



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4210

by Rep. Allen Skillicorn

SYNOPSIS AS INTRODUCED:

720 ILCS 510/2	from Ch. 38, par. 81-22
720 ILCS 510/6	from Ch. 38, par. 81-26
720 ILCS 510/10	from Ch. 38, par. 81-30
720 ILCS 510/14	from Ch. 38, par. 81-34

Amends the Illinois Abortion Law of 1975. Defines "Down syndrome". Prohibits a physician from intentionally performing an abortion with knowledge that the pregnant woman is seeking the abortion solely on account of the fetus having a test result indicating Down syndrome, a prenatal diagnosis of Down syndrome, or any other reason to believe that the fetus has Down syndrome. Effective immediately.

LRB100 16442 RLC 31571 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

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 2, 6, 10, and 14 as follows:

6 (720 ILCS 510/2) (from Ch. 38, par. 81-22)

7 Sec. 2. Unless the language or context clearly indicates a
8 different meaning is intended, the following words or phrases
9 for the purpose of this Law shall be given the meaning ascribed
10 to them:

11 (1) "Viability" means that stage of fetal development when,
12 in the medical judgment of the attending physician based on the
13 particular facts of the case before him, there is a reasonable
14 likelihood of sustained survival of the fetus outside the womb,
15 with or without artificial support.

16 (2) "Physician" means any person licensed to practice
17 medicine in all its branches under the Illinois Medical
18 Practice Act of 1987, as amended.

19 (3) "Department" means the Department of Public Health,
20 State of Illinois.

21 (4) "Abortion" means the use of any instrument, medicine,
22 drug or any other substance or device to terminate the
23 pregnancy of a woman known to be pregnant with an intention

1 other than to increase the probability of a live birth, to
2 preserve the life or health of the child after live birth, or
3 to remove a dead fetus.

4 (5) "Fertilization" and "conception" each mean the
5 fertilization of a human ovum by a human sperm, which shall be
6 deemed to have occurred at the time when it is known a
7 spermatozoon has penetrated the cell membrane of the ovum.

8 (6) "Fetus" and "unborn child" each mean an individual
9 organism of the species homo sapiens from fertilization until
10 live birth.

11 (7) "Abortifacient" means any instrument, medicine, drug,
12 or any other substance or device which is known to cause fetal
13 death when employed in the usual and customary use for which it
14 is manufactured, whether or not the fetus is known to exist
15 when such substance or device is employed.

16 (8) "Born alive", "live born", and "live birth", when
17 applied to an individual organism of the species homo sapiens,
18 each mean he or she was completely expelled or extracted from
19 his or her mother and after such separation breathed or showed
20 evidence of any of the following: beating of the heart,
21 pulsation of the umbilical cord, or definite movement of
22 voluntary muscles, irrespective of the duration of pregnancy
23 and whether or not the umbilical cord has been cut or the
24 placenta is attached.

25 (9) "Down syndrome" means a chromosome disorder associated
26 either with an extra chromosome 21, in whole or in part, or an

1 effective trisomy for chromosome 21.

2 (Source: P.A. 85-1209.)

3 (720 ILCS 510/6) (from Ch. 38, par. 81-26)

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

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

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

19 (2) (a) No abortion shall be performed or induced when the
20 fetus is viable unless there is in attendance a physician other
21 than the physician performing or inducing the abortion who
22 shall take control of and provide immediate medical care for
23 any child born alive as a result of the abortion. This
24 requirement shall not apply when, in the medical judgment of
25 the physician performing or inducing the abortion based on the

1 particular facts of the case before him, there exists a medical
2 emergency; in such a case, the physician shall describe the
3 basis of this judgment on the form prescribed by Section 10 of
4 this Act. Any physician who intentionally performs or induces
5 such an abortion and who intentionally, knowingly, or
6 recklessly fails to arrange for the attendance of such a second
7 physician in violation of Section 6(2)(a) commits a Class 3
8 felony.

9 (b) Subsequent to the abortion, if a child is born alive,
10 the physician required by Section 6(2)(a) to be in attendance
11 shall exercise the same degree of professional skill, care and
12 diligence to preserve the life and health of the child as would
13 be required of a physician providing immediate medical care to
14 a child born alive in the course of a pregnancy termination
15 which was not an abortion. Any such physician who
16 intentionally, knowingly, or recklessly violates Section
17 6(2)(b) commits a Class 3 felony.

