

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 17, 1993,
at 5:21 p.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: NONE
Executive Action: SB 202

EXECUTIVE ACTION ON SB 202

Motion:

Senator Grosfield moved to AMEND SB 202. (Exhibit #1)

Discussion:

Senator Grosfield explained amendment sb020203.agp.

Senator Halligan asked Senator Grosfield if the 24 hour waiting
period was left in SB 202. Senator Grosfield said yes.

Senator Halligan asked Senator Grosfield about Page 11, line 8. Senator Grosfield said the language had been stricken.

Senator Towe asked Senator Grosfield if it was the intent to have different penalties for abortions which had been performed and abortions which had been attempted. Senator Grosfield said, "No." Senator Grosfield suggested striking the word "treble" on page 11, line 16.

Senator Towe suggested striking the entire paragraph one, of section 7, and inserting, "a women upon whom an abortion has been performed or has been attempted." Therefore the penalty would be all the same, unless there should be a different penalty for an attempt.

Senator Towe told Senator Harding there were two different penalties. For performing an abortion, the penalty would be \$10,000 and actual damages, for attempting an abortion the penalty would be \$5,000 and treble damages. Senator Towe told the Committee that was inconsistent and suggested eliminating the first paragraph or eliminating the treble damages in the second paragraph. Senator Harding said the treble damages were dropped in both paragraphs.

Chair Yellowtail said the intention was to strike treble damages in all cases.

Chair Yellowtail said amendment sb020203.agp would be changed to include the elimination of the word "treble" on page 11, line 10 and line 16.

Vote:

The motion to amend SB 202 FAILED by a Roll Call Vote.

Motion:

Senator Bartlett moved to AMEND SB 202. (Exhibit #2)

Discussion:

Senator Bartlett explained amendment sb020206.avl.

Senator Franklin spoke in support of amendment sb020206.avl.

Senator Grosfield asked Senator Bartlett about the information that would be available. Senator Bartlett said the information would be from neutral sources on the medical and physiological effects of abortion and alternatives to abortion.

Vote:

The motion to amend SB 202 CARRIED by a Roll Call Vote.

Motion:

Senator Halligan moved to AMEND SB 202. (Exhibit #3)

Discussion:

Senator Halligan explained amendment sb020207.avl.

Discussion:

Senator Harp asked Senator Harding to respond to amendment sb020207.avl. Senator Harding told the Committee that she had not seen the proposed amendment. She thought the definition of abortion was because Montana's definition was outdated compared to the Supreme Courts definition. Senator Harding was not aware of lessening the amount of damages and feels they should not be lessened. Senator Harding said the ultrasound was taken out of SB 202 because it was unfavorable to a lot of people. The really important thing was to provide information to women. Senator Harding said they offered through Senator Grosfield's amendment to take out the Grandparent and father being able to sue. Senator Harding said SB 202 would provide information to young women and that it would be presented in a way that was informative, yet not have it lean toward pro-life or pro-choice.

Senator Bartlett said Senator Halligan's amendment does not contradict the intention of providing good objective information. The printed material from the Department of Health would still be included and made available to anyone contemplating an abortion.

Senator Brown asked Senator Harding if the twenty-four hour waiting period was significant when SB 202 was introduced. Senator Harding said, "Yes".

Senator Brown asked Senator Harding if she agreed to the amendment. Senator Harding said the important thing was the information that would be provided to women. Senator Harding said the 24 hour waiting period was a good thing.

Senator Brown asked Senator Harding if the amendment would radically change SB 202. Senator Harding said yes.

Senator Grosfield asked Senator Halligan about the provided information. Senator Halligan told the Committee the Department of Health would provide objective material for women.

Senator Halligan told the Committee the 24 hour waiting period provision was not in the title of the bill. Senator Halligan said if the 24 hour waiting period was a key component of SB 202, it should have been in the title of the bill. There would be no notice of a waiting period, therefore it would be fatal if the public was not given notice. The key point to SB 202 as he understood it, was to provide information to women.

Senator Crippen asked Senator Harding if she would agree to

Senator Halligan's amendment if the 24 hour waiting period was left intact. Senator Harding said yes.

Senator Crippen asked Ms. Lane the purpose of striking "redefining informed consent in the Montana Abortion Control Act." Ms. Lane said informed consent, as it currently appears in the code, is reinserted on page 2. Lines 5 and 6 in the title were stricken because they were no longer applicable to the bill since informed consent does not have to be redefined.

Senator Crippen asked Ms. Lane if there was a connection between the 24 hour waiting period and redefining informed consent in the Abortion Control Act. Ms. Lane said no.

Motion:

Senator Crippen moved to DIVIDE the question by removing item #11 from amendment sb020207.avl.

Discussion:

Chair Yellowtail said the question was divided, therefore the Committee would consider item #11 separately from the remainder of the amendments.

Ms. Lane asked if the Committee would vote to amend SB 202 with item #11 or vote to delete item #11 from the series of amendments. (sb020207.avl)

Senator Crippen said the purpose of his motion was to divide the question to eliminate item #11 from Senator Halligan's motion to amend. Senator Crippen said by doing that, the 24 hour waiting period would still be in the bill.

Chair Yellowtail said the Chair would divide the amendments and consider item #11. The effect of this would be to strike the 24 hour waiting period from SB 202.

Senator Halligan said a vote for the motion would strike the 24 hour waiting period from SB 202. A vote against the amendment would leave the 24 hour waiting period in SB 202.

Vote:

The motion to amend item #11 into SB 202 from amendment sb020207.avl CARRIED by a Roll Call Vote.

Vote:

The motion to amend SB 202 CARRIED by a Roll Call Vote.

Motion:

Senator Towe moved to AMEND SB 202 by adding a statement of

intent to read: "A statement of intent is required for this bill because section 4 authorizes the Department of Health and Environment Sciences to adopt rules relating to gestational periods. It is the intent of the legislature that periods adopted by the Department be adequate to fully inform the reader of various gestational ages of the fetus". Also, page 8, line 13, insert after the word "material," the words, "that is." Page 8, line 15, following "at," strike "2-week." Following the word "increments" strike the remainder of line 15 through "term" on line 16, then insert "and that is adopted by the department by rule." Page 8, line 18, strike "2-week." Senator Towe said this is exactly the amendment Senator Grosfield proposed with a minor change in the statement of intent.

Senator Doherty asked Senator Towe about the words "fetus" and "unborn child." Senator Towe said they are inconsistent, therefore it would be appropriate to change the words "unborn child" to "fetus".

Senator Towe told the Committee on lines 15 and 18 he would change the words "unborn child" to fetus to be included in his proposed amendment.

Motion:

Senator Franklin made a SUBSTITUTE motion on page 8, subsection 2. "Material that is designed to inform the women of the probable anatomical and physiological characteristic of the fetus must be objective, not judgmental and designed to convey only accurate scientific information about the fetus at various gestational ages."

Discussion:

Senator Towe asked Senator Franklin if she would include the statement of intent. Senator Franklin said she did not know.

Ms. Lane said the substitute motion would strike the word "unborn child" and insert "fetus" on page 5, line 15. The remainder of line 15 would be stricken through line 21 after the word "depicted." Ms. Lane said there was not a reference to adoption of rules by the department, therefore there was no need for the statement of intent.

Chair Yellowtail told Senator Franklin that her motion does not refer to rule making.

Ms. Lane told the Committee there was a rule that said if a state agency was given new rule making authority, or authority to adopt rules in new areas, a statement of intent would be required. However, the statute was repealed by the legislature, therefore it is no longer necessary to have a statement of intent when extending rule making authority.

Senator Towe told the Committee the statement of intent could be eliminated.

Senator Franklin told the Committee the words "unborn child" would be stricken from page 8, line 23, and "fetus" would be inserted.

Chair Yellowtail told the Committee a statement of intent was not included in the substitute motion.

Senator Towe told the Committee page 3, line 9 refers to an unborn child.

Chair Yellowtail said the substitute amendment would include striking "unborn child" on page 3, line 9, and insert "fetus."

Senator Grosfield told the Committee that he would resist the substitute motion.

Senator Halligan told the Committee that he would support the substitute motion.

Vote:

The substitute motion CARRIED by a Roll Call Vote.

Motion:

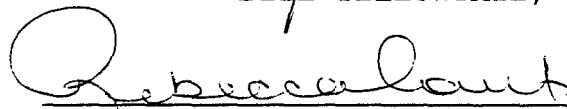
Senator Halligan moved SB 202 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 7:00 p.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

21st meeting

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 2-17-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 5
February 21, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 202 (first reading copy -- white), respectfully report that Senate Bill No. 202 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, lines 5 and 6.

