

1 *File* *McLee* *Molnar* *Wells* *Hayden* *Emery* *Fore*  
 2 *Bergman* *Bauer* *Lester* *Curtiss* *Smith* *Walt*  
 3 *INTRODUCED BY* *B.S. Brown* *Ray Peak* *Green* *Harquail* *Beak*  
 4 *ORR* *Jungquist* *Simpkins* *Madame* *Ahner*  
 5 *A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE "WOMAN'S RIGHT-TO-KNOW ACT"*  
 6 *PROVIDING FOR THE PUBLICATION AND DISSEMINATION OF INFORMATION CONCERNING ABORTION,*  
 7 *CLARIFYING INFORMED CONSENT; PROVIDING CIVIL REMEDIES FOR FAILURE TO OBTAIN INFORMED*  
 8 *CONSENT; AMENDING SECTIONS 50-20-104, 50-20-106, AND 50-20-112, MCA; AND PROVIDING AN*  
 9 *EFFECTIVE DATE."* *Burnett* *Tom Nelson* *Fish* *Estad* *Bishop*  
 10 *BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:* *Rehbein* *Barnett* *Miller* *Ops* *Forbes* *Hayne*  
 11 *Amott* *Judy* *Murphy* *Merahan* *Knox* *Jenkins* *Storall* *Holder*

12 NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Woman's  
 13 Right-to-Know Act".

- 14
- 15 NEW SECTION. **Section 2. Legislative purpose and findings.** (1) The legislature finds that:
- 16 (a) it is essential to the psychological and physical well-being of a woman who is considering an
  - 17 abortion that the woman receive complete and accurate information on alternatives;
  - 18 (b) the knowledgeable exercise of a woman's decision to have an abortion depends on the extent
  - 19 to which the woman receives sufficient information to make an informed choice between the alternatives
  - 20 of giving birth and having an abortion;
  - 21 (c) in most instances, the only contact with a physician that a woman who has an abortion has
  - 22 occurs simultaneously with the abortion procedure, with little opportunity to receive counseling concerning
  - 23 the decision;
  - 24 (d) the decision to abort is an important and often stressful one, and it is desirable and imperative
  - 25 that it be made with full knowledge of its nature and consequences;
  - 26 (e) the medical, emotional, and psychological consequences of an abortion are serious and can be
  - 27 lasting;
  - 28 (f) abortion facilities or providers offer only limited or impersonal counseling opportunities; and
  - 29 (g) many abortion facilities or providers hire untrained and unprofessional counselors whose primary
  - 30 goal is to sell abortion services.

1 (2) Based on the findings in subsection (1), it is the purpose of [sections 1 through 8] to:

2 (a) ensure that every woman who is considering an abortion receive complete information on  
3 alternatives and that every woman submitting to an abortion do so only after giving informed consent to  
4 the abortion procedure;

5 (b) protect unborn children from a woman's uninformed decision to have an abortion; and

6 (c) reduce the risk that a woman may elect an abortion, only to discover later, with devastating  
7 psychological consequences, that the decision was not fully informed.

8

9 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 8], unless the context  
10 requires otherwise, the following definitions apply:

11 (1) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical  
12 judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate  
13 abortion of the woman's pregnancy to avert the woman's death or for which a delay will create serious risk  
14 of substantial and irreversible impairment of a major bodily function.

15 (2) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

16 (3) "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child  
17 in the woman's body.

18 (4) "Unborn child" means the offspring of human beings from conception until birth.

19

20 **NEW SECTION. Section 4. Publication of materials.** (1) The department shall publish and annually  
21 update easily comprehensible printed materials that are geographically indexed and designed to inform  
22 women of public and private agencies and services available to assist a woman through pregnancy, during  
23 childbirth, and while a woman's child is dependent. The materials must:

24 (a) include adoption agencies;

25 (b) include a comprehensive list of the agencies, a description of the services offered, and the  
26 telephone numbers and addresses of the agencies;

27 (c) inform a woman about medical assistance benefits for prenatal care, childbirth, neonatal care,  
28 and child support obligations of a father of a child.

29 (2) The department shall ensure that the materials described in this section are comprehensive and  
30 do not directly or indirectly promote, exclude, or discourage the use of any agency or service. The

1 materials must include a toll-free, 24-hour telephone number that may be called to orally obtain a list and  
2 description of agencies in the locality of the caller and of the services offered by the agencies.

3 (3) The materials must state that:

4 (a) it is unlawful for any individual to coerce a woman to undergo an abortion;

5 (b) a physician who performs an abortion on a woman without the woman's informed consent may  
6 be liable to the woman for damages in a civil action; and

7 (c) the law allows adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care.

