

SENATE BILL NO. 354

INTRODUCED BY A. OLSZEWSKI

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A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE MONTANA BORN-ALIVE INFANT PROTECTION ACT; PROVIDING THAT VIABLE, BORN-ALIVE INFANTS MAY NOT BE DEPRIVED OF MEDICALLY APPROPRIATE AND REASONABLE MEDICAL TREATMENT; PROVIDING PENALTIES; REPEALING SECTION 50-20-108, MCA; 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 "Montana Born-Alive Infant Protection Act".

NEW SECTION. **Section 2. Findings -- purpose.** (1) The legislature finds, with respect to [sections 1 through 8], that:

- (a) the state of Montana has a paramount interest in protecting all human life;
- (b) if an abortion results in the live birth of an infant, the infant is a legal person for all purposes under the laws of this state;
- (c) it is not an infringement on a woman's right to terminate her pregnancy for this state to assert its interest in protecting an infant whose live birth occurred as the result of an abortion; and
- (d) without proper legal protection, newly born infants who have survived abortions have been denied appropriate lifesaving or life-sustaining medical care and treatment and have been left to die.

(2) Based on the findings in subsection (1), the purposes of [sections 1 through 8] are to:

- (a) ensure the protection and promotion of the health and well-being of all infants born alive in this state;
- and
- (b) mandate that health care providers give medically appropriate and reasonable lifesaving and life-sustaining medical care and treatment to all born-alive infants.

NEW SECTION. **Section 3. Definitions.** For the purposes of [sections 1 through 8], the following definitions apply:



1 (1) (a) "Born alive" or "live birth" means the complete expulsion or extraction of an infant from the infant's
2 mother and, after expulsion or extraction, whether or not the umbilical cord has been cut or the placenta is
3 attached and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor,
4 cesarean section, or induced abortion, the infant shows any evidence of life, including but not limited to one or
5 more of the following:

- 6 (i) breathing;
- 7 (ii) a heartbeat;
- 8 (iii) umbilical cord pulsation; or
- 9 (iv) definite movement of voluntary muscles.

10 (b) An infant born alive is presumed to be viable until the health care provider attending the infant's birth
11 determines otherwise.

12 (2) "Consent" means the voluntary agreement or acquiescence by a person 18 years of age or older and
13 with the requisite mental capacity who is not under duress or coercion and who has knowledge or understanding
14 of the act or action to which the person has agreed or acquiesced.

15 (3) "Health care provider" means a person licensed under Title 37 whose scope of practice includes the
16 performance of an abortion or the provision of obstetrical or pediatric care.

17 (4) "Infant" means a child of the species homo sapiens, from 8 weeks of development until 30 days
18 postbirth, who has been completely expelled or extracted from the child's mother.

19
20 **NEW SECTION. Section 4. Requirements and responsibilities.** (1) A person may not deny or deprive
21 an infant born alive who is viable of nourishment with the intent to cause or allow the death of the infant for any
22 reason, including but not limited to:

- 23 (a) the infant was born with a handicap;
- 24 (b) the infant is not wanted by the infant's parent or guardian; or
- 25 (c) the infant is born alive by natural or artificial means.

26 (2) A person may not deprive an infant born alive who is viable of medically appropriate and reasonable
27 medical care, medical treatment, or surgical care.

28 (3) The requirements of this section may not be construed to prevent a viable, born-alive infant's parent
29 or guardian from refusing to give consent to medical treatment or surgical care that is not medically necessary
30 or reasonable, including care or treatment that:

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

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

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

5 (4) (a) A health care provider performing an abortion shall take all medically appropriate and reasonable
6 steps to preserve the life and health of a born-alive infant who is viable. If an abortion performed in a hospital
7 results in a live birth of a viable infant, the health care provider shall provide immediate medical care to the infant,
8 inform the mother of the live birth, and request transfer of the infant to emergency care for medically appropriate
9 and reasonable medical care and treatment to the infant.

10 (b) If an abortion performed in a facility other than a hospital results in a live birth of a viable infant, the
11 health care provider shall provide immediate medical care to the infant and call 9-1-1 for an emergency transfer
12 of the infant to a hospital that shall provide medically appropriate and reasonable care and treatment to the infant.

