-903. Abortion after 22 weeks gestational age prohibited.**

(1) **UNLAWFUL CONDUCT.** NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EXCEPT AS PROVIDED IN 18-6-903 (3), IT IS UNLAWFUL FOR ANY PERSON TO INTENTIONALLY OR RECKLESSLY PERFORM OR ATTEMPT TO PERFORM AN ABORTION IF THE PROBABLE GESTATIONAL AGE OF THE FETUS IS AT LEAST 22 WEEKS.

(2) **ASSESSMENT OF GESTATIONAL AGE.** A PHYSICIAN PERFORMING OR ATTEMPTING AN ABORTION SHALL FIRST MAKE A DETERMINATION OF THE PROBABLE GESTATIONAL AGE. IN MAKING SUCH A DETERMINATION, THE PHYSICIAN SHALL MAKE SUCH INQUIRIES OF THE PREGNANT WOMAN AND PERFORM OR CAUSE TO BE PERFORMED SUCH MEDICAL EXAMINATIONS AND TESTS AS 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) **AFFIRMATIVE DEFENSE.** IF, IN THE REASONABLE MEDICAL JUDGEMENT OF THE PHYSICIAN, AN ABORTION IS IMMEDIATELY REQUIRED, RATHER THAN AN EXPEDITED DELIVERY OF THE FETUS, TO SAVE THE LIFE OF A PREGNANT WOMAN THAT IS THREATENED BY A PHYSICAL DISORDER, PHYSICAL ILLNESS, OR PHYSICAL INJURY, NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS, SUCH AN ABORTION IS NOT UNLAWFUL. IN SUCH A SITUATION, A PHYSICIAN MAY REASONABLY RELY UPON AN ASSESSMENT OF GESTATIONAL AGE MADE BY ANOTHER PHYSICIAN INSTEAD OF ABIDING BY THE PROVISIONS OF 18-6-903 (2).

(4) **PROVISION FOR SURVIVAL.** IF AN ABORTION AT 22 WEEKS OR AFTER IS NECESSARY TO SAVE THE LIFE OF THE MOTHER THAT IS THREATENED IN THE MANNER DESCRIBED IN 18-6-903 (3), AND IF THE PHYSICIAN PROCEEDS TO A TERMINATION OF THE PREGNANCY, THE PHYSICIAN SHALL TERMINATE THE PREGNANCY IN THE MANNER WHICH, IN REASONABLE MEDICAL JUDGMENT, PROVIDES THE BEST OPPORTUNITY FOR THE FETUS TO SURVIVE, UNLESS, IN REASONABLE MEDICAL JUDGMENT, TERMINATION OF THE PREGNANCY IN THAT MANNER WOULD POSE A GREATER RISK OF DEATH TO THE PREGNANT WOMAN.

(5) **CRIMINAL PENALTIES.** ANY PERSON WHO INTENTIONALLY OR RECKLESSLY PERFORMS OR INDUCES OR ATTEMPTS TO PERFORM OR INDUCE AN ABORTION IN VIOLATION OF THIS PART 9 IS GUILTY OF A CLASS 3 FELONY. 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.

**(6) EFFECTIVE DATE.** IF APPROVED BY THE VOTERS, THIS PART 9, ALONG WITH C.R.S. 12-36-117(1)(NN), AND C.R.S. 12-36-118(9.5), SHALL BECOME EFFECTIVE UPON CERTIFICATION OF THE VOTE FOR THE NOVEMBER 2020 ELECTION AND SHALL BE SELF-EXECUTING.

**SECTION 2.** IN COLORADO REVISED STATUTES, 12-240-121, ADD (1)(nn) AS FOLLOWS:

**12-240-121. Unprofessional conduct.** (1) “Unprofessional conduct” as used in this Article 240 means:

(nn) A VIOLATION OF SECTION 18-6-903.

**SECTION 3.** IN COLORADO REVISED STATUTES, 12-240-125, ADD (9.5) AS FOLLOWS:

**12-240-125. Disciplinary action by board – immunity – rules.**

(9.5) IF THE BOARD FINDS A LICENSEE COMMITTED UNPROFESSIONAL CONDUCT IN VIOLATION OF SECTION 12-240-121 (1)(nn), THE BOARD SHALL SUSPEND THE LICENSEE’S LICENSE FOR AT LEAST ONE YEAR.