LEGAL BIRTH DEFINITION ACT
Act 135 of 2004

An initiation of Legislation to define legal birth and the commencing of legal personhood and rights; and to provide immunity for certain acts.

History: 2004, Act 135, Eff. Mar. 30, 2005.

Constitutionality: The U.S. 6th Circuit Court of Appeals, affirming the U.S. District Court's decision in *Northland Family Planning v Cox* (docket Nos. 05-2417 and 05-2418, published June 4, 2007), held that the Legal Birth Definition Act, an act initiated by citizen petition, is unconstitutional. The court held that "invalidation of the law is the only available course" since the act "imposed an undue burden on a woman's right to terminate her pregnancy by prohibiting the D and E procedure, because it failed to adequately protect the health of the woman, and because it was void for vagueness due to its confusing language."

Compiler's note: This new act was proposed by initiative petition pursuant to Const 1963, art 2, § 9. On June 9, 2004, the initiative petition was approved by an affirmative vote of the majority of the Senators elect and filed with the Secretary of State. On June 9, 2004, the initiative petition was approved by an affirmative vote of the majority of the Members elect of the House of Representatives and filed with the Secretary of State. The Legislature did not vote pursuant to Const 1963, art 4, § 27, to give immediate effect to this enactment.

The People of the State of Michigan enact:

333.1081 Short title.

Sec. 1. This act shall be known and may be cited as the "legal birth definition act".

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333.1082 Findings.

Sec. 2. The following findings are hereby made:

(a) That in Roe v Wade the United States supreme court declared that an unborn child is not a person as understood and protected by the constitution, but any born child is a legal person with full constitutional and legal rights.

(b) That in Roe v Wade the United States supreme court made no effort to define birth or place any restrictions on the states in defining when a human being is considered born for legal purposes.

(c) That, when any portion of a human being has been vaginally delivered outside his or her mother's body, that portion of the body can only be described as born and the state has a rational basis for defining that human being as born and as a legal person.

(d) That the state has a compelling interest in protecting the life of a born person.

History: 2004, Act 135, Eff. Mar. 30, 2005.

Constitutionality: In *Northland Family Planning Clinic v Cox*, 396 F Supp 2d 978 (2005), the federal court for the Eastern District of Michigan held that the legal definition of birth act is unconstitutional because it places an undue burden on a woman's right to an abortion, does not provide a sufficient maternal health exception, requires the physician to balance the maternal and neonatal interests in the life exception, and fails to give clear notice of the activities that are prohibited. (The case is now on appeal to 6th circuit.)

The U.S. 6th Circuit Court of Appeals, affirming the U.S. District Court's decision in *Northland Family Planning v Cox* (docket Nos. 05-2417 and 05-2418, published June 4, 2007), held that the Legal Birth Definition Act, an act initiated by citizen petition, is unconstitutional. The court held that "invalidation of the law is the only available course" since the act "imposed an undue burden on a woman's right to terminate her pregnancy by prohibiting the D and E procedure, because it failed to adequately protect the health of the woman, and because it was void for vagueness due to its confusing language."

333.1083 Perinate as legally born person; immunity.

Sec. 3. (1) A perinate shall be considered a legally born person for all purposes under the law.

(2) A physician or an individual performing an act, task, or function under the delegatory authority of a physician is immune from criminal, civil, or administrative liability for performing any procedure that results in injury or death of a perinate while completing the delivery of the perinate under any of the following circumstances:

(a) If the perinate is being expelled from the mother's body as a result of a spontaneous abortion.

(b) If in that physician's reasonable medical judgment and in compliance with the applicable standard of practice and care, the procedure was necessary in either of the following circumstances:

(i) To save the life of the mother and every reasonable effort was made to preserve the life of both the mother and the perinate.

(ii) To avert an imminent threat to the physical health of the mother, and any harm to the perinate was incidental to treating the mother and not a known or intended result of the procedure performed.

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333.1084 Existing right, privilege, or protection.

Sec. 4. Nothing in this act shall abrogate any existing right, privilege, or protection under criminal or civil law that applies to an embryo or fetus.

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333.1085 Definitions.

Sec. 5. As used in this act:

(a) "Anatomical part" means any portion of the anatomy of a human being that has not been severed from the body, but not including the umbilical cord or placenta.

(b) "Imminent threat to the physical health" means a physical condition that if left untreated would result in substantial and irreversible impairment of a major bodily function.

(c) "Live" means demonstrating 1 or more of the following biological functions:

(i) A detectable heartbeat.

(ii) Evidence of breathing.

(iii) Evidence of spontaneous movement.

(iv) Umbilical cord pulsation.

(d) "Perinate" means a live human being at any point after which any anatomical part of the human being is know to have passed beyond the plane of the vaginal introitus until the point of complete expulsion or extraction from the mother's body.

(e) "Physician" means an individual licensed by the state to engage in the practice of medicine or osteopathic medicine and surgery under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

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