

1 HOUSE BILL NO. 280

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5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN ULTRASOUND PRIOR TO AN ABORTION; AND
7 PROVIDING PENALTIES AND CIVIL REMEDIES."

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

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11 NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Ultrasound
12 Prior to Abortion Act".

13
14 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], the following definitions
15 apply:

16 (1) "Abortion" means the intentional use or prescription of any instrument, medicine, drug, or any other
17 substance or device or method to:

18 (a) terminate the life of an unborn child; or

19 (b) terminate the pregnancy of a woman known to be pregnant with an intention other than to:

20 (i) produce a live birth and preserve the life and health of the child after live birth;

21 (ii) remove an ectopic pregnancy; or

22 (iii) remove a dead unborn child who died as the result of natural causes, accidental trauma, or a criminal
23 assault on the pregnant woman or her unborn child.

24 (2) "Attempt to perform an abortion" means an act or an omission of a statutorily required act that, under
25 the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned
26 to culminate in the performance of an abortion.

27 (3) "Qualified technician" means a registered diagnostic medical sonographer who is certified in
28 obstetrics and gynecology by the American registry for diagnostic medical sonography or a nurse midwife or
29 advanced practice registered nurse in obstetrics with certification in obstetrical ultrasonography.

30 (4) "Unborn child" or "unborn children" means a member or members of the species *Homo sapiens* at

1 any stage of development before birth.

2 (5) "Woman" means a female human being whether or not the female has reached the age of majority.

3

4 **NEW SECTION. Section 3. Requirement of ultrasound -- compliance by providers -- performance**
 5 **and review of ultrasound -- ability to avert eyes.** (1) An abortion provider who knowingly performs any abortion
 6 shall comply with the requirements of [sections 1 through 7].

7 (2) Except as provided in [section 4], prior to a woman giving informed consent to having any part of an
 8 abortion performed, the physician who is to perform the abortion or a qualified technician shall:

9 (a) perform an obstetric ultrasound on the pregnant woman;

10 (b) provide a simultaneous verbal explanation of what the ultrasound is depicting, which must include
 11 the presence and location of the unborn child within the uterus and the number of unborn children depicted. If
 12 the ultrasound image indicates that fetal demise has occurred, a woman must be informed of that fact.

13 (c) display the ultrasound images so that the pregnant woman may view them; and

14 (d) provide a medical description of the ultrasound images, which must include the dimensions of the
 15 embryo or fetus and the presence of external members and internal organs if present and viewable.

16 (3) This section may not be construed to prevent a pregnant woman from averting the woman's eyes
 17 from the ultrasound images required to be provided to and reviewed with the woman. Neither the physician nor
 18 the pregnant woman is subject to any penalty if the woman declines to look at the presented ultrasound images.

19

20 **NEW SECTION. Section 4. Exception for medical emergencies -- certification.** (1) [Section 3] does
 21 not apply to an abortion provider or facility in the case of a medical emergency.

22 (2) (a) Upon a determination by an abortion provider that a medical emergency exists with respect to a
 23 pregnant woman, the provider shall certify the specific medical conditions that constitute the emergency.

24 (b) An abortion provider who willfully falsifies a certification under subsection (2)(a) is subject to all the
 25 penalties provided for under [sections 5 and 6] for failure to comply with [sections 1 through 7].

26 (3) For purposes of this section, the following definitions apply:

27 (a) "Medical emergency" means a condition that, ~~in the reasonable medical judgment of the abortion~~
 28 ~~provider, so complicates the medical condition of the pregnant woman that a delay in commencing an abortion~~
 29 ~~procedure would impose a serious risk of causing grave and irreversible physical health damage entailing~~
 30 ~~substantial impairment of a major bodily function~~ TO A REASONABLE DEGREE OF MEDICAL CERTAINTY, SO COMPLICATES

1 THE MEDICAL CONDITION OF THE PREGNANT WOMAN THAT IT NECESSITATES THE IMMEDIATE ABORTION OF THE PREGNANCY
 2 WITHOUT FIRST DETERMINING GESTATIONAL AGE TO AVERT THE WOMAN'S DEATH OR FOR WHICH THE DELAY NECESSARY
 3 TO DETERMINE GESTATIONAL AGE WILL CREATE SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE PHYSICAL IMPAIRMENT
 4 OF A MAJOR BODILY FUNCTION, NOT INCLUDING PSYCHOLOGICAL OR EMOTIONAL CONDITIONS.

5 (b) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably
 6 prudent physician knowledgeable about the case and the treatment possibilities with respect to the medical
 7 conditions involved.

8
 9 NEW SECTION. Section 5. Penalties for failure to comply. A person who knowingly or ~~recklessly~~
 10 performs or attempts to perform an abortion in violation of [sections 1 through 7] is guilty of a ~~felony~~ MISDEMEANOR
 11 AND UPON CONVICTION SHALL BE PUNISHED BY A TERM OF IMPRISONMENT OF NOT MORE THAN 6 MONTHS, BY A FINE OF
 12 NOT MORE THAN \$1,000, OR BOTH. A penalty may not be assessed against the woman upon whom the abortion
 13 is performed or attempted to be performed.

14
 15 NEW SECTION. Section 6. Civil remedies for failure to comply -- attorney fees. (1) (a) A person
 16 upon whom an abortion has been performed in violation of [sections 1 through 7], the father of the unborn child
 17 who was the subject of the abortion, or a grandparent of the unborn child may maintain an action against the
 18 person who performed the abortion in knowing or reckless violation of [sections 1 through 7] for actual and
 19 punitive damages.

20 (b) A person upon whom an abortion has been attempted in violation of [sections 1 through 7] may
 21 maintain an action against the person who attempted to perform the abortion in knowing or reckless violation of
 22 [sections 1 through 7] for actual and punitive damages.

23 (2) If judgment is rendered in favor of the plaintiff in an action brought under this section, the court shall
 24 also award reasonable attorney fees in favor of the plaintiff against the defendant. If judgment is rendered in favor
 25 of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall
 26 also render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.

27
 28 NEW SECTION. Section 7. Protection of privacy in court proceedings. In a civil or criminal
 29 proceeding or action brought under [sections 1 through 7], the court shall rule whether the anonymity of any
 30 woman upon whom an abortion has been performed or attempted to be performed must be protected from public

1 disclosure if the woman does not give consent to disclosure. The court, upon motion or of its own accord, shall
2 make a ruling and, upon determining that anonymity should be preserved, shall issue orders to the parties,
3 witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms
4 or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each order
5 must be accompanied by specific written findings explaining why the anonymity of the woman should be
6 preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve
7 that interest, and why no reasonable, less restrictive alternative exists. In the absence of written consent of the
8 woman upon whom an abortion has been performed or attempted to be performed, any person, other than a
9 public official, who brings an action under [section 6(1)(a)] shall do so under a pseudonym. This section may not
10 be construed to conceal from the defendant the identity of the plaintiff or of witnesses.

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12 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 7] are intended to be codified
13 as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 through
14 7].

15
16 **NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable
17 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
18 remains in effect in all valid applications that are severable from the invalid applications.

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