

Model Legislation
Life at Conception Act

HOUSE/SENATE BILL NO. _____

SECTION _____ is amended to read as follows:

A. Definitions. The definitions set forth in this section are controlling for purposes of this section and of this code/statute, irrespective of terms used in medical coding, notations, or billing documents. As used in this section, the term:

“Abortion” means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of the preborn child.

A physician’s performance of a medical procedure or treatment designed or intended to prevent the death of a pregnant woman and not designed or intended to kill the unborn child is not an abortion under this section.

An act under this section is not an abortion if the act is performed with the purpose to:

- i. to produce a live birth and save the life or preserve the health of the preborn child;
- ii. to remove a dead preborn child and remaining tissue; or
- iii. to remove a verified ectopic pregnancy.

“Abortifacient” means any medicine, drug or any other substance, or any combination of drugs, medicines, or substances; including but not limited to RU-486, mifepristone, Mifeprex, Mifegyne; or any substantially similar generic or non-generic drug or chemical dispensed for purposes of causing an abortion, or any future drug developed, marketed, sold, or distributed for the purpose of causing an abortion.

“Chemical abortion” is a form of abortion and refers to the use of an abortifacient to:

- i. intentionally kill the preborn child of a woman known to be pregnant; or
- ii. intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than:
 - a. to produce a live birth and save the life or preserve the health of the preborn child;
 - b. to remove a dead preborn child and remaining tissue; or
 - c. to remove a verified ectopic pregnancy.

"Ectopic pregnancy" means a pregnancy in which the fertilized human ovum, or blastocyst, implants and grows outside of the uterus.

"Fertilization" means the fusion of a human spermatozoon with a human ovum.

"Person" means an individual, including a preborn child, beginning at the moment of fertilization.

"Physician" means a physician licensed under chapter(s) _____ or a physician practicing medicine or osteopathic medicine in the employment of the United States.

"Pregnancy" means the period of time from fertilization until birth and is calculated from the first day of the pregnant woman's last menstrual period.

"Preborn child" means an individual organism of the species Homo sapiens from fertilization until live birth.

SECTION _____, SECTION _____, and SECTION _____, [list all sections and subsections referring to rape and incest exceptions to abortion if they exist in current state law] is amended to read as follows:

[Insert language that strikes rape and incest exceptions to abortion.]

A. Termination of pregnancies.

- A. Notwithstanding any other law to the contrary, a person or entity may not commit or attempt to commit an abortion except in the case of a verified ectopic pregnancy.
- B. Committing or attempting to commit an abortion, including facilitating a chemical abortion, is a felony, punishable as provided in Section _____ with a mandatory term of imprisonment not to exceed 10 years or with a fine not to exceed \$100,000, or both.

1. This section does not authorize a woman to be charged with or convicted of a criminal offense in the death of her own preborn child.
2. The following are affirmative defenses to any criminal or other liabilities under this section:
 - a. A physician licensed in this state provides a medical procedure or service for a legitimate medical reason to a pregnant woman that results in the accidental or unintentional physical injury to or death of the preborn child.
 - b. A pharmacy fills a valid prescription issued by a physician licensed in this state.
3. It is not a defense that a sender did not know or intend that an abortion would result
4. This act does not prohibit a contraceptive measure, drug, or chemical that is administered before the time when a pregnancy could be determined through conventional medical testing.

B. Remedies

- A. In addition to the remedies available under the laws of this state, the following persons may bring a civil action against another person or entity, including a sender whether in state or out of state, that knowingly or intentionally commits or attempts to commit an abortion in violation of this section:
 1. a woman who was pregnant at the time she obtained or received an abortifacient that was manufactured, distributed, mailed, transported, delivered, prescribed, provided, or possessed in violation of this act, or
 2. the father, sibling, or grandparent of the preborn child with which the woman described by subparagraph (1) of this paragraph [which immediately precedes this one] was pregnant at the time she obtained or received the abortifacient.
- B. An action may not be brought under this section by:
 1. Anyone who impregnated a woman through conduct constituting sexual assault under Section _____, Penal Code, or aggravated sexual assault under Section _____, Penal Code;
 2. Anyone who committed an offense for which an affirmative finding of family violence was made under Article _____, Code of [Criminal Procedure];
 3. Anyone who provided an abortifacient to a pregnant woman for the purpose of committing, inducing, or attempting an abortion without the woman's consent or knowledge;
 4. Anyone who has been convicted of an offense under Section _____, Penal Code [list section of law that describes the crime of stalking];

