

AMENDED IN ASSEMBLY MAY 1, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2202

Introduced by Assembly Member Baldwin

February 24, 2000

An act to amend Section 123445 of, to add Section 123446 to, and to repeal and add Section 123440 of, the Health and Safety Code, relating to body parts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2202, as amended, Baldwin. Selling of fetal tissue and body parts.

~~Existing law contains provisions relating to the disposal of human remains~~ makes it unlawful for any person to use any aborted product of human conception, other than fetal remains, for any type of scientific or laboratory research or for any other kind of experimentation or study, with certain exceptions, and provides that a violation of this provision constitutes unprofessional conduct within the meaning of the Medical Practice Act.

This bill would ~~express the intent of the Legislature to enact legislation relating to the selling of fetal tissue and body parts~~ enact the Prevention of Exploitation of Women and Aborted Human Beings Act of 2000 to make it unlawful to buy, sell, donate, or use any aborted human beings for any purposes, except as provided under this bill. The bill would make a violation of this prohibition punishable as felony mayhem. The bill would make it unlawful for certain persons to

intentionally engage or participate in the exploitation of aborted human beings, as defined. Because this bill would create a new crime, it would impose a state-mandated local program.

Existing law requires, with certain exceptions, that, at the conclusion of any scientific or laboratory research or any other kind of experimentation or study upon fetal remains, the fetal remains be promptly interred or disposed of by incineration. A violation of this provision is a misdemeanor.

The bill would recast this provision, to instead apply to any medical research and other uses of any part of the body of a fetus that has died under specified circumstances. Under the bill, a violation of this provision, as recast, would not be a misdemeanor.

The bill would authorize the Attorney General to maintain injunctive actions against future violations of these prohibitions or for civil contempt. The bill would provide that a violation of these provisions constitutes unprofessional conduct within the meaning of the Medical Practice Act.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes. State-mandated local program: ~~no~~—yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1.—It is the intent of the Legislature to enact~~
- 2 *SECTION 1. This act shall be known and may be cited*
- 3 *as the Prevention of Exploitation of Women and Aborted*
- 4 *Human Beings Act of 2000.*
- 5 *SEC. 2. The Legislature finds and declares all of the*
- 6 *following:*
- 7 *(a) Recent history and current events demonstrate*
- 8 *the danger that allowing the exploitation of bodies,*
- 9 *organs, and tissues of human beings electively killed by*
- 10 *state-sanctioned means leads to inhumane excess and*



1 *injustice. This exploitation inevitably provides the*
2 *motivation and rationalization for allowing and*
3 *promoting the killing of one class of humanity for the*
4 *benefit of another.*

5 *(b) Examples include the inmates of Nazi death camps*
6 *who were subjected to atrocious physiological and*
7 *medical experiments carried out by medical professionals*
8 *to increase the survivability of Nazi soldiers in combat,*
9 *and prisoners in communist China who are executed and*
10 *whose body parts are sold on an international market to*
11 *monied clientele.*

12 *(c) Americans abhor and reject this exploitation and*
13 *have clearly established a policy of that abhorrence along*
14 *with allied nations at the Nuremberg war trials. It is*
15 *noteworthy that medical science chose not to partake of*
16 *knowledge derived from experiments performed on*
17 *dying and dead victims of the Nazi atrocities.*

18 *(d) This policy of abhorrence of exploitation must be*
19 *applied to all state-sanctioned electively killed human*
20 *beings, including those legally aborted. It is essential not*
21 *to allow the use of or trade in bodies, organs, or tissues of*
22 *electively aborted human beings for any use, including*
23 *medical research and experimentation, no matter how*
24 *well intentioned or promising. To do otherwise would*
25 *establish a specific class of human beings for exploitation*
26 *and consignment to being a commodity.*

27 *(e) Medical research must not be reliant on aborted*
28 *fetal tissue. This reliance invites the expansion of abortion*
29 *for purposes beyond the United States Supreme Court's*
30 *original intent in the case of Roe v. Wade ((1973) 410 U.S.*
31 *113; 35 L.Ed.2d 147). Alternate sources of fetal tissue and*
32 *stem cells for medical research have been and are*
33 *available, such as tissue from miscarriages, stillbirths, and*
34 *adult stem cells.*

35 *(f) It is within the purview of the Legislature to*
36 *establish and invoke the moral and ethical standards of*
37 *scientific research. Science is not the author of ethics;*
38 *rather, the principles and policy of a people establish*
39 *ethics for science. This is not done with the intent of*
40 *limiting the potential good of science, but to prevent*

1 *crimes against humanity from occurring as science seeks*
2 *to benefit humanity.*

