

## ABORTION

### LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting. (5-4-105, MCA; [Chapter 309, Laws of 2017](#)) The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The links below provide access to the introduced bill. The other information is also available under the links or “Status of this Bill.”

**Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.**

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### Background Materials and Research

**Topic Summary:** Abortion of a viable fetus (defined as a fetus who is able to live outside its mother’s womb, albeit with artificial aid) is prohibited in Montana unless the abortion is necessary to preserve the life or health of the mother. (50-20-109, MCA.) Title 50, chapter 20, MCA, sets forth additional laws regarding abortion, many of which are not currently in effect because they have been declared unconstitutional and permanently enjoined by the courts or because they are enjoined pending litigation. Laws not in effect include:

- informed consent requirements (50-20-104(5); 50-20-106(1)-(6); & 50-20-112(4)(b), MCA);
- Title 50, chapter 20, part 3, MCA, the “Woman’s Right-to-Know Act” (except for 50-20-301; 50-20-307(1), (2), (4), & (5); & 50-20-308, MCA);
- section 50-20-401, MCA, pertaining to partial birth abortions. Note: This section was amended after it was enjoined in an attempt to cure the constitutional issues but has not been subsequently addressed by Montana courts. Federal law currently prohibits partial birth abortions, and the constitutionality of that law was upheld by the U.S. Supreme Court. (See 18 U.S.C. 1531; *Gonzales v. Carhart*, 550 U.S. 124 (2007).)
- Title 50, chapter 20, part 5, MCA, the “Parental Consent for Abortion Act of 2013”. Note: The constitutionality of this part and the Parental Notice of Abortion Act of 2011 is currently being litigated. The Parental Notice of Abortion Act was a legislative referendum that prohibits the performance of an abortion on a minor under 16 years of age without first giving notice to the minor’s parents. The Parental Consent for Abortion Act repealed the Parental Notice of Abortion Act; however, by stipulation of the parties to the lawsuit, the Parental Consent for Abortion Act is enjoined and the Parental Notice of Abortion Act is in effect pending the outcome of the lawsuit.

**Legislative Services Division Materials:** None.

**Other Materials:**

[Parental Notice of Abortion Act of 2011](#)

[18 U.S.C. 1531](#)

## Introduced Legislation

### 2017

[Senate Bill No. 282](#) – (S) Vetoed by Governor -- AN ACT REVISING ABORTION LAWS TO RESTRICT THE PERFORMANCE OF AN ABORTION OF A VIABLE FETUS; REVISING THE DEFINITION OF A VIABLE FETUS; PROVIDING FOR THE DELIVERY OF A VIABLE FETUS IF CERTAIN CONDITIONS EXIST; AND AMENDING SECTIONS 50-20-102, 50-20-104, 50-20-106, 50-20-108, 50-20-109, 50-20-110, AND 50-20-306, MCA.

[Senate Bill No. 329](#) – (S) Vetoed by Governor -- AN ACT ADOPTING THE MONTANA PAIN-CAPABLE UNBORN CHILD PROTECTION ACT; PROHIBITING THE ABORTION OF AN UNBORN CHILD CAPABLE OF FEELING PAIN; PROVIDING EXCEPTIONS; PROVIDING DEFINITIONS; PROVIDING PENALTIES; PROVIDING CIVIL REMEDIES; PROVIDING PRIVACY PROTECTIONS; AND AMENDING SECTIONS 50-20-102 AND 50-20-109, MCA.

### 2015

[Senate Bill No. 349](#) – (S) Vetoed by Governor -- AN ACT REQUIRING AN ISSUER WHO OFFERS HEALTH INSURANCE COVERAGE THAT INCLUDES ELECTIVE ABORTION COVERAGE TO ALSO SELL HEALTH INSURANCE COVERAGE THAT DOES NOT INCLUDE ELECTIVE ABORTION COVERAGE; REQUIRING NOTICE; AND PROVIDING AN EFFECTIVE DATE.

[House Bill No. 479](#) – (H) Vetoed by Governor -- 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.

[House Bill No. 587](#) – (H) Vetoed by Governor -- AN ACT REQUIRING THAT CERTAIN MEDICAL PRACTITIONERS BE PHYSICALLY PRESENT WHEN PERFORMING OR PROVIDING CERTAIN ABORTION SERVICES TO A PREGNANT WOMAN; AND PROVIDING A PENALTY.

### 2013

[House Bill No. 391](#) – Chapter Number Assigned -- AN ACT REQUIRING PARENTAL CONSENT PRIOR TO AN ABORTION FOR A MINOR; PROVIDING FOR JUDICIAL WAIVER OF THE CONSENT REQUIREMENT; PROVIDING PENALTIES; REPEALING PRIOR STATUTES RELATED TO PARENTAL NOTIFICATION; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-221, 50-20-222, 50-20-223, 50-20-224, 50-20-225, 50-20-228, 50-20-229, 50-20-232, AND 50-20-235, MCA; AND PROVIDING AN EFFECTIVE DATE.

