

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE PREBORN INFANTS DIGNITY ACT;
5 REVISING LAWS RELATED TO THE FINAL DISPOSITION OF PREBORN INFANT BODILY REMAINS;
6 PROVIDING FOR REQUIREMENTS TO RELEASE PREBORN INFANT BODILY REMAINS TO THE MOTHER
7 FOR FINAL DISPOSITION; PROVIDING FOR AUTHORIZATION FOR THE FINAL DISPOSITION OF
8 PREBORN INFANT BODILY REMAINS; PROHIBITING THE BUYING OR SELLING OF OR THE
9 EXPERIMENTATION ON PREBORN INFANTS OR BODILY REMAINS RESULTING FROM ABORTION;
10 PROVIDING FOR CRIMINAL, CIVIL, AND ADMINISTRATIVE PENALTIES; PROVIDING DEFINITIONS; AND
11 AMENDING SECTION 50-15-403, MCA."

12

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

14

15 NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Preborn Infants
16 Dignity Act".

17

18 NEW SECTION. **Section 2. Legislative findings and purpose.** (1) The legislature finds that:

19 (a) deceased preborn infants deserve the same respect and dignity as all other human beings;

20 (b) the laws of this state do not ensure that a miscarried, stillborn, or aborted preborn infant

21 receives a proper burial or other respectful final disposition;

22 (c) the laws of this state also fail to require fetal death reporting and the issuance of fetal death

23 certificates except as required by 46-4-114, 46-4-120, and 50-15-403;

24 (d) the loss of a preborn infant at any stage of development is often devastating to parents and the
25 laws of this state offer certificates of birth resulting in stillbirth under 50-15-208 to parents for fetal deaths that
26 occur;

27 (e) the laws of this state do not explicitly prohibit the sale, transfer, distribution, or donation of the
28 bodily remains of aborted preborn infants for experimentation; and

(f) it is the public policy of this state to promote childbirth over abortion. Permitting the sale, transfer, distribution, or donation of the bodily remains of aborted preborn infants, particularly for pecuniary gain, and the use of the bodies of aborted preborn infants for experimentation violates this state's public policy.

(2) Based on the findings in subsection (1), the purposes of [sections 1 through 9] are to:

(a) ensure that the mother of the deceased preborn infant is given the opportunity to bury or dispose of the bodily remains of her infant with dignity and respect;

(b) require institutions where deceased preborn infants are delivered or where preborn infants are aborted to provide a dignified final disposition of the bodily remains of these infants;

(c) require fetal death reports for all fetal deaths as defined in [section 3];

(d) ensure that parents of all stillborn infants are offered the opportunity to obtain a certificate of birth resulting in stillbirth;

(e) prohibit the sale, transfer, distribution, or other unlawful disposition of the bodily remains of a deceased preborn infant, the bodily remains of an aborted preborn infant, or the bodily remains of an infant born alive who later dies as the result of a failed abortion procedure; and

(f) ensure that the bodily remains of a deceased preborn infant resulting from an occurrence other than an abortion are not sold, transferred, or distributed for experimentation without the mother's informed, written consent.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 9], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Abortion" has the meaning provided in 50-20-104.

(2) "Authorized representative" has the meaning provided in 50-15-101.

(3) "Bodily remains" means the physical remains, corpse, or body parts of a deceased preborn infant who is expelled or extracted from the infant's mother and who reaches a stage of development so that there are cartilaginous structures or fetal or skeletal parts, whether or not the remains are obtained by induced, spontaneous, or accidental means. The death is indicated by the fact that, after the expulsion or extraction, the preborn infant does not show any evidence of life, such as:

(a) breathing;