8 (4) The materials must inform the pregnant woman of the probable anatomical and physiological  
9 characteristics of the unborn child at 2-week gestational increments from fertilization to full term, including  
10 pictures or drawings representing the development of unborn children at 2-week gestational increments.  
11 The pictures or drawings must contain the dimensions of the unborn child and must be realistic. The  
12 materials must include any relevant information on the possibility of the unborn child's survival at each  
13 stage depicted. The materials must be objective, nonjudgmental, and designed to convey only accurate  
14 scientific information about the unborn child at the various gestational ages. The materials must contain  
15 objective information describing the methods of abortion procedures commonly employed, the medical risks  
16 commonly associated with each procedure, the possible detrimental psychological effects of abortion, and  
17 the medical risks associated with carrying a child to term.

18 (5) The materials must be printed in a clearly legible typeface.

19 (6) The materials required to be produced under this section must be provided at no cost upon  
20 request and must be provided in appropriate quantities to any person, facility, or hospital.

21  
22 **NEW SECTION. Section 5. Emergency.** When a medical emergency compels the performance of  
23 an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications  
24 supporting the physician's judgment that an abortion is necessary to avert the woman's death or that a  
25 24-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

26  
27 **NEW SECTION. Section 6. Physician reporting requirements -- penalty -- action -- department**  
28 **report.** (1) Within [90 days after the effective date of this section], the department shall prepare a  
29 reporting form to be used by physicians that contains a reprint of this chapter and on which the physician  
30 shall list:

1 (a) the number of women to whom the physician provided the information described in  
2 50-20-104(5)(a), including:

3 (i) the number of women provided the information by telephone and the number to whom it was  
4 provided in person; and

5 (ii) the number of women in each group referred to in subsection (1)(a)(i) to whom the physician  
6 provided the information in the capacity of a referring physician and the number to whom it was provided  
7 in the capacity of a physician who is to perform the abortion;

8 (b) the number of women to whom the physician or an agent of the physician provided the  
9 information described in 50-20-104(5)(b), including:

10 (i) the number of women to whom the physician provided the information by telephone and the  
11 number to whom it was provided in person;

12 (ii) the number of women in each group referred to in subsection (1)(b)(i) to whom the physician  
13 provided the information in the capacity of a referring physician and the number to whom it was provided  
14 in the capacity of a physician who is to perform the abortion; and

15 (iii) the number of women in each group referred to in subsection (1)(b)(ii) to whom information was  
16 provided by the physician and the number to whom it was provided by an agent of the physician;

17 (c) the number of women who availed themselves of the opportunity to obtain a copy of the printed  
18 information described in [section 4] and the number who did not;

19 (d) of each of the numbers described in subsections (1)(a) through (1)(c), the number who, to the  
20 best of the reporting physician's information and belief, obtained an abortion; and

21 (e) the number of abortions that were performed by the physician but in which information  
22 otherwise required to be provided at least 24 hours before the abortion was not provided because:

23 (i) an immediate abortion was necessary to avert the woman's death; or

24 (ii) a delay would create serious risk of substantial and irreversible impairment of a major bodily  
25 function.

26 (2) The department shall ensure that copies of the reporting forms described in subsection (1) are  
27 provided:

28 (a) by [120 days after the effective date of this section] to all physicians licensed in this state;

29 (b) to each physician licensed to practice after [the effective date of this section], at the time of  
30 licensure;

1 (c) by December 1 of each succeeding year, to all physicians licensed to practice in this state.

2 (3) By February 28 of each year, each physician or the physician's agent who provided information  
3 to one or more women in accordance with 50-20-106 shall submit a copy of the reporting form described  
4 in subsection (1) to the department with the requested data entered accurately and completely.

5 (4) Reports that are not submitted by March 31 are subject to a penalty of \$500 for each 30-day  
6 period that the reports are overdue. A physician who is required to report but who, more than 1 year after  
7 the due date, has not submitted a report or who has submitted an incomplete report may, in an action  
8 brought by the department, be directed by a district court to submit a complete report within a period  
9 stated in the court order or be subject to sanctions for civil contempt.

10 (5) By June 30 of each year, the department shall issue a public report providing statistics for the  
11 previous calendar year submitted in accordance with this section for each of the items listed in subsection  
12 (1). Each report must provide the statistics for all previous calendar years, adjusted to reflect information  
13 from late or corrected reports. The department shall ensure that none of the information included in the  
14 public reports could reasonably lead to the identification of an individual who was provided information of  
15 in accordance with 50-20-106.

16 (6) The department may, by rule, alter the dates established by subsection (2)(c), (3), or (5) or  
17 consolidate the forms or reports described in this section with other forms or reports to achieve  
18 administrative convenience, achieve fiscal savings, or reduce the burden of reporting requirements.  
19 However, reporting forms must be sent to all licensed physicians at least once a year, and the report  
20 described in subsection (5) must be issued at least once a year.

21  
22 **NEW SECTION. Section 7. Civil remedies.** (1) A person who performs an abortion in knowing  
23 or reckless violation of this chapter may be liable for actual and punitive damages in an action brought by:

- 24 (a) the woman upon whom an abortion was performed;  
25 (b) the father of the unborn child who was the subject of the abortion; or  
26 (c) the grandparent of an unborn child who was the subject of the abortion.

