



SPONSOR: Rep. Welch  
& Sen. Vaughn

HOUSE OF REPRESENTATIVES

140th GENERAL ASSEMBLY

HOUSE BILL NO.

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CERTAIN BIRTHS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend Title 11 of the Delaware Code by adding thereto a new section, to be  
2 designated as §1334, to read as follows:

3           "§1334. Concealing the birth of an infant.

4           (a) A person is guilty of concealing the birth of an infant when the person knowingly  
5 conceals the corpse of a newborn child, whether or not such child was born alive, with intent to  
6 conceal the fact of its birth, or with intent to prevent a determination of whether such child was  
7 born dead or alive. Concealing the birth of an infant is a Class "E" felony.

8           (b) For the purposes of this section, the following definitions shall apply:

9           (1) "Child" or "infant" shall include, in addition to their ordinary meanings, any  
10 product of conception which results in a live birth or spontaneous fetal death.

11           (2) "Birth" shall mean the complete expulsion or extraction of a child, from its  
12 mother, no matter whether the result was a live birth or spontaneous fetal death. "Birth"  
13 as defined in this section does not include a therapeutic abortion, as defined in this Title.

14           (3) "Live birth" and "spontaneous fetal death" shall have the same meaning as set  
15 forth in §3101, Title 16 of this Code.

16           (c) This section shall not apply to any birth which occurs with the assistance of any  
17 physician or nurse, unless such physician or nurse is the biological parent of such child, or  
18 believes that he or she is the biological parent of such child.

19 (d) It shall be an affirmative defense to any prosecution under this section that the child  
20 whose corpse was concealed had not attained at least 24 weeks of gestational age at the time of  
21 the birth.

22 (e) Prosecution under this section, or the availability of a defense under subsection (c),  
23 (d) or (e) of this section, shall not preclude a separate prosecution, conviction or sentence under  
24 any other section of this Code."  
25

#### SYNOPSIS

This Act closes a loophole in Delaware's Criminal Code by making it a felony to conceal the birth of an infant by concealing its corpse. Under current law, it is difficult to prosecute a person who kills an infant and then disposes of his or her corpse because this act of concealment makes it difficult to prove that the baby was born alive, which is a prerequisite for the prosecution of any crime of violence under the Delaware Code. At least ten other states have similar criminal statutes. This Act is based upon Oregon's law.