- 1 (b) a heartbeat;
- 2 (c) umbilical cord pulsation; or
- 3 (d) definite movement of the voluntary muscles.
- 4 (4) "Born alive" or "live birth" means the complete expulsion or extraction of an infant from the
- 5 infant's mother, regardless of the state of gestational development, who, after expulsion or extraction, whether
- 6 or not the umbilical cord is cut or the placenta is attached, and regardless of whether the expulsion or extraction
- 7 occurs as a result of natural or induced labor, cesarean section, or induced abortion, shows any evidence of
- 8 life, including but not limited to one or more of the following:
- 9 (a) breathing;
- 10 (b) a heartbeat;
- 11 (c) umbilical cord pulsation; or
- 12 (d) definite movement of voluntary muscles.
- 13 (5) "Cremation" has the meaning provided in 37-19-101.
- 14 (6) (a) "Experiment" or "experimentation" means the use of an infant, a preborn infant, or the bodily
- 15 remains of a deceased preborn infant in a trial, test, procedure, or observation carried out with the goal of
- 16 verifying, refuting, or establishing the validity of a hypothesis.
- 17 (b) The term does not include pathological study or any treatment, medication, diagnostic or
- 18 remedial tests, procedures, or observations that have the purpose of determining the life or health of the infant
- 19 or preborn infant or preserving the life or health of the infant, the preborn infant, or the infant's mother.
- 20 (7) "Fetal death" means death prior to the expulsion or extraction from a woman of a preborn infant
- 21 who has reached a stage of development so that there are cartilaginous structures or fetal or skeletal parts. The
- 22 death is indicated by the fact that, after the expulsion or extraction, the preborn infant does not show any
- 23 evidence of life, such as:
- 24 (a) breathing;
- 25 (b) a heartbeat;
- 26 (c) umbilical cord pulsation; or
- 27 (d) definite movement of voluntary muscles.
- 28 (8) "Final disposition" has the meaning provided in 50-15-101.

(9) "Infant" means a child of the species *Homo sapiens* who is completely expelled or extracted from a woman's body, regardless of the stage of gestational development, until the age of 30 days post birth.

(10) "Institution" means a public or private organization, corporation, partnership, sole proprietorship, association, agency, or other entity that is involved in providing health care services, including but not limited to:

(a) hospitals;

(b) clinics;

(c) medical centers;

(d) ambulatory surgical centers;

(e) private physicians' offices;

(f) university medical schools; and

(g) medical training facilities.

(11) (a) "Medical waste" means discarded biologic product such as blood, tissue, or body parts removed from medical facilities, as well as bedding, bandages, syringes, and similar materials that are used in treating patients.

(b) The term does not include bodily remains as defined in this section.

(12) "Miscarriage" means the spontaneous or accidental death of a preborn infant before the infant is able to survive independently that does not result in the birth of a live infant. The death is indicated by the fact that, after the expulsion of the preborn infant, the infant does not show any evidence of life, such as:

(a) breathing;

(b) a heartbeat;

(c) umbilical cord pulsation; or

(d) definite movement of voluntary muscles.

(13) "Pathological study" means the examination of body tissue for diagnostic or forensic purposes and any related activities necessary to perform this study. The term includes any study or test, genetic or otherwise, to determine paternity or the cause of death.

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

(15) "Preborn infant" means the offspring of human beings from a stage of development so that

1 there are cartilaginous structures or fetal or skeletal parts to birth.

2 (16) "Pregnant" or "pregnancy" means the female reproductive condition of having a preborn infant
3 in the woman's uterus.

4 (17) "Stillbirth" means the birth of a human being who has died in the uterus. The death is indicated
5 by the fact that, after the expulsion of the preborn infant, the infant does not show any evidence of life, such as:

6 (a) breathing;

7 (b) a heartbeat;

8 (c) umbilical cord pulsation; or

9 (d) definite movement of voluntary muscles.

10 (18) "Therapeutic" means intended to treat or cure a disease or disorder by remedial agents or
11 methods.

12 (19) "Unauthorized incineration" means the combined burning of bodily remains with medical waste,
13 as both bodily remains and medical waste are defined in this section.

