

HOUSE BILL NO. 479

INTRODUCED BY A. OLSZEWSKI

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING REQUIREMENTS FOR FETAL SURGERY; REQUIRING THE DETERMINATION OF THE GESTATIONAL AGE OF AN UNBORN CHILD PRIOR TO FETAL SURGERY; REQUIRING THE ADMINISTRATION OF FETAL ANESTHESIA; REQUIRING FACILITIES TO REPORT ON THE USE OF FETAL ANESTHESIA IN ABORTIONS; PROVIDING EXCEPTIONS; PROVIDING DEFINITIONS; PROVIDING A PENALTY; AND AMENDING SECTION 50-20-110, MCA."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 4] may be cited as the "Montana Unborn Child Pain and Suffering Prevention Act".

- NEW SECTION. **Section 2. Legislative findings.** The legislature finds that:
- (1) substantial scientific evidence recognizes that an unborn child is capable of experiencing physical pain and suffering by not later than 20 weeks after fertilization;
 - (2) the state has a compelling interest in protecting unborn children from preventable physical pain and suffering in order to prevent harmful, pain-induced, long-term neurodevelopmental effects, including but not limited to altered pain sensitivity and emotional, behavioral, and learning disabilities;
 - (3) the state has a compelling interest in preventing or minimizing the pain and suffering of an unborn child during an abortion; and
 - (4) the requirement of fetal anesthesia does not impose an undue burden on or pose a substantial obstacle to a woman's ability to have an abortion.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 4], the following definitions apply:

- (1) "Abortion" has the meaning provided in 50-20-104.
- (2) "Department" means the department of public health and human services provided for in 2-15-2201.
- (3) "Fetal surgery" means a surgical or invasive procedure, including an abortion, that is performed on



1 an unborn child.

2 (4) "Gestational age" means the age of an unborn child as calculated from the fusion of a human
3 spermatozoon with a human ovum.

4 (5) "Invasive procedure" means an act that penetrates or breaks the skin or enters a body cavity. The
5 term includes the application of pharmacologic, electromagnetic, or particle radiation to an unborn child for the
6 purpose of causing intentional death or destruction. The term does not include the acts of obtaining blood from
7 the umbilical cord or placing fetal scalp electrodes on an unborn child during labor and delivery.

8 (6) "Medical emergency" means a physical condition that, in the medical judgment of a reasonably
9 prudent physician, knowledgeable about the case and the treatment possibilities with respect to the conditions
10 involved, poses an immediate, serious risk of substantial and irreversible physical impairment of a major bodily
11 function of the pregnant woman or unborn child. A condition does not constitute a medical emergency if it is
12 based on a claim or diagnosis that the pregnant woman will engage in conduct that will result in substantial and
13 irreversible physical impairment of a major bodily function or the woman's death.

14 (7) "Pain" means an unpleasant physical and sensory experience associated with actual or potential
15 tissue damage, including the encoding and processing of harmful stimuli within the nervous system.

16 (8) "Physician" has the meaning provided in 37-3-102.

17 (9) "Suffering" means the state of severe physical distress associated with events that threaten the
18 viability of a body that can be measured by monitoring physiologic processes necessary to sustain life.

19 (10) "Unborn child" means an individual organism of the species *Homo sapiens* from fusion of a human
20 spermatozoon with a human ovum until live birth.

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22 **NEW SECTION. Section 4. Fetal surgery -- use of anesthesia required -- determination of**
23 **probable post-fertilization age required -- penalty.** (1) Except in the case of a medical emergency, a person
24 may not perform fetal surgery on an unborn child whose gestational age is 20 or more weeks without:

25 (a) administering an amount of anesthesia to the unborn child that provides adequate relief from physical
26 pain and suffering; and

27 (b) first determining the gestational age of the unborn child or relying on a determination made by a
28 physician. In making this determination, the person shall make inquiries of the pregnant woman and perform or
29 cause to be performed any medical examination and test that a reasonably prudent physician, knowledgeable
30 about the case and the medical conditions involved, would consider necessary in order to make an accurate

1 determination of the gestational age.

2 (2) (a) A person who purposely or knowingly violates this section is guilty of a misdemeanor and shall
3 be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or
4 both.

5 (b) Upon a second or subsequent conviction, the person is guilty of a felony and shall be fined an amount
6 not less than \$500 or more than \$50,000 and be imprisoned for a term of not less than 10 days or more than 5
7 years, or both.

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9 **Section 5.** Section 50-20-110, MCA, is amended to read:

10 **"50-20-110. Reporting of practice of abortion.** (1) Every facility in which an abortion is performed
11 within the state shall keep on file upon a form prescribed by the department a statement dated and certified by
12 the physician who performed the abortion setting forth ~~such~~ information with respect to the abortion as the
13 department by regulation shall require, including but not limited to information on prior pregnancies, the medical
14 procedure employed to administer the abortion, whether fetal anesthesia was administered in accordance with
15 [section 4], the gestational age of the fetus, the vital signs of the fetus after abortion, if any, and if after viability,
16 the medical procedures employed to protect and preserve the life and health of the fetus.

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

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

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

30 (5) All reports and documents required by this chapter ~~shall~~ must be treated with the confidentiality

1 afforded to medical records, subject to ~~such~~ disclosure as is permitted by law. Statistical data not identifying any
2 individual involved in an abortion ~~shall~~ must be made public by the department annually, and the report required
3 by subsection (4) ~~of this section~~ to be filed with the department ~~shall~~ must be available for public inspection
4 except insofar as it identifies any individual involved in an abortion. Names and identities of persons submitting
5 to abortion ~~shall~~ must remain confidential among medical and medical support personnel directly involved in the
6 abortion and among persons working in the facility where the abortion was performed whose duties include billing
7 the patient or submitting claims to an insurance company, keeping facility records, or processing abortion data
8 required by state law.

9 (6) Violation of this section is a misdemeanor and is punishable as provided in 46-18-212."
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11 NEW SECTION. Section 6. Codification instruction. [Sections 1 through 4] are intended to be codified
12 as an integral part of Title 50, chapter 19, and the provisions of Title 50, chapter 19, apply to [sections 1 through
13 4].

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