

HOUSE BILL NO. 854

2/19 Introduced
2/19 Referred to Human Services & Aging
2/22 Hearing
Died in Committee

1 HOUSE BILL NO. 854
 2 INTRODUCED BY KOEHNKE

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE LAW
 5 RELATING TO AND TO GENERALLY ENHANCE THE PROTECTION AND
 6 RIGHTS OF PERSONS UNDER 18 YEARS OF AGE; DEFINING TERMS
 7 RELATING TO CHILDREN; AMENDING SECTIONS 40-6-233, 41-1-102,
 8 45-3-107, 50-15-101, 50-20-104, AND 50-20-108, MCA."

9
 10 WHEREAS, the Montana Constitution provides in Article
 11 II, section 15, that: "The rights of persons under 18 years
 12 of age shall include, but not be limited to, all the
 13 fundamental rights of this Article unless specifically
 14 precluded by laws which enhance the protection of such
 15 persons"; and

16 WHEREAS, the Montana Code Annotated contains numerous
 17 sections relating to children, enacted over a 118-year
 18 period; and

19 WHEREAS, many of these sections directly affect the
 20 lives and protection of children; and

21 WHEREAS, there is a growing need for and a compelling
 22 state interest in protection of children from abuse and
 23 neglect.

24 THEREFORE, the Legislature of the State of Montana
 25 finds it appropriate to enhance the protection and rights of

1 children with this act.

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

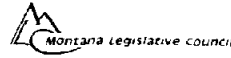
4 NEW SECTION. Section 1. Purpose. By passage of [this
 5 act], it is not the intent of the legislature to limit,
 6 deny, or abridge any existing constitutional rights of
 7 either women or children, but rather to clarify the law
 8 relating to the protection of children from abuse and
 9 neglect.

10 Section 2. Section 40-6-233, MCA, is amended to read:

11 "40-6-233. Remedy for parental or guardianship abuse
 12 or neglect. (1) The abuse or neglect of parental or
 13 guardianship authority or obligation is the subject of
 14 judicial cognizance in a civil action brought by on behalf
 15 of the child er by its his relative within the third degree,
 16 next friend, or by the county commissioners attorney of the
 17 county where the child resides or is found. When the abuse
 18 or neglect is established or there is reason to believe the
 19 child is in immediate or apparent danger of being harmed,
 20 the child may be placed in a protective environment or
 21 otherwise freed from the dominion of the parent or guardian
 22 and the duty of support and education enforced.

23 (2) The definitions in 41-3-102 apply to this
 24 section."

25 Section 3. Section 41-1-102, MCA, is amended to read:



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1 "41-1-102. Periods of minority -- how calculated --
2 definitions. (1) The periods specified in 41-1-101 must be
3 calculated from the first minute of the day on which persons
4 are born alive to the same minute of the corresponding day
5 completing the period of minority.

6 (2) An infant born alive is an existing person of
7 minor age for all purposes from the instant of his birth.
8 Such existing person is entitled to all the rights and
9 protection contained in Article II, section 15, of the
10 Montana constitution.

11 (3) (a) "Born alive" or "live birth" means:

12 (i) the natural birth of an infant who shows any
13 evidence of life at birth, with or without artificial or
14 medical aid, as he emerges from the womb; or

15 (ii) the caesarean birth of an infant who shows any
16 evidence of life at birth, with or without artificial or
17 medical aid, after being entirely outside the womb.

18 (b) "Evidence of life at birth" includes but is not
19 limited to beating of the heart, pulsation of the umbilical
20 cord, or definite movement of voluntary muscles, whether or
21 not the umbilical cord has been cut or the placenta is
22 attached, regardless of the gestational age."

23 Section 4. Section 45-3-107, MCA, is amended to read:

24 "45-3-107. Use of force by parent, guardian, or
25 teacher. A parent, ~~or an~~ authorized agent of any parent, or

1 a guardian, master, or teacher, or other person responsible
2 for a child's welfare is justified in the use of such force
3 as is reasonable and necessary to restrain or correct ~~his~~
4 the child, ward, apprentice, or pupil, except force likely
5 to cause physical or mental injury as defined in 41-3-102.
6 As used in this section, "child" means a person under 18
7 years of age."

8 Section 5. Section 50-15-101, MCA, is amended to read:

9 "50-15-101. Definitions. Unless the context requires
10 otherwise, in parts 1 through 4 the following definitions
11 apply:

12 (1) "Board" means the board of health and
13 environmental sciences provided for in 2-15-2104.

14 (2) "Dead body" means a lifeless human body or parts
15 of a body from which it reasonably may be concluded that
16 death occurred recently.

17 (3) "Department" means the department of health and
18 environmental sciences provided for in Title 2, chapter 15,
19 part 21.

20 (4) "Dissolution of marriage" means a marriage
21 terminated pursuant to Title 40, chapter 4, part 1.