14 (20) "Valuable consideration" means anything that confers a benefit on a person who performs or
15 assists with the performance of an abortion or an institution where the bodily remains of an aborted preborn
16 infant are expelled or extracted, including but not limited to:

17 (a) money;

18 (b) work;

19 (c) performance;

20 (d) assets; or

21 (e) a promise.

22

23 NEW SECTION. **Section 4. Release of deceased preborn infant to mother for final disposition.**

24 (1) In each instance of fetal death, the individual in charge of the institution where the bodily remains are
25 expelled or extracted, on request of the mother, shall release to the mother or the mother's authorized
26 representative the bodily remains for final disposition:

27 (a) by burial, interment, or cremation; or

28 (b) when the bodily remains are the result of a miscarriage or stillbirth, in compliance with 72-17-

1 201.

2 (2) A request may be made by the mother or her authorized representative prior to or within an
3 amount of time that is reasonable under the circumstances after the expulsion or extraction of the bodily
4 remains.

5

6 NEW SECTION. **Section 5. Authorization for final disposition of deceased preborn infant.** (1) In
7 each instance of fetal death in which a mother does not request the release of her deceased preborn infant, the
8 funeral director or other person assuming responsibility for the final disposition of the bodily remains shall
9 obtain from the mother or her authorized representative a written authorization for final disposition on a form
10 prescribed and furnished or approved by the department of public health and human services provided for in 2-
11 15-2201. The authorization may allow final disposition to be by a funeral director or the individual in charge of
12 the institution where the bodily remains are expelled or extracted.

13 (2) The mother or her authorized representative may direct the final disposition of the bodily
14 remains to be:

15 (a) by burial, interment, or cremation; or

16 (b) when the bodily remains are the result of a miscarriage or stillbirth, in compliance with 72-17-
17 201.

18 (3) After final disposition, the funeral director, individual in charge of the institution, or other person
19 assuming responsibility for the final disposition shall retain the authorization for not less than 7 years.

20 (4) The individual in charge of the institution where the bodily remains are expelled or extracted
21 shall ensure that the final disposition of the bodily remains is:

22 (a) by burial, interment, or cremation; or

23 (b) when the bodily remains are the result of a miscarriage or stillbirth, in compliance with 72-17-
24 201.

25 (5) Final disposition of bodily remains may not be by unauthorized incineration.

26 (6) If final disposition of the bodily remains is by cremation, the medical examiner of the county in
27 which the fetal death occurs shall sign the authorization for final disposition.

28 (7) Bodily remains may be removed from the place of death to be prepared for final disposition

1 consistent with the requirements of 50-15-405.

2 (8) A permit for final disposition issued under the laws of another state that accompanies bodily
3 remains brought into Montana is authorization for final disposition of the bodily remains in Montana

4 (9) If, due to impossibility, the authorization required under subsection (1) cannot be obtained, the
5 funeral director or other person assuming responsibility for the final disposition of the bodily remains may
6 authorize any of the final dispositions available under subsection (2).

7

8 **NEW SECTION. Section 6. Prohibition on buying and selling of and experimentation on**

9 **preborn infants or bodily remains resulting from abortion.** (1) A person may only transfer, distribute, give
10 away, accept, use, or attempt to use a deceased preborn infant, the bodily remains of an aborted preborn
11 infant, or the bodily remains of an infant born alive who later dies as the result of a failed abortion procedure in
12 accordance with the provisions of [sections 4 and 5].

13 (2) Except as provided in subsection (1), a person may not purposely or knowingly sell, transfer,
14 distribute, give away, accept, use, or attempt to use a deceased preborn infant, the bodily remains of an
15 aborted preborn infant, or the bodily remains of an infant born alive who later dies as the result of a failed
16 abortion procedure.

