

1 HOUSE BILL NO. 479

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8 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING REQUIREMENTS FOR FETAL SURGERY;
9 REQUIRING THE DETERMINATION OF THE GESTATIONAL AGE OF AN UNBORN CHILD PRIOR TO FETAL
10 SURGERY; REQUIRING THE ADMINISTRATION OF FETAL ANESTHESIA; REQUIRING FACILITIES TO
11 REPORT ON THE USE OF FETAL ANESTHESIA IN ABORTIONS; PROVIDING EXCEPTIONS; PROVIDING
12 DEFINITIONS; PROVIDING A PENALTY; AND AMENDING SECTION 50-20-110, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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16 NEW SECTION. **Section 1. Short title.** [Sections 1 through 4 5] may be cited as the "Montana Unborn
17 Child Pain and Suffering Prevention Act".

18
19 NEW SECTION. **Section 2. Legislative findings.** The legislature finds that:

20 (1) substantial scientific evidence recognizes that an unborn child is capable of experiencing physical pain
21 and suffering by not later than 20 weeks after fertilization;

22 (2) the state has a compelling interest in protecting unborn children from preventable physical pain and
23 suffering in order to prevent harmful, pain-induced, long-term neurodevelopmental effects, including but not
24 limited to altered pain sensitivity and emotional, behavioral, and learning disabilities;

25 (3) the state has a compelling interest in preventing or minimizing the pain and suffering of an unborn
26 child during an abortion; and

27 (4) the requirement of fetal anesthesia does not impose an undue burden on or pose a substantial
28 obstacle to a woman's ability to have an abortion.

29
30 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 4 5], the following definitions

1 apply:

2 (1) "Abortion" has the meaning provided in 50-20-104.

3 (2) "Department" means the department of public health and human services provided for in 2-15-2201.

4 (3) "Fetal surgery" means a surgical or invasive procedure, including an abortion, that is performed on
5 an unborn child.

6 (4) "Gestational age" means the age of an unborn child as calculated from the fusion of a human
7 spermatozoon with a human ovum.

8 (5) "INFORMED CONSENT" MEANS VOLUNTARY CONSENT BY A WOMAN UPON WHOM AN INVASIVE PROCEDURE IS
9 TO BE PERFORMED AFTER A PHYSICIAN:

10 (A) PROVIDES THE WOMAN ORALLY AND IN PERSON WITH INFORMATION ON THE PROPOSED INVASIVE PROCEDURE
11 AND ON FETAL PAIN; AND

12 (B) PERSONALLY PROVIDES THE WOMAN WITH WRITTEN MATERIAL DEVELOPED IN ACCORDANCE WITH [SECTION
13 5].

14 ~~(5)~~(6) "Invasive procedure" means an act that penetrates or breaks the skin or enters a body cavity. The
15 term includes the application of pharmacologic, ~~electromagnetic, or particle radiation~~ METHODS to an unborn child
16 for the purpose of causing intentional death or destruction. The term does not include the acts of obtaining blood
17 from the umbilical cord or placing fetal scalp electrodes on an unborn child during labor and delivery.

18 ~~(6)~~(7) "Medical emergency" means a physical condition that, in the medical judgment of a reasonably
19 prudent physician, knowledgeable about the case and the treatment possibilities with respect to the conditions
20 involved, poses an immediate, serious risk of substantial and irreversible physical impairment of a major bodily
21 function of the pregnant woman or unborn child. A condition does not constitute a medical emergency if it is
22 based on a claim or diagnosis that the pregnant woman will engage in conduct that will result in substantial and
23 irreversible physical impairment of a major bodily function or the woman's death.

24 ~~(7)~~(8) "Pain" means an unpleasant physical and sensory experience associated with actual or potential
25 tissue damage, including the encoding and processing of harmful stimuli within the nervous system.

26 ~~(8)~~(9) "Physician" has the meaning provided in 37-3-102.

27 ~~(9)~~(10) "Suffering" means the state of severe physical distress associated with events that threaten the
28 viability of a body that can be measured by monitoring physiologic processes necessary to sustain life.

29 ~~(10)~~(11) "Unborn child" means an individual organism of the species Homo sapiens from fusion of a
30 human spermatozoon with a human ovum until live birth.

1
 2 **NEW SECTION. Section 4. Fetal surgery -- use of anesthesia required -- determination of**
 3 **probable post-fertilization age required -- penalty.** (1) Except in the case of a medical emergency OR THE
 4 REFUSAL OF A WOMAN TO PROVIDE INFORMED CONSENT, a person may not perform fetal surgery on an unborn child
 5 whose gestational age is 20 or more weeks without:

6 (a) administering an amount of anesthesia to the unborn child that provides adequate relief from physical
 7 pain and suffering; and

8 (b) first determining the gestational age of the unborn child or relying on a determination made by a
 9 physician. In making this determination, the person shall make inquiries of the pregnant woman and perform or
 10 cause to be performed any medical examination and test that a reasonably prudent physician, knowledgeable
 11 about the case and the medical conditions involved, would consider necessary in order to make an accurate
 12 determination of the gestational age.