5. Anyone charged or convicted of a crime in relation to the abortion;
 6. Anyone charged or convicted of a crime against the woman during the prior ten (10) years;
 7. Anyone against whom the woman had a restraining order or protective order at any point five years prior to the pregnancy or thereafter; or
 8. Anyone who acts in concert or participation with a person described by this subdivision.
- C. If a claimant prevails in an action brought under this section, the court shall award:
1. Injunctive relief that requires the defendant to comply with this section.
 2. Damages of \$10,000 for each abortion that the person, entity, or sender knowingly and intentionally committed or attempted to commit.
 3. Attorney's fees and court costs.
- D. A person may bring an action under this section up to three years after the date the cause of action accrues or up to one year after the lifting or expiration of any stay, injunction, or temporary restraining order that was put in place less than three years after the date the cause of action accrued, whichever is later.
- E. Notwithstanding any other law to the contrary, a court may not award attorney's fees or costs to a defendant in a civil action brought under this section.
- F. A civil action brought under this section is in addition to and does not impair the rights or remedies of the plaintiff in other causes of action in law or equity.
- G. If any provision of this section or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this section.

SECTION _____ [licensure of clinics, hospitals] is amended to read as follows:

A state agency, a local governmental entity, or a managed care plan providing services under Section _____ may not expend funds for the benefit of, pay funds to, or initiate or renew a contract with an organization that owns, operates, or is affiliated with one or more clinics that are licensed under this chapter and perform abortions unless one or more of the following applies: All abortions committed by such clinics are medically necessary to preserve the life of the pregnant woman or to avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman, other than a psychological condition.

SECTION _____ is amended to read as follows: [Health benefits coverage; limitations] is amended to read as follows:

- A. Benchmark Benefits. In order for health benefits coverage to qualify for premium assistance payments for an eligible child under Section _____, the health benefits coverage, including for coverage under Medicaid and [_____ List name of Medicaid waiver/program for the state that covers children], must include the following minimum benefits, as medically necessary.
- B. Exclusions...
- C. Abortion is excluded, unless in the case of a verified ectopic pregnancy.
- D. A health insurance policy under which coverage is purchased in whole or in part with any state or federal funds through an exchange created pursuant to the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, may not provide coverage for an abortion as defined in Section _____, except if the pregnancy is an ectopic pregnancy, or if the pregnancy would, as certified by a physician, place the woman in danger of death unless an abortion is committed. Coverage is deemed to be purchased with state or federal funds if any tax credit or cost-sharing credit is applied toward the health insurance policy.
- E. A plan under which coverage is purchased in whole or in part with any state or federal funds through an exchange created pursuant to the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148, may not provide coverage for an abortion, as defined in Section _____, except if the pregnancy is an ectopic pregnancy, or if the pregnancy would, as certified by a physician, place the woman in danger of death unless an abortion is committed. Coverage is deemed to be purchased with state or federal funds if any tax credit or cost-sharing credit is applied toward the health insurance policy.

SECTION _____ [crimes, criminal penalties] is amended to read as follows:

- A. Whoever commits an act that violates a provision of this code or commits a criminal offense defined by another statute and thereby causes the death of, or bodily injury to, a preborn child commits a separate offense if the provision or statute does not otherwise specifically provide a separate offense for such death or injury to a preborn child.
- B. This subsection does not permit the prosecution:

1. Of a person for providing medical treatment of the pregnant woman or her preborn child that is not in violation of a provision of this code; or
2. Of a woman with respect to her preborn child.