



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB5328

by Rep. Jerry Costello, II

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Abortion Law of 1975. Provides that except in the case of a medical emergency, no physician or person shall knowingly perform, induce, or attempt to perform an abortion upon a pregnant woman when the probable gestational age of her unborn child has been determined to be at least 20 weeks. Provides that a woman upon whom an abortion in violation of the Act is performed or induced may not be prosecuted under the Act for a conspiracy to violate the 20 week requirement. Provides that the woman, the father of the unborn child if married to the mother at the time she receives an abortion in violation of the Act, or, if the mother has not attained the age of 18 years at the time of the abortion, or both, the maternal grandparents of the unborn child, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or, if brought by the maternal grandparents, the maternal grandparents consented to the abortion. Provides that a medical facility licensed under the Ambulatory Surgical Treatment Center Act or the Hospital Licensing Act in which an abortion is performed or induced in violation of the Act shall be subject to immediate revocation of its license by the Department of Public Health. Provides that a medical facility licensed under the Ambulatory Surgical Treatment Center Act or the Hospital Licensing Act in which an abortion is performed or induced in violation of the Act shall lose all State funding for 2 years and shall reimburse the State for moneys or grants received from the State by the medical facility for the fiscal year in which the abortion in violation of the Act was performed.

LRB100 17107 RLC 32259 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL 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, 5, 10, and 14 and by adding Sections 1.1,  
6 1.2, 11.2, 11.3, 11.4, and 11.5 as follows:

7 (720 ILCS 510/1.1 new)

8 Sec. 1.1. Legislative findings and purposes.

9 (1) The General Assembly of the State of Illinois does  
10 solemnly declare and find that:

11 (a) Abortion can cause serious physical and  
12 psychological (both short-term and long-term)  
13 complications for women, including but not limited to:  
14 uterine perforation, uterine scarring, cervical  
15 perforation or other injury, infection, bleeding,  
16 hemorrhage, blood clots, failure to actually terminate the  
17 pregnancy, incomplete abortion (retained tissue), pelvic  
18 inflammatory disease, endometritis, missed ectopic  
19 pregnancy, cardiac arrest, respiratory arrest, renal  
20 failure, metabolic disorder, shock, embolism, coma,  
21 placenta previa in subsequent pregnancies, preterm birth  
22 in subsequent pregnancies, free fluid in the abdomen, organ  
23 damage, adverse reactions to anesthesia and other drugs,

1 psychological or emotional complications including  
2 depression, anxiety, sleeping disorders, an increased risk  
3 of breast cancer, and death.

4 (b) Abortion has a higher medical risk when the  
5 procedure is performed later in pregnancy. Compared to an  
6 abortion at 8 weeks gestation or earlier, the relative risk  
7 increases exponentially at higher gestations (L. Bartlett  
8 et al., Risk factors for legal induced abortion-related  
9 mortality in the United States, OBSTETRICS & GYNECOLOGY  
10 103(4):729 (2004)).

11 (c) In fact, the incidence of major complications is  
12 highest after 20 weeks of gestation (J. Pregler & A.  
13 DeCherney, WOMEN'S HEALTH: PRINCIPLES AND CLINICAL  
14 PRACTICE 232 (2002)).

15 (d) According to the Alan Guttmacher Institute, the  
16 risk of death associated with abortion increases with the  
17 length of pregnancy, from one death for every one million  
18 abortions at or before eight weeks gestation to one per  
19 29,000 abortions at 16 to 20 weeks gestation and one per  
20 11,000 abortions at 21 or more weeks gestation (citing L.  
21 Bartlett et al., Risk factors for legal induced  
22 abortion-related mortality in the United States,  
23 OBSTETRICS & GYNECOLOGY 103(4):729-737 (2004)).

24 (e) After the first trimester, the risk of hemorrhage  
25 from an abortion, in particular, is greater, and the  
26 resultant complications may require a hysterectomy, other

1 reparative surgery, or a blood transfusion.

2 (f) The State of Illinois has a legitimate concern for  
3 the public's health and safety (Williamson v. Lee Optical,  
4 348 U.S. 483, 486 (1955)).

5 (g) The State of Illinois "has legitimate interests  
6 from the outset of pregnancy in protecting the health of  
7 women" (Planned Parenthood of Southeastern Pennsylvania v.  
8 Casey, 505 U.S. 833, 847 (1992)). More specifically, the  
9 State of Illinois "has a legitimate concern with the health  
10 of women who undergo abortions" (Akron v. Akron Ctr. for  
11 Reproductive Health, Inc., 462 U.S. 416, 428-29 (1983)).

