

No. \_\_\_\_\_

## A BILL

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF \_\_\_\_\_:

### Section 1.

(A) As used in this bill:

(1) "Conception" means fertilization.

(2) "Contraceptive" means a drug, device, or chemical that prevents conception.

(3) "DNA" means deoxyribonucleic acid.

(4) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(5) "Fetus" means the human offspring developing during pregnancy from the moment of conception and includes the embryonic stage of development.

(6) "Gestational age" means the age of an unborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.

(7) "Gestational sac" means the structure that comprises the extraembryonic membranes that envelop the fetus and that is typically visible by ultrasound after the fourth week of pregnancy.

(8) "Intrauterine pregnancy" means a pregnancy in which the fetus is attached to the placenta within the uterus of the pregnant woman.

(9) "Medical emergency" means a condition that in a physician's good faith medical judgment, based upon the facts known to the physician at that time, so endangers the life of the pregnant woman or poses a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman as to necessitate the immediate performance or inducement of an abortion.

(10) "Physician" means an individual authorized under \_\_\_\_\_ of the Code to practice medicine and surgery or osteopathic medicine and surgery.

(11) "Pregnancy" means the human female reproductive condition that begins with fertilization, when the woman is carrying the developing human offspring, and that is calculated from the first day of the last menstrual period of the woman.

(12) "Serious risk of the substantial and irreversible impairment of a major bodily function" has the same meaning as in section \_\_\_\_\_ of the Code.

(13) "Spontaneous miscarriage" means the natural or accidental termination of a pregnancy and the expulsion of the fetus, typically caused by genetic defects in the fetus or physical abnormalities in the pregnant woman.

(14) "Standard medical practice" means the degree of skill, care, and diligence that an obstetrician of ordinary judgment, learning, and skill would employ in like circumstances. As applied to the method used to determine the presence of a fetal heartbeat for purposes of section \_\_\_\_\_ of the Code, "standard medical practice" includes employing the appropriate means of detection depending on the estimated gestational age of the fetus and the condition of the woman and her pregnancy.

(15) "Unborn human individual" means an individual organism of the species homo sapiens from fertilization until live birth.

(B) (1) It is the intent of the legislature that a court judgment or order suspending enforcement of any provision of this act is not to be regarded as tantamount to repeal of that provision.

(2) After the issuance of a decision by the supreme court of the United States overruling *Roe v. Wade*, 410 U.S. 113 (1973), the issuance of any other court order or judgment restoring, expanding, or clarifying the authority of states to prohibit or regulate abortion entirely or in part, or the effective date of an amendment to the Constitution of the United States restoring, expanding, or clarifying the

authority of states to prohibit or regulate abortion entirely or in part, the attorney general may apply to the pertinent state or federal court for either or both of the following:

(a) A declaration that any one or more sections specified in **this bill** are constitutional;

(b) A judgment or order lifting an injunction against the enforcement of any one or more sections of **this bill**.

(3) If the attorney general fails to apply for the relief described in section(B) (2) of this section within the thirty-day period after an event described in that section occurs, any county prosecutor may apply to the appropriate state or federal court for such relief.

(4) If any provision of **this bill** is held invalid, or if the application of such provision to any person or circumstance is held invalid, the invalidity of that provision does not affect any other provisions or applications of this **section and sections** , , and **to of the Code** that can be given effect without the invalid provision or application, and to this end the provisions of **those sections** are severable. In particular, it is the intent of the general assembly that any invalidity or potential invalidity of a provision of **section or sections - of the Code** is not to impair the immediate and continuing enforceability of the remaining provisions. It is furthermore the intent of the general assembly that the provisions of **this bill** are not to have the effect of repealing or limiting any other laws of this state, except as specified by **this bill**.

**Sec. 2.** (A) The legislature hereby declares that it finds, according to contemporary medical research, all of the following:

(1) As many as thirty per cent of natural pregnancies end in spontaneous miscarriage.

(2) Less than five per cent of all natural pregnancies end in spontaneous miscarriage after detection of fetal cardiac activity.

(3) Over ninety per cent of in vitro pregnancies survive the first trimester if cardiac activity is detected in the gestational sac.