27 (2) A person who attempts to perform an abortion in knowing or reckless violation of this chapter  
28 may be liable for actual and punitive damages in an action brought by the woman upon whom an abortion  
29 was attempted.

30 (3) If the department fails to issue the public report required in [section 6], a group of 10 or more

1 citizens may seek an injunction, in a court of competent jurisdiction, against the director of the department  
 2 to require that a complete report be issued within a period established by court order. Failure to comply  
 3 with an injunction subjects the director to sanctions for civil contempt.

4 (4) If judgment is rendered in favor of the plaintiff in any action described in this section, the court  
 5 shall award reasonable attorney fees in favor of the plaintiff against the defendant.

6 (5) An abortion or attempted abortion performed in violation of this chapter is the basis for a  
 7 professional disciplinary action under 37-3-322.

8  
 9 **NEW SECTION. Section 8. Protection of privacy in court proceedings.** In a civil or criminal  
 10 proceeding under this chapter, the court shall determine whether the anonymity of a woman upon whom  
 11 an abortion has been performed or attempted must be preserved from public disclosure, unless the woman  
 12 waives anonymity. The court shall make a ruling and, upon determining that the woman's anonymity  
 13 should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing  
 14 of the record and the exclusion of individuals from the proceedings to the extent necessary to safeguard  
 15 the woman's identity from public disclosure. Each order must be accompanied by specific written findings  
 16 explaining why the anonymity of the woman should be preserved, why the order is necessary, how the  
 17 order is tailored to protect the woman's privacy, and why no less restrictive alternative exists. In the  
 18 absence of written consent of the woman upon whom an abortion has been performed or attempted, a  
 19 person other than a public official who brings an action under [section 7(1)] shall do so under a pseudonym.

20  
 21 **NEW SECTION. Section 9. Right of intervention.** Pursuant to Rule 24(a), Montana Rules of Civil  
 22 Procedure, a legislator has the right to intervene in any case in which the constitutionality of Title 50,  
 23 chapter 20, is challenged.

24  
 25 **Section 10.** Section 50-20-104, MCA, is amended to read:

26 **"50-20-104. Definitions.** As used in this chapter, the following definitions apply:

27 (1) "Abortion" means ~~the performance of, assistance or participation in the performance of, or~~  
 28 ~~submission to an act or operation intended to terminate a pregnancy without live birth~~ the use or  
 29 prescription of any instrument, medicine, drug, or other substance or device to intentionally terminate the  
 30 pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of

1 a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

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

5 ~~(2)(3)~~ "Department" means the department of health and environmental sciences provided for in  
 6 Title 2, chapter 15, part 21.

7 ~~(3)(4)~~ "Facility" means a hospital, health care facility, physician's office, or other place in which  
 8 an abortion is performed.

9 ~~(4)(5)~~ "Informed consent" means voluntary consent to an abortion by the woman upon whom the  
 10 abortion is to be performed only after full disclosure to ~~her~~ the woman by:

11 (a) the physician who is to perform the abortion of such of the following information as is  
 12 reasonably chargeable to the knowledge of the physician in his professional capacity:

13 (a)(i) the stage of development of the fetus, the method of particular medical risks associated with  
 14 the particular abortion procedure to be utilized employed, including, and the effects of such abortion method  
 15 upon the fetus when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to  
 16 subsequent pregnancies, and infertility;

17 (b)(ii) the physical and psychological effects of probable gestational age of the unborn child at the  
 18 time the abortion is to be performed; and

19 (c)(iii) available alternatives to abortion, including childbirth and adoption the medical risks of  
 20 carrying the child to term-;

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

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

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

25 (iii) that the woman has the right to review the printed materials described in [section 4]; and

26 (c) the physician or the agent that the printed materials described in [section 4] have been provided  
 27 by the department and that the materials describe the unborn child and list agencies that offer alternatives  
 28 to abortion.

29 ~~(5)(6)~~ "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial  
 30 aid."

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

2           "**50-20-106. ~~Consent to abortion~~ Informed consent.** (1) ~~No~~ An abortion may not be performed ~~upon~~  
3 ~~any woman in the absence of~~ without the informed consent of the woman upon whom the abortion is to  
4 be performed. The informed consent must be received and certified at least 24 hours prior to the abortion.

5           (2) Informed consent ~~may~~ must be ~~evidenced~~ certified by a written statement in a form prescribed  
6 by the department and signed by the physician and the woman upon whom the abortion is to be performed  
7 in which the physician certifies that ~~he~~ the physician has made the full disclosure provided in  
8 50-20-104~~(4)~~(5) and in which the woman upon whom the abortion is to be performed acknowledges that  
9 the ~~above~~ disclosures have been made to ~~her~~ the woman and that ~~she~~ the woman voluntarily consents to  
10 the abortion.