12 (h) In addition, there is substantial and  
13 well-documented medical evidence that an unborn child by at  
14 least 20 weeks gestation has the capacity to feel pain  
15 during an abortion (K. Anand, Pain and its effects in the  
16 human neonate and fetus, N.E.J.M. 317:1321 (1987)).

17 (i) Pain receptors (nociceptors) are present  
18 throughout the unborn child's entire body no later than 18  
19 weeks gestation.

20 (j) By 10 weeks gestation, the unborn child reacts to  
21 touch.

22 (k) In the unborn child, application of such painful  
23 stimuli is associated with significant increases in stress  
24 hormones known as the stress response.

25 (l) Subjection to such painful stimuli is associated  
26 with long-term harmful neurodevelopmental effects, such as

1 altered pain sensitivity and, possibly, emotional,  
2 behavioral, and learning disabilities later in life.

3 (m) For the purposes of surgery on unborn children,  
4 fetal anesthesia is routinely administered and is  
5 associated with a decrease in stress hormones compared to  
6 their level when painful stimuli are applied without the  
7 anesthesia.

8 (n) The position, asserted by some medical experts,  
9 that the unborn child is incapable of experiencing pain  
10 until a point later in pregnancy than 20 weeks gestation  
11 predominantly rests on the assumption that the ability to  
12 experience pain depends on the cerebral cortex and requires  
13 nerve connections between the thalamus and the cortex.  
14 However, recent medical research and analysis, especially  
15 since 2007, provides strong evidence for the conclusion  
16 that a functioning cortex is not necessary to experience  
17 pain.

18 (o) Substantial evidence indicates that children born  
19 missing the bulk of the cerebral cortex, those with  
20 hydranencephaly, nevertheless experience pain.

21 (p) In adults, stimulation or ablation of the cerebral  
22 cortex does not alter pain perception, while stimulation or  
23 ablation of the thalamus does.

24 (g) Substantial evidence indicates that structures  
25 used for pain processing in early development differ from  
26 those of adults, using different neural elements available

1 at specific times during development, such as the  
2 subcortical plate, to fulfill the role of pain processing.

3 (r) The position, asserted by some medical experts,  
4 that the unborn child remains in a coma-like sleep state  
5 that precludes the unborn child experiencing pain is  
6 inconsistent with the documented reaction of unborn  
7 children to painful stimuli and with the experience of  
8 fetal surgeons who have found it necessary to sedate the  
9 unborn child with anesthesia to prevent the unborn child  
10 from thrashing about in reaction to invasive surgery.

11 (2) Based on the findings in subsection (1) of this  
12 Section, the General Assembly's purposes in enacting this  
13 amendatory Act of the 100th General Assembly are to:

14 (a) Based on the documented risks to women's health,  
15 prohibit abortions at or after 20 weeks gestation, except  
16 in cases of a medical emergency.

17 (b) Prohibit abortions at or after 20 weeks gestation,  
18 in part, because of the pain felt by an unborn child.

19 (c) Define "medical emergency" to encompass  
20 "significant health risks", namely only those  
21 circumstances in which a pregnant woman's life or a major  
22 bodily function is threatened (Gonzales v. Carhart, 550  
23 U.S. 124, 161 (2007)).

24 (720 ILCS 510/1.2 new)

25 Sec. 1.2. Construction.

1       (a) Nothing in this Act shall be construed as creating or  
2       recognizing a right to an abortion.

3       (b) It is not the intention of this Act to make lawful an  
4       abortion that is currently unlawful.

5               (720 ILCS 510/2) (from Ch. 38, par. 81-22)

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

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

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

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  
24       other than to increase the probability of a live birth, to  
25       preserve the life or health of the child after live birth, or

1 to remove a dead fetus.

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

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

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

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

23 (9) "Attempt to perform" means an act or omission of a  
24 statutorily required act that, under the circumstances as the  
25 actor believes them to be, constitutes a substantial step in a  
26 course of conduct planned to culminate in the performance or



1 induction of an abortion.

2 (10) "Conception" means the fusion of a human spermatozoon  
3 with a human ovum.

4 (11) "Gestational age" means the time that has elapsed  
5 since the first day of the woman's last menstrual period.

6 (12) "Major bodily function" includes, but is not limited  
7 to, functions of the immune system, normal cell growth, and  
8 digestive, bowel, bladder, neurological, brain, respiratory,  
9 circulatory, endocrine, and reproductive functions.

10 (13) "Medical facility" means any public or private  
11 hospital, clinic, center, medical school, medical training  
12 institution, healthcare facility, physician's office,  
13 infirmary, or dispensary.

14 (14) "Pregnant" or "pregnancy" means that female  
15 reproductive condition of having an unborn child in the woman's  
16 uterus.