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

22 (4) (a) Any physician who intentionally performs an
23 abortion when, in his medical judgment based on the particular
24 facts of the case before him, there is a reasonable possibility
25 of sustained survival of the fetus outside the womb, with or
26 without artificial support, shall utilize that method of

1 abortion which, of those he knows to be available, is in his
2 medical judgment most likely to preserve the life and health of
3 the fetus.

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

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

11 (5) Nothing in Section 6 requires a physician to employ a
12 method of abortion which, in the medical judgment of the
13 physician performing the abortion based on the particular facts
14 of the case before him, would increase medical risk to the
15 mother.

16 (6) When the fetus is viable and when there exists
17 reasonable medical certainty (a) that the particular method of
18 abortion to be employed will cause organic pain to the fetus,
19 and (b) that use of an anesthetic or analgesic would abolish or
20 alleviate organic pain to the fetus caused by the particular
21 method of abortion to be employed, then the physician who is to
22 perform the abortion or his agent or the referring physician or
23 his agent shall inform the woman upon whom the abortion is to
24 be performed that such an anesthetic or analgesic is available,
25 if he knows it to be available, for use to abolish or alleviate
26 organic pain caused to the fetus by the particular method of

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

19 (7) No person shall sell or experiment upon a fetus
20 produced by the fertilization of a human ovum by a human sperm
21 unless such experimentation is therapeutic to the fetus thereby
22 produced. Intentional violation of this section is a Class A
23 misdemeanor. Nothing in this subsection (7) is intended to
24 prohibit the performance of in vitro fertilization.

25 (8) No person shall intentionally perform an abortion with
26 knowledge that the pregnant woman is seeking the abortion

1 solely on account of the sex of the fetus. Nothing in Section
2 6(8) shall be construed to proscribe the performance of an
3 abortion on account of the sex of the fetus because of a
4 genetic disorder linked to that sex. If the application of
5 Section 6(8) to the period of pregnancy prior to viability is
6 held invalid, then such invalidity shall not affect its
7 application to the period of pregnancy subsequent to viability.

8 (9) (a) No person shall intentionally perform an abortion
9 with knowledge that the pregnant woman is seeking the abortion
10 solely on account of the fetus having a test result indicating
11 Down syndrome, a prenatal diagnosis of Down syndrome, or any
12 other reason to believe that the fetus has Down syndrome.

13 (b) Any physician who intentionally, knowingly, or
14 recklessly violates the provisions of paragraph (a) of this
15 subsection (9) commits a Class 4 felony.

16 (c) Any physician who intentionally, knowingly, or
17 recklessly violates the provisions of paragraph (a) of this
18 subsection (9) shall be subject to revocation of his or her
19 license pursuant to paragraph (22) of subsection (A) of Section
20 22 of the Medical Practice Act of 1987.

21 (d) Any physician who violates the provisions of paragraph
22 (a) of this subsection (9) is liable in a civil action for
23 compensatory and punitive damages and reasonable attorney's
24 fees to any person, or the representative of the estate of any
25 person, who sustains injury, death, or loss to person or
26 property as the result of the violation. In any action under

1 this paragraph (d), the court also may award any injunctive or
2 other equitable relief that the court considers appropriate.

3 (e) A pregnant woman on whom an abortion is performed in
4 violation of the provisions of paragraph (a) of this subsection
5 (9) is not guilty of violating the provisions of paragraph (a)
6 of this subsection (9) or of attempting to commit, conspiring
7 to commit, or complicity in committing a violation of the
8 provisions of paragraph (a) of this subsection (9).

9 (Source: P.A. 84-1001.)