11           (3) If a woman chooses to review the written materials described in [section 4], the materials must  
12 be provided to her at least 24 hours before the abortion or be mailed to the woman by certified mail, with  
13 delivery restricted to the addressee, at least 72 hours before the abortion.

14           (4) The information required in 50-20-104(5)(a) may be provided by telephone without conducting  
15 a physical examination or tests of the patient. The information may be based on facts supplied to the  
16 physician by the woman and other relevant information that is reasonably available to the physician. The  
17 information may not be provided by a tape recording but must be provided during a consultation in which  
18 the physician is able to ask questions of the woman and the woman is able to ask questions of the  
19 physician. If a physical examination, tests, or the availability of other information subsequently indicates,  
20 in the medical judgment of the physician, a revision of information previously provided to the patient, the  
21 revised information may be communicated to the patient at any time prior to the performance of the  
22 abortion.

23           (5) The information required in 50-20-104(5)(b) may be provided by a tape recording if provision  
24 is made to record or otherwise register specifically whether the woman does or does not choose to review  
25 the printed materials.

26           ~~(3)~~(6) The ~~above~~ informed consent or consent provided for in this section is not required if a  
27 licensed physician certifies that the abortion is necessary ~~to preserve the life of the mother~~ because of a  
28 medical emergency as defined in [section 3].

29           ~~(4)~~(7) ~~No~~ An executive officer, administrative agency, or public employee of the state or of any  
30 local governmental body ~~has power to~~ may not issue any order requiring an abortion or ~~shall~~ coerce any



1 woman to have an abortion, ~~nor shall any~~ A person may not coerce any woman to have an abortion.

2 ~~(5)(8)~~ Violation of subsections (1) ~~and (4)~~ through (7) of this section is a misdemeanor."

3  
4 **Section 12.** Section 50-20-112, MCA, is amended to read:

5 **"50-20-112. Penalties.** (1) A person convicted of deliberate, mitigated, or negligent homicide under  
6 this chapter is subject to the penalties prescribed by 45-5-102 through 45-5-104.

7 (2) A person convicted of a felony other than deliberate, mitigated, or negligent homicide under  
8 this chapter is subject to a fine not to exceed \$1,000, imprisonment in the state prison for a term not to  
9 exceed 5 years, or both.

10 (3) A person convicted of a misdemeanor under this chapter is subject to a fine not to exceed  
11 \$500, imprisonment in the county jail for a term not to exceed 6 months, or both.

12 (4)(a) A penalty may not be imposed against the woman upon whom the abortion is performed or  
13 attempted to be performed.

14 (b) A penalty may not be imposed for failure to comply with the provision of 50-20-106 that  
15 requires a written certification that the woman has been informed of the opportunity to review the  
16 information referred to in [section 4] if the department has not made the written materials available at the  
17 time that the physician or the physician's agent is required to inform the woman of the right to review the  
18 materials."

19  
20 NEW SECTION. Section 13. Construction. [Sections 1 through 11] may not be construed as  
21 creating or recognizing a right to abortion. [Sections 1 through 11] do not make lawful any abortion that  
22 is currently unlawful.

23  
24 NEW SECTION. Section 14. Severability. If a part of [this act] is invalid, all valid parts that are  
25 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
26 applications, the part remains in effect in all valid applications that are severable from the invalid  
27 applications.

28  
29 NEW SECTION. Section 15. Codification instruction. [Sections 1 through 8] are intended to be  
30 codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to

1 [sections 1 through 8].

2

3 NEW SECTION. **Section 16. Effective date.** [This act] is effective July 1, 1995.

4 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0292, as introduced

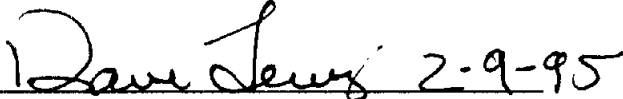
DESCRIPTION OF PROPOSED LEGISLATION:

