

AMENDED IN ASSEMBLY MAY 15, 2000

AMENDED IN ASSEMBLY MAY 8, 2000

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~~ *Sections 123440 and 123445* of, and to add Sections 123440.1 and 123446 to, the Health and Safety Code, relating to body parts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2202, as amended, Baldwin. Aborted fetal tissue and body parts: sale ~~or~~, purchase, *donation, or use*.

Existing law 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 enact the Prevention of the Sale ~~or~~, Purchase, *Donation, or Use* of Aborted Human Fetal Body Parts Act of 2000 to make it unlawful to buy~~—or~~, sell, *donate, or use* an aborted human embryo or fetus, as defined, for any purposes, except as provided under this bill. The bill would make a violation of this prohibition punishable as felony

mayhem. 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 human embryo or 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: yes. State-mandated local program: yes.

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

1 SECTION 1. This act shall be known, and may be
2 cited, as the Prevention of the Sale ~~or Purchase~~,
3 *Purchase, Donation, or Use* of Aborted Human Fetal
4 Body Parts Act of 2000.

5 SEC. 2. The Legislature finds and declares all of the
6 following:

7 (a) Medical research must not be reliant on aborted
8 human embryo or fetal tissue. This reliance invites the
9 expansion of abortion for purposes beyond the United
10 States Supreme Court’s original intent in the case of *Roe*
11 *v. Wade* ((1973) 410 U.S. 113; 35 L.Ed.2d 147). Alternate
12 sources of fetal tissue and stem cells for medical research



1 have been and are available, such as tissue from
2 miscarriages, stillbirths, and adult stem cells.

3 (b) It is within the purview of the Legislature to
4 establish and invoke the moral and ethical standards of
5 scientific research. Science is not the author of ethics;
6 rather, the principles and policy of a people establish
7 ethics for science.

8 (c) An aborted fetal tissue market exists in California.
9 Government agencies, educational institutions, and
10 private enterprises are currently buying and using fetal
11 body parts obtained from abortions performed in
12 California and elsewhere.

13 (d) Vulnerable pregnant women are being exploited
14 by abortion providers who urge them to donate their
15 aborted fetuses for humanitarian reasons.

16 (e) The practice of profiteering in fetal tissue sales
17 encourages the extension of pregnancies for the purpose
18 of providing more fully developed fetuses and fetal body
19 parts, and extension of these pregnancies increases the
20 risk for women.

21 SEC. 3. (a) It is the intent of the Legislature in
22 enacting this act to do both of the following:

23 (1) Prohibit the sale and purchase of the remains of
24 aborted human embryos and fetuses for any purpose
25 other than those permitted in this act.

26 (2) Provide for the disposition of aborted human
27 embryos and fetuses by means of cremation or decent
28 burial.

29 (b) It is not the intent of the Legislature to approve or
30 condone abortions in general, which became and remain
31 legal in California as a result of the United States Supreme
32 Court decisions in *Roe v. Wade* ((1973) 410 U.S. 113; 35
33 L.Ed.2d 147) and *Doe v. Bolton* ((1973) 410 U.S. 179; 35
34 L.Ed.2d 201).

35 SEC. 4. *Section 123440 of the Health and Safety Code*
36 *is amended to read:*

37 123440. (a) It is unlawful for any person to use any
38 aborted product of human conception, ~~other than fetal~~
39 ~~remains~~, for any type of scientific or laboratory research
40 or for any other kind of experimentation or study, except



1 to protect or preserve the life and health of the fetus.
2 ~~“Fetal remains,” as used in this section, means a lifeless~~
3 ~~product of conception regardless of the duration of~~
4 ~~pregnancy. A fetus shall not be deemed to be lifeless for~~
5 ~~the purposes of this section, unless there is an absence of~~
6 ~~a discernible heartbeat.~~

7 (b) In addition to any other criminal or civil liability
8 that may be imposed by law, any violation of this section
9 constitutes unprofessional conduct within the meaning of
10 the Medical Practice Act, ~~Chapter~~ (*Chapter 5*
11 (commencing with Section 2000) of Division 2 of the
12 Business and Professions ~~Code~~ *Code*).

13 *SEC. 5.* Section 123440.1 is added to the Health and
14 Safety Code, to read:

15 123440.1. (a) Except as provided in subdivision (b):

16 (1) It is unlawful for any person to buy ~~or sell~~, *sell*,
17 *donate, or use* an aborted human embryo or fetus for any
18 purpose.

