

1 SENATE BILL NO. 282

2 INTRODUCED BY A. OLSZEWSKI

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ABORTION LAWS TO PROHIBIT THE PERFORMANCE
5 OF AN ABORTION OF A VIABLE FETUS; REVISING THE DEFINITION OF A VIABLE FETUS; PROVIDING
6 FOR THE DELIVERY OF A VIABLE FETUS IF CERTAIN CONDITIONS EXIST; AND AMENDING SECTIONS
7 50-20-102, 50-20-104, 50-20-106, 50-20-108, 50-20-109, 50-20-110, AND 50-20-306, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 50-20-102, MCA, is amended to read:
12 **"50-20-102. Statement of purpose -- findings.** (1) The legislature reaffirms the tradition of the state
13 of Montana to protect every human life, whether unborn or aged, healthy or sick. In keeping with this tradition and
14 in the spirit of our constitution, we reaffirm the intent to extend the protection of the laws of Montana in favor of
15 all human life. It is the policy of the state to preserve and protect the lives of all human beings and to provide
16 protection for the viable human life. The protection afforded to a person by Montana's constitutional right of
17 privacy is not absolute, but may be infringed upon by a compelling state interest. The legislature finds that a
18 compelling state interest exists in the protection of viable life.

19 (2) The legislature finds, with respect to 50-20-109(1)(b), that:

20 (a) a tragic situation occurs when a woman in late pregnancy confronts a life-threatening health condition
21 and has to make the difficult decision of choosing between sacrificing her life for the sake of her unborn child or
22 aborting her unborn child to preserve her own life;

23 (b) the viability of children born prematurely has dramatically improved due to the establishment of
24 neonatal intensive medical care facilities throughout Montana; and

25 (c) the state has a compelling interest in providing a pregnant woman with the ability to choose to
26 preserve both her life and that of her unborn child when confronted by a life-threatening health condition during
27 late pregnancy.

28 ~~(2)~~(3) The legislature finds, with respect to 50-20-401, that:

29 (a) the United States supreme court has determined that states have a legitimate interest in protecting
30 both a woman's health and the potentiality of human life and that each interest grows and reaches a compelling

1 point at various stages of a woman's approach to the full term of a pregnancy;

2 (b) the court has also determined that subsequent to viability, the state in promoting its interest in the
3 potentiality of human life may, if it chooses, regulate and even proscribe abortion except when necessary, in
4 appropriate medical judgment, for the preservation of the life or health of the woman;

5 (c) the holdings referred to in subsections ~~(2)(a) and (2)(b)~~ (3)(a) and (3)(b) apply to unborn persons in
6 order to extend to unborn persons the inalienable right to defend their lives and liberties;

7 (d) absent clear proof that an abortion is necessary to save the life of the woman, the abortion of a viable
8 person is an infringement of that person's rights; and

9 (e) the state has a duty to protect innocent life and that duty has grown to a compelling point with respect
10 to partial-birth abortion."
11

12 **Section 2.** Section 50-20-104, MCA, is amended to read:

13 **"50-20-104. Definitions.** As used in this chapter, the following definitions apply:

14 (1) "Abortion" means the use or prescription of any instrument, medicine, drug, or other substance or
15 device to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than
16 to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a
17 dead fetus.

18 (2) "Attempted abortion" or "attempted" means an act or an omission of a statutorily required act that,
19 under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct
20 planned to culminate in the performance of an abortion in violation of this chapter.

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

22 (4) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion
23 is performed.

24 (5) "Gestational age" means the age of a fetus as calculated from the first day of a woman's last
25 menstrual cycle to the current date.

26 ~~(5)(6)~~ (6) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion
27 is to be performed only after full disclosure to the woman by:

28 (a) the physician who is to perform the abortion of the following information:

29 (i) the particular medical risks associated with the particular abortion procedure to be employed,
30 including, when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to subsequent

1 pregnancies, and infertility;

2 (ii) the probable gestational age of the unborn child at the time the abortion is to be performed; and

3 (iii) the medical risks of carrying the child to term;

4 (b) the physician or an agent of the physician:

5 (i) that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

6 (ii) that the father is liable to assist in the support of the child, even in instances in which the father has
7 offered to pay for the abortion; and

8 (iii) that the woman has the right to review the printed materials described in 50-20-304; and

9 (c) the physician or the agent that the printed materials described in 50-20-304 have been provided by
10 the department and that the materials describe the unborn child and list agencies that offer alternatives to
11 abortion.

12 ~~(6)(7) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid~~
13 "Viable" or "viability" means that a fetus has attained a gestational age of 24 weeks or more."

14

15 **Section 3.** Section 50-20-106, MCA, is amended to read:

16 **"50-20-106. Informed consent.** (1) An abortion may not be performed without the informed consent of
17 the woman upon whom the abortion is to be performed. The informed consent must be received at least 24 hours
18 prior to the abortion and certified prior to or at the time of the abortion.