An act clarifying a woman's right to know certain facts prior to abortion; providing for the publication and dissemination of information concerning alternatives to pregnancy; clarifying informed consent; and providing physician and public reporting requirements and civil penalties.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. Information will be disseminated upon request from the Department of Health and Environmental Sciences (DHES), at no cost, in appropriate quantities to any person, facility or hospital.
3. The total number of printed materials needed during each fiscal year is estimated to be 28,200 calculated as follows:
  - o Women receiving abortions will be provided with the printed materials in the course of securing written proof of informed consent. Based on the FY92 Vital Statistics Report, the annual number of abortions is estimated to be 3,400. (Using a calculation of 295.2 abortions per 1000 live births, where there were 11,498 live births.) These women all will receive printed materials.
  - o There is no accurate way to guess how many other persons will request printed information. It is assumed that 17,000 additional people, or about 1.5 times the number of FY92 live births in Montana, will request the printed information.
  - o In 1993, Montana had 1,395 active physicians, 66 hospitals, 47 county health departments, 33 family planning sites, 5 community health centers and 5 medical assistance facilities. Five copies will be distributed to each of these providers for a total of 7,800 ( $1,395+66+47+33+5+5 = 1,551$  receiving 5 copies each = 7,755)..
4. The materials will cost approximately \$1.25 per copy to print and distribute, resulting in an annual cost of \$35,250.
5. A toll free, 24 hour telephone number will be set up for people to call and access the information required by SB292. The cost of a toll free line is \$100 for the initial installation in FY96 and \$.16 per minute of calls after that. Using an estimate of 200 minutes of usage per month, the cost would be \$484 in FY96 and \$384 in FY97.
6. The department will supply physicians with a form for reporting, required in Section 6. A preliminary estimate of the cost of printing and mailing is \$.50 per form, sent to 1,400 physicians, as a total annual cost of \$700. In FY96, two distributions would be required, so the total cost for that year only would be \$1,400.
7. No costs for enforcement or legal action are assumed or included the development of the fiscal note. Additionally, no penalties are assumed to be imposed during this biennium.
8. Funding for these costs will be 100% general fund.

(continued)

  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

  
BOB BROWN, PRIMARY SPONSOR      DATE

Fiscal Note for SB0292, as introduced

SB 292

Fiscal Note Request, SB0292, as introduced

Page 2

(continued)

FISCAL IMPACT:

<u>Expenditures:</u>	<u>FY96</u> <u>Difference</u>	<u>FY97</u> <u>Difference</u>
Operating Expenses	37,134	36,334
<u>Funding:</u>		
General Fund (01)	37,134	36,334

## 1 SENATE BILL NO. 292

2 INTRODUCED BY BROWN, PECK, GREEN, HARGROVE, S. SMITH, COLE, SOFT, MCGEE, BERGMAN,  
3 MOLNAR, BAER, WELLS, FOSTER, KITZENBERG, MCCANN, CURTISS, L. SMITH, EMERSON, JORE,  
4 MOHL, BECK, MILLER, GRIMES, ORR, SWYSGOOD, SIMPKINS, MARTINEZ, AHNER, KEATING,  
5 HARDING, ZOOK, HERTEL, TVEIT, BENEDICT, DEVLIN, KASTEN, HERRON, JABS, GROSFIELD,  
6 CRISMORE, KEENAN, HARP, CRIPPEN, VICK, BURNETT, T. NELSON, TASH, ESTRADA, BISHOP,  
7 REHBEIN, BARNETT, MILLS, OHS, MASOLO, FORBES, HAYNE, ARNOTT, MURDOCK, HOLDEN,  
8 MENAHAN, KNOX, JENKINS, STOVALL, TOEWS

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11 PROVIDING FOR THE PUBLICATION AND DISSEMINATION OF INFORMATION CONCERNING ABORTION;  
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21 NEW SECTION. **Section 2. Legislative purpose and findings.** (1) The legislature finds that:  
22 (a) it is essential to the psychological and physical well-being of a woman who is considering an  
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24 (b) the knowledgeable exercise of a woman's decision to have an abortion depends on the extent  
25 to which the woman receives sufficient information to make an informed choice between the alternatives  
26 of giving birth and having an abortion;  
27 (c) in most instances, the only contact with a physician that a woman who has an abortion has  
28 occurs simultaneously with the abortion procedure, with little opportunity to receive counseling concerning  
29 the decision;  
30 (d) the decision to abort is an important and often stressful one, and it is desirable and imperative

1 that it be made with full knowledge of its nature and consequences;

2 (e) the medical, emotional, and psychological consequences of an abortion are serious and can be  
3 lasting;

4 (f) SOME abortion facilities or providers offer only limited or impersonal counseling opportunities;  
5 and

6 (g) ~~many~~ SOME abortion facilities or providers hire untrained and unprofessional counselors whose  
7 primary goal is to sell abortion services.

8 (2) Based on the findings in subsection (1), it is the purpose of [sections 1 through 8] to:

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21 of substantial and irreversible impairment of a major bodily function.

22 (2) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

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24 in the woman's body.

25 (4) "Unborn child" means the offspring of human beings from conception until birth.

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27 NEW SECTION. Section 4. Publication of materials. (1) The department shall publish and annually  
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1 (a) include adoption agencies;

2 (b) include a comprehensive list of the agencies, a description of the services offered, and the  
3 telephone numbers and addresses of the agencies;

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5 and child support obligations of a father of a child.

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7 do not directly or indirectly promote, exclude, or discourage the use of any agency or service. The  
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12 (b) a physician who performs an abortion on a woman without the woman's informed consent may  
13 be liable to the woman for damages in a civil action; and

14 (c) the law allows adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care.