10 (720 ILCS 510/10) (from Ch. 38, par. 81-30)

11 Sec. 10. A report of each abortion performed shall be made
12 to the Department on forms prescribed by it. Such report forms
13 shall not identify the patient by name, but by an individual
14 number to be noted in the patient's permanent record in the
15 possession of the physician, and shall include information
16 concerning:

17 (1) Identification of the physician who performed the
18 abortion and the facility where the abortion was performed and
19 a patient identification number;

20 (2) State in which the patient resides;

21 (3) Patient's date of birth, race and marital status;

22 (4) Number of prior pregnancies;

23 (5) Date of last menstrual period;

24 (6) Type of abortion procedure performed;

25 (7) Complications and whether the abortion resulted in a

1 live birth;

2 (8) The date the abortion was performed;

3 (9) Medical indications for any abortion performed when the
4 fetus was viable;

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

7 (11) Basis for any medical judgment that a medical
8 emergency existed when required under Sections 6(2)(a) and 6(6)
9 and when required to be reported in accordance with this
10 Section by any provision of this Law; ~~and~~

11 (12) The pathologist's test results pursuant to Section 12
12 of this Act; and ~~and~~

13 (13) The attending physician's knowledge as to whether the
14 pregnant woman was seeking the abortion solely on account of
15 the fetus having a test result indicating Down syndrome, a
16 prenatal diagnosis of Down syndrome, or any other reason to
17 believe that the fetus has Down syndrome.

18 Such form shall be completed by the hospital or other
19 licensed facility, signed by the physician who performed the
20 abortion or pregnancy termination, and transmitted to the
21 Department not later than 10 days following the end of the
22 month in which the abortion was performed.

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

1 The Department may prescribe rules and regulations
2 regarding the administration of this Law and shall prescribe
3 regulations to secure the confidentiality of the woman's
4 identity in the information to be provided under the "Vital
5 Records Act". All reports received by the Department shall be
6 treated as confidential and the Department shall secure the
7 woman's anonymity. Such reports shall be used only for
8 statistical purposes.

9 Upon 30 days public notice, the Department is empowered to
10 require reporting of any additional information which, in the
11 sound discretion of the Department, is necessary to develop
12 statistical data relating to the protection of maternal or
13 fetal life or health, or is necessary to enforce the provisions
14 of this Law, or is necessary to develop useful criteria for
15 medical decisions. The Department shall annually report to the
16 General Assembly all statistical data gathered under this Law
17 and its recommendations to further the purpose of this Law.

18 The requirement for reporting to the General Assembly shall
19 be satisfied by filing copies of the report with the Speaker,
20 the Minority Leader and the Clerk of the House of
21 Representatives and the President, the Minority Leader and the
22 Secretary of the Senate and the Legislative Research Unit, as
23 required by Section 3.1 of "An Act to revise the law in
24 relation to the General Assembly", approved February 25, 1874,
25 as amended, and filing such additional copies with the State
26 Government Report Distribution Center for the General Assembly

1 as is required under paragraph (t) of Section 7 of the State
2 Library Act.

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

4 (720 ILCS 510/14) (from Ch. 38, par. 81-34)

5 Sec. 14. (1) If any provision, word, phrase or clause of
6 this Act or the application thereof to any person or
7 circumstance shall be held invalid, such invalidity shall not
8 affect the provisions, words, phrases, clauses or application
9 of this Act which can be given effect without the invalid
10 provision, word, phrase, clause, or application, and to this
11 end the provisions, words, phrases, and clauses of this Act are
12 declared to be severable.

13 (2) Within 60 days from the time this Section becomes law,
14 the Department shall issue regulations pursuant to Section 10.
15 Insofar as Section 10 requires registration under the "Vital
16 Records Act", it shall not take effect until such regulations
17 are issued. The Department shall make available the forms
18 required under Section 10 within 30 days of the time this
19 Section becomes law. No requirement that any person report
20 information to the Department shall become effective until the
21 Department has made available the forms required under Section
22 10. All other provisions of this amended Law shall take effect
23 immediately upon enactment.

24 (3) The General Assembly may, by joint resolution, appoint
25 one or more of its members who sponsored or cosponsored this

1 amendatory Act of the 100th General Assembly to intervene as a
2 matter of right in any case in which the constitutionality of
3 this amendatory Act of the 100th General Assembly is
4 challenged.

5 (4) Within 60 days after the effective date of this
6 amendatory Act of the 100th General Assembly, the Department
7 shall issue rules to implement this amendatory Act of the 100th
8 General Assembly. The Department shall make available the forms
9 required under Section 10 within 30 days after the effective
10 date of this amendatory Act of the 100th General Assembly.

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

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.