17 (15) "Probable gestational age" means what, in reasonable  
18 medical judgment, will with reasonable probability be the  
19 gestational age of the unborn child at the time the abortion is  
20 considered, performed, or attempted.

21 (16) "Reasonable medical judgment" means that medical  
22 judgment that would be made by a reasonably prudent physician,  
23 knowledgeable about the case and the treatment possibilities  
24 with respect to the medical condition or conditions involved.

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

1 (720 ILCS 510/5) (from Ch. 38, par. 81-25)

2 Sec. 5. (1) When the fetus is viable no abortion shall be  
3 performed unless in the medical judgment of the attending or  
4 referring physician, based on the particular facts of the case  
5 before him, it is necessary to preserve the life or health of  
6 the mother. Intentional, knowing, or reckless failure to  
7 conform to the requirements of subsection (1) of Section 5 is a  
8 Class 2 felony.

9 (2) When the fetus is viable the physician shall certify in  
10 writing, on a form prescribed by the Department under Section  
11 10 of this Law, the medical indications which, in his medical  
12 judgment based on the particular facts of the case before him,  
13 warrant performance of the abortion to preserve the life or  
14 health of the mother.

15 (3) Except in the case of a medical emergency as  
16 specifically defined in subsection (5) of this Section, no  
17 abortion shall be performed, induced, or attempted unless the  
18 attending or referring physician has first made a determination  
19 of the probable gestational age of the unborn child. In making  
20 the determination, the attending or referring physician shall  
21 make the inquiries of the pregnant woman and perform or cause  
22 to be performed all the medical examinations, imaging studies,  
23 and tests as a reasonably prudent physician, knowledgeable  
24 about the medical facts and conditions of both the woman and  
25 the unborn child involved, would consider necessary to perform  
26 and consider in making an accurate diagnosis with respect to

1 gestational age.

2 (4) Except in the case of a medical emergency as  
3 specifically defined in subsection (5) of this Section, no  
4 physician or person shall knowingly perform, induce, or attempt  
5 to perform an abortion upon a pregnant woman when the probable  
6 gestational age of her unborn child has been determined to be  
7 at least 20 weeks. Intentional, knowing, or reckless failure to  
8 conform to the requirements of this subsection (4) is a Class 2  
9 felony.

10 (5) For the purposes of this Act only, "medical emergency"  
11 means a condition in which an abortion is necessary to preserve  
12 the life of the pregnant woman whose life is endangered by a  
13 physical disorder, physical illness, or physical injury,  
14 including a life-endangering physical condition caused by or  
15 arising from the pregnancy itself, or when continuation of the  
16 pregnancy will create a serious risk of substantial and  
17 irreversible impairment of a major bodily function (as  
18 specifically defined in subsection (12) of Section 2 of this  
19 Act) of the pregnant woman.

20 (6) Any physician who performs an abortion under subsection  
21 (5) of this Section shall certify in writing, on a form  
22 prescribed by the Department under Section 10 of this Law, the  
23 reason or reasons for the determination that a medical  
24 emergency existed. The physician and the medical facility shall  
25 retain a copy of the written reports required under this  
26 Section for not less than 5 years.

1       Failure to report under this Section does not subject the  
2       physician to criminal or civil penalties under Sections 11 and  
3       11.3 of this Act. Subsection (5) of this Section does not  
4       preclude sanctions, disciplinary action, or any other  
5       appropriate action by the Illinois State Medical Disciplinary  
6       Board.

7       (Source: P.A. 83-1128.)

8               (720 ILCS 510/10) (from Ch. 38, par. 81-30)

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

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

18           (2) State in which the patient resides;

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

20           (4) Number of prior pregnancies;

21           (5) Date of last menstrual period;

22           (6) Type of abortion procedure performed;

23           (7) Complications and whether the abortion resulted in a  
24      live birth;

25           (8) The date the abortion was performed;

1           (9) Medical indications for any abortion performed when the  
2 fetus was viable;

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

5           (11) Basis for any medical judgment that a medical  
6 emergency existed when required under Sections 5(6), 6(2)(a)  
7 and 6(6) and when required to be reported in accordance with  
8 this Section by any provision of this Law; and

9           (12) The pathologist's test results pursuant to Section 12  
10 of this Act.

11           Such form shall be completed by the hospital or other  
12 licensed facility, signed by the physician who performed the  
13 abortion or pregnancy termination, and transmitted to the  
14 Department not later than 10 days following the end of the  
15 month in which the abortion was performed.