19 (2) Informed consent must be certified by a written statement in a form prescribed by the department and
20 signed by the physician and the woman upon whom the abortion is to be performed in which the physician
21 certifies that the physician has made the full disclosure provided in 50-20-104~~(5)~~(6) and in which the woman upon
22 whom the abortion is to be performed acknowledges that the disclosures have been made to the woman and that
23 the woman voluntarily consents to the abortion.

24 (3) If a woman chooses to review the written materials described in 50-20-304, the materials must be
25 provided to the woman at least 24 hours before the abortion or be mailed to the woman by certified mail, with
26 delivery restricted to the addressee, at least 72 hours before the abortion.

27 (4) The information required in 50-20-104~~(5)(a)~~(6)(a) may be provided by telephone without conducting
28 a physical examination or tests of the patient. The information may be based on facts supplied to the physician
29 by the woman and other relevant information that is reasonably available to the physician. The information may
30 not be provided by a tape recording but must be provided during a consultation in which the physician is able to

1 ask questions of the woman and the woman is able to ask questions of the physician. If a physical examination,
 2 tests, or the availability of other information subsequently indicates, in the medical judgment of the physician, a
 3 revision of information previously provided to the patient, the revised information may be communicated to the
 4 patient at any time prior to the performance of the abortion.

5 (5) The information required in 50-20-104~~(5)(b)~~(6)(b) may be provided by a tape recording if provision
 6 is made to record or otherwise register specifically whether the woman does or does not choose to review the
 7 printed materials.

8 (6) The informed consent or consent provided for in this section is not required if a licensed physician
 9 certifies that the abortion is necessary because of a medical emergency as defined in 50-20-303.

10 (7) An executive officer, administrative agency, or public employee of the state or of any local
 11 governmental body may not issue any order requiring an abortion or coerce any woman to have an abortion. A
 12 person may not coerce any woman to have an abortion.

13 (8) A violation of subsections (1) through (7) is a misdemeanor."
 14

15 **Section 4.** Section 50-20-108, MCA, is amended to read:

16 **"50-20-108. Protection of premature infants born alive.** (1) A person commits an offense, as defined
 17 in 45-5-102 through 45-5-104, if the person purposely, knowingly, or negligently causes the death of a premature
 18 infant born alive, if the infant is viable.

19 ~~(2) Whenever a premature infant that is the subject of abortion is born alive and is viable, it becomes a~~
 20 ~~dependent and neglected child subject to the provisions of state law, unless:~~

21 ~~—— (a) the termination of the pregnancy is necessary to preserve the life of the mother; or~~

22 ~~—— (b) the mother and the mother's spouse or either of them have agreed in writing in advance of the~~
 23 ~~abortion or within 72 hours thereafter to accept the parental rights and responsibilities of the premature infant if~~
 24 ~~it survives the abortion procedure.~~

25 ~~(3)~~(2) A person may not use any premature infant born alive for any type of scientific research or other
 26 kind of experimentation except as necessary to protect or preserve the life and health of the premature infant born
 27 alive.

28 ~~(4)~~(3) A violation of subsection ~~(3)~~ (2) is a felony."
 29

30 **Section 5.** Section 50-20-109, MCA, is amended to read:

1 **"50-20-109. Control of practice of abortion.** (1) Except as provided in 50-20-401, an abortion may not
2 be performed within the state of Montana:

3 (a) except by a licensed physician or physician assistant;

4 (b) after viability of the fetus, ~~except as provided in subsection (2).~~ If a fetus is viable and, in the medical
5 judgment of a licensed physician or physician assistant, a physical condition exists that poses an immediate,
6 serious risk of death or substantial and irreversible physical impairment of a major bodily function of the pregnant
7 woman or viable fetus, the physician or physician assistant shall induce labor or deliver the viable fetus by
8 caesarean section and provide life-sustaining support to the viable fetus. For the purposes of this subsection
9 (1)(b), a physical condition does not include a condition that is based on a claim or diagnosis that the pregnant
10 woman will engage in conduct that will result in death or substantial and irreversible physical impairment of a
11 major bodily function.

12 ~~(2) An abortion under subsection (1)(b) may be performed only to preserve the life or health of the~~
13 ~~mother and only if:~~

14 ~~—— (a) the judgment of the physician who is to perform the abortion is first certified in writing by the~~
15 ~~physician, setting forth in detail the facts relied upon in making the judgment; and~~

16 ~~—— (b) two other licensed physicians have first examined the patient and concurred in writing with the~~
17 ~~judgment. The certification and concurrence in this subsection (2)(b) are not required if a licensed physician~~
18 ~~certifies that the abortion is necessary to preserve the life of the mother.~~

19 ~~—— (3) The timing and procedure used in performing an abortion under subsection (1)(b) must be such that~~
20 ~~the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in~~
21 ~~45-2-101. The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health~~
22 ~~of the mother.~~

23 ~~—— (4) For purposes of this section, "health" means the prevention of a risk of substantial and irreversible~~
24 ~~impairment of a major bodily function.~~

25 ~~(5)(2)~~ The supervision agreement of a physician assistant may provide for performing abortions.

