



Right to Life League  
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April 13, 2022

Assemblymember Jim Wood, Chair  
Assembly Health Committee  
1020 North Street, Room 390  
Sacramento, CA 95814

**Re: Letter in Opposition: AB 2223 Decriminalizing Infanticide**

Dear Chairman Wood and Members of the Assembly Judiciary Committee,

On behalf of the Right to Life League, I urge you to vote NO on SB 2223.

AB 2223 decriminalizes infanticide by eliminating civil and criminal penalties for abortions and by amending Section 123467 of the Health and Safety Code to include **“perinatal death due to a pregnancy-related cause.”**

The bill doesn’t define the term “perinatal” – but it doesn’t have to. Existing California law already supplies the definition as “the period from the establishment of pregnancy to **one month following delivery.**”<sup>1</sup> If the definition of “perinatal” expands further, AB 2223’s scope will likewise expand to prevent prosecution of later child mortality.

Adding the modifying phrase “due to a pregnancy-related cause” does not define or limit what would constitute a perinatal death. The phrase is vague, overbroad and legally meaningless.

Accordingly, AB 2223 decriminalizes killing babies born alive ostensibly up through the first month after birth.

As written, AB 2223 directly conflicts with existing California Health and Safety Code Section 123435 that protects the rights of an infant prematurely born alive in the course of an abortion. This 1995 California law requires that a child born alive in the course of an abortion must receive the same care offered a child delivered in the course of a live birth. AB 2223 will make

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<sup>1</sup> See ARTICLE 4. The Medi-Cal Benefits Program § 14134.5(b).

this statutory born-alive protection null and void by prohibiting the investigation of that infant's death. The Bill Analysis is silent on this conflict of law.

AB 2223 also conflicts with the Reproductive Privacy Act because AB 2223 provides for an absolute right to any pregnancy outcome at any stage of pregnancy, including perinatal death. The Reproductive Privacy Act limits the right of abortion after the age of viability in keeping with U.S. Supreme Court precedent.

Moreover, inclusion of the perinatal clause is unnecessary and adds no additional protection from prosecution following either an abortion or a true pregnancy loss. California Penal Code Section 187, which defines actionable murder, ALREADY prohibits prosecution of abortion. Even a death resulting from a botched late term abortion would not be actionable because it is specifically excluded from Penal Code Section 187.

Yet even in its latest iteration, AB 2223 will make it a crime to investigate a newborn's death! AB 2223 seeks to change the scope of coroners' inquiries. It also creates a civil cause of action against private individuals, like doctors or nurses or physician assistants, midwives, relatives or neighbors, who report an infant's death. Damages start at \$25,000 and can also include lawyers' fees. The threat of a superior court trial with civil damages and possible attorneys' fees will deter all but the most courageous good Samaritans from reporting child abuse leading to an infant's death lest they face crippling legal challenge. This is chilling.

And according to Section 9, just the "*threat of investigation, arrest, or prosecution*, of a person with respect to their pregnancy or actual, potential, or alleged pregnancy outcome, constitutes 'threat, intimidation, or coercion'" sufficient to trigger a civil cause of action under Section 52.1 of the Civil Code." So, if a doctor cautions a mother suffering from postpartum depression that he must report the death of her baby, does that constitute a "threat of investigation"? Are we as a society to turn a blind eye to the suffering, neglect or death of infants in the name of AB 2223?

The American Center for Law and Justice explains<sup>2</sup> how AB 2223 will thwart investigation and cover up evidence of infanticide following failed late-term abortions:

Shortly into the start of the Biden Administration, the FDA lifted the in-person dispensing requirement, allowing abortion pills to be delivered through the mail. Many pro-abortion states do not have state level regulations concerning chemical abortions, and

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<sup>2</sup> Summers, O. (2022, March 28). *California follows Maryland's lead with disturbing bill that could effectively legalize infanticide*. American Center for Law and Justice. Retrieved March 29, 2022, from <https://aclj.org/pro-life/california-follows-marylands-lead-with-disturbing-bill-that-could-effectively-legalize-infanticide>

the FDA's change in its REMS program ensured even greater access to chemical abortion via mail – with no in-person visit requirement to verify the actual stage of pregnancy.

When there is no in-person oversight of chemical abortions to verify the stage of pregnancy, there will be an increase in late-term chemical abortions. We already know that the abortion pills do not work in “safe or effective ways” one out of every four times. And that the pills are not recommended for use past 10-weeks of gestation. The abortion industry and pro-abortion advocates also know this. **The abortion lobby further knows and understands that an increase in late-term chemical abortions is going to lead to an increase in babies being born alive after failed abortions.** And abortion advocates do not want those live births to be investigated or recorded. They also don't want those babies to live.

AB 2223's use of “perinatal death due to a pregnancy-related cause” and its chilling cause of action to deter the reporting of infant deaths is not an accident, an oversight, or a misguided intention to protect grieving mothers from overzealous, rogue prosecutors.

It is intentional, strategic legislation designed to extend abortion rights past birth, to create a protected “fourth trimester” right to infanticide. Please vote NO on AB 2223.

Very Truly Yours,



Susan S. Arnall, Esq.



Vice President of Legal Affairs  
Right to Life League