17 (3) Except as provided in subsection (1), a person may not aid or abet any sale, transfer,
18 distribution, other unlawful disposition, acceptance, use, or attempted use of a deceased preborn infant, the
19 bodily remains of an aborted preborn infant, or the bodily remains of an infant born alive who later dies as the
20 result of a failed abortion procedure.

21 (4) A person may not use a deceased preborn infant, the bodily remains of an aborted preborn
22 infant, or the bodily remains of an infant born alive who later dies as the result of a failed abortion procedure in
23 any animal or human research, experimentation, or study, or for transplantation, except:

24 (a) for diagnostic or remedial tests, procedures, or observations that have the purpose of
25 determining the life or health of the infant or preborn infant or preserving the life or health of the infant, the
26 preborn infant, or the infant's mother;

27 (b) for pathological study; or

28 (c) when the deceased preborn infant or the bodily remains of a preborn infant result from an

1 occurrence other than an abortion, with the mother's informed, written consent as provided in 72-17-201.

2 (5) A person may not experiment on a preborn infant unless the experimentation is or could be
3 therapeutic to the preborn infant and is in accordance with applicable law.

4 (6) A person may not perform or offer to perform an abortion in which part or all of the justification
5 or reason for the abortion is that the bodily remains may be used for animal or human research,
6 experimentation, or study, or for transplantation.

7
8 **NEW SECTION. Section 7. Criminal penalties.** (1) An individual in charge of an institution where
9 bodily remains are expelled or extracted who violates [section 4] shall be guilty of a felony for each violation and
10 may be punished according to subsection (5).

11 (2) The person assuming responsibility for the final disposition of bodily remains or an individual in
12 charge of an institution where bodily remains are expelled or extracted who violates [section 5] shall be guilty of
13 a felony for each violation and may be punished according to subsection (5).

14 (3) A person who purposely or knowingly sells, transfers, distributes, gives away, accepts, uses, or
15 attempts to use an infant born alive in the course of an abortion procedure, a preborn infant, or the bodily
16 remains of an aborted preborn infant in violation of [section 6] or who aids or abets any sale, transfer,
17 distribution, other unlawful disposition, acceptance, use or attempted use of an infant born alive in the course of
18 an abortion procedure, a preborn infant, or the bodily remains of an aborted preborn infant in violation of
19 [section 6] shall be guilty of a felony for each violation and may be punished according to subsection (5).

20 (4) A person who experiments on an infant born alive in the course of an abortion procedure, a
21 preborn infant who is intended to be aborted, a deceased preborn infant, or the bodily remains of an aborted
22 preborn infant, or who performs or offers to perform an abortion in which part or all of the justification or reason
23 for the abortion is that the bodily remains may be used for animal or human research, experimentation, or
24 study, or for transplantation, in violation of [section 6], shall be guilty of a felony for each violation and may be
25 punished according to subsection (5).

26 (5) (a) A person convicted of a first offense under subsection (1), (2), (3), or (4) shall be fined not
27 more than \$10,000 and imprisoned for a term of not less than 2 years or more than 10 years.

28 (b) A person convicted of a second offense under subsection (1), (2), (3), or (4) shall be fined not

1 more than \$50,000 and imprisoned for a term of not less than 10 years or more than 25 years.

2 (c) A person convicted of a third or subsequent offense under subsection (1), (2), (3), or (4) shall
3 be fined not more than \$100,000 and imprisoned for a term of not less than 25 years or more than life.

4 (6) For the purpose of determining the number of convictions for prior offenses referred to in
5 subsection (5):

6 (a) "offense" means:

7 (i) a conviction, as defined in 45-2-101, under subsection (1), (2), (3), or (4) of this section;

8 (ii) a conviction in another state for a violation of a statute similar to subsection (1), (2), (3), or (4);

9 or

10 (iii) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this
11 state or another state for a violation of a statute similar to subsection (1), (2), (3), or (4), which forfeiture has not
12 been vacated.

