

Senate Bill 1553

Sponsored by Senator LINTHICUM, Representatives SMITH G, OWENS, Senator HEARD, Representatives MORGAN, RESCHKE; Senators HANSELL, KENNEMER, THOMSEN, Representatives BOSHART DAVIS, CATE, DRAZAN, GOODWIN, LEVY, LEWIS, NOBLE, SCHARF, SMITH DB (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires health care practitioner to exercise proper degree of care to preserve health and life of child born alive after abortion or attempted abortion. Requires health care practitioner to ensure child born alive is transported to hospital.

Allows specified person to bring civil action for damages and equitable relief against health care practitioner for failure to exercise proper degree of care. Directs court to award attorney fees to prevailing plaintiff.

Allows court to order identity or personally identifiable information of specified person protected from disclosure.

A BILL FOR AN ACT

1
2 Relating to abortion.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Sections 1 to 6 of this 2022 Act shall be known and may be cited as the**
5 **Born-Alive Infants Protection Act.**

6 **SECTION 2. As used in sections 1 to 6 of this 2022 Act:**

7 (1) "Abortion" means the use or prescription of a drug, instrument, medicine or other
8 substance or device to prematurely terminate a person's pregnancy with a purpose other
9 than:

10 (a) To increase the probability of a live birth and preserve the life and health of the child;

11 or

12 (b) To remove a dead unborn child that died as a result of natural causes in utero, acci-
13 dental trauma or a criminal assault on the pregnant person or the unborn child.

14 (2) "Born alive" means the complete expulsion or extraction of a child from a person at
15 any stage of the child's development and after the expulsion or extraction, the child is
16 breathing or has a beating heart, pulsation of the umbilical cord or definite movement of
17 voluntary muscles, whether the umbilical cord has been severed or not. Expulsion or ex-
18 traction may occur by natural or induced labor, cesarean section or induced abortion.

19 (3) "Health care practitioner" means a person who is authorized by a health professional
20 regulatory agency in this state to engage in the practice of a health care discipline.

21 **SECTION 3. In determining the meaning of any statute, rule, regulation or interpretation**
22 **thereof by an agency of this state, "person," "human being," "child" and "individual," in ad-**
23 **dition to any other definition, means an infant member of the species Homo sapiens who is**
24 **born alive at any stage of the member's development.**

25 **SECTION 4. (1) When an abortion or attempted abortion results in a child born alive, any**
26 **health care practitioner who is present at the time the child is born alive shall:**

27 (a) Exercise the same degree of professional skill, care and diligence to preserve the life

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 and health of the child that a reasonably diligent and conscientious health care practitioner
2 would render to any other child born alive at the same gestational age; and

3 (b) Following the exercise of skill, care and diligence required under paragraph (a) of this
4 subsection, if the child born alive was not delivered in a hospital, ensure that the child born
5 alive is immediately transported and admitted to a hospital. If the child was born alive at a
6 hospital, the health care practitioner shall continue to exercise the skill, care and diligence
7 required under paragraph (a) of this subsection.

8 (2) A health care practitioner or an employee of a health care clinic where an abortion
9 or attempted abortion results in a child born alive and who has knowledge of a violation of
10 subsection (1) of this section shall immediately report the violation to a state law enforce-
11 ment agency.

12 **SECTION 5.** Nothing in sections 1 to 6 of this 2022 Act shall be construed to affirm, deny,
13 expand or limit any legal status or legal right of a member of the species *Homo sapiens* at
14 any point prior to being born alive.

15 **SECTION 6.** (1) A person upon whom an abortion was performed or attempted to be
16 performed may maintain a civil action against a person who knowingly or recklessly violates
17 section 4 of this 2022 Act for damages and equitable relief.

18 (2) A court shall award attorney fees to a plaintiff who prevails in an action described in
19 subsection (1) of this section.

20 (3) A civil action for violation of section 4 of this 2022 Act may not be maintained against
21 a person upon whom an abortion was performed or attempted to be performed.

22 **SECTION 7.** (1) In an action brought under section 6 of this 2022 Act, the court shall rule,
23 either by the court's own motion or that of a party, whether the identity or any personally
24 identifiable information of the person upon whom an abortion was performed or attempted
25 to be performed in violation of section 4 of this 2022 Act should be exempt from disclosure,
26 unless the person consents in a signed writing to the disclosure of the person's identity or
27 personally identifiable information.

28 (2) If the court determines, under subsection (1) of this section, that the person's identity
29 or any personally identifiable information should be exempt from disclosure, the court shall
30 issue orders to the parties, witnesses and counsel regarding the protection from disclosure
31 and shall direct that the court record be sealed and that the proceedings be closed to the
32 public to the extent necessary to protect from disclosure the person's identity or personally
33 identifiable information.

34 (3) An order issued under this section must include written findings explaining:

35 (a) Why the person's identity or personally identifiable information should be protected
36 from disclosure;

37 (b) Why the order is necessary to protect the person's identity or personally identifiable
38 information from disclosure;

39 (c) How the order is narrowly tailored to achieve protection from disclosure; and

40 (d) Why no reasonable, less restrictive alternative means exist to ensure protection from
41 disclosure.

42 (4) This section may not be construed to prevent the disclosure of the identity of the
43 plaintiff or of witnesses for the defendant.

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