Following: "ABORTION;" on line 5

Strike: remainder of line 5 through "ACT;" on line 6

2. Title, lines 8 through 11.

Following: "MATERIAL" on line 8

Strike: remainder of line 8 through "CONSENT" on line 11

3. Title, line 11.

Following: "50-20-104"

Strike: ", "

Insert: "AND"

4. Title, line 12.

Strike: "AND 50-20-112,"

5. Page 1, line 21 through page 2, line 1.

Following: "birth" on line 21

Strike: remainder of line 21 through "fetus" on page 2, line 1

Insert: "performance of, assistance or participation in the performance of, or submission to an act or operation intended to terminate a pregnancy without live birth"

6. Page 2, line 21.

Following: line 20

Insert: "(4) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of such of the following information as is reasonably chargeable to the knowledge of the physician in his professional capacity:

(a) the stage of development of the fetus, the method of abortion to be utilized, and the effects of the abortion method upon the fetus;

(b) the physical and psychological effects of abortion; and

(c) available alternatives to abortion, including childbirth and adoption."

Renumber: subsequent subsections

7. Page 3, lines 7 through 9.

Strike: subsection (6) in its entirety

Renumber: subsequent subsection

8. Page 4, line 3.

Following: line 2

Insert: "(2) Informed consent may be evidenced by a written statement in a form prescribed by the department and signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that he has made the full disclosure provided in 50-20-104(4) and in which the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

(3) The above informed consent or consent is not required if a licensed physician certifies that the abortion is necessary to preserve the life of the mother."

Renumber: subsequent subsections

9. Page 4, line 5.

Strike: "(3) through (9)"

Insert: "(5) through (10)"

10. Page 4, line 6.

Strike: "(4) and (5)"

Insert: "(6) and (7)"

11. Page 4, line 7.

Following: "woman"

Strike: "at least 24 hours"

12. Page 4, line 24 through page 5, line 7.

Strike: subsections (a) through (c) in their entirety

Renumber: subsequent subsections

13. Page 5, line 9.

Following: "child"

Strike: "and"

Insert: ";"

14. Page 5, line 10.

Following: "abortion"

Insert: "; describing the medical and psychological effects associated with pregnancies terminated by abortion, associated with pregnancies carried to term in which the infant or child is placed for adoption, and associated with pregnancies carried to term in which the child is kept by the natural mother"

15. Page 5, lines 13 through 16.

Strike: subsection (6) in its entirety

Re-number: subsequent subsections

16. Page 5, lines 20 and 21.

Strike: "(4) and (5)"

Insert: "(6) and (7)"

17. Page 5, line 23.

Strike: "subsections (5)(c) and (5)(d)"

Insert: "subsection (7)(a)"

18. Page 6, line 2.

Strike: "(7)"

Insert: "(8)"

19. Page 6, line 16.

Strike: "(10)"

Insert: "(11)"

20. Page 6, line 18 through page 7, line 23.

Strike: section 3 in its entirety

Re-number: subsequent sections

21. Page 7, line 24.

Following: "information."

Insert: "(1)"

Following: "Within"

Strike: "60"

Insert: "180"

22. Page 8, line 1.

Following: "shall"

Insert: ", subject to the provisions of subsection (2),"

23. Page 8, line 4.

Strike: "(1)"

Insert: "(a)"

24. Page 8, line 9.

Strike: "(a)"

Insert: "(i)"

25. Page 8, line 10.

Strike: "(b)"

Insert: "(ii)"

26. Page 8, line 13.

Following: line 12

Insert: "(b) material designed to inform the woman of the medical and psychological effects associated with pregnancies terminated by abortion, associated with pregnancies carried to term in which the infant or child is placed for adoption, and associated with pregnancies carried to term in which the child is kept by the natural mother;"

27. Page 8, line 13.

Strike: "(2)"

Insert: "(c)"

Following: "material"

Insert: "that is"

28. Page 8, lines 15 through 21.

Following: line 14

Strike: lines 15 through "depicted" on line 21

Insert: "fetus"

29. Page 8, line 23.

Strike: "unborn child"

Insert: "fetus"

30. Page 8, line 25.

Strike: "(a)"

Insert: "(i)"

31. Page 9, line 2.

Strike: "(b)"

Insert: "(ii)"

32. Page 9, line 3.

Strike: "unborn child's"

Insert: "fetus's"

33. Page 9, line 4.

Strike: "(c)"

Insert: "(iii)"

24. Page 8, line 9.

Strike: "(a)"

Insert: "(i)"

25. Page 8, line 10.

Strike: "(b)"

Insert: "(ii)"

26. Page 8, line 13.

Following: line 12

Insert: "(b) material designed to inform the woman of the medical and psychological effects associated with pregnancies terminated by abortion, associated with pregnancies carried to term in which the infant or child is placed for adoption, and associated with pregnancies carried to term in which the child is kept by the natural mother;"

27. Page 8, line 13.

Strike: "(2)"

Insert: "(c)"

Following: "material"

Insert: "that is"

28. Page 8, lines 15 through 21.

Following: line 14

Strike: lines 15 through "depicted" on line 21

Insert: "fetus"

29. Page 8, line 23.

Strike: "unborn child"

Insert: "fetus"

30. Page 8, line 25.

Strike: "(a)"

Insert: "(i)"

31. Page 9, line 2.

Strike: "(b)"

Insert: "(ii)"

32. Page 9, line 3.

Strike: "unborn child's"

Insert: "fetus's"

33. Page 9, line 4.

Strike: "(c)"

Insert: "(iii)"

34. Page 9, line 6.
Strike: "(d)"
Insert: "(iv)"
Following: "possible"
Strike: "detrimental"

35. Page 9, line 8.
Strike: "(e)"
Insert: "(v)"

36. Page 9, line 10.
Following: line 9
Insert: "(2) The material prepared by the department under this section must be based on information published by the American psychiatric association, the American college of obstetricians and gynecologists, and the American medical association and must identify risk levels for different age groups when risks vary by age group."

37. Page 9, line 10 through page 12, line 2.
Strike: sections 5 through 7 in their entirety
Renumber: subsequent sections

38. Page 12, line 4.
Strike: "[Sections 4 through 8] are"
Insert: "[Section 3] is"

39. Page 12, line 7.
Strike: "[sections 4 through 8]"
Insert: "[section 3]"

-END-

ROLL CALL VOTE

SENATE COMMITTEE Judiciary

BILL NO. SB202

DATE 2/17/93

TIME 5:38

A.M. (P.M.)

NAME	YES	NO
Senator Yellowtail		X
Senator Doherty		X
Senator Brown	X	X
Senator Crippen	X	
Senator Rye	X	
Senator Grosfield	X	
Senator Halligan		X
Senator Harp	X	
Senator Towe	X	
Senator Bartlett		X
Senator Blaylock		X
Senator Franklin		X

Rebecca Louret
SECRETARY

Bill Yellowtail
CHAIR

MOTION: to amend (4)
SB020203. app. motion failed

ROLL CALL VOTE

SENATE COMMITTEE Judiciary

BILL NO. SB202

DATE 2/17/93

TIME 5:43 A.M. P.M.

NAME	YES	NO
Senator Yellowtail	X	
Senator Doherty	X	
Senator Brown		X
Senator Crippen		X
Senator Rye		X
Senator Grosfield		X
Senator Halligan	X	
Senator Harp		X
Senator Towe	X	
Senator Bartlett	X	
Senator Blaylock	X	
Senator Franklin	X	

Rebecca Lawert
SECRETARY

Bill Yellowtail
CHAIR

MOTION: amend sb020206 au 1
carried

ROLL CALL VOTE

SENATE COMMITTEE Judiciary

BILL NO. SB202

DATE 2/17/93

TIME 6:09

A.M. P.M.

NAME	YES	NO
Senator Yellowtail	X	
Senator Doherty	X	
Senator Brown		X
Senator Crippen		X
Senator Rye		X
Senator Grosfield		X
Senator Halligan	X	
Senator Harp		X
Senator Towe	X	
Senator Bartlett	X	
Senator Blaylock	X	
Senator Franklin	X	

Rebecca Couet
SECRETARY

Bill Yellowtail
CHAIR

MOTION: Strike amend II from bill.
motion carried

ROLL CALL VOTE

SENATE COMMITTEE Judiciary BILL NO. SB202

DATE 2/17/93 TIME 6:10 A.M. P.M.

NAME	YES	NO
Senator Yellowtail	X	
Senator Doherty	X	
Senator Brown		X
Senator Crippen		X
Senator Rye		X
Senator Grosfield		X
Senator Halligan	X	
Senator Harp		X
Senator Towe	X	
Senator Bartlett	X	
Senator Blaylock	X	
Senator Franklin	X	

Rebecca Court
SECRETARY

Bill Yellowtail
CHAIR

MOTION: to amend -
carried sb020207 aul

ROLL CALL VOTE

SENATE COMMITTEE

Judiciary

BILL NO. SB202

DATE 2-17-93

TIME 6:25 A.M. P.M.