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

20           The Department may prescribe rules and regulations  
21 regarding the administration of this Law and shall prescribe  
22 regulations to secure the confidentiality of the woman's  
23 identity in the information to be provided under the "Vital  
24 Records Act". All reports received by the Department shall be  
25 treated as confidential and the Department shall secure the  
26 woman's anonymity. Such reports shall be used only for

1 statistical purposes.

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

11 The requirement for reporting to the General Assembly shall  
12 be satisfied by filing copies of the report with the Speaker,  
13 the Minority Leader and the Clerk of the House of  
14 Representatives and the President, the Minority Leader and the  
15 Secretary of the Senate and the Legislative Research Unit, as  
16 required by Section 3.1 of "An Act to revise the law in  
17 relation to the General Assembly", approved February 25, 1874,  
18 as amended, and filing such additional copies with the State  
19 Government Report Distribution Center for the General Assembly  
20 as is required under paragraph (t) of Section 7 of the State  
21 Library Act.

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

23 (720 ILCS 510/11.2 new)

24 Sec. 11.2. Prosecutorial exclusion. A woman upon whom an  
25 abortion in violation of this Act is performed or induced may

1 not be prosecuted under this Act for a conspiracy to violate  
2 subsection (4) of Section 5 of this Act.

3 (720 ILCS 510/11.3 new)

4 Sec. 11.3. Civil remedies.

5 (1) The woman, the father of the unborn child if married to  
6 the mother at the time she receives an abortion in violation of  
7 this Act, or, if the mother has not attained the age of 18  
8 years at the time of the abortion, or both, the maternal  
9 grandparents of the unborn child, may in a civil action obtain  
10 appropriate relief, unless the pregnancy resulted from the  
11 plaintiff's criminal conduct or, if brought by the maternal  
12 grandparents, the maternal grandparents consented to the  
13 abortion.

14 (2) The relief shall include:

15 (a) money damages for all psychological and physical  
16 injuries occasioned by the violation of this Act; and

17 (b) statutory damages equal to 3 times the cost of the  
18 abortion performed in violation of this Act.

19 (720 ILCS 510/11.4 new)

20 Sec. 11.4. Review by Medical Board.

21 (1) A physician defendant accused of violating this Act may  
22 seek a hearing before the Illinois State Medical Disciplinary  
23 Board as to whether the physician's conduct was necessary to  
24 save the life of the mother whose life was endangered by a

1 physical disorder, physical illness, or physical injury,  
2 including a life-endangering physical condition caused by or  
3 arising from the pregnancy itself; or as to whether the  
4 continuation of the pregnancy would have created a serious risk  
5 of substantial and irreversible impairment of a major bodily  
6 function (as specifically defined in subsection (12) of Section  
7 2 of this Act) of the pregnant woman, or both.

8 (2) The findings on this issue are admissible at the  
9 criminal and civil trials of the physician defendant. Upon a  
10 motion of the physician defendant, the court shall delay the  
11 beginning of the trial or trials for not more than 30 days to  
12 permit the hearing to take place.

13 (720 ILCS 510/11.5 new)

14 Sec. 11.5. Penalties for medical facilities.

15 (1) A medical facility licensed under the Ambulatory  
16 Surgical Treatment Center Act or the Hospital Licensing Act in  
17 which an abortion is performed or induced in violation of this  
18 Act shall be subject to immediate revocation of its license by  
19 the Department.

20 (2) A medical facility licensed under the Ambulatory  
21 Surgical Treatment Center Act or the Hospital Licensing Act in  
22 which an abortion is performed or induced in violation of this  
23 Act shall lose all State funding for 2 years and shall  
24 reimburse the State for moneys or grants received by the  
25 medical facility from the State for the fiscal year in which



1 the abortion in violation of this Act was performed.

2 (720 ILCS 510/14) (from Ch. 38, par. 81-34)

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

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

22 (3) The General Assembly, by joint resolution, may appoint  
23 one or more of its members, who sponsored or cosponsored this  
24 Act in his or her official capacity, to intervene as a matter  
25 of right in any case in which the constitutionality of this

1 amendatory Act of the 100th General Assembly is challenged.

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

1 INDEX

2 Statutes amended in order of appearance

3 720 ILCS 510/1.1 new

4 720 ILCS 510/1.2 new

5 720 ILCS 510/2 from Ch. 38, par. 81-22

6 720 ILCS 510/5 from Ch. 38, par. 81-25

7 720 ILCS 510/10 from Ch. 38, par. 81-30

8 720 ILCS 510/11.2 new

9 720 ILCS 510/11.3 new

10 720 ILCS 510/11.4 new

11 720 ILCS 510/11.5 new

12 720 ILCS 510/14 from Ch. 38, par. 81-34