

# Girls' Health First



## New “Reproductive Health Act” Expands Late-Term Abortions, Jeopardizes Parental Notice and Repeals Existing Protections for Women

### RHA IS HARMFUL TO WOMEN AND GIRLS, EXPRESSLY REPEALING EXISTING PROTECTIONS AND PUTTING PARENTAL NOTICE IN JEOPARDY

- 71% of Americans support a requirement for parental involvement in a minor's abortion decision, according to a Gallup Poll.
- 32% of teen mothers ages 15-17 are impregnated by men older than 20, according to the National Campaign to Prevent Teen and Unplanned Pregnancy.
- **Illinois ranked 10th in the nation in human trafficking in 2018.** According to a study by the Global Centurion Foundation, “*the prevalence of forced abortion is an especially disturbing trend in sex trafficking.*” The study showed that more than half of the survivors reported having at least one abortion, and 30% had more than one abortion. **More than half said the abortion was not their choice.** The victims reported that the pressure from pimps to continue the trade did not allow the time for them to carry the baby. The average age of a trafficked girl is 12-14.
- Illinois currently has a law that helps to protect minor girls against sex traffickers and male predators who would use abortion to conceal evidence of their crimes. It is called the *Parental Notice of Abortion Act*.
- When Parental Notice became effective in Illinois in 2013, abortions on minors dropped 57% according to the Illinois Department of Public Health. As is evident, involvement of a parent is an effective means of protecting minor girls in this context. For girls in extenuating circumstances (such as abuse by a guardian), the Parental Notice Act already provides options to obtain an abortion without an adult family member being notified, in the form of judicial bypass. The Illinois Bypass Coordination Project, run by the ACLU, is the top hit in a google search on parental notice, and leads minors through this process.
- For minors who do have an abusive parent or guardian, the judicial bypass process works well, as it gives the state an opportunity to pull them out of that abusive situation. In fact, without parental notice, these young girls would certainly obtain an abortion and then return to the abusive environment with no intervention.
- Any representative who supports current law in the Parental Notice of Abortion Act needs to realize that RHA throws that critical legal protection for minor girls into jeopardy. Specifically, **although RHA does not expressly repeal Parental Notice, RHA would create a legal framework for its repeal in the courts.**
- By way of brief background, **RHA Section 1-15 creates a fundamental right to abortion**, and specifies that “[e]very individual who becomes pregnant has a fundamental right to continue the pregnancy and give birth or to have an abortion, and to make autonomous decisions about how to exercise that right.” RHA

Section 1-20, paragraph 1 goes on emphasize the point by saying that the State "*shall not deny, restrict, interfere with, or discriminate against an individual's exercise of the fundamental rights*" under the RHA. As if there was any doubt, RHA Section 1-30, paragraph (b) specifies that "*nothing in [RHA] shall be construed to authorize the State to burden any individual's fundamental rights relating to reproductive health care.*"

- Taken together, we see that RHA provides a basis to strike down any law or regulation that would in any way interfere with an unfettered right to an abortion, even if that law or regulation is adopted in the interest of protecting the woman or girl seeking the abortion. A court could find that a parental notice would "interfere" a minor seeking to obtain an abortion, and in the process, decide to strike down the Parental Notice of Abortion Act.
- With that as context, we can see how RHA would cast into jeopardy a broad range of health, safety, and other regulations that protect women and girls, particularly if they could be framed as limiting the availability of abortion. Examples of common sense regulations that could be put at risk include:
  - Obligations for abortion clinics to **maintain adequate medical records** (210 ILCS 5/6(3)(c)), and
  - Prohibitions on **granting a license to an abortion clinic if the center director or officer has been convicted of a felony** ((210 ILCS 5/6(1))
- Beyond the wide range of common sense laws and regulations that would be implicitly put at risk by RHA, there are the many protective laws that RHA expressly repeals.
- RHA Section 905-5 **expressly repeals Section 5/6.1 of the Ambulatory Surgical Treatment Center Act**, which requires an abortion center devoted primarily to providing facilities for abortion to have a physician, who is actively engaged in the practice of medicine at the Center, on the board of directors as a condition to licensure of the Center.
- RHA Section 905-15 expressly repeals the entirety of the Illinois Abortion Law of 1975 as amended. As such, in a single provision, RHA eliminates a range of protective requirements, including:
  - **Obligations for physicians to provide reports to the Illinois Department of Public Health, including complications arising from the abortion procedure**, and documentation of the medical indications for the physician's determinations (including on questions of viability) (720 ILCS 510/10)
  - Obligations for physicians to provide the pregnant woman with information, in situations where the physician knows the abortion procedure will cause pain for the unborn, about options for the use of an anesthetic (720 ILCS 510/6(6))
  - Obligations for any physician who diagnoses a woman with a complication for an abortion to report to the Illinois Department of Public Health, including where known, the name or location of the facility (720 ILCS 510/10.1)
- **RHA also establishes other provisions that lower standards for the care of women and girls.** For example, RHA Section 910-53 expands the prescribing authority of physician assistants, such that physician assistants can prescribe a broad range of significant pharmaceuticals without the presence of a physician. Given the complications that can and do arise from the abortion pill and other pharmaceuticals in abortion care, how can this be better for our women and girls?