NAME	YES	NO
Senator Yellowtail	X	
Senator Doherty	X	
Senator Brown		X
Senator Crippen		X
Senator Rye		X
Senator Grosfield		X
Senator Halligan	X	
Senator Harp		X
Senator Towe	X	
Senator Bartlett	X	
Senator Blaylock	X	
Senator Franklin	X	

Rebecca Lovet
SECRETARY

Bill Yellowtail
CHAIR

MOTION: Substitute motion Franklin
Motion carried.

Amendments to Senate Bill No. 202
First Reading Copy

For the Committee on Judiciary

Prepared by Greg Petesch
February 16, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-17-93
BILL NO. SB202

1. Title, line 6.
Following: line 5
Insert: "ABORTION AND"

2. Title, lines 8 and 9.
Following: line 7
Insert: "SPECIFIC INFORMATION AND"
Following: "MATERIAL" on line 8
Strike: remainder of line 8 through "VIDEOTAPE" on line 9

3. Title, line 10.
Strike: "DAMAGES"
Insert: "REMEDIES"

4. Page 1, line 13.
Insert: " STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] authorizes the department of health and environmental sciences to adopt rules relating to gestational periods. It is the intent of the legislature that the periods adopted by the department be 2-week periods initially and progress to 4-week periods, as adopted by the Ohio department of human services."

5. Page 4, line 5.
Strike: "(9)"
Insert: "(10)"

6. Page 4, line 24 through page 5, line 7.
Strike: subsections (a) through (c) in their entirety.
Renumber: subsequent subsections

7. Page 5, lines 13 and 14.
Following: "to" on line 13
Strike: remainder of line 13 through the first "or" on line 14
Following: "material,"
Strike: "or both,"

8. Page 5, line 15.
Strike: "them"
Insert: "it"

9. Page 5, line 23.
Strike: "subsections (5)(c) and (5)(d)"
Insert: "subsection (5)(a)"

10. Page 6, line 3.

Following: line 2

Insert: "(9) The information required by subsections (4) and (5) may be provided to a woman by the referring physician and in that case the physician who is to perform the abortion may rely on the certification of the referring physician that the information has been provided as required by subsection (3). A referring physician who does not certify that the information was provided is not liable for a violation of 50-20-112, [sections 4 through 6], or this section."

Renumber: subsequent subsections

11. Page 6, line 16.

Strike: "(10)"

Insert: "(11)"

12. Page 7, line 13.

Strike: "(5) (d)"

Insert: "(5) (a)"

13. Page 7, lines 16 through 23.

Strike: subsection (6) in its entirety

14. Page 8, lines 9 and 12.

Strike: "and"

15. Page 8, line 13.

Following: line 12

Insert: "(c) a statement that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care; (d) a statement that the father may be held legally responsible to assist in the support of the woman's child even if the father has offered to pay for the abortion; and"

Following: "material" on line 13

Insert: "that is"

16. Page 8, lines 15 and 16.

Following: "at" on line 15

Strike: "2-week"

Following: "increments"

Strike: remainder of line 15 through "term" on line 16

Insert: "and that is adopted by the department by rule"

17. Page 8, line 18.

Strike: "2-week"

18. Page 9, lines 10 through 23.

Strike: section 5 in its entirety

Renumber: subsequent sections

19. Page 10, line 3.

Strike: "8"

Insert: "6"

EXHIBIT 1
DATE 2-17-93
SB 202

20. Page 10, line 25.
Strike: "7"
Insert: "6"

21. Page 11, lines 7, 15, and 25.
Strike: "8"
Insert: "6"

22. Page 11, lines 7 through 9.
Following: "]"
Strike: remainder of line 7 through "child" on line 9

23. Page 11, line 10.
Strike: "treble"

24. Page 12, lines 4 and 7.
Strike: "8"
Insert: "6"

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] authorizes the department of health and environmental sciences to adopt rules relating to gestational periods. It is the intent of the legislature that the periods adopted by the department be 2-week periods initially and progress to 4-week periods, as adopted by the Ohio department of human services."

LC 1039/01

EXHIBIT 1
DATE 2-17-93
SFS 202

SPONSOR BILL NO. 202

INTRODUCED BY *Harding, Jeff Shanks, Gene Spating*
Confield *with the support of* *Bob Brown, Patricia Whalen*

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING A WOMAN'S CONSENT TO KNOW CERTAIN FACTS PRIOR TO AN ABORTION; REDEFINING RIGHT TO INFORMED CONSENT IN THE MONTANA ABORTION CONTROL ACT; AND

REQUIRING THAT A WOMAN CONTEMPLATING AN ABORTION BE PROVIDED AN OPPORTUNITY TO REVIEW CERTAIN PRINTED MATERIAL AND

OPPORTUNITY TO VIEW AN ULTRASOUND VIDEO; PROVIDING CIVIL REMEDIES FOR AN ABORTION PERFORMED WITHOUT INFORMED AND VOLUNTARY CONSENT; AND AMENDING SECTIONS 50-20-107, 50-20-106, AND 50-20-112, MCA."

STATEMENT OF INTENT

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 performance of assistance or participation in the performance of or submission to an act or operation intended to terminate a pregnancy without live birth intentional use or prescription of any instrument, medicine, drug, or other substance or device to terminate the pregnancy of a woman known to be pregnant, other than to increase the probability of a live birth, to preserve the life or health of the child after a live birth, or to remove

- 1 a dead fetus.
- 2 (2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.
- 3 (3) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.
- 4 (4) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of such of the following information as is reasonably chargeable to the knowledge of the physician in his professional capacity:
- 5 (a) the stage of development of the fetus; the method of abortion to be utilized; and the effects of such abortion method upon the fetus;
- 6 (b) the physical and psychological effects of abortion; and
- 7 (c) available alternatives to abortion, including childbirth and adoption;
- 8 (4) "Medical emergency" means a condition that, based on a physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of the woman's pregnancy to avert the woman's death or for which a delay will create



1 serious risk of substantial and irreversible impairment of a
2 major bodily function.

3 (5) "Probable gestational age of the unborn child"
4 means the age that, in the judgment of the physician, will
5 with reasonability be the gestational age of the unborn
6 child at the time the abortion is planned to be performed.

7 (5)(6) "Viability" means the ability of a fetus to live
8 outside the mother's womb, albeit with by natural or
9 artificial aid life-support systems.

10 (7) "Woman" means a female person."

11 Section 2. Section 50-20-106, MCA, is amended to read:

12 "50-20-106. Consent Informed and voluntary consent to
13 abortion -- medical emergency exception. (1) No An abortion
14 may not be performed upon any woman in the absence of
15 informed and voluntary consent by the woman upon whom the
16 abortion is to be performed.

17 (2) informed consent may be evidenced by a written
18 statement in a form prescribed by the department and signed
19 by the physician and the woman upon whom the abortion is to
20 be performed in which the physician certifies that he has
21 made the full disclosure provided in 50-20-104(4) and in
22 which the woman upon whom the abortion is to be performed
23 acknowledges that the above disclosures have been made to
24 her and that she voluntarily consents to the abortion;

25 (3) the above informed consent or consent is not

1 required if a licensed physician certifies the abortion is
2 necessary to preserve the life of the mother;

3 (2) Except in the case of a medical emergency, consent
4 to an abortion is informed and voluntary only if the
5 provisions of subsections (3) through (10) are met.

6 (3) The information required by subsections (4) and (5)
7 must be provided to a woman at least 24 hours before an
8 abortion.

9 (4) The physician who is to perform the abortion or the
10 referring physician shall tell the woman:

11 (a) the name of the physician who will perform the
12 abortion;

13 (b) the probable gestational age of the unborn child at
14 the time the abortion is to be performed;

15 (c) the particular medical risks associated with the
16 particular abortion procedure to be used, including, when
17 medically accurate, the risks of infection, hemorrhage,
18 danger to subsequent pregnancies, and infertility; and

19 (d) the medical risks associated with carrying the
20 child to full term.

21 (5) The physician who is to perform the abortion, the
22 referring physician, or the agent of either shall tell the
23 woman that:

24 (a) medical assistance benefits may be available for
25 prenatal care, childbirth, and neonatal care;

"(9) The information required by subsections (4) and (5) may be provided to a woman by the referring physician and in that case the physician who is to perform the abortion and in rely on the certification of the referring physician that the information has been provided as required by subsection (3). A referring physician who does not certify that the information was provided is not liable for a violation of 50-20-112, [sections 4 through 6], or this section."