22 (5) "Fetal death" means a birth after 20 weeks of
23 gestation which is not a live birth.

24 (6) "Invalid marriage" means a marriage decreed by a
25 district court to be invalid for the reasons contained in

1 40-1-402.

2 (7) "Live birth" ~~means the birth of a child who shows~~
3 ~~evidence of life after being entirely outside the mother~~ has
4 the meaning contained in 41-1-102.

5 (8) "Local registrar" means a person appointed by the
6 department to act as its agent in administering this chapter
7 in the area set forth in the letter of appointment.

8 (9) "Person in charge of interment" means a person who
9 places or causes to be placed a dead body or the ashes after
10 cremation in a grave, vault, urn, or other receptacle or
11 otherwise disposes of the body.

12 (10) "Physician" means a person legally authorized to
13 practice medicine in this state.

14 (11) "Vital statistics" includes the registration,
15 preparation, transcription, collection, compilation, and
16 preservation of data pertaining to births, adoptions,
17 legitimations, deaths, fetal deaths, marital status, and
18 incidental supporting data."

19 Section 6. Section 50-20-104, MCA, is amended to read:

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

22 (1) "Abortion" means the performance of, assistance or
23 participation in the performance of, or submission to an act
24 or operation intended to terminate a pregnancy.

25 (2) "Appropriate medical judgment" means the

1 professional decision of a responsible attending physician
2 of either the mother or infant made in accordance with
3 generally accepted medical standards.

4 (3) "Born alive" has the meaning contained in
5 41-1-102. An infant born alive or a premature infant born
6 alive is an existing person within the meaning and
7 protection of Article II, section 15, of the Montana
8 constitution.

9 ~~(4)~~ (4) "Department" means the department of health and
10 environmental sciences provided for in Title 2, chapter 15,
11 part 21.

12 ~~(5)~~ (5) "Facility" means a hospital, health care
13 facility, physician's office, or other place in which an
14 abortion is performed.

15 (6) "Health" means a physical condition necessary to
16 sustain human life.

17 ~~(7)~~ (7) "Informed consent" means voluntary consent to
18 an abortion by the woman upon whom the abortion is to be
19 performed only after full disclosure to her by the physician
20 who is to perform the abortion of such of the following
21 information as is reasonably chargeable to the knowledge of
22 the physician in his professional capacity:

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

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

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

5 ~~(4) "Abortion" means the performance of assistance or
6 participation in the performance of or submission to an act
7 or operation intended to terminate a pregnancy without live
8 birth.~~

9 (8) "Licensed physician" means a person licensed under
10 Title 37, chapter 3.

11 (9) "Person" has the meaning contained in 45-2-101.

12 ~~(5)(10) "Viability" means the ability of a fetus to
13 live outside the mother's womb, albeit with artificial aid
14 point during a pregnancy at which a human fetus becomes
15 potentially able to live outside the womb, with or without
16 artificial or medical aid.~~

17 (11) "Viable fetus" or "viable human fetus" means an
18 unborn human fetus that has reached the point of viability."

19 Section 7. Section 50-20-108, MCA, is amended to read:

20 "50-20-108. Protection of ~~premature infants born alive~~
21 life and health of infant. (1) A person commits the offense
22 of criminal homicide, as defined in 45-5-101 through
23 45-5-104, if he purposely, knowingly, or negligently causes
24 the death of a premature infant born alive, ~~if such infant~~
25 is viable.

1 (2) A person commits the offense of endangering the
2 welfare of children, as defined in 45-5-622, if he knowingly
3 endangers the welfare of a premature infant born alive by
4 violating a duty of care, protection, or support that is
5 necessary in appropriate medical judgment for the
6 preservation of the infant's life or health.

7 ~~(2)(3)~~ Whenever a premature infant which is the
8 subject of abortion is born alive ~~and is viable~~, it becomes
9 a dependent and neglected child, as defined in 41-3-102,
10 subject to the provisions of state law, unless:

11 (a) the termination of the pregnancy is was necessary
12 to preserve the life of the mother; or

13 (b) the mother and her spouse or either of them have
14 agreed in writing in advance of the abortion or within 72
15 hours thereafter to accept the parental rights and
16 responsibilities of the premature infant if it survives the
17 abortion procedure; or

18 (c) the mother was pregnant out of wedlock and has
19 filed an ex parte petition under 40-6-127 of intent to
20 release the child for adoption.

21 ~~(3)(4)~~ No person may use any premature infant born
22 alive for any type of scientific research or other kind of
23 experimentation except as necessary to protect or preserve
24 the life and health of such premature infant born alive.

25 ~~(4)(5)~~ Violation of subsection ~~(3)~~ (4) of this section

1 is a felony and is punishable as provided in 50-20-112(2)."

2 NEW SECTION. Section 8. Extension of authority. Any
3 existing authority of the department of health and
4 environmental sciences to make rules on the subject of the
5 provisions of this act is extended to the provisions of this
6 act.

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

-End-