[House Bill No. 521](#) – Chapter Number Assigned -- AN ACT REQUIRING PARENTAL CONSENT PRIOR TO AN ABORTION FOR A MINOR; PROVIDING FOR JUDICIAL WAIVER OF THE CONSENT REQUIREMENT; PROVIDING PENALTIES; REPEALING PRIOR STATUTES RELATED TO PARENTAL NOTIFICATION; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-221, 50-20-222, 50-20-223, 50-20-224, 50-20-225, 50-20-228, 50-20-229, 50-20-232, AND 50-20-235, MCA; AND PROVIDING AN EFFECTIVE DATE.

### 2011

## TOPIC OF PRIMER

[Senate Bill No. 97](#) – (S) Vetoed by Governor -- AN ACT REPEALING THE PARENTAL NOTICE OF ABORTION ACT AND ENACTING THE PARENTAL NOTICE OF ABORTION ACT OF 2011; PROVIDING THAT THE PROVISIONS OF THE ACT APPLY TO MINORS UNDER 16 YEARS OF AGE; REVISING THE JUDICIAL BYPASS PROVISIONS UNDER THE ACT; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-201, 50-20-202, 50-20-203, 50-20-204, 50-20-205, 50-20-208, 50-20-209, 50-20-211, 50-20-212, AND 50-20-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

[Senate Bill No. 176](#) – (S) Vetoed by Governor -- AN ACT PROHIBITING QUALIFIED HEALTH INSURANCE PLANS OFFERED THROUGH A HEALTH INSURANCE EXCHANGE IN MONTANA FROM COVERING ABORTION SERVICES.

[House Bill No. 280](#) – (H) Died in Process -- AN ACT REQUIRING AN ULTRASOUND PRIOR TO AN ABORTION; AND PROVIDING PENALTIES AND CIVIL REMEDIES.

[House Bill No. 544](#) – (S) Died in Standing Committee -- AN ACT REQUIRING PREABORTION SCREENING AND COUNSELING; PROVIDING DEFINITIONS; PROVIDING PENALTIES; AND PROVIDING CIVIL REMEDIES FOR VIOLATIONS.

[House Bill No. 574](#) – (S) Died in Process -- AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II OF THE MONTANA CONSTITUTION TO CLARIFY THAT THE MONTANA CONSTITUTION DOES NOT GRANT OR SECURE A RIGHT TO ABORTION OR THE PUBLIC FUNDING OF ABORTION.

[House Bill No. 627](#) – Chapter Number Assigned -- AN ACT REQUIRING PARENTAL NOTIFICATION PRIOR TO AN ABORTION FOR A MINOR; PROVIDING FOR A JUDICIAL WAIVER OF NOTIFICATION; PROVIDING PENALTIES; REPEALING PRIOR STATUTES RELATING TO PARENTAL NOTIFICATION; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 41-1-405 AND 47-1-104, MCA; REPEALING SECTIONS 50-20-201, 50-20-202, 50-20-203, 50-20-204, 50-20-205, 50-20-208, 50-20-209, 50-20-211, 50-20-212, AND 50-20-215, MCA; AND PROVIDING AN EFFECTIVE DATE.

## 2009

[Senate Joint Resolution No. 27](#) – (S) Died in Standing Committee -- A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING THE FEDERAL FREEDOM OF CHOICE ACT.

[Senate Bill No. 46](#) – (H) Died in Standing Committee -- AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 10, OF THE MONTANA CONSTITUTION PROVIDING THAT THE PROTECTION OF UNBORN HUMAN LIFE IS A COMPELLING STATE INTEREST; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

[Senate Bill No. 374](#) – (H) Died in Standing Committee -- AN ACT REVISING THE PARENTAL NOTICE OF ABORTION ACT BY REVISING THE JUDICIAL BYPASS PROVISION; AND AMENDING SECTION 50-20-212, MCA.

[Senate Bill No. 497](#) – (S) Died in Standing Committee -- AN ACT CREATING THE CRIME OF OBSTRUCTING A PROTEST DEMONSTRATION AT A HEALTH CARE FACILITY; AND AMENDING SECTION 45-8-110, MCA.

[House Bill No. 661](#) – (H) Died in Standing Committee -- AN ACT REQUIRING THE LICENSING OF ABORTION FACILITIES; ESTABLISHING LICENSE FEES, COMPLIANCE INSPECTIONS, AND FINES; PROVIDING FOR MINIMUM STANDARDS FOR ABORTION FACILITIES; PROVIDING FOR DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES RULEMAKING AUTHORITY; CREATING A STATE SPECIAL REVENUE

TOPIC OF PRIMER

ACCOUNT; PROVIDING AN APPROPRIATION; AMENDING SECTION 50-20-105, MCA; AND PROVIDING AN EFFECTIVE DATE.