(4) Nearly ninety per cent of in vitro pregnancies do not survive the first trimester where cardiac activity is not detected in the gestational sac.

(5) Fetal heartbeat, therefore, has become a key medical predictor that an unborn human individual will reach live birth.

(6) Cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac.

(7) The **state of** \_\_\_\_\_ has strong interests from the outset of the pregnancy in protecting the health of the woman and the life of an unborn human individual who may be born.

(8) In order to make an informed choice about whether to continue her pregnancy, the pregnant woman has a legitimate interest in knowing the likelihood of the fetus surviving to full-term birth based upon the presence of cardiac activity.

(B) **This bill** applies only to intrauterine pregnancies.

**Sec. 3.** (A) A person who intends to perform or induce an abortion on a pregnant woman shall determine whether there is a detectable fetal heartbeat of the unborn human individual the pregnant woman is carrying. The method of determining the presence of a fetal heartbeat shall be consistent with the person's good faith understanding of standard medical practice, provided that if rules have been adopted under subsection (B) of this section, the method chosen may be one that is consistent with the rules. The person who determines the presence or absence of a fetal heartbeat shall record in the pregnant woman's medical record the estimated gestational age of the unborn human individual, the method used to test

for a fetal heartbeat, the date and time of the test, and the results of the test.

(B) The **director of health** may adopt rules specifying the appropriate methods of determining the presence of a fetal heartbeat of an unborn individual based on standard medical practice. The rules shall be adopted in accordance with **section** of the Code.

**Sec. 4.** (A) Except as provided in subsection (B) of this section, no person shall knowingly and purposefully perform or induce an abortion on a pregnant woman before determining in accordance with subsection (A) of section 3 of **this bill** whether the unborn human individual the pregnant woman is carrying has a detectable heartbeat.

Whoever violates this division is guilty of performing or inducing an abortion before determining whether there is a detectable fetal heartbeat, a **felony** of the degree.

(B) Subsection (A) of this section does not apply to a physician who performs or induces the abortion if the physician believes that a medical emergency exists that prevents compliance with that division.

(C) A physician who performs or induces an abortion on a pregnant woman based on the exception in subsection (B) of this section shall make written notations in the pregnant woman's medical records of both of the following:

(1) The physician's belief that a medical emergency necessitating the abortion existed;

(2) The medical condition of the pregnant woman that assertedly prevented compliance with subsection (A) of this section.

For at least seven years from the date the notations are made, the physician shall maintain in the physician's own records a copy of the notations.

(D) A person is not in violation of subsection (A) of this section if the person acts in accordance with subsection (A) of section 3 of **this bill** and the

method used to test for the presence of a fetal heartbeat does not reveal a fetal heartbeat.

**Sec. 5.** (A) If a person who intends to perform or induce an abortion on a pregnant woman has determined, under section 3 of **this bill**, that the unborn human individual the pregnant woman is carrying has a detectable heartbeat, the person shall not, except as provided in subsection (B) of this section, perform or induce the abortion until all of the following requirements have been met and at least twenty-four hours have elapsed after the last of the requirements is met:

(1) The person intending to perform or induce the abortion shall inform the pregnant woman in writing that the unborn human individual the pregnant woman is carrying has a fetal heartbeat.

(2) The person intending to perform or induce the abortion shall inform the pregnant woman, to the best of the person's knowledge, of the statistical probability of bringing the unborn human individual possessing a detectable fetal heartbeat to term based on the gestational age of the unborn human individual or, if the **director of health** has specified statistical probability information pursuant to rules adopted under subsection (C) of this section, shall provide to the pregnant woman that information.

(3) The pregnant woman shall sign a form acknowledging that the pregnant woman has received information from the person intending to perform or induce the abortion that the unborn human individual the pregnant woman is carrying has a fetal heartbeat and that the pregnant woman is aware of the statistical probability of bringing the unborn human individual the pregnant woman is carrying to term.

(B) Subsection (A) of this section does not apply if the person who intends to perform or induce the abortion believes that a medical emergency exists that prevents compliance with that subsection.