26 ~~(6)(3)~~ Violation of ~~subsections (1) through (3)~~ subsection (1) is a felony."
27

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

29 **"50-20-110. Reporting of practice of abortion.** (1) Every facility in which an abortion is performed
30 within the state shall keep on file ~~upon~~ on a form prescribed by the department a statement dated and certified

1 by the physician who performed the abortion setting forth ~~such~~ any information with respect to the abortion as
 2 that the department by regulation ~~shall require~~ requires, including but not limited to information on prior
 3 pregnancies, the medical procedure employed to administer the abortion, the gestational age of the fetus, and
 4 the vital signs of the fetus after abortion, if any; ~~and if after viability, the medical procedures employed to protect~~
 5 ~~and preserve the life and health of the fetus.~~

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

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

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

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

28 (6) Violation of this section is a misdemeanor and is punishable as provided in 46-18-212."
 29

30 **Section 7.** Section 50-20-306, MCA, is amended to read:

1 **"50-20-306. Physician reporting requirements -- penalty -- action -- department report.** (1) ~~Within~~
 2 ~~90 days after July 1, 1995, the~~ The department shall prepare a reporting form to be used by physicians that
 3 contains a reprint of this chapter and on which the physician shall list:

4 (a) the number of women to whom the physician provided the information described in
 5 50-20-104~~(5)(a)~~(6)(a), including:

6 (i) the number of women provided the information by telephone and the number to whom it was provided
 7 in person; and

8 (ii) the number of women in each group referred to in subsection (1)(a)(i) to whom the physician provided
 9 the information in the capacity of a referring physician and the number to whom it was provided in the capacity
 10 of a physician who is to perform the abortion;

11 (b) the number of women to whom the physician or an agent of the physician provided the information
 12 described in 50-20-104~~(5)(b)~~(6)(b), including:

13 (i) the number of women to whom the physician provided the information by telephone and the number
 14 to whom it was provided in person;

15 (ii) the number of women in each group referred to in subsection (1)(b)(i) to whom the physician provided
 16 the information in the capacity of a referring physician and the number to whom it was provided in the capacity
 17 of a physician who is to perform the abortion; and

18 (iii) the number of women in each group referred to in subsection (1)(b)(ii) to whom information was
 19 provided by the physician and the number to whom it was provided by an agent of the physician;

20 (c) the number of women who availed themselves of the opportunity to obtain a copy of the printed
 21 information described in 50-20-304 and the number who did not;

22 (d) of each of the numbers described in subsections (1)(a) through (1)(c), the number who, to the best
 23 of the reporting physician's information and belief, obtained an abortion; and

24 (e) the number of abortions that were performed by the physician but in which information otherwise
 25 required to be provided at least 24 hours before the abortion was not provided because:

26 (i) an immediate abortion was necessary to avert the woman's death; or

27 (ii) a delay would create serious risk of substantial and irreversible impairment of a major bodily function.

28 (2) The department shall ensure that copies of the reporting forms described in subsection (1) are
 29 provided:

30 ~~— (a) by 120 days after July 1, 1995, to all physicians licensed in this state;~~

1 ~~_____ (b) to each physician licensed to practice after July 1, 1995, at the time of licensure;~~

2 ~~_____ (c) by December 1 of each succeeding year; to all physicians licensed to practice in this state.~~

3 (3) By February 28 of each year, each physician or the physician's agent who provided information to
4 one or more women in accordance with 50-20-106 shall submit a copy of the reporting form described in
5 subsection (1) to the department with the requested data entered accurately and completely.

6 (4) Reports that are not submitted by March 31 are subject to a penalty of \$500 for each 30-day period
7 that the reports are overdue. A physician who is required to report but who, more than 1 year after the due date,
8 has not submitted a report or who has submitted an incomplete report may, in an action brought by the
9 department, be directed by a district court to submit a complete report within a period stated in the court order
10 or be subject to sanctions for civil contempt.

11 (5) By June 30 of each year, the department shall issue a public report providing statistics for the
12 previous calendar year submitted in accordance with this section for each of the items listed in subsection (1).
13 Each report must provide the statistics for all previous calendar years, adjusted to reflect information from late
14 or corrected reports. The department shall ensure that none of the information included in the public reports could
15 reasonably lead to the identification of an individual who was provided information in accordance with 50-20-106.
16 The department shall design the reporting process to ensure that confidentiality regarding the physician or the
17 physician's agent is maintained in the department records.

18 (6) The department may, by rule, alter the dates established by subsection (2)~~(c)~~, (3), or (5) or
19 consolidate the forms or reports described in this section with other forms or reports to achieve administrative
20 convenience, achieve fiscal savings, or reduce the burden of reporting requirements. However, reporting forms
21 must be sent to all licensed physicians at least once a year, and the report described in subsection (5) must be
22 issued at least once a year."

23

- END -