## RHA NARROWS THE DEFINITION OF VIABILITY AND MAKES OTHER CHANGES TO EXISTING LAW, EXPANDING LATE-TERM ABORTIONS

- **Overview.** RHA would narrow the definition of "viability" of the unborn child, establish an expansive definition of "health" of the mother, and make other changes. These changes would make it much easier for abortion providers to perform late-term abortions without any meaningful restrictions or oversight. In general, once an unborn baby reaches viability, an abortion can only be performed when the abortion is "necessary to protect the life or health of the mother." Abortions on the pre-viable are not subject to any such standard. As such, viability is an important milestone to establish some level of consideration for the life of the unborn. An Executive Summary of key points are as follows.
- **RHA narrows the definition of "viability."** Under existing law, the term "viability" means "*that stage of fetal development when, in the medical judgment of the attending physician based on the particular facts of the case before him, there is a reasonable likelihood of sustained survival of the fetus outside the womb, with or without artificial support.*" (Illinois Abortion Act of 1975 as amended) (720 ILCS 510/2(1)).
- RHA Section 1-10 would replace the term "viability" with "fetal viability" and would amend the definition under existing law in four (4) key ways.
  - 1) RHA would allow any **health care professional (not just a physician) to make the judgment on viability.** This opens the door for physician's assistants and advanced practice registered nurses to make these critical decisions.
  - 2) RHA would raise the standard and provide that there must be a **substantial likelihood (not just a reasonable likelihood) of the sustained survival of the fetus** outside the womb.
  - 3) RHA would add the qualifier that the fetus would only have sustained viability outside the womb if the continued life would happen "**without the application of extraordinary medical measures.**" Since the term "extraordinary medical measures" is not defined, and since non-physicians can make the judgment, the healthcare professional could make a wide range of biased decisions on the question of what is an extraordinary medical measure (e.g., perhaps considering measures such as phototherapy for jaundice, breathing support, or even an IV as qualifying).
  - 4) RHA would **repeal a key clarification in existing law**, namely that the unborn can attain sustained viability "**with or without artificial support.**" In particular, under existing law, the mere fact that the unborn child would need artificial support (even extraordinary measures) would not disqualify the child as being viable.
- RHA's changes to "viability/fetal viability" would narrow the definition materially and result in fewer unborn children that qualify as viable. Although it is difficult to quantify given the newness of the language, for illustration purposes, if the application of current law results in unborn children of 22 weeks of gestation to be deemed viable, RHA's changes could raise that standard to perhaps 28 weeks of gestation or higher. This would make it easier for abortion providers to perform abortions on unborn children of 22 to 28 weeks of gestation without having to justify that the abortion is necessary to protect the life or health of the mother.
- **RHA includes an expansive definition of "health."** RHA Section 1-10 would establish an expansive definition of "health" to make it easier for an abortion provider to decide, even if the unborn child is viable, that the abortion is necessary for the "health" of the mother. Current law does not define "health," but RHA would establish an expansive definition of "health" that includes "*all factors that are relevant to the patient's health and well-being, including, but not limited to, physical, emotional, psychological, and familial health and age.*"

In particular, the inclusion of the term "familial" would allow the nurse, physician-assistant, or physician making this critical decision on health to take into consideration factors beyond the mother's health, such as the health or even squabbling of her siblings, parents, or other family members.