13 (2) (a) A person who purposely or knowingly violates this section ~~is guilty of a misdemeanor and shall~~
 14 ~~be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or~~
 15 ~~both~~ MAY BE REPORTED TO THE APPROPRIATE PROFESSIONAL LICENSING BOARD. THE BOARD SHALL REVIEW THE
 16 COMPLAINT IN ACCORDANCE WITH THE PROVISIONS OF TITLE 37, CHAPTER 1.

17 (b) Upon a second or subsequent conviction VIOLATION, the person is ~~guilty of a felony and shall be fined~~
 18 ~~an amount not less than \$500 or more than \$50,000 and be imprisoned for a term of not less than 10 days or~~
 19 ~~more than 5 years, or both~~ SUBJECT TO FORFEITURE OF THE PERSON'S PROFESSIONAL LICENSE.

20
 21 **NEW SECTION. SECTION 5. INFORMED CONSENT -- WRITTEN MATERIAL.** THE DEPARTMENT SHALL DEVELOP
 22 THE WRITTEN MATERIAL TO BE USED BY PHYSICIANS FOR THE PURPOSES OF INFORMED CONSENT. BEFORE INITIAL
 23 PUBLICATION OF THE MATERIAL AND FOR ANY SUBSEQUENT REVISIONS, THE DEPARTMENT SHALL MAKE THE DRAFT
 24 MATERIAL AVAILABLE FOR PUBLIC COMMENT.

25
 26 **Section 6.** Section 50-20-110, MCA, is amended to read:

27 **"50-20-110. Reporting of practice of abortion.** (1) Every facility in which an abortion is performed
 28 within the state shall keep on file upon a form prescribed by the department a statement dated and certified by
 29 the physician who performed the abortion setting forth ~~such~~ information with respect to the abortion as the
 30 department by regulation shall require, including but not limited to information on prior pregnancies, the medical

1 procedure employed to administer the abortion, whether fetal anesthesia was administered in accordance with
 2 [section 4], the gestational age of the fetus, the vital signs of the fetus after abortion, if any, and if after viability,
 3 the medical procedures employed to protect and preserve the life and health of the fetus.

4 (2) The physician performing an abortion shall cause ~~such~~ pathology studies to be made in connection
 5 ~~therewith~~ with the abortion as the department shall require by regulation, and the facility shall keep the reports
 6 thereof on file.

7 (3) In connection with an abortion, the facility shall keep on file the original of each of the documents
 8 required by this chapter relating to informed consent, consent to abortion, certification of necessity of abortion
 9 to preserve the life or health of the mother, and certification of necessity of abortion to preserve the life of the
 10 mother.

11 (4) ~~Such~~ The facility shall, within 30 days after the abortion, file with the department a report upon a form
 12 prescribed by the department and certified by the custodian of the records or physician in charge of ~~such~~ the
 13 facility setting forth all of the information required in subsections (1), (2), and (3) ~~of this section~~, except ~~such~~
 14 information ~~as that~~ that would identify any individual involved with the abortion. ~~The report~~ In filing the report, the
 15 facility shall exclude copies of any documents required to be filed by subsection (3) ~~of this section~~, but shall certify
 16 that ~~such~~ the documents were duly executed and are on file.

17 (5) All reports and documents required by this chapter ~~shall~~ must be treated with the confidentiality
 18 afforded to medical records, subject to ~~such~~ disclosure as is permitted by law. Statistical data not identifying any
 19 individual involved in an abortion ~~shall~~ must be made public by the department annually, and the report required
 20 by subsection (4) ~~of this section~~ to be filed with the department ~~shall~~ must be available for public inspection
 21 except insofar as it identifies any individual involved in an abortion. Names and identities of persons submitting
 22 to abortion ~~shall~~ must remain confidential among medical and medical support personnel directly involved in the
 23 abortion and among persons working in the facility where the abortion was performed whose duties include billing
 24 the patient or submitting claims to an insurance company, keeping facility records, or processing abortion data
 25 required by state law.

26 (6) Violation of this section is a misdemeanor and is punishable as provided in 46-18-212."
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28 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 4 5] are intended to be
 29 codified as an integral part of Title 50, chapter 19, and the provisions of Title 50, chapter 19, apply to [sections
 30 1 through 4 5].

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