1 ~~(b) the father is liable to assist in the support of~~
2 ~~the woman's child even if the father has offered to pay for~~
3 ~~the abortion;~~
4 ~~(c) the woman has a right to view the ultrasound~~
5 ~~videotape provided by the department of an unborn child in~~
6 ~~the womb at 2-week gestational increments from the time a~~
7 ~~woman can be known to be pregnant until full term;~~
8 ~~(d) the woman has a right to review printed material~~
9 ~~provided by the department describing the unborn child and~~
10 ~~listing agencies that offer alternatives to abortion; and~~
11 ~~(e) the woman is free to withhold or to withdraw~~
12 ~~informed and voluntary consent to the abortion.~~
13 ~~(6) If the woman chooses to view the ultrasound~~
14 ~~videotape or review the printed material, or both, the~~
15 ~~physician or the physician's agent shall furnish them to the~~
16 ~~woman.~~
17 ~~(7) Prior to an abortion, the woman upon whom the~~
18 ~~abortion is to be performed shall certify in writing, on a~~
19 ~~form prescribed by the department, that:~~
20 ~~(a) the information described in subsections (4) and~~
21 ~~(5) has been furnished; and~~
22 ~~(b) the woman has been informed of the right to review~~
23 ~~the information described in subsections (5)(c) and (5)(d).~~
24 ~~(8) Prior to an abortion, the physician who is to~~
25 ~~perform the abortion or the physician's agent must have~~

1 ~~received a copy of the written certification required in~~
2 ~~subsection (7).~~
3 ~~(9) If a medical emergency compels the performance of~~
4 ~~an abortion, the physician shall, prior to the abortion if~~
5 ~~possible, inform the woman of the medical indications~~
6 ~~supporting the physician's judgment that an abortion is~~
7 ~~necessary to avert the woman's death or that a delay will~~
8 ~~create serious risk of substantial and irreversible~~
9 ~~impairment of a major bodily function.~~
10 ~~(4)--No ⁽¹¹⁾ executive officer, administrative~~
11 ~~agency, or public employee of the state or of any local~~
12 ~~governmental body has power to may not issue any order~~
13 ~~requiring an abortion or shall coerce any woman to have an~~
14 ~~abortion; nor shall any A person may not coerce any woman~~
15 ~~to have an abortion.~~
16 ~~(5) ⁽¹²⁾ Violation of subsections (1) and (4) ⁽¹¹⁾ of~~
17 ~~this section is a misdemeanor."~~

18 **Section 3.** Section 50-20-112, MCA, is amended to read:
19 "50-20-112. Penalties. (1) A person convicted of
20 deliberate, mitigated, or negligent homicide under this
21 chapter is subject to the penalties prescribed by 45-5-102
22 through 45-5-104.

23 (2) A person convicted of a felony other than
24 deliberate, mitigated, or negligent homicide under this
25 chapter is subject to a fine not to exceed \$1,000.

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"(c) a statement that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;
(d) a statement that the father may be held legally responsible to assist in the support of the woman's child even if the father has offered to pay for the abortion; and "c 1039/01

1 imprisonment in the state prison for a term not to exceed 5
2 years, or both.

3 (3) A person convicted of a misdemeanor under this
4 chapter is subject to a fine not to exceed \$500,
5 imprisonment in the county jail for a term not to exceed 6
6 months, or both.

7 (4) A penalty may not be assessed against a woman upon
8 whom the abortion is performed or attempted to be performed.

9 (5) If the department has not made printed material
10 available when the physician, the referring physician, or
11 the agent of either is required to inform a woman of the
12 right to review it, a criminal or civil penalty may not be
13 imposed for failure to comply with 50-20-106(5)(a) or (7)
14 requiring written certification that a woman has been given
15 an opportunity to review the information.

16 ~~(6) If the department has not made the ultrasound
17 videotape available when the physician, the referring
18 physician, or the agent of either is required to inform the
19 woman of the right to view it, a criminal or civil penalty
20 may not be imposed for failure to comply with section
21 50-20-106(5)(c) or (7) requiring written certification that
22 the woman has been informed of the right to view the
23 ultrasound videotape."~~

24 NEW SECTION. Section 4. Printed information. Within 60
25 days of [the effective date of this act], the department

1 shall publish the following in legible, large typeface and
2 make available upon request at no cost to any person,
3 facility, or hospital:

4 (1) geographically indexed material designed to inform
5 a woman of public and private agencies and services,
6 including adoption agencies and services, that are available
7 to assist a woman through pregnancy, following childbirth,
8 and while the child is dependent. The material must include:

9 (a) a comprehensive list of the agencies available; and
10 (b) a description of the services offered by the
11 available agencies, including the telephone numbers of the
12 agencies; and *that is*

13 (2) material designed to inform the woman of the
14 probable anatomical and physiological characteristics of the
15 unborn child at ~~2-week~~ gestational increments ~~from the time~~
and that is adopted by the department by rule

16 ~~a woman can be known to be pregnant until full term,~~
17 including any color pictures or drawings representing the
18 development of unborn children at ~~2-week~~ gestational
19 increments containing the dimensions of the fetus that are
20 realistic and appropriate for the stage of pregnancy
21 depicted. The material must be objective, nonjudgmental, and
22 designed to convey only accurate, scientific information
23 about the unborn child at the various gestational ages,
24 including:

25 (a) objective information describing the methods of

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1 abortion procedures commonly used;

2 (b) any relevant information on the possibility of the

3 unborn child's survival;

4 (c) the medical risks commonly associated with each

5 abortion procedure;

6 (d) the possible detrimental psychological effects of

7 abortion; and

8 (e) the medical risks commonly associated with carrying

9 a child to term.

10 ~~NEW SECTION. Section 5. Ultrasound required. (1).~~

11 ~~Within 60 days of [the effective date of this act], the~~

12 ~~department shall provide a videotape containing ultrasound~~

13 ~~motion pictures of unborn children in the womb that is~~

14 ~~designed to inform a viewer of the probable anatomical and~~

15 ~~physiological characteristics of an unborn child at 2-week~~

16 ~~gestational increments from the time a woman can be known to~~

17 ~~be pregnant until full term.~~

18 ~~(2) The ultrasound must be objective, nonjudgmental,~~

19 ~~and designed to convey only accurate, scientific information~~

20 ~~about an unborn child at the various gestational ages.~~

21 ~~(3) The ultrasound must be available at no cost from~~

22 ~~the department upon request to any person, facility, or~~

23 ~~hospital.~~

24 ~~NEW SECTION. Section 6. Anonymity of a woman. (1) If a~~

25 woman upon whom an abortion has been performed or attempted

1 does not consent to be publicly named in a civil or criminal

2 action brought for violation of 50-20-104, 50-20-106,

3 50-20-112, or [sections 4 through ⁶], the court shall rule,

4 upon motion by either party, whether the identity of the

5 woman must be preserved from public disclosure.

6 (2) If the court rules that the woman's anonymity

7 should be preserved, the court shall issue the order to the

8 parties, witnesses, and attorneys; order the court records

9 to be sealed; and exclude persons from the court room to the

10 extent necessary to protect the woman's identity from public

11 disclosure.

12 (3) The court order must be accompanied by a written

13 statement explaining:

14 (a) why the name of the woman should not be publicly

15 disclosed;

16 (b) why the order is essential in protecting the

17 woman's anonymity;

18 (c) how the order is narrowly tailored to protect the

19 woman's anonymity; and

20 (d) why a reasonable, less restrictive alternative does

21 not exist.

22 (4) If a woman upon whom an abortion has been performed

23 or attempted does not give written consent, any person,

24 other than a public official, who brings an action under

25 [section ⁶] shall do so under a pseudonym.

1 (5) This section may not be construed to conceal from
2 the defendant the identity of a plaintiff or of the
3 witnesses.

4 NEW SECTION. Section 7. Performance of abortion
5 without informed consent -- civil damages. (1) A woman upon
6 whom an abortion has been performed in violation of
7 50-20-104, 50-20-106, 50-20-112, or [sections 4 through ~~6~~]
8 ~~the father of the unborn child who was the subject of the~~
9 ~~abortion, or a grandparent of the unborn child~~ may file a
10 civil action for \$10,000 in punitive damages and ~~treble~~ the
11 actual damages against the person who performed the
12 abortion.

13 (2) A woman upon whom an abortion has been attempted in
14 violation of 50-20-104, 50-20-106, 50-20-112, or [sections 4
15 through ~~6~~] may file a civil action for \$5,000 in punitive
16 damages and treble the actual damages against the person who
17 attempted to perform the abortion.