13 (5) If a person described in subsection (4) is unable to perform the duties required under subsection (4)
14 because the person is assisting the woman on whom the abortion was performed, then another health care
15 provider shall assume the duties outlined in subsection (4).

16 (6) A born-alive infant who is viable must be treated as a legal person under the laws of this state, with
17 the same rights to medically appropriate and reasonable care and treatment. A birth certificate and a death
18 certificate, if death occurs, must be issued accordingly.

19 (7) If, before an abortion, the mother has stated in writing that the mother does not wish to keep the infant
20 in the event that the abortion results in a live birth of a viable infant, and this writing is not retracted before the
21 abortion, the infant if born alive, immediately upon birth is presumed to be a youth in need of care under Title 41,
22 chapter 3.

23 (8) A person may not use a viable, born-alive infant for any type of scientific research or other kind of
24 experimentation except as necessary to protect or preserve the life and health of the born-alive infant.

25
26 **NEW SECTION. Section 5. Exceptions.** A parent or guardian of a viable, born-alive infant may not be
27 held criminally or civilly liable for the actions of a health care provider that are in violation of [sections 1 through
28 8] and to which the parent or guardian did not give consent.

29
30 **NEW SECTION. Section 6. Criminal penalties.** (1) A health care provider who purposely, knowingly,

1 or negligently fails to provide medically appropriate and reasonable care and treatment to a viable, born-alive
 2 infant in the course of an abortion is guilty of a felony and upon conviction shall be fined an amount not to exceed
 3 \$50,000, imprisoned in a state prison for a term not to exceed 20 years, or both.

4 (2) A person who purposely or knowingly violates [section 4(8)] is guilty of a felony and upon conviction
 5 may be fined an amount not to exceed \$50,000 and shall be imprisoned in a state prison for a term of not less
 6 than 2 years and not more than 40 years.

7
 8 **NEW SECTION. Section 7. Civil and administrative action.** In addition to all other remedies available
 9 under the laws of this state, failure to comply with the requirements of [sections 1 through 8]:

10 (1) provides a basis for a civil action for compensatory and punitive damages. A conviction under
 11 [section 6] is admissible in a civil lawsuit as prima facie evidence of a failure to provide medically appropriate and
 12 reasonable care and treatment to a viable, born-alive infant. A civil action may be based on a claim that the death
 13 of or injury to a viable, born-alive infant was a result of simple negligence, gross negligence, wantonness,
 14 willfulness, intentional conduct, or another violation of the legal standard of care.

15 (2) provides a basis for professional disciplinary action under Title 37 for the suspension or revocation
 16 of the license of a health care provider. Upon a health care provider's conviction under [section 6], the provider's
 17 license must be automatically suspended for a period of at least 1 year. The license must be reinstated after that
 18 time, subject to any conditions the provider's licensing board requires to ensure compliance with [sections 1
 19 through 8].

20 (3) provides a basis for recovery for the parent of the viable, born-alive infant or the parent or guardian
 21 of the mother if the mother is under 18 years of age for the wrongful death of the infant under 27-1-513.

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 23 **NEW SECTION. Section 8. Construction.** Nothing in [sections 1 through 8] may be construed:

24 (1) to affirm, deny, expand, or contract any legal status or legal right applicable to any member of the
 25 species homo sapiens at any point prior to being born alive;

26 (2) to affect existing federal or state law regarding abortion;

27 (3) as creating or recognizing a right to abortion;

28 (4) to alter generally accepted medical standards.

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 30 **NEW SECTION. Section 9. Repealer.** The following section of the Montana Code Annotated is

1 repealed:

2 50-20-108. Protection of premature infants born alive.

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4 NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 8] are intended to be
5 codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections
6 1 through 8].

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8 NEW SECTION. **Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are
9 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
10 the part remains in effect in all valid applications that are severable from the invalid applications.

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12 NEW SECTION. **Section 12. Right of intervention.** The legislature, by joint resolution, may appoint
13 one or more of its members who sponsored or cosponsored [this act] in the member's official capacity to intervene
14 as a matter of right in any case in which the constitutionality of [this act] is challenged.

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16 NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

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