

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN ABORTION MAY BE PERFORMED IN  
5 THIS STATE ONLY IF THE PREGNANCY IS A RESULT OF RAPE OR INCEST OR TO PRESERVE THE  
6 LIFE OF THE MOTHER; AND AMENDING SECTIONS 50-20-102, 50-20-109, 50-20-110, 50-20-303, 50-20-  
7 305, 50-20-306, AND 50-20-503, 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  
14 and in the spirit of our constitution, we reaffirm the intent to extend the protection of the laws of Montana in  
15 favor of all human life. It is the policy of the state to preserve and protect the lives of all human beings and to  
16 provide protection for the viable human life. The protection afforded to a person by Montana's constitutional  
17 right of privacy is not absolute, but may be infringed upon by a compelling state interest. The legislature finds  
18 that a compelling state interest exists in the protection of viable life.

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

20 (a) the United States supreme court has determined that states have a legitimate interest in protecting  
21 both a woman's health and the potentiality of human life and that each interest grows and reaches a compelling  
22 point at various stages of a woman's approach to the full term of a pregnancy;

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

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

28 (d) absent clear proof that an abortion is necessary to save the life of the woman, the abortion of a

1 viable person is an infringement of that person's rights; and

2 (e) the state has a duty to protect innocent life and that duty has grown to a compelling point with  
3 respect to partial-birth abortion."  
4

5 **Section 2.** Section 50-20-109, MCA, is amended to read:

6 **"50-20-109. Control of practice of abortion.** (1) ~~Except as provided in 50-20-401, a~~ An abortion may  
7 ~~not~~ be performed within the state of Montana:

8 (a) ~~except by a licensed physician or physician assistant; ;~~

9 (b)(a) ~~after viability of the fetus, except as provided in subsection (2) only if the pregnancy is the result~~  
10 ~~of rape or incest; or-~~

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

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

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

18 (3)(2) ~~The timing and procedure used in performing an abortion under subsection (1)(b) must be such~~  
19 ~~so that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is~~  
20 ~~defined in 45-2-101. The fetus may be intentionally endangered or destroyed only if necessary to preserve the~~  
21 ~~life or health of the mother.~~

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

24 (5)(3) ~~The supervision agreement of a physician assistant may provide for performing abortions.~~

25 (6)(4) ~~Violation of subsections (1) through (3) or (2) is a felony punishable in accordance with 50-20-~~  
26 ~~112."~~

27

28 **Section 3.** Section 50-20-110, MCA, is amended to read:

1           **"50-20-110. Reporting of practice of abortion.** (1) ~~Every~~ Each facility in which an abortion is  
 2 performed within the state shall keep on file upon a form prescribed by the department a statement dated and  
 3 certified by the physician who performed the abortion setting forth ~~such~~ the information with respect to the  
 4 abortion as the department by regulation shall require, including but not limited to information on prior  
 5 pregnancies, the medical procedure employed to administer the abortion, the gestational age of the fetus, the  
 6 vital signs of the fetus after abortion, if any, and if after viability, the medical procedures employed to protect  
 7 and preserve the life and health of the fetus.

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

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

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

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

1 processing abortion data required by state law.

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

3

4 **Section 4.** Section 50-20-303, MCA, is amended to read:

5 **"50-20-303. Definitions.** As used in this part, unless the context requires otherwise, the following  
6 definitions apply:

7 (1) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical  
8 judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion  
9 of the woman's pregnancy to avert the woman's death ~~or for which a delay will create serious risk of substantial~~  
10 ~~and irreversible impairment of a major bodily function.~~

11 (2) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

12 (3) "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in  
13 the woman's body.

14 (4) "Unborn child" means the offspring of human beings from conception until birth."

15

16 **Section 5.** Section 50-20-305, MCA, is amended to read:

17 **"50-20-305. Emergency.** When a medical emergency compels the performance of an abortion, the  
18 physician shall inform the woman, before the abortion if possible, of the medical indications supporting the  
19 physician's judgment that an abortion is necessary to avert the woman's death ~~or that a 24-hour delay will~~  
20 ~~create serious risk of substantial and irreversible impairment of a major bodily function."~~

21

22 **Section 6.** Section 50-20-306, MCA, is amended to read:

23 **"50-20-306. Physician reporting requirements -- penalty -- action -- department report.** (1) Within  
24 90 days after July 1, 1995, the department shall prepare a reporting form to be used by physicians that contains  
25 a reprint of this chapter and on which the physician shall list:

26 (a) the number of women to whom the physician provided the information described in 50-20-  
27 104(5)(a), including:

28 (i) the number of women provided the information by telephone and the number to whom it was

1 provided in person; and

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (c) by December 1 of each succeeding year, to all physicians licensed to practice in this state.

28 (3) By February 28 of each year, each physician or the physician's agent who provided information to

1 one or more women in accordance with 50-20-106 shall submit a copy of the reporting form described in  
2 subsection (1) to the department with the requested data entered accurately and completely.

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

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

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

21 **Section 7.** Section 50-20-503, MCA, is amended to read:

22 **"50-20-503. Definitions.** As used in this part, unless the context requires otherwise, the following  
23 definitions apply:

24 (1) "Coerce" means to restrain or dominate the choice of a minor by force, threat of force, or  
25 deprivation of food and shelter.

26 (2) "Consent" means a notarized written statement obtained on a form and executed in the manner  
27 prescribed by 50-20-505 that is signed by a parent or legal guardian of a minor and that declares that the minor  
28 intends to seek an abortion and that the parent or legal guardian of the minor consents to the abortion.