18 (3) The court shall grant reasonable attorney fees to:
19 (a) a plaintiff obtaining a judgment under subsection
20 (1) or (2); or

21 (b) the defendant if the plaintiff does not obtain a
22 judgment and if the court finds that the plaintiff's civil
23 action was frivolous or brought in bad faith.

24 (4) An intentional violation of 50-20-104, 50-20-106,
25 50-20-112, or [sections 4 through ~~6~~] is admissible in a

1 civil action as prima facie evidence of a failure to obtain
2 informed and voluntary consent.

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

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

-End-

Amendments to Senate Bill No. 202
First Reading Copy

Requested by Senator Bartlett
For the Committee on Judiciary

Prepared by Valencia Lane
February 16, 1993

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. Z

DATE 2-17-93

BILL NO. SB202

1. Page 5, line 9.

Following: "child"

Strike: "and"

Insert: " ; "

2. Page 5, line 10.

Following: "abortion"

Insert: " ; describing the medical and psychological effects associated with pregnancies terminated by abortion, associated with pregnancies carried to term in which the infant or child is placed for adoption, and associated with pregnancies carried to term in which the child is kept by the natural mother "

3. Page 7, line 24.

Following: "information."

Insert: "(1)"

4. Page 8, line 1.

Following: "shall"

Insert: " , subject to the provisions of subsection (2) , "

5. Page 8, line 4.

Strike: "(1)"

Insert: "(a)"

6. Page 8, line 9.

Strike: "(a)"

Insert: "(i)"

7. Page 8, line 10.

Strike: "(b)"

Insert: "(ii)"

8. Page 8, line 13.

Following: line 12

Insert: "(b) material designed to inform the woman of the medical and psychological effects associated with pregnancies terminated by abortion, associated with pregnancies carried to term in which the infant or child is placed for adoption, and associated with pregnancies carried to term in which the child is kept by the natural mother ; "

9. Page 8, line 13.

Strike: "(2)"

Insert: "(c)"

10. Page 8, line 25.

Strike: "(a)"

Insert: "(i)"

11. Page 9, line 2.

Strike: "(b)"

Insert: "(ii)"

12. Page 9, line 4.

Strike: "(c)"

Insert: "(iii)"

13. Page 9, line 6.

Strike: "(d)"

Insert: "(iv)"

Following: "possible"

Strike: "detrimental"

14. Page 9, line 8.

Strike: "(e)"

Insert: "(v)"

15. Page 9, line 10.

Following: line 9

Insert: "(2) The material prepared by the department under this section must be based on information published by the American psychiatric association, the American college of obstetricians and gynecologists, and the American medical association and must identify risk levels for different age groups when risks vary by age group."

Bartlett

SMITH BILL NO. 202

INTRODUCED BY *Harding* *Greg Smith* *Don Spitzer*
Confield *Bob Brown* *Paul Natta* *Whalen*
 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING A WOMAN'S RIGHT TO KNOW CERTAIN FACTS PRIOR TO AN ABORTION; REDEFINING INFORMED CONSENT IN THE MONTANA ABORTION CONTROL ACT; REQUIRING THAT A WOMAN CONTEMPLATING AN ABORTION BE PROVIDED AN OPPORTUNITY TO VIEW AN ULTRASOUND VIDEOTAPE; PROVIDING CIVIL DAMAGES FOR AN ABORTION PERFORMED WITHOUT INFORMED AND VOLUNTARY CONSENT; AND AMENDING SECTIONS 50-20-104, 50-20-106, AND 50-20-112, MCA."
Polina Smith

1 a dead fetus.
 2 (2) "Department" means the department of health and
 3 environmental sciences provided for in Title 2, chapter 15,
 4 part 21.
 5 (3) "Facility" means a hospital, health care facility,
 6 physician's office, or other place in which an abortion is
 7 performed.
 8 (4) "informed consent" means voluntary consent to an
 9 abortion by the woman upon whom the abortion is to be
 10 performed only after full disclosure to her by the physician
 11 who is to perform the abortion of such of the following
 12 information as is reasonably chargeable to the knowledge of
 13 the physician in his professional capacity:
 14 (a) the stage of development of the fetus; the method
 15 of abortion to be utilized; and the effects of such abortion
 16 method upon the fetus;
 17 (b) the physical and psychological effects of abortion;
 18 and
 19 (c) available alternatives to abortion, including
 20 childbirth and adoption;
 21 (4) "Medical emergency" means a condition that, based
 22 on a physician's good faith clinical judgment, so
 23 complicates the medical condition of a pregnant woman as to
 24 necessitate the immediate abortion of the woman's pregnancy
 25 to avert the woman's death or for which a delay will create

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1 serious risk of substantial and irreversible impairment of a
 2 major bodily function.
 3 (5) "Probable gestational age of the unborn child"
 4 means the age that, in the judgment of the physician, will
 5 with reasonability be the gestational age of the unborn
 6 child at the time the abortion is planned to be performed.
 7 (5)(6) "Viability" means the ability of a fetus to live
 8 outside the mother's womb,--albeit--with by natural or
 9 artificial aid life-support systems.

10 (7) "Woman" means a female person."

11 **Section 2.** Section 50-20-106, MCA, is amended to read:

12 "50-20-106. Consent informed and voluntary consent to
 13 abortion -- medical emergency exception. (1) No An abortion
 14 may not be performed upon--any--woman in the absence of
 15 informed and voluntary consent by the woman upon whom the
 16 abortion is to be performed.

17 (2) --informed consent may--be--evidenced--by--e--written
 18 statement--in-a-form-prescribed-by-the-department-and-signed
 19 by-the-physician-and-the-woman-upon-whom-the-abortion-is--to
 20 be--performed--in--which-the-physician-certifies-that-he-has
 21 made-the-full-disclosure-provided--in--50-20-104(4)--and--in
 22 which--the--woman--upon-whom-the-abortion-is-to-be-performed
 23 acknowledges-that-the-above-disclosures-have--been--made--to
 24 her-and-that-she-voluntarily-consents-to-the-abortion;
 25 (3) --The--above--informed--consent--or--consent--is--not

1 required--if--a--licensed-physician-certifies-the-abortion-is
 2 necessary-to-preserve-the-life-of-the-mother;
 3 (2) Except in the case of a medical emergency, consent
 4 to an abortion is informed and voluntary only if the
 5 provisions of subsections (3) through (9) are met.
 6 (3) The information required by subsections (4) and (5)
 7 must be provided to a woman at least 24 hours before an
 8 abortion.

9 (4) The physician who is to perform the abortion or the
 10 referring physician shall tell the woman:

11 (a) the name of the physician who will perform the
 12 abortion;

13 (b) the probable gestational age of the unborn child at
 14 the time the abortion is to be performed;

15 (c) the particular medical risks associated with the
 16 particular abortion procedure to be used, including, when
 17 medically accurate, the risks of infection, hemorrhage,
 18 danger to subsequent pregnancies, and infertility; and
 19 (d) the medical risks associated with carrying the
 20 child to full term.

21 (5) The physician who is to perform the abortion, the
 22 referring physician, or the agent of either shall tell the
 23 woman that:

24 (a) medical assistance benefits may be available for
 25 prenatal care, childbirth, and neonatal care;

describing the medical and psychological effects associated with pregnancies terminated by abortion, associated with pregnancies carried to term in which the infant or child is placed for adoption, and associated with pregnancies carried to term in which the child is kept by the natural mother"

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1 (b) the father is liable to assist in the support of
2 the woman's child even if the father has offered to pay for
3 the abortion;

4 (c) the woman has a right to view the ultrasound
5 videotape provided by the department of an unborn child in
6 the womb at 2-week gestational increments from the time a
7 woman can be known to be pregnant until full term;

8 (d) the woman has a right to review printed material
9 provided by the department describing the unborn child and,
10 listing agencies that offer alternatives to abortion; and
11 (e) the woman is free to withhold or to withdraw
12 informed and voluntary consent to the abortion.

13 (6) If the woman chooses to view the ultrasound
14 videotape or review the printed material, or both, the
15 physician or the physician's agent shall furnish them to the
16 woman.

17 (7) Prior to an abortion, the woman upon whom the
18 abortion is to be performed shall certify in writing, on a
19 form prescribed by the department, that:

20 (a) the information described in subsections (4) and
21 (5) has been furnished; and

22 (b) the woman has been informed of the right to review
23 the information described in subsections (5)(c) and (5)(d).

24 (8) Prior to an abortion, the physician who is to
25 perform the abortion or the physician's agent must have

1 received a copy of the written certification required in
2 subsection (7).

3 (9) If a medical emergency compels the performance of
4 an abortion, the physician shall, prior to the abortion if
5 possible, inform the woman of the medical indications
6 supporting the physician's judgment that an abortion is
7 necessary to avert the woman's death or that a delay will
8 create serious risk of substantial and irreversible
9 impairment of a major bodily function.

