

HOUSE BILL NO. 575

INTRODUCED BY L. SHELDON-GALLOWAY

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING AN ABORTION OF AN UNBORN VIABLE CHILD UNLESS NECESSARY TO PRESERVE THE LIFE OF THE MOTHER; CLARIFYING THE DEFINITION OF "VIABILITY"; AMENDING SECTIONS 50-20-104 AND 50-20-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 50-20-104, MCA, is amended to read:

"50-20-104. Definitions. As used in this chapter, the following definitions apply:

(1) "Abortion" means the use or prescription of any instrument, medicine, drug, or other substance or device to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

(2) "Attempted abortion" or "attempted" means an act or an omission of a statutorily required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in violation of this chapter.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

(5) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to the woman by:

(a) the physician who is to perform the abortion of the following information:

(i) the particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to subsequent

1 pregnancies, and infertility;

2 (ii) the probable gestational age of the unborn child at the time the abortion is to be performed;

3 and

4 (iii) the medical risks of carrying the child to term;

5 (b) the physician or an agent of the physician:

6 (i) that medical assistance benefits may be available for prenatal care, childbirth, and neonatal
7 care;

8 (ii) that the father is liable to assist in the support of the child, even in instances in which the father
9 has offered to pay for the abortion; and

10 (iii) that the woman has the right to review the printed materials described in 50-20-304; and

11 (c) the physician or the agent that the printed materials described in 50-20-304 have been
12 provided by the department and that the materials describe the unborn child and list agencies that offer
13 alternatives to abortion.

14 (6) (a) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial
15 aid.

16 (b) A determination of viability must be:

17 (i) made in writing by the physician or physician assistant performing an abortion AND INCLUDE THE
18 REVIEW AND RECORD OF AN ULTRASOUND; and

19 (ii) based on the best available science and survival data, with viability presumed at 24 weeks
20 gestational age and any period of time after that. A calculation of gestational age must take into account a
21 margin of error and, if uncertainty exists regarding viability, there is a presumption of viability."

22

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

24 **"50-20-109. Control of practice of abortion.** (1) Except as provided in 50-20-401, an abortion may
25 not be performed within the state of Montana:

26 (a) except by a licensed physician or physician assistant; and

27 (b) on an unborn child;

28 (i) who is capable of feeling pain, except as provided in 50-20-603; or

1 (ii) who is viable, unless necessary to preserve the life of the mother.

2 (2) The supervision agreement of a physician assistant may provide for performing abortions.

3 (3) Violation of subsection (1) is a felony."

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5 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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