15 (4) The materials must inform the pregnant woman of the probable anatomical and physiological  
16 characteristics of the unborn child at 2-week gestational increments from fertilization to full term, including  
17 pictures or drawings representing the development of unborn children at 2-week gestational increments.  
18 The pictures or drawings must contain the dimensions of the unborn child and must be realistic. The  
19 materials must include any relevant information on the possibility of the unborn child's survival at each  
20 stage depicted. The materials must be objective, nonjudgmental, and designed to convey only accurate  
21 scientific information about the unborn child at the various gestational ages. The materials must contain  
22 objective information describing the methods of abortion procedures commonly employed, the medical risks  
23 commonly associated with each procedure, the possible detrimental psychological effects of abortion, and  
24 the medical risks associated with carrying a child to term.

25 (5) The materials must be printed in a clearly legible typeface.

26 (6) The materials required to be produced under this section must be provided at no cost upon  
27 request and must be provided in appropriate quantities to any person, facility, or hospital.

28  
29 **NEW SECTION. Section 5. Emergency.** When a medical emergency compels the performance of  
30 an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications

1 supporting the physician's judgment that an abortion is necessary to avert the woman's death or that a  
2 24-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

3

4 **NEW SECTION. Section 6. Physician reporting requirements -- penalty -- action -- department**  
5 **report.** (1) Within [90 days after the effective date of this section], the department shall prepare a  
6 reporting form to be used by physicians that contains a reprint of this chapter and on which the physician  
7 shall list:

8 (a) the number of women to whom the physician provided the information described in  
9 50-20-104(5)(a), including:

10 (i) the number of women provided the information by telephone and the number to whom it was  
11 provided in person; and

12 (ii) the number of women in each group referred to in subsection (1)(a)(i) to whom the physician  
13 provided the information in the capacity of a referring physician and the number to whom it was provided  
14 in the capacity of a physician who is to perform the abortion;

15 (b) the number of women to whom the physician or an agent of the physician provided the  
16 information described in 50-20-104(5)(b), including:

17 (i) the number of women to whom the physician provided the information by telephone and the  
18 number to whom it was provided in person;

19 (ii) the number of women in each group referred to in subsection (1)(b)(i) to whom the physician  
20 provided the information in the capacity of a referring physician and the number to whom it was provided  
21 in the capacity of a physician who is to perform the abortion; and

22 (iii) the number of women in each group referred to in subsection (1)(b)(ii) to whom information was  
23 provided by the physician and the number to whom it was provided by an agent of the physician;

24 (c) the number of women who availed themselves of the opportunity to obtain a copy of the printed  
25 information described in [section 4] and the number who did not;

26 (d) of each of the numbers described in subsections (1)(a) through (1)(c), the number who, to the  
27 best of the reporting physician's information and belief, obtained an abortion; and

28 (e) the number of abortions that were performed by the physician but in which information  
29 otherwise required to be provided at least 24 hours before the abortion was not provided because:

30 (i) an immediate abortion was necessary to avert the woman's death; or



1 (iii) a delay would create serious risk of substantial and irreversible impairment of a major bodily  
2 function.

3 (2) The department shall ensure that copies of the reporting forms described in subsection (1) are  
4 provided:

5 (a) by [120 days after the effective date of this section] to all physicians licensed in this state;

6 (b) to each physician licensed to practice after [the effective date of this section], at the time of  
7 licensure;

8 (c) by December 1 of each succeeding year, to all physicians licensed to practice in this state.

9 (3) By February 28 of each year, each physician or the physician's agent who provided information  
10 to one or more women in accordance with 50-20-106 shall submit a copy of the reporting form described  
11 in subsection (1) to the department with the requested data entered accurately and completely.

12 (4) Reports that are not submitted by March 31 are subject to a penalty of \$500 for each 30-day  
13 period that the reports are overdue. A physician who is required to report but who, more than 1 year after  
14 the due date, has not submitted a report or who has submitted an incomplete report may, in an action  
15 brought by the department, be directed by a district court to submit a complete report within a period  
16 stated in the court order or be subject to sanctions for civil contempt.

17 (5) By June 30 of each year, the department shall issue a public report providing statistics for the  
18 previous calendar year submitted in accordance with this section for each of the items listed in subsection  
19 (1). Each report must provide the statistics for all previous calendar years, adjusted to reflect information  
20 from late or corrected reports. The department shall ensure that none of the information included in the  
21 public reports could reasonably lead to the identification of an individual who was provided information of  
22 in accordance with 50-20-106.

23 (6) The department may, by rule, alter the dates established by subsection (2)(c), (3), or (5) or  
24 consolidate the forms or reports described in this section with other forms or reports to achieve  
25 administrative convenience, achieve fiscal savings, or reduce the burden of reporting requirements.  
26 However, reporting forms must be sent to all licensed physicians at least once a year, and the report  
27 described in subsection (5) must be issued at least once a year.

28  
29 **NEW SECTION. Section 7. Civil remedies.** (1) A person who performs an abortion in knowing  
30 or reckless violation of this chapter may be liable for actual and punitive damages in an action brought by:

- 1 (a) the woman upon whom an abortion was performed;  
2 (b) the father of the unborn child who was the subject of the abortion; or  
3 (c) the grandparent of an unborn child who was the subject of the abortion.