10 (4)--No (10) An executive officer, administrative
11 agency, or public employee of the state or of any local
12 governmental body has--power--to may not issue any order
13 requiring an abortion or shall coerce any woman to have an
14 abortion; nor--shall--any A person may not coerce any woman
15 to have an abortion.

16 (5)(11) Violation of subsections (1) and (4) (10) of
17 this section is a misdemeanor."

18 Section 3. Section 50-20-112, MCA, is amended to read:
19 "50-20-112. Penalties. (1) A person convicted of
20 deliberate, mitigated, or negligent homicide under this
21 chapter is subject to the penalties prescribed by 45-5-102
22 through 45-5-104.

23 (2) A person convicted of a felony other than
24 deliberate, mitigated, or negligent homicide under this
25 chapter is subject to a fine not to exceed \$1,000,

(b) material designed to inform the woman of the medical and psychological effects associated with pregnancies terminated by abortion, associated with pregnancies carried to term in which the infant or child is placed for adoption, and associated with pregnancies carried to term in which the child is kept by the natural mother;" 1039/01

subject to the provisions of subsection (2),

1 imprisonment in the state prison for a term not to exceed 5
2 years, or both.

3 (3) A person convicted of a misdemeanor under this
4 chapter is subject to a fine not to exceed \$500,
5 imprisonment in the county jail for a term not to exceed 6
6 months, or both.

7 (4) A penalty may not be assessed against a woman upon
8 whom the abortion is performed or attempted to be performed.

9 (5) If the department has not made printed material
10 available when the physician, the referring physician, or
11 the agent of either is required to inform a woman of the
12 right to review it, a criminal or civil penalty may not be
13 imposed for failure to comply with 50-20-106(5)(d) or (7)
14 requiring written certification that a woman has been given
15 an opportunity to review the information.

16 (6) If the department has not made the ultrasound
17 videotape available when the physician, the referring
18 physician, or the agent of either is required to inform the
19 woman of the right to view it, a criminal or civil penalty
20 may not be imposed for failure to comply with section
21 50-20-106(5)(c) or (7) requiring written certification that
22 the woman has been informed of the right to view the
23 ultrasound videotape."

24 NEW SECTION. Section 4. Printed information. Within 60
25 days of [the effective date of this act], the department

1 shall publish the following in legible, large typeface and
2 make available upon request at no cost to any person,
3 facility, or hospital:

4 (a) material geographically indexed material designed to inform
5 a woman of public and private agencies and services,
6 including adoption agencies and services, that are available
7 to assist a woman through pregnancy, following childbirth,
8 and while the child is dependent. The material must include:
9 (i) a comprehensive list of the agencies available; and
10 (ii) a description of the services offered by the
11 available agencies, including the telephone numbers of the
12 agencies; and

13 (c) material designed to inform the woman of the
14 probable anatomical and physiological characteristics of the
15 unborn child at 2-week gestational increments from the time
16 a woman can be known to be pregnant until full term,
17 including any color pictures or drawings representing the
18 development of unborn children at 2-week gestational
19 increments containing the dimensions of the fetus that are
20 realistic and appropriate for the stage of pregnancy
21 depicted. The material must be objective, nonjudgmental, and
22 designed to convey only accurate, scientific information
23 about the unborn child at the various gestational ages,
24 including:

25 (i) objective information describing the methods of

(2) The material prepared by the department under this section must be based on information published by the American psychiatric association, the American college of obstetricians and gynecologists, and the American medical association and must identify risk levels for different age groups when risks vary by age group."

EXHIBIT 2
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- 1 abortion procedures commonly used;
 - 2 ~~(ii)~~ any relevant information on the possibility of the
 - 3 unborn child's survival;
 - 4 ~~(iii)~~ the medical risks commonly associated with each
 - 5 abortion procedure;
 - 6 ~~(iv)~~ the possible ~~detrimental~~ psychological effects of
 - 7 abortion; and
 - 8 ~~(v)~~ the medical risks commonly associated with carrying
 - 9 a child to term.
 - 10 **NEW SECTION. Section 5. Ultrasound required. (1)**
 - 11 Within 60 days of [the effective date of this act], the
 - 12 department shall provide a videotape containing ultrasound
 - 13 motion pictures of unborn children in the womb that is
 - 14 designed to inform a viewer of the probable anatomical and
 - 15 physiological characteristics of an unborn child at 2-week
 - 16 gestational increments from the time a woman can be known to
 - 17 be pregnant until full term.
 - 18 (2) The ultrasound must be objective, nonjudgmental,
 - 19 and designed to convey only accurate, scientific information
 - 20 about an unborn child at the various gestational ages.
 - 21 (3) The ultrasound must be available at no cost from
 - 22 the department upon request to any person, facility, or
 - 23 hospital.
 - 24 **NEW SECTION. Section 6. Anonymity of a woman. (1)** If a
 - 25 woman upon whom an abortion has been performed or attempted
- 1 does not consent to be publicly named in a civil or criminal
 - 2 action brought for violation of 50-20-104, 50-20-106,
 - 3 50-20-112, or [sections 4 through 8], the court shall rule,
 - 4 upon motion by either party, whether the identity of the
 - 5 woman must be preserved from public disclosure.
 - 6 (2) If the court rules that the woman's anonymity
 - 7 should be preserved, the court shall issue the order to the
 - 8 parties, witnesses, and attorneys; order the court records
 - 9 to be sealed; and exclude persons from the court room to the
 - 10 extent necessary to protect the woman's identity from public
 - 11 disclosure.
 - 12 (3) The court order must be accompanied by a written
 - 13 statement explaining:
 - 14 (a) why the name of the woman should not be publicly
 - 15 disclosed;
 - 16 (b) why the order is essential in protecting the
 - 17 woman's anonymity;
 - 18 (c) how the order is narrowly tailored to protect the
 - 19 woman's anonymity; and
 - 20 (d) why a reasonable, less restrictive alternative does
 - 21 not exist.
 - 22 (4) If a woman upon whom an abortion has been performed
 - 23 or attempted does not give written consent, any person,
 - 24 other than a public official, who brings an action under
 - 25 [section 7] shall do so under a pseudonym.

1 (5) This section may not be construed to conceal from
2 the defendant the identity of a plaintiff or of the
3 witnesses.

4 NEW SECTION. Section 7. Performance of abortion
5 without informed consent -- civil damages. (1) A woman upon
6 whom an abortion has been performed in violation of
7 50-20-104, 50-20-106, 50-20-112, or [sections 4 through 8],
8 the father of the unborn child who was the subject of the
9 abortion, or a grandparent of the unborn child may file a
10 civil action for \$10,000 in punitive damages and treble the
11 actual damages against the person who performed the
12 abortion.

13 (2) A woman upon whom an abortion has been attempted in
14 violation of 50-20-104, 50-20-106, 50-20-112, or [sections 4
15 through 8] may file a civil action for \$5,000 in punitive
16 damages and treble the actual damages against the person who
17 attempted to perform the abortion.

18 (3) The court shall grant reasonable attorney fees to:

19 (a) a plaintiff obtaining a judgment under subsection
20 (1) or (2); or

21 (b) the defendant if the plaintiff does not obtain a
22 judgment and if the court finds that the plaintiff's civil
23 action was frivolous or brought in bad faith.

24 (4) An intentional violation of 50-20-104, 50-20-106,
25 50-20-112, or [sections 4 through 8] is admissible in a

1 civil action as prima facie evidence of a failure to obtain
2 informed and voluntary consent.

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

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

-End-

Amendments to Senate Bill No. 202
First Reading Copy

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Valencia Lane
February 16, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 2-17-93
BILL NO. SB202

1. Title, lines 5 and 6.
Following: "ABORTION;" on line 5
Strike: remainder of line 5 through "ACT;" on line 6
2. Title, lines 8 through 11.
Following: "MATERIAL" on line 8
Strike: remainder of line 8 through "CONSENT" on line 11
3. Title, line 11.
Following: "50-20-104"
Strike: ", "
Insert: "AND"
4. Title, line 12.
Strike: "AND 50-20-112,"
5. Page 1, line 21 through page 2, line 1.
Following: "~~birth~~" on line 21
Strike: remainder of line 21 through "fetus" on page 2, line 1
Insert: "performance of, assistance or participation in the performance of, or submission to an act or operation intended to terminate a pregnancy without live birth"
6. Page 2, line 21.
Following: line 20
Insert: "(4) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of such of the following information as is reasonably chargeable to the knowledge of the physician in his professional capacity:
(a) the stage of development of the fetus, the method of abortion to be utilized, and the effects of the abortion method upon the fetus;
(b) the physical and psychological effects of abortion; and
(c) available alternatives to abortion, including childbirth and adoption."
Renumber: subsequent subsections
7. Page 3, lines 7 through 9.
Strike: subsection (6) in its entirety
Renumber: subsequent subsection
8. Page 4, line 3.

