

CHAPTER 142: ABORTION

Section

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§ 142.01 DEFINITIONS.

For the purpose of this chapter the following words and phrases shall have the following meanings ascribed to them respectively.

(A) “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 an unborn child. The term does not include:

- (1) In vitro fertilization or fertility treatments of any type;
- (2) The use, prescription, administration, procuring, or selling of Plan B, morning-after pills, intrauterine devices, or any other type of contraception or emergency contraception; or
- (3) An act performed with the purpose to:
 - (a) Save the life or preserve the health of the unborn child;
 - (b) Remove a dead unborn child caused by spontaneous abortion; or
 - (c) Remove an ectopic pregnancy, the implantation of a fertilized egg or embryo outside of the uterus.

(B) “HOSPITAL” means an institution that is:

- (1) Primarily engaged in providing, by or under the supervision of physicians, inpatient diagnostic and therapeutic services or rehabilitation services; and
- (2) Duly licensed for this purpose under the laws of Illinois.

(C) “INTERACTIVE COMPUTER SERVICE” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(D) “MEDICAL EMERGENCY” means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

(E) “WOMAN” and “WOMEN” include any person whose biological sex is female, including any person with XX chromosomes and any person with a uterus, regardless of any gender identity that the person may attempt to assert or claim.

(Ord. 9432, passed 5-2-23)

§ 142.02 COMPLIANCE WITH FEDERAL ABORTION LAWS REQUIRED.

(A) Except as provided by subsection (D), it shall be unlawful for any person to violate 18 U.S.C. § 1461 by using the mails for the mailing, carriage in the mails, or delivery of:

(1) Any article or thing designed, adapted, or intended for producing abortion;

or

(2) Any article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion;

(B) Except as provided by subsection (D), it shall be unlawful for any person to violate 18 U.S.C. § 1462 by:

(1) Using any express company or other common carrier or interactive computer service for carriage in interstate or foreign commerce of any drug, medicine, article, or thing designed, adapted, or intended for producing abortion;

(2) Knowingly taking or receiving, from such express company or other common carrier or interactive computer service, any matter or thing described in subsection (B)(1).

(C) Except as provided by subsection (D), it shall be unlawful for any person to engage in conduct that aids or abets the violations of 18 U.S.C. § 1461 or 18 U.S.C. § 1462 described in subsection (A).

(D) This section shall not apply to any conduct taken by a hospital, or by any employees, agents, or contractors of a hospital, that is necessary to ensure that a licensed physician is prepared to perform an abortion in response to a medical emergency.

(E) No provision of this section may be construed to prohibit any conduct protected by the First Amendment of the U.S. Constitution, as made applicable to state and local governments through the Supreme Court's interpretation of the Fourteenth Amendment, or by article 1, section 4 of the Illinois Constitution.

(F) Under no circumstance may the mother of the unborn child that has been aborted, or the pregnant woman who seeks to abort her unborn child, be subject to prosecution or penalty under this section.

(G) Any person found guilty of violating any provision of this section shall be fined \$750 for each offense. In addition to any fine imposed under this chapter, the offender shall be ordered to pay all of the costs and fees incurred by the City in prosecuting the violation, which shall include but not be limited to the costs associated with an administrative adjudication proceeding or court proceeding, and reasonable attorney's fees.

(Ord. 9432, passed 5-2-23)

§ 142.03 SEVERABILITY.

(A) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the City Council that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every

application of the provisions in this chapter to every person, group of persons, or circumstances, are severable from each other.

(B) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by any court to be invalid, preempted, or unconstitutional, for any reason

whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this chapter shall be severed from any applications that a court finds to be invalid, preempted, or unconstitutional, because it is the City Council's intent and priority that every single valid application of every provision in this chapter be allowed to stand alone.

(C) The City Council further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter were to be declared invalid, preempted, or unconstitutional.

(D) If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of subsections (A), (B), and (C).

(E) No court may decline to enforce the severability requirements of subsections (A), (B), (C), and (D) on the ground that severance would "rewrite" the ordinance or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state or local official from enforcing a statute or ordinance is never rewriting the underlying law or engaging in legislative or lawmaking activity, as the statute or ordinance continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

(1) Is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Illinois Constitution or United States Constitution;

(2) Is not a formal amendment of the language in a statute or ordinance; and

(3) No more rewrites a statute or ordinance than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

(F) If any court, including any state or federal court, disregards any of the severability requirements in subsections (A), (B), (C), (D), or (E), and declares or finds any provision of this chapter facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating federal or state law or the federal or state constitutions, then that provision shall be interpreted, as a matter of city law, as if the City Council had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal or state law or the federal or state constitutions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.

(Ord. 9432, passed 5-2-23)

§ 142.04 EFFECTIVE DATE.

This chapter shall take effect when the city of Danville obtains a declaratory judgment from a court that it may enact and enforce an ordinance requiring compliance with the abortion-related provisions of 18 U.S.C. § 1461 and 18 U.S.C. § 1462, however those statutes are interpreted by the court, and the declaratory judgment becomes final upon the conclusion of direct appeals.

(Ord. 9432, passed 5-2-23)