3 *(g) An aborted fetal tissue market exists in California.*
4 *Government agencies, educational institutions, and*
5 *private enterprises are currently buying and using fetal*
6 *body parts obtained from abortions performed in*
7 *California and elsewhere. This market not only violates a*
8 *policy of not exploiting the remains of electively killed*
9 *humans, it exploits women. Public documentation reveals*
10 *that this marketing of fetal body parts has resulted in the*
11 *following:*

12 *(1) Vulnerable pregnant women are being exploited*
13 *by abortion providers who urge them to donate their*
14 *aborted fetuses for humanitarian reasons. Public*
15 *documentaries have shown that in reality, these abortion*
16 *providers are motivated by financial gain, and their*
17 *practice has led to profiteering in fetal body parts.*

18 *(2) Public documentaries have shown that despite*
19 *increased risk and pain to the woman, abortion*
20 *procedures are altered, special instruments are used, and*
21 *procedure duration is extended in order to obtain an*
22 *intact fetus. This enables the wholesaler to maximize*
23 *profits by providing undamaged fetal parts.*

24 *(3) The practice of profiteering in fetal tissue sales*
25 *encourages the extension of pregnancies for the purpose*
26 *of providing more fully developed fetuses and fetal body*
27 *parts, and extension of these pregnancies increases the*
28 *risk for women.*

29 *SEC. 3. It is the intent of the Legislature in enacting*
30 *this act to prevent the exploitation of women by*
31 *prohibiting the sale of the remains of aborted human*
32 *beings for any purpose other than those permitted in this*
33 *act. Aborted human beings and associated products of*
34 *conception shall be disposed of by cremation or decent*
35 *burial. It is not the intent of the Legislature to approve or*
36 *condone abortions in general, which became and remain*
37 *legal in California as a result of the United States Supreme*
38 *Court decision in Roe v. Wade ((1973) 410 U.S. 113; 35*
39 *L.Ed.2d 147) and Doe v. Bolton ((1973) 410 U.S. 179; 35*
40 *L.Ed.2d 201).*



1 *SEC. 4. Section 123440 of the Health and Safety Code*
2 *is repealed.*

3 ~~123440. (a) It is unlawful for any person to use any~~
4 ~~aborted product of human conception, other than fetal~~
5 ~~remains, for any type of scientific or laboratory research~~
6 ~~or for any other kind of experimentation or study, except~~
7 ~~to protect or preserve the life and health of the fetus.~~
8 ~~“Fetal remains,” as used in this section, means a lifeless~~
9 ~~product of conception regardless of the duration of~~
10 ~~pregnancy. A fetus shall not be deemed to be lifeless for~~
11 ~~the purposes of this section, unless there is an absence of~~
12 ~~a discernible heartbeat.~~

13 ~~(b) In addition to any other criminal or civil liability~~
14 ~~that may be imposed by law, any violation of this section~~
15 ~~constitutes unprofessional conduct within the meaning of~~
16 ~~the Medical Practice Act, Chapter 5 (commencing with~~
17 ~~Section 2000) of Division 2 of the Business and Professions~~
18 ~~Code.~~

19 *SEC. 5. Section 123440 is added to the Health and*
20 *Safety Code, to read:*

21 *123440. (a) Except as provided in subdivision (b),*
22 *the following acts are unlawful:*

23 *(1) It is unlawful for any person to buy, sell, donate, or*
24 *use any aborted human beings for any purposes, other*
25 *than those necessary to preserve the life of the aborted*
26 *fetus should it be born alive and for autopsies and*
27 *pathological testing that pertains to the mother or the*
28 *fetus itself.*

29 *(2) It is unlawful for any person intentionally to*
30 *engage or participate in the exploitation of aborted*
31 *human beings.*

32 *(3) It is unlawful for any person employed by this state*
33 *or any agency or political subdivision thereof, within the*
34 *scope of his or her employment, intentionally to engage*
35 *or participate in the exploitation of aborted human*
36 *beings.*

37 *(4) It is unlawful for any public institution, public*
38 *facility, public equipment, or any physical assets owned,*
39 *leased, or controlled by this state or any agency or*



1 political subdivision thereof to be used for the
2 exploitation of aborted human beings.

3 (5) It is unlawful for any funds received or controlled
4 by this state or any agency or political subdivision thereof,
5 including, but not limited to, funds derived from federal,
6 state, or local taxes, gifts or grants from any source, public
7 or private, to be expended for exploitation of aborted
8 human beings.