Following: line 2

Insert: "(2) Informed consent may be evidenced by a written statement in a form prescribed by the department and signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that he has made the full disclosure provided in 50-20-104(4) and in which the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

(3) The above informed consent or consent is not required if a licensed physician certifies that the abortion is necessary to preserve the life of the mother."

Renumber: subsequent subsections

9. Page 4, line 5.

Strike: "(3) through (9)"

Insert: "(5) through (10)"

10. Page 4, line 6.

Strike: "(4) and (5)"

Insert: "(6) and (7)"

11. Page 4, line 7.

Following: "woman"

Strike: "at least 24 hours"

12. Page 4, line 24 through page 5, line 7.

Strike: subsections (a) through (c) in their entirety

Renumber: subsequent subsections

13. Page 5, lines 13 through 16.

Strike: subsection (6) in its entirety

Renumber: subsequent subsections

14. Page 5, lines 20 and 21.

Strike: "(4) and (5)"

Insert: "(6) and (7)"

15. Page 5, line 23.

Strike: "subsections (5)(c) and (5)(d)"

Insert: "subsection (7)(a)"

16. Page 6, line 2.

Strike: "(7)"

Insert: "(8)"

17. Page 6, line 16.

Strike: "(10)"

Insert: "(11)"

18. Page 6, line 18 through page 7, line 23.

Strike: section 3 in its entirety

Renumber: subsequent sections

19. Page 7, line 24.

Following: "Within"
Strike: "60"
Insert: "180"

20. Page 9, line 10 through page 12, line 2.
Strike: sections 5 through 7 in their entirety
Renumber: subsequent sections

21. Page 12, line 4.
Strike: "[Sections 4 through 8] are"
Insert: "[Section 3] is"

22. Page 12, line 7.
Strike: "[sections 4 through 8]"
Insert: "[section 3]"

EXHIBIT 3
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LC 1039/M performance of, assistance or participation in the 39/01 performance of, or submission to an act or operation intended to terminate a pregnancy without live birth"

Smith BILL NO. 202

INTRODUCED BY *Handing* *Doc. Clerk* *Tom Spating*
Confield *Rep. Brown* *Pack* *NATURAL Whalen*
A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING A WOMAN'S RIGHT TO KNOW CERTAIN FACTS PRIOR TO AN ABORTION; REDEFINING INFORMED CONSENT IN THE MONTANA ABORTION CONTROL ACT; REQUIRING THAT A WOMAN CONTEMPLATING AN ABORTION BE PROVIDED AN OPPORTUNITY TO REVIEW CERTAIN PRINTED MATERIAL AND AN OPPORTUNITY TO VIEW AN ULTRASOUND VIDEOAPE; PROVIDING CIVIL DAMAGES FOR AN ABORTION PERFORMED WITHOUT INFORMED AND VOLUNTARY CONSENT; AND AMENDING SECTIONS 50-20-106, AND 50-20-117, MCA."
Molina
Smith

1 ~~a dead fetus~~
2 (2) "Department" means the department of health and
3 environmental sciences provided for in Title 2, chapter 15,
4 part 21.
5 (3) "Facility" means a hospital, health care facility,
6 physician's office, or other place in which an abortion is
7 performed.

8 "Informed consent" means voluntary consent to an
9 abortion by the woman upon whom the abortion is to be
10 performed only after full disclosure to her by the physician
11 information as to the abortion of such of the following physical
12 the physician in his reasonably chargeable to the following
13 (a) the stage of development of the fetus, the method
14 of abortion to be utilized, and the effects of the abortion;
15 (b) the physical and psychological effects of the abortion;
16 (c) available alternatives to abortion, including
17 childbirth and adoption."
18 method upon the fetus;
19 (b) the physical and psychological effects of abortion, including
20 method upon the fetus;
21 (b) the physical and psychological effects of abortion;
22 (c) available alternatives to abortion, including
23 childbirth and adoption."
24 method upon the fetus;
25 (b) the physical and psychological effects of abortion;

26 (1) "Abortion" means the performance of assistance or
27 participation in the performance of or submission to an act
28 or operation intended to terminate a pregnancy without live
29 birth intentional use of prescription of any instrument,
30 medicine, drug, or other substance or device to terminate
31 the pregnancy of a woman known to be pregnant, other than to
32 increase the probability of a live birth, to preserve the
33 life or health of the child after a live birth, or to remove

" (2) Informed consent may be evidenced by a ~~written~~ statement in a form prescribed by the department and signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that he has made the full disclosure provided in 50-20-104(4) and in which the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

(3) The above informed consent or consent is not required if a licensed physician certifies that the abortion is necessary to preserve the life of the mother."

1 serious risk of substantial and irreversible impairment of a
2 major bodily function.

3 (4) "Probable gestational age of the unborn child"
4 means the age that, in the judgment of the physician, will
5 with reasonability be the gestational age of the unborn
6 child at the time the abortion is planned to be performed.

7 (5) "Viability" means the ability of a fetus to live
8 outside the mother's womb, either with by natural or
9 artificial and life support systems.

10 (6) "Woman" means a female person."

11 Section 2. Section 50-20-106, MCA, is amended to read:

12 "50-20-106. Consent Informed and voluntary consent to
13 abortion -- medical emergency exception. (1) No An abortion
14 may not be performed upon any woman in the absence of
15 informed and voluntary consent by the woman upon whom the
16 abortion is to be performed.

17 (2) --informed consent may be evidenced by a written
18 statement in a form prescribed by the department and signed
19 by the physician and the woman upon whom the abortion is to
20 be performed in which the physician certifies that he has
21 made the full disclosure provided in 50-20-104(4) and in
22 which the woman upon whom the abortion is to be performed
23 acknowledges that the above disclosures have been made to
24 her and that she voluntarily consents to the abortion.

25 (3) --the above informed consent or consent is not

1 required to preserve the life of the mother.
2 necessary to preserve the life of the mother.

3 (4) Except in the case of a medical emergency, consent

4 to an abortion is informed and voluntary only if the

5 provisions of subsections (3) through (5) are met.

6 (5) The information required by subsections (4) and (5)

7 must be provided to a woman at least 24 hours before an

8 abortion.

9 (6) The physician who is to perform the abortion or the

10 referring physician shall tell the woman:

11 (a) the name of the physician who will perform the

12 abortion;

13 (b) the probable gestational age of the unborn child at

14 the time the abortion is to be performed;

15 (c) the particular medical risks associated with the

16 particular abortion procedure to be used, including, when

17 medically accurate, the risks of infection, hemorrhage,

18 danger to subsequent pregnancies, and infertility; and

19 (d) the medical risks associated with carrying the

20 child to full term.

21 (7) The physician who is to perform the abortion, the

22 referring physician, or the agent of either shall tell the

23 woman that:

24 (a) medical assistance benefits may be available for

25 prenatal care, childbirth, and neonatal care.

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1 ~~(b) the father is liable to assist in the support of~~
 2 ~~the woman's child even if the father has offered to pay for~~
 3 ~~the abortion;~~
 4 ~~(c) the woman has a right to view the ultrasound~~
 5 ~~videotape provided by the department of an unborn child in~~
 6 ~~the womb at 2-week gestational increments from the time a~~
 7 ~~woman can be known to be pregnant until full term;~~
 8 ~~(d) the woman has a right to review printed material~~
 9 ~~provided by the department describing the unborn child and~~
 10 ~~listing agencies that offer alternatives to abortion; and~~
 11 ~~(e) the woman is free to withhold or to withdraw~~
 12 ~~informed and voluntary consent to the abortion.~~
 13 ~~(f) If the woman chooses to view the ultrasound~~
 14 ~~videotape or review the printed material, or both, the~~
 15 ~~physician or the physician's agent shall furnish them to the~~
 16 ~~woman.~~
 17 ~~(g) Prior to an abortion, the woman upon whom the~~
 18 ~~abortion is to be performed shall certify in writing, on a~~
 19 ~~form prescribed by the department, that:~~
 20 ~~(a) the information described in subsections (4) and~~
 21 ~~(5) has been furnished; and~~
 22 ~~(b) the woman has been informed of the right to review~~
 23 ~~the information described in subsections (7)(c), (4),~~
 24 ~~(8) and (9) Prior to an abortion, the physician who is to~~
 25 ~~perform the abortion or the physician's agent must have~~