4 (2) A person who attempts to perform an abortion in knowing or reckless violation of this chapter  
5 may be liable for actual and punitive damages in an action brought by the woman upon whom an abortion  
6 was attempted.

7 (3) If the department fails to issue the public report required in [section 6], a group of 10 or more  
8 citizens may seek an injunction, in a court of competent jurisdiction, against the director of the department  
9 to require that a complete report be issued within a period established by court order. Failure to comply  
10 with an injunction subjects the director to sanctions for civil contempt.

11 (4) If judgment is rendered in favor of the plaintiff in any action described in this section, the court  
12 shall award reasonable attorney fees in favor of the plaintiff against the defendant.

13 (5) An abortion or attempted abortion performed in violation of this chapter is the basis for a  
14 professional disciplinary action under 37-3-322.

15

16 **NEW SECTION. Section 8. Protection of privacy in court proceedings.** In a civil or criminal  
17 proceeding under this chapter, the court shall determine whether the anonymity of a woman upon whom  
18 an abortion has been performed or attempted must be preserved from public disclosure, unless the woman  
19 waives anonymity. The court shall make a ruling and, upon determining that the woman's anonymity  
20 should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing  
21 of the record and the exclusion of individuals from the proceedings to the extent necessary to safeguard  
22 the woman's identity from public disclosure. Each order must be accompanied by specific written findings  
23 explaining why the anonymity of the woman should be preserved, why the order is necessary, how the  
24 order is tailored to protect the woman's privacy, and why no less restrictive alternative exists. In the  
25 absence of written consent of the woman upon whom an abortion has been performed or attempted, a  
26 person other than a public official who brings an action under [section 7(1)] shall do so under a pseudonym.

27

28 **NEW SECTION. Section 9. Right of intervention.** Pursuant to Rule 24(a), Montana Rules of Civil  
29 Procedure, a legislator has the right to intervene in any case in which the constitutionality of Title 50,  
30 chapter 20, is challenged.

1           **Section 10.** Section 50-20-104, MCA, is amended to read:

2           **"50-20-104. Definitions.** As used in this chapter, the following definitions apply:

3           (1) "Abortion" means ~~the performance of, assistance or participation in the performance of, or~~  
4 ~~submission to an act or operation intended to terminate a pregnancy without live birth~~ the use or  
5 prescription of any instrument, medicine, drug, or other substance or device to intentionally terminate the  
6 pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of  
7 a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

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

11           ~~(2)(3)~~ (3) "Department" means the department of health and environmental sciences provided for in  
12 Title 2, chapter 15, part 21.

13           ~~(3)(4)~~ (4) "Facility" means a hospital, health care facility, physician's office, or other place in which  
14 an abortion is performed.

15           ~~(4)(5)~~ (5) "Informed consent" means voluntary consent to an abortion by the woman upon whom the  
16 abortion is to be performed only after full disclosure to ~~her~~ the woman by:

17           (a) the physician who is to perform the abortion of such of the following information as is  
18 reasonably chargeable to the knowledge of the physician in his professional capacity:

19           ~~(a)(i)~~ (i) the stage of development of the fetus, the method of particular medical risks associated with  
20 the particular abortion procedure to be utilized employed, including, and the effects of such abortion method  
21 upon the fetus when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to  
22 subsequent pregnancies, and infertility;

23           ~~(b)(ii)~~ (ii) the physical and psychological effects of probable gestational age of the unborn child at the  
24 time the abortion is to be performed; and

25           ~~(c)(iii)~~ (iii) available alternatives to abortion, including childbirth and adoption the medical risks of  
26 carrying the child to term;

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

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

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

1 (iii) that the woman has the right to review the printed materials described in [section 4]; and  
 2 (c) the physician or the agent that the printed materials described in [section 4] have been provided  
 3 by the department and that the materials describe the unborn child and list agencies that offer alternatives  
 4 to abortion.

5 ~~(5)(6)~~ "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial  
 6 aid."

7  
 8 **Section 11.** Section 50-20-106, MCA, is amended to read:

9 **"50-20-106. ~~Consent to abortion~~ Informed consent.** (1) ~~No~~ An abortion may not be performed ~~upon~~  
 10 ~~any woman in the absence of~~ without the informed consent of the woman upon whom the abortion is to  
 11 be performed. The informed consent must be received and certified at least 24 hours prior to the abortion  
 12 AND CERTIFIED PRIOR TO OR AT THE TIME OF THE ABORTION.

