



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3050

Introduced 2/19/2021, by Rep. Adam Niemerg

SYNOPSIS AS INTRODUCED:

New Act

Creates the Infant Born Alive Protection Act. Provides that any physician who intentionally performs an abortion when there is a reasonable likelihood or possibility of sustained survival of the fetus outside the womb shall utilize the method most likely to preserve the life and health of the fetus, and that failure to do so is a Class 3 felony. Prohibits the performance or inducement of an abortion when the fetus is viable unless 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 alive as a result of the abortion. Provides that any living individual organism of the species homo sapiens who has been born alive is legally an individual under the Criminal Code of 2012. Provides that a Class 3 felony is committed when a physician under specified circumstances intentionally, knowingly, or recklessly fails to exercise the same conduct to preserve the life and health of a child as would be required for a child born alive at the same gestational age. Provides that nothing in the Act requires a physician to employ a method of abortion which, in the medical judgment of the physician, would increase medical risk to the mother. Except in specified circumstances, requires specified persons to inform a woman upon whom an abortion is to be performed when an anesthetic or analgesic is available for use to abolish or alleviate organic pain caused to the fetus by the particular method of abortion to be employed and provides that failure to do so is a Class B misdemeanor. Contains other provisions.

LRB102 11386 CPF 16719 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Infant
5 Born Alive Protection Act.

6 Section 5. Method of abortion.

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

15 (b) The physician shall certify in writing, on a form
16 prescribed by the Department of Public Health, the available
17 methods considered and the reasons for choosing the method
18 employed.

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

22 Section 10. Additional physician.

1 (a) No abortion shall be performed or induced when the
2 fetus is viable unless there is in attendance a physician
3 other than the physician performing or inducing the abortion
4 who shall take control of and provide immediate medical care
5 for any child born alive as a result of the abortion. This
6 requirement shall not apply when, in the medical judgment of
7 the physician performing or inducing the abortion based on the
8 particular facts of the case before him or her, there exists a
9 medical emergency; in such a case, the physician shall
10 describe the basis of this judgment on the form prescribed by
11 the Department of Public Health. Any physician who
12 intentionally performs or induces such an abortion and who
13 intentionally, knowingly, or recklessly fails to arrange for
14 the attendance of such a second physician in violation of this
15 subsection commits a Class 3 felony.

16 (b) Subsequent to the abortion, if a child is born alive,
17 the physician required by subsection (a) of this Section to be
18 in attendance shall exercise the same degree of professional
19 skill, care, and diligence to preserve the life and health of
20 the child as would be required of a physician providing
21 immediate medical care to a child born alive at the same
22 gestational age. Any such physician who intentionally,
23 knowingly, or recklessly violates this subsection commits a
24 Class 3 felony.

25 Section 15. Living individuals. The law of this State

1 shall not be construed to imply that any living individual
2 organism of the species homo sapiens who has been born alive is
3 not an individual under the Criminal Code of 2012.

4 Section 20. Reasonable possibility of sustained survival.

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

13 (b) The physician shall certify in writing, on a form
14 prescribed by the Department of Public Health, the available
15 methods considered and the reasons for choosing the method
16 employed.

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

20 Section 25. Increased medical risk to the mother. Nothing
21 in this Act requires a physician to employ a method of abortion
22 which, in the medical judgment of the physician performing the
23 abortion based on the particular facts of the case before him
24 or her, would increase medical risk to the mother.

1 Section 30. Alleviating organic pain to a fetus.

2 (a) When the fetus is viable and when there exists
3 reasonable medical certainty that (1) the particular method of
4 abortion to be employed will cause organic pain to the fetus,
5 and (2) use of an anesthetic or analgesic would abolish or
6 alleviate organic pain to the fetus caused by the particular
7 method of abortion to be employed, then the physician who is to
8 perform the abortion or his or her agent or the referring
9 physician or his or her agent shall inform the woman upon whom
10 the abortion is to be performed that such an anesthetic or
11 analgesic is available, if he or she knows it to be available,
12 for use to abolish or alleviate organic pain caused to the
13 fetus by the particular method of abortion to be employed. Any
14 person who performs an abortion with knowledge that any such
15 reasonable medical certainty exists and that such an
16 anesthetic or analgesic is available, and intentionally fails
17 to so inform the woman or to ascertain that the woman has been
18 so informed commits a Class B misdemeanor.

19 (b) The requirements of this Section shall not apply in
20 the following circumstances:

21 (1) when, in the medical judgment of the physician who
22 is to perform the abortion or the referring physician,
23 based upon the particular facts of the case before him or
24 her:

25 (A) there exists a medical emergency; or

1 (B) the administration of such an anesthetic or
2 analgesic would decrease a possibility of sustained
3 survival of the fetus apart from the body of the
4 mother, with or without artificial support; or

5 (2) when the physician who is to perform the abortion
6 administers an anesthetic or an analgesic to the woman or
7 the fetus and he or she knows there exists reasonable
8 medical certainty that such use will abolish organic pain
9 caused to the fetus during the course of the abortion.

10 Section 35. Rules. The Department of Public Health shall
11 adopt any rules necessary for the administration and
12 enforcement of this Act.