1 ~~received a copy of the written certification required in~~
 2 ~~subsection (7).~~
 3 ~~(8) If a medical emergency compels the performance of~~
 4 ~~an abortion, the physician shall, prior to the abortion if~~
 5 ~~possible, inform the woman of the medical indications~~
 6 ~~supporting the physician's judgment that an abortion is~~
 7 ~~necessary to avert the woman's death or that a delay will~~
 8 ~~create serious risk of substantial and irreversible~~
 9 ~~impairment of a major bodily function.~~
 10 ~~(4) No ⁽¹¹⁾ executive officer, administrative~~
 11 ~~agency, or public employee of the state or of any local~~
 12 ~~governmental body has power to may not issue any order~~
 13 ~~requiring an abortion or shall coerce any woman to have an~~
 14 ~~abortion, nor shall any A person may not coerce any woman~~
 15 ~~to have an abortion.~~
 16 ~~(5) ⁽²⁾ Violation of subsections (1) and (4) ⁽¹¹⁾ of~~
 17 ~~this section is a misdemeanor."~~
 18 ~~Section 3. Section 50-20-112, MCA, is amended to read:~~
 19 ~~"50-20-112. Penalties. (1) A person convicted of~~
 20 ~~deliberate, mitigated, or negligent homicide under this~~
 21 ~~chapter is subject to the penalties prescribed by 45-5-102~~
 22 ~~through 45-5-104.~~
 23 ~~(2) A person convicted of a felony other than~~
 24 ~~deliberate, mitigated, or negligent homicide under this~~
 25 ~~chapter is subject to a fine not to exceed \$1,000.~~

1 imprisonment in the state prison for a term not to exceed 5
2 years, or both.

3 ~~(3) A person convicted of a misdemeanor under this~~
4 ~~chapter is subject to a fine not to exceed \$500.~~
5 ~~Imprisonment in the county jail for a term not to exceed 6~~
6 ~~months, or both.~~

7 ~~(4) A penalty may not be assessed against a woman upon~~
8 ~~whom the abortion is performed or attempted to be performed.~~

9 ~~(5) If the department has not made printed material~~
10 ~~available when the physician, the referring physician, or~~
11 ~~the agent of either is required to inform a woman of the~~
12 ~~right to review it, a criminal or civil penalty may not be~~
13 ~~imposed for failure to comply with 50-20-106(5)(d) or (7)~~
14 ~~requiring written certification that a woman has been given~~
15 ~~an opportunity to review the information.~~

16 ~~(6) If the department has not made the ultrasound~~
17 ~~videotape available when the physician, the referring~~
18 ~~physician, or the agent of either is required to inform the~~
19 ~~woman of the right to view it, a criminal or civil penalty~~
20 ~~may not be imposed for failure to comply with section~~
21 ~~50-20-106(5)(c) or (7) requiring written certification that~~
22 ~~the woman has been informed of the right to view the~~
23 ~~ultrasound videotape."~~

24 NEW SECTION. Section 4. Printed information. Within ¹⁸⁰~~60~~
25 days of [the effective date of this act], the department

1 shall publish the following in legible, large typeface and
2 make available upon request at no cost to any person,
3 facility, or hospital:

4 (1) geographically indexed material designed to inform
5 a woman of public and private agencies and services,
6 including adoption agencies and services, that are available
7 to assist a woman through pregnancy, following childbirth,
8 and while the child is dependent. The material must include:

9 (a) a comprehensive list of the agencies available; and
10 (b) a description of the services offered by the
11 available agencies, including the telephone numbers of the
12 agencies; and

13 (2) material designed to inform the woman of the
14 probable anatomical and physiological characteristics of the
15 unborn child at 2-week gestational increments from the time
16 a woman can be known to be pregnant until full term,
17 including any color pictures or drawings representing the
18 development of unborn children at 2-week gestational
19 increments containing the dimensions of the fetus that are
20 realistic and appropriate for the stage of pregnancy
21 depicted. The material must be objective, nonjudgmental, and
22 designed to convey only accurate, scientific information
23 about the unborn child at the various gestational ages,
24 including:

25 (a) objective information describing the methods of

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1 abortion procedures commonly used;

2 (b) any relevant information on the possibility of the

3 unborn child's survival;

4 (c) the medical risks commonly associated with each

5 abortion procedure;

6 (d) the possible detrimental psychological effects of

7 abortion; and

8 (e) the medical risks commonly associated with carrying

9 a child to term.

10 ~~NEW SECTION. Section 5. ultrasound required. (1)~~

11 Within 60 days of the effective date of this act, the

12 department shall provide a videotape containing ultrasound

13 motion pictures of unborn children in the womb that is

14 designed to inform a viewer of the probable anatomical and

15 physiological characteristics of an unborn child at 2-week

16 gestational increments from the time a woman can be known to

17 be pregnant until full term.

18 (2) The ultrasound must be objective, nonjudgmental,

19 and designed to convey only accurate, scientific information

20 about an unborn child at the various gestational ages.

21 (3) The ultrasound must be available at no cost from

22 the department upon request to any person, facility, or

23 hospital.

24 ~~NEW SECTION. Section 6. Anonymity of a woman. (1) If a~~

25 woman upon whom an abortion has been performed or attempted,

1 does not consent to be publicly named in a civil or criminal

2 action brought for violation of 50-20-104, 50-20-106,

3 50-20-112, or sections 4 through 8, the court shall rule,

4 upon motion by either party, whether the identity of the

5 woman must be preserved from public disclosure.

6 (2) If the court rules that the woman's anonymity

7 should be preserved, the court shall issue the order to the

8 parties, witnesses, and attorneys, order the court records

9 to be sealed, and exclude persons from the court room to the

10 extent necessary to protect the woman's identity from public

11 disclosure.

12 (3) The court order must be accompanied by a written

13 statement explaining:

- 14 (a) why the name of the woman should not be publicly
- 15 disclosed;
- 16 (b) why the order is essential in protecting the
- 17 woman's anonymity;

18 (c) how the order is narrowly tailored to protect the

19 woman's anonymity; and

20 (d) why a reasonable, less restrictive alternative does

21 not exist.

22 (4) If a woman upon whom an abortion has been performed

23 or attempted does not give written consent, any person,

24 other than a public official, who brings an action under

25 [section 7] shall do so under a pseudonym.

1 ~~(5) This section may not be construed to conceal from~~
 2 ~~the defendant the identity of a plaintiff or of the~~
 3 ~~witnesses.~~
 4 ~~NEW SECTION: Section 7. Performance of abortion~~
 5 ~~without informed consent civil damages. (1) A woman upon~~
 6 ~~whom an abortion has been performed in violation of~~
 7 ~~50-20-104, 50-20-106, 50-20-112, or [sections 4 through 6],~~
 8 ~~the father of the unborn child who was the subject of the~~
 9 ~~abortion, or a grandparent of the unborn child may file a~~
 10 ~~civil action for \$10,000 in punitive damages and treble the~~
 11 ~~actual damages against the person who performed the~~
 12 ~~abortion.~~
 13 ~~(2) A woman upon whom an abortion has been attempted in~~
 14 ~~violation of 50-20-104, 50-20-106, 50-20-112, or [sections 4~~
 15 ~~through 6] may file a civil action for \$5,000 in punitive~~
 16 ~~damages and treble the actual damages against the person who~~
 17 ~~attempted to perform the abortion.~~
 18 ~~(3) The court shall grant reasonable attorney fees to:~~
 19 ~~(a) a plaintiff obtaining a judgment under subsection~~
 20 ~~(1) or (2); or~~
 21 ~~(b) the defendant if the plaintiff does not obtain a~~
 22 ~~judgment and if the court finds that the plaintiff's civil~~
 23 ~~action was frivolous or brought in bad faith.~~
 24 ~~(4) An intentional violation of 50-20-104, 50-20-106,~~
 25 ~~50-20-112, or [sections 4 through 6] is admissible in a~~

1 ~~civil action as prima facie evidence of a failure to obtain~~
 2 ~~informed and voluntary consent.~~
 3 ~~NEW SECTION. Section 8. Codification Instruction.~~
 4 ~~[Sections 4 through 6] are intended to be codified as an~~
 5 ~~integral part of Title 50, chapter 20, part 1, and the~~
 6 ~~provisions of Title 50, chapter 20, part 1, apply to~~
 7 ~~[sections 4 through 6].~~
 8 ~~NEW SECTION. Section 9. Severability. If a part of~~
 9 ~~[this act] is invalid, all valid parts that are severable~~
 10 ~~from the invalid part remain in effect. If a part of [this~~
 11 ~~act] is invalid in one or more of its applications, the part~~
 12 ~~remains in effect in all valid applications that are~~
 13 ~~severable from the invalid applications.~~