(C) The **director of health** may adopt rules that specify information regarding

the statistical probability of bringing an unborn human individual possessing a detectable heartbeat to term based on the gestational age of the unborn human individual. The rules shall be based on available medical evidence and shall be adopted in accordance with **section \_\_\_\_\_ of the Code.**

(D) This section does not have the effect of repealing or limiting any other provision of **the Code** relating to informed consent for an abortion.

**Sec. 6.** (A) Except as provided in subsection (B) of this section, no person shall knowingly and purposefully perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual the pregnant woman is carrying and whose fetal heartbeat has been detected in accordance with subsection (A) of section 3 of the **this bill.**

Whoever violates this subsection is guilty of performing or inducing an abortion after the detection of a fetal heartbeat, a **felony of the \_\_\_\_\_ degree.**

(B) Subsection (A) of this section does not apply to a physician who performs a medical procedure that, in the physician's reasonable medical judgment, is designed or intended to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

A physician who performs a medical procedure as described in this subsection shall declare, in a written document, that the medical procedure is necessary, to the best of the physician's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. In the document, the physician shall specify the pregnant woman's medical condition that the medical procedure is asserted to address and the medical rationale for the physician's conclusion that the medical procedure is necessary to prevent the

death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

A physician who performs a medical procedure as described in this subsection shall place the written document required by this subsection in the pregnant woman's medical records. For at least seven years from the date the document is created, the physician shall maintain a copy of the document in the physician's own records.

(C) A person is not in violation of subsection (A) of this section if the person acts in accordance with subsection (A) of section 3 of **this bill** and the method used to test for the presence of a fetal heartbeat does not reveal a fetal heartbeat.

(D) Subsection (A) of this section does not have the effect of repealing or limiting any other provision of **the Code** that restricts or regulates the performance or inducement of an abortion by a particular method or during a particular stage of a pregnancy.

**Sec. 7.** (A) A person who performs or induces an abortion on a pregnant woman shall do whichever of the following is applicable:

(1) If a purported reason for the abortion is to preserve the health of the pregnant woman, the person shall specify in a written document the medical condition that the abortion is asserted to address and the medical rationale for the person's conclusion that the abortion is necessary to address that condition.

(2) If subsection (A) (1) of this section does not apply, the person shall specify in a written document that maternal health is not a purpose of the abortion.

(B) The person who specifies the information in the document described in subsection (A) of this section shall place the document in the pregnant woman's medical records. For at least seven years from the date the document is created, the person who specifies the information shall maintain a copy of the document

in the person's own records.

**Sec. 8.** Nothing in **this bill** prohibits the sale, use, prescription, or administration of a drug, device, or chemical for contraceptive purposes.

**Sec. 9.** A pregnant woman on whom an abortion is performed or induced in violation of **this bill** is not guilty of violating any of those sections; is not guilty of attempting to commit, conspiring to commit, or complicity in committing a violation of any of those sections; and is not subject to a civil penalty based on the abortion being performed or induced in violation of any of those sections.

**Sec. 10.** (A) A woman who meets any one or more of the following criteria may file a civil action for the wrongful death of her unborn child:

(1) A woman on whom an abortion was performed or induced in violation of section 4 or section 6 of **this bill**;

(2) A woman on whom an abortion was performed or induced who was not given the information described in section 5 of **this bill** or who did not sign a form described in section 5 of **this bill**.

(B) A woman who prevails in an action filed under subsection (A) of this section shall receive both of the following from the person who committed the one or more acts described in subsection (A) of this section:

(1) Damages in an amount equal to ten thousand dollars or an amount determined by the trier of fact after consideration of the evidence (at the mother's election at any time prior to final judgment) subject to the same defenses and requirements of proof, except any requirement of live birth, as would apply to a suit for the wrongful death of a child who had been born alive;

(2) Court costs and reasonable attorney's fees.

(C) If the defendant in an action filed under subsection (A) of this section prevails and the court finds that the commencement of the action constitutes

frivolous conduct as defined in **section** \_\_\_\_\_ **of the Code** and that the defendant was adversely affected by the frivolous conduct, the court shall award reasonable attorney's fees in accordance with **section** \_\_\_\_\_ **of the Code.**

**Sec. 11.** The information required to be recorded in sections 3, 4, 6, and 7 shall be reported **to the director of health in accordance with the ruled governing the reporting of other abortion information.**