9 (b) Subdivision (a) does not apply to the donation for
10 medical research, experimentation, or study of the
11 remains of an embryo or fetus whose death is the result
12 of miscarriage, stillbirth, sickness or disease, accident, or
13 crime committed on the fetus or the mother by a third
14 party. In these instances, the donation may be made only
15 by the mother of the fetus or, if she is incapacitated, by the
16 father of the fetus or by a legal guardian.

17 (c) For purposes of this section, the following
18 definitions apply:

19 (1) "Aborted human beings" means human fetal
20 tissue, cells, or organs that are obtained from a living or
21 dead embryo or fetus during or after an induced abortion
22 but does not include human fetal tissue, cells, or organs
23 that are obtained from a spontaneous abortion or
24 stillbirth.

25 (2) "Exploitation of aborted human beings" means the
26 sale or purchase of aborted human beings, or research or
27 treatment, including transplantation, that utilizes
28 aborted human beings, but does not include abortion, the
29 removal of aborted human beings from their mothers,
30 beneficial treatment of a living aborted child, autopsies,
31 or pathological testing.

32 SEC. 6. Section 123445 of the Health and Safety Code
33 is amended to read:

34 123445. ~~(a) Except as provided in subdivision (b), at~~
35 ~~At the conclusion of any scientific or laboratory medical~~
36 ~~research or any other kind of experimentation or study~~
37 ~~upon fetal remains, the fetal remains shall be promptly~~
38 ~~interred or disposed of by incineration.~~

39 ~~Storage~~ other uses of any part of the body of a fetus
40 whose death is the result of a miscarriage, stillbirth,



1 *sickness or disease, accident, or crime committed on the*
2 *fetus or the mother by a third party, the prenatal body*
3 *parts shall be disposed of by cremation or decent burial.*

4 (b) *Storage of the fetal remains prior to the*
5 *completion of the research, ~~experimentation, or study~~ or*
6 *other uses shall be in a ~~place~~ facility not open to the*
7 *public, and the method of storage shall prevent any*
8 *deterioration of the fetal remains that ~~would create~~ could*
9 *cause a health hazard.*

10 ~~(b) Subdivision (a) shall not apply to public or private~~
11 ~~educational institutions.~~

12 ~~Any violation of this section is a misdemeanor.~~

13 *SEC. 7. Section 123446 is added to the Health and*
14 *Safety Code, to read:*

15 *123446. (a) The Attorney General may maintain an*
16 *action in a court of appropriate jurisdiction against any*
17 *person or entity who has violated Section 123440 to obtain*
18 *an injunction against future violation of that section, or*
19 *for civil contempt against any person or entity who has*
20 *intentionally violated an injunction issued in accordance*
21 *with this section. If judgment is rendered in favor of the*
22 *Attorney General, the court shall also render judgment*
23 *for a reasonable attorney's fee in favor of the Attorney*
24 *General against the defendant. If judgment is rendered*
25 *in favor of the defendant and the court finds that the*
26 *Attorney General's suit was frivolous and brought in bad*
27 *faith, the court shall also render judgment for a*
28 *reasonable attorney's fee in favor of the defendant against*
29 *the Attorney General.*

30 (b) *Any person who engages in the sale, purchase,*
31 *donation, or use of any part of an aborted human being*
32 *in violation of Section 123440 shall be guilty of the felony*
33 *of mayhem pursuant to Section 203 of the Penal Code,*
34 *and shall be punished by a fine of fifty thousand dollars*
35 *(\$50,000), imprisonment in the state prison for two, four,*
36 *or eight years, or both the fine and imprisonment.*

37 (c) *In addition to any other criminal or civil liability*
38 *that may be imposed by law, any violation of Section*
39 *123440 constitutes unprofessional conduct within the*
40 *meaning of the Medical Practice Act, Chapter 5*



1 (commencing with Section 2000) of Division 2 of the
2 Business and Professions Code.

3 SEC. 8. If any provision, word, phrase, or clause of this
4 act or the application thereof to any person or
5 circumstance is held invalid, such invalidity shall not
6 affect the provisions, words, phrases, clauses, or
7 applications of the act which can be given effect without
8 the invalid provisions, words, phrases, clauses, or
9 application; and to this end, the provisions, words,
10 phrases, and clauses of this act are declared severable.

11 SEC. 9. No reimbursement is required by this act
12 pursuant to Section 6 of Article XIII B of the California
13 Constitution because the only costs that may be incurred
14 by a local agency or school district will be incurred
15 because this act creates a new crime or infraction,
16 eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section
18 17556 of the Government Code, or changes the definition
19 of a crime within the meaning of Section 6 of Article
20 XIII B of the California Constitution.

21 ~~legislation relating to the selling of fetal tissue and body~~
22 ~~parts.~~