19 (2) It is unlawful for any public institution, public
20 facility, public equipment, or any physical assets owned,
21 leased, or controlled by this state or any agency or
22 political subdivision thereof to buy ~~or sell~~, *sell, donate, or*
23 *use* aborted human embryos or fetuses.

24 (3) It is unlawful for any funds received or controlled
25 by this state or any agency or political subdivision thereof,
26 including, but not limited to, funds derived from federal,
27 state, or local taxes, gifts or grants from any source, public
28 or private, to be expended for the purpose of ~~purchasing~~
29 *buying, selling, donating, or using* embryos or fetuses or
30 any part thereof.

31 (b) Subdivision (a) shall not apply to the donation for
32 medical research, experimentation, or study of the
33 remains of an embryo or fetus whose death is the result
34 of miscarriage, stillbirth, sickness or disease, accident, or
35 crime committed on the fetus or the mother by a third
36 party. In these instances, the donation may be made only
37 by the mother of the fetus or, if she is incapacitated, by the
38 father of the fetus or by a legal guardian.

39 (c) For purposes of this section, “aborted human
40 embryo or fetus” means a human embryo or fetus or any



1 part thereof, including tissue, cells, or organs that are
2 obtained from a living or dead embryo or fetus during or
3 after an induced abortion but does not include human
4 embryonic or fetal tissue, cells, or organs that are
5 obtained from a spontaneous abortion or stillbirth.

6 ~~SEC. 5.—~~

7 *SEC. 6.* Section 123445 of the Health and Safety Code
8 is amended to read:

9 123445. (a) At the conclusion of any medical research
10 or other uses of any part of the body of a human embryo
11 or fetus whose death is the result of a miscarriage,
12 stillbirth, sickness or disease, accident, or crime
13 committed on the fetus or the mother by a third party, the
14 prenatal body parts shall be disposed of by cremation or
15 decent burial.

16 (b) Storage of the fetal remains prior to the
17 completion of the research or other uses shall be in a
18 facility not open to the public, and the method of storage
19 shall prevent any deterioration of the fetal remains that
20 could cause a health hazard.

21 *(c) Any violation of this section is a misdemeanor.*

22 ~~SEC. 6.—~~

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

25 123446. (a) The Attorney General may maintain an
26 action in a court of appropriate jurisdiction against any
27 person or entity who has violated Section 123440.1 to
28 obtain an injunction against future violation of that
29 section, or for civil contempt against any person or entity
30 who has intentionally violated an injunction issued in
31 accordance with this section. If judgment is rendered in
32 favor of the Attorney General, the court shall also render
33 judgment for a reasonable attorney's fee in favor of the
34 Attorney General against the defendant. If judgment is
35 rendered in favor of the defendant and the court finds
36 that the Attorney General's suit was frivolous and
37 brought in bad faith, the court shall also render judgment
38 for a reasonable attorney's fee in favor of the defendant
39 against the Attorney General.



1 (b) Any person who engages in the sale ~~or purchase~~,
 2 *purchase, donation, or use* of an aborted human embryo
 3 or fetus in violation of Section 123440.1 shall be guilty of
 4 the felony of mayhem pursuant to Section 203 of the Penal
 5 Code, and shall be punished by a fine of fifty thousand
 6 dollars (\$50,000), imprisonment in the state prison for
 7 two, four, or eight years, or both the fine and
 8 imprisonment.

9 (c) In addition to any other criminal or civil liability
 10 that may be imposed by law, any violation of Section
 11 123440.1 constitutes unprofessional conduct within the
 12 meaning of the Medical Practice Act, Chapter 5
 13 (commencing with Section 2000) of Division 2 of the
 14 Business and Professions Code.

15 ~~SEC. 7.—~~

16 *SEC. 8.* If any provision, word, phrase, or clause of this
 17 act or the application thereof to any person or
 18 circumstance is held invalid, such invalidity shall not
 19 affect the provisions, words, phrases, clauses, or
 20 applications of the act which can be given effect without
 21 the invalid provisions, words, phrases, clauses, or
 22 application; and to this end, the provisions, words,
 23 phrases, and clauses of this act are declared severable.

24 ~~SEC. 8.—~~

25 *SEC. 9.* No reimbursement is required by this act
 26 pursuant to Section 6 of Article XIII B of the California
 27 Constitution because the only costs that may be incurred
 28 by a local agency or school district will be incurred
 29 because this act creates a new crime or infraction,
 30 eliminates a crime or infraction, or changes the penalty
 31 for a crime or infraction, within the meaning of Section
 32 17556 of the Government Code, or changes the definition
 33 of a crime within the meaning of Section 6 of Article
 34 XIII B of the California Constitution.