13 (b) a prior offense under subsection (1), (2), (3), or (4) must be counted regardless of whether it is
14 under the same subsection that serves as the basis of a subsequent charge or conviction.

15

16 NEW SECTION. Section 8. Civil and administrative penalties. (1) In addition to whatever remedies
17 are available under the laws of this state, failure to comply with the requirements of [sections 4 through 6] must:

18 (a) provide a basis for recovery for the biological parent or parents of the infant or preborn infant or
19 the legal parent, parents, or guardian of the mother, if the mother is a minor, for the unlawful disposition of or
20 experimentation on an infant, preborn infant, or bodily remains. The relief must include:

21 (i) money damages for all psychological injuries occasioned by the violation; and

22 (ii) statutory damages equal to five times the cost of the mother's delivery or abortion.

23 (b) provide a basis for professional disciplinary action under 37-1-136 for the suspension or
24 revocation of a license for a physician, licensed professional nurse, or other licensed or regulated health care
25 provider.

26 (2) A conviction of a physician, licensed professional nurse, or other licensed or regulated health
27 care provider for a failure to comply with the requirements of [sections 4 through 6] must result in the automatic
28 suspension of the provider's license for a period of a least 1 year. The provider's license may be reinstated after

1 that time only under the conditions as the licensing board shall require to ensure compliance with [sections 4
2 through 6].

3
4 **NEW SECTION. Section 9. Construction.** (1) Nothing in [sections 1 through 9] may be construed to
5 affect existing state law regarding abortion.

6 (2) Nothing in [sections 1 through 9] may be construed as creating a right to abortion.

7
8 **Section 10.** Section 50-15-403, MCA, is amended to read:

9 **"50-15-403. Preparation and filing of death or fetal death certificate.** (1) A person in charge of
10 disposition of a dead body or ~~fetus that weighs at least 350 grams at death or, if the weight is unknown, has~~
11 ~~reached 20 completed weeks of gestation at death~~ deceased preborn infant as defined in [section 3] shall
12 obtain personal data on the deceased, including the deceased's social security number, if any, or, in the case of
13 a fetal death, on the parents that is required by the department from persons best qualified to supply the data
14 and enter it on the death or fetal death certificate.

15 (2) The person in charge of disposition of the dead body or ~~fetus~~ deceased preborn infant shall
16 present the death certificate to the certifying physician, the certifying advanced practice registered nurse, or the
17 coroner having jurisdiction for medical certification of the cause of death. The medical certification must be
18 completed by the physician, the advanced practice registered nurse, or the coroner within the timeframe
19 established by the department by rule. The person in charge of disposition shall obtain the completed
20 certification of the cause of death from the physician, the advanced practice registered nurse, or the coroner
21 and shall, within the time that the department may prescribe by rule, file the death or fetal death certificate with
22 the local registrar in the registration area where the death occurred or, if the place of death is unknown, where
23 the dead body was discovered.

24 (3) If a dead body is found in this state but the place of death is unknown, the place where the
25 body is found must be shown as the place of death on the death certificate. If the date of death is unknown,
26 then the approximate date must be entered on the certificate. If the date cannot be approximated, the date that
27 the body was found must be entered as the date of death, and the certificate must indicate that fact.

28 (4) When a death occurs in a moving vehicle, as defined in 45-2-101, in the United States and the

1 body is first removed from the vehicle in this state, the death must be registered in this state and the place
2 where the body is first removed is considered the place of death. When a death occurs in a moving vehicle
3 while in international air space or in a foreign country or its air space and the body is first removed from the
4 vehicle in this state, the death must be registered in this state, but the actual place of death, insofar as it can be
5 determined, must be entered on the death certificate."

6
7 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 9] are intended to be
8 codified as an integral part of Title 50, chapter 19, and the provisions of Title 50, chapter 19, apply to [sections
9 1 through 9].

10
11 **NEW SECTION. Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
13 the part remains in effect in all valid applications that are severable from the invalid applications.

14 - END -