

LEGAL BIRTH DEFINITION ACT (EXCERPT)
Act 135 of 2004

***** 333.1083 THIS SECTION IS REPEALED BY ACT 286 OF 2023 EFFECTIVE FEBRUARY 13, 2024

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.

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."