

HOUSE BILL NO. 625

INTRODUCED BY K. SEEKINS-CROWE, T. MCGILLVRAY, G. HERTZ, D. ZOLNIKOV, M. REGIER, D. BARTEL, C. KNUDSEN, S. VINTON, K. BOGNER, B. GILLESPIE, T. MOORE, B. LER, F. NAVE, L. BREWSTER, K. ZOLNIKOV, B. MITCHELL, A. REGIER, P. FIELDER, S. GALLOWAY, C. HINKLE, M. BINKLEY, R. MARSHALL, C. FRIEDEL, S. ESSMANN, T. SMITH, G. OBLANDER, N. NICOL, J. BERGSTROM, J. ETCHART, B. BARKER

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE INFANT SAFETY AND CARE ACT; PROVIDING FINDINGS; PROVIDING DEFINITIONS; PROVIDING INFANT PROTECTIONS; PROVIDING PENALTIES AND PROFESSIONAL SANCTIONS; PROVIDING FOR MANDATORY REPORTING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Infant Safety and Care Act".

NEW SECTION. **Section 2. Legislative findings.** The legislature finds, with respect to [sections 1 through 8], that:

- (1) there is a compelling interest in protecting the life of an infant born alive following an attempted abortion;
- (2) an infant born alive following an attempted abortion is a legal person for all purposes under the laws of this state and is entitled to all protections under these laws; and
- (3) an infant born alive following an attempted abortion in an abortion clinic, medical facility, or other facility is entitled to the same protections under the law that would arise for any newborn infant or for any person who comes to a medical facility or other facility for screening or treatment or otherwise becomes a patient in the facility's care.

1 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 8], the following definitions
2 apply:

3 (1) "Abortion clinic" means a health care provider that performs any abortion procedure or provides
4 an abortion-inducing drug.

5 (2) (a) "Abortion-inducing drug" means a medicine, drug, or any other substance provided,
6 prescribed, or dispensed with the intent to terminate the clinically diagnosable pregnancy of a woman with the
7 knowledge that the termination will with reasonable likelihood cause the death of the unborn child.

8 (b) The term includes the off-label use of drugs known to have abortion-inducing properties that
9 are prescribed specifically with the intent of causing an abortion.

10 (c) The term does not include a drug that may be known to cause an abortion that is prescribed for
11 other medical indications.

12 (3) "Born alive" means the complete expulsion or extraction from the mother of a human infant, at
13 any stage of development, who, after expulsion or extraction, breathes, has a beating heart, or has definite
14 movement of voluntary muscles, regardless of whether the umbilical cord has been cut and regardless of
15 whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, induced
16 abortion, or another method.

17 (4) "Health care provider" means an individual who may be asked to participate in any way in a
18 health care service or procedure, including but not limited to a physician, physician's assistant, nurse, certified
19 nursing assistant, medical assistant, hospital employee, medical facility employee, or abortion clinic employee.

20 (5) "Knowingly" has the meaning provided in 45-2-101.

21 (6) "Medical facility" means a public or private hospital, clinic, center, medical school, medical
22 training institute, health care facility, physician's office, infirmary, dispensary, ambulatory surgical treatment
23 center, or other institution or location where medical care or treatment is provided to an individual.

24 (7) "Purposely" has the meaning provided in 45-2-101.

25

26 **NEW SECTION. Section 4. Infant safety and protection.** (1) A health care provider present at the
27 time an infant is born alive FOLLOWING AN ABORTION OR AN ATTEMPTED ABORTION shall:

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

1 health of the infant as a reasonably diligent and conscientious health care provider would render to any other
2 infant born alive at the same gestational age; and

3 (b) following the exercise of skill, care, and diligence required under subsection (1)(a), ensure the
4 infant born alive is immediately transported and admitted to a medical facility.

5 (2) The requirements of this section may not be construed to prevent an infant's parents or
6 guardian from refusing to give consent to medical treatment or surgical care that is not medically necessary or
7 reasonable, including care or treatment that:

8 (a) is not necessary to save the life of the infant;

9 (b) has a potential risk to the infant's life or health that outweighs the potential benefit to the infant
10 from the treatment or care; or

11 (c) will do no more than temporarily prolong the act of dying when death is imminent.

12

13 **NEW SECTION. Section 5. Criminal penalties -- professional sanctions -- civil liability.** (1) A

14 health care provider who purposely or knowingly violates [section 4] commits a felony offense and, on
15 conviction, shall be subject to a fine not to exceed \$1,000, imprisonment in the state prison for a term not to
16 exceed 5 years, or both.

17 (2) A licensed health care provider who purposely or knowingly violates the prohibition in [section
18 4] commits an act of unprofessional conduct, and the individual's license to practice medicine in this state must
19 be suspended for a minimum of 1 year pursuant to Title 37.

20 (3) In addition to all other remedies available under the laws of this state, failure to comply with the
21 requirements of [sections 1 through 8] provides a basis for:

22 (a) a civil malpractice action for actual and punitive damages; and

23 (b) a civil fine of not less than \$5,000 for each violation imposed by the department of justice.

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25 **NEW SECTION. Section 6. Mandatory reporting.** A health care provider, medical facility, abortion
26 clinic, or employee or volunteer of a medical facility or abortion clinic with knowledge of a violation of [sections 1
27 through 8] shall immediately report the violation to the department of justice.

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1 **NEW SECTION. Section 7. Right of intervention.** The legislature, by joint resolution, may appoint
2 one or more of its members to intervene as a matter of right in any case in which the constitutionality or
3 enforceability of [sections 1 through 8] is challenged.
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5 **NEW SECTION. Section 8. Construction.** [Sections 1 through 8] do not prohibit the application of
6 the laws of this state protecting children to infants born alive during an attempted abortion.
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8 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 8] are intended to be
9 codified as a new part in Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1
10 through 8].
11

12 **NEW SECTION. Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
14 the part remains in effect in all valid applications that are severable from the invalid applications.
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16 **NEW SECTION. Section 11. Effective date.** [This act] is effective on passage and approval.
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