- **RHA repeals detailed certification and reporting obligations.** Under current law, the **physician** must certify in a signed writing the **medical indicators** that support the determination that a post-viability abortion is necessary for the life or health of the mother. (720 ILCS 510/5(2)). This report, along with specified detailed information - including any complications, whether the abortion resulted in a live birth, and other information - must be reported to the Department of Health. (720 ILCS 510/10). If additional information becomes known after submission of the report (e.g., additional complications), the physician must update the report to the Department of Health within 10 days of becoming aware of the information. (720 ILCS 510/10).
- RHA Section 1-25 would greatly diminish these certification and reporting requirements. Neither the physician, nor any other health care professional, would need to certify in a signed writing as to the medical indicators or other reasons that supported their decision on the question of viability. RHA Section 1-25(b). It appears there would be some version of reporting obligation that should use a specified Department of Health form, but the obligation does not attach to the physician or other health care professional, and instead is set in the passive voice (so it would be difficult to enforce), namely that a "*report of each abortion performed by a healthcare professional shall be made to the Department on forms prescribed by it.*" RHA Section 1-25(b). With this standard, the receptionist at the abortion clinic could prepare and submit reports.
- Surprisingly, the RHA would specify that the **Department of Health could not use the abortion provider's report for any kind of follow-up inquiry or investigation**, and instead would only be able to "*use the reports for statistical purposes only.*" RHA would also specify that such "*reports must be destroyed within 2 years after date of receipt.*" RHA Section 1-25(d). **Clearly, there is no desire to allow the Department of Health to do any actual enforcement or oversight to protect women's health or safety, even in instances of complications or sub-standard care.**
- **RHA repeals penalties for non-compliance by physicians and health care professionals.** RHA also would repeal a broad range of express penalties set forth in the Illinois Abortion Act of 1975. For example, it is a Class 2 felony for a physician to perform an abortion on a viable unborn child without making a determination on the necessity of such procedure for the life or health of the mother. (720 ILCS 510/5(1)). RHA repeals these penalties for non-compliance, which further reinforces that there is no desire to establish a meaningful regulatory environment that protects the health of women and girls.

## **RHA TREATS ALL UNBORN IN ALL STAGES AS HAVING NO VALUE OR RIGHTS**

- Perhaps the most shocking aspect of RHA is it includes language treating all of the unborn in all stages of development as having absolutely NO value or rights, going beyond Roe.
- **In the Appropriations-Human Services Committee Hearing on May 26, 2019, a Representative asked, "At what point does the unborn child receive protection from abortion?" The proponents answered, "When they're born."**
- With the developments in ultrasound and modern science, we know there is a human life in the womb. Particularly in the late stages of gestation, we all see that we have a fully formed, fully feeling human being, and Illinois has a compelling interest to protect these little lives.

- Nevertheless, RHA Section 1-15(c) provides that a "*fertilized egg, embryo, or fetus does not have independent rights under the laws of this State.*" Note that there is no distinction in this flat statement between an embryo immediately after fertilization vs. an unborn child who is fully formed at 9 months of gestation immediately before birth. All are equally unworthy of any rights or protection whatsoever.
- We see this carried out through the RHA itself. The Illinois Abortion Law of 1975 as amended currently establishes a range of protections for the unborn, including requirements to have a second physician present for post-viability abortions (to take care of the unborn child if born alive) (720 ILCS 510/6(2)). It also establishes obligations for the abortion physician to report the medical indications supporting the determination to perform the abortion post-viability. (720 ILCS 510/5(2)). The RHA eliminates these requirements.
- RHA also eliminates a series of protections in the Illinois Abortion Law of 1975 as amended that reflect the compelling interest that Illinois has in the unborn. For example, RHA eliminates:
  - The prohibition on the sale or experimenting upon a fetus (720 ILCS 510/6(7))
  - The prohibition on performing an abortion with knowledge that the individual is seeking abortion solely on account of the sex of the unborn (e.g., the individual wants a boy and not a girl) ((720 ILCS 510/6(8))
  - The obligations for a physician who performs an abortion post-viability to use methods most likely to preserve the life and health of the unborn (720 ILCS 510/6(1)(a))
- To those who say that we need RHA, we say we don't need extreme abortion legislation in our State. We need to protect the women and girls in this State. We need to maintain our common sense protections already well thought out and established in our laws. And, we need to recognize that it is good and right that our State law provides some protections for the unborn.
- If this law passes, it would make Illinois perhaps the least protective state in the nation for the unborn, even exceeding New York's new abortion law. Illinois would become an extreme outlier in erasing all protections for the unborn, and crucial protections for women and girls. Please vote NO on the Reproductive Health Act.

**Put women's safety over clinic profits. Vote NO on The Reproductive Health Act (SB 25, HFA 1).**