13 (2) Informed consent ~~may~~ must be ~~evidenced~~ certified by a written statement in a form prescribed  
 14 by the department and signed by the physician and the woman upon whom the abortion is to be performed  
 15 in which the physician certifies that ~~he~~ the physician has made the full disclosure provided in  
 16 50-20-104~~(4)~~(5) and in which the woman upon whom the abortion is to be performed acknowledges that  
 17 the ~~above~~ disclosures have been made to ~~her~~ the woman and that ~~she~~ the woman voluntarily consents to  
 18 the abortion.

19 (3) If a woman chooses to review the written materials described in [section 4], the materials must  
 20 be provided to her at least 24 hours before the abortion or be mailed to the woman by certified mail, with  
 21 delivery restricted to the addressee, at least 72 hours before the abortion.

22 (4) The information required in 50-20-104(5)(a) may be provided by telephone without conducting  
 23 a physical examination or tests of the patient. The information may be based on facts supplied to the  
 24 physician by the woman and other relevant information that is reasonably available to the physician. The  
 25 information may not be provided by a tape recording but must be provided during a consultation in which  
 26 the physician is able to ask questions of the woman and the woman is able to ask questions of the  
 27 physician. If a physical examination, tests, or the availability of other information subsequently indicates,  
 28 in the medical judgment of the physician, a revision of information previously provided to the patient, the  
 29 revised information may be communicated to the patient at any time prior to the performance of the  
 30 abortion.

1           (5) The information required in 50-20-104(5)(b) may be provided by a tape recording if provision  
 2 is made to record or otherwise register specifically whether the woman does or does not choose to review  
 3 the printed materials.

4           ~~(3)(6)~~ The ~~above~~ informed consent or consent provided for in this section is not required if a  
 5 licensed physician certifies that the abortion is necessary to preserve the life of the mother because of a  
 6 medical emergency as defined in [section 3].

7           ~~(4)(7)~~ ~~No~~ An executive officer, administrative agency, or public employee of the state or of any  
 8 local governmental body ~~has power to~~ may not issue any order requiring an abortion or ~~shall~~ coerce any  
 9 woman to have an abortion; ~~nor shall any~~ A person may not coerce any woman to have an abortion.

10           ~~(5)(8)~~ Violation of subsections (1) ~~and (4)~~ through (7) of this section is a misdemeanor."  
 11

12           **Section 12.** Section 50-20-112, MCA, is amended to read:

13           "**50-20-112. Penalties.** (1) A person convicted of deliberate, mitigated, or negligent homicide under  
 14 this chapter is subject to the penalties prescribed by 45-5-102 through 45-5-104.

15           (2) A person convicted of a felony other than deliberate, mitigated, or negligent homicide under  
 16 this chapter is subject to a fine not to exceed \$1,000, imprisonment in the state prison for a term not to  
 17 exceed 5 years, or both.

18           (3) A person convicted of a misdemeanor under this chapter is subject to a fine not to exceed  
 19 \$500, imprisonment in the county jail for a term not to exceed 6 months, or both.

20           (4)(a) A penalty may not be imposed against the woman upon whom the abortion is performed or  
 21 attempted to be performed.

22           (b) A penalty may not be imposed for failure to comply with the provision of 50-20-106 that  
 23 requires a written certification that the woman has been informed of the opportunity to review the  
 24 information referred to in [section 4] if the department has not made the written materials available at the  
 25 time that the physician or the physician's agent is required to inform the woman of the right to review the  
 26 materials."

27  
 28           NEW SECTION. **Section 13. Construction.** [Sections 1 through 11] may not be construed as  
 29 creating or recognizing a right to abortion. [Sections 1 through 11] do not make lawful any abortion that  
 30 is currently unlawful.

1            NEW SECTION. **Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are  
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
3 applications, the part remains in effect in all valid applications that are severable from the invalid  
4 applications.

5

6            NEW SECTION. **Section 15. Codification instruction.** [Sections 1 through 8] are intended to be  
7 codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to  
8 [sections 1 through 8].

9

10           NEW SECTION. **Section 16. Effective date.** [This act] is effective July 1, 1995.

11

-END-

## 1 SENATE BILL NO. 292

2 INTRODUCED BY BROWN, PECK, GREEN, HARGROVE, S. SMITH, COLE, SOFT, MCGEE, BERGMAN,  
3 MOLNAR, BAER, WELLS, FOSTER, KITZENBERG, MCCANN, CURTISS, L. SMITH, EMERSON, JORE,  
4 MOHL, BECK, MILLER, GRIMES, ORR, SWYSGOOD, SIMPKINS, MARTINEZ, AHNER, KEATING,  
5 HARDING, ZOOK, HERTEL, TVEIT, BENEDICT, DEVLIN, KASTEN, HERRON, JABS, GROSFIELD,  
6 CRISMORE, KEENAN, HARP, CRIPPEN, VICK, BURNETT, T. NELSON, TASH, ESTRADA, BISHOP,  
7 REHBEIN, BARNETT, MILLS, OHS, MASOLO, FORBES, HAYNE, ARNOTT, MURDOCK, HOLDEN,  
8 MENAHAN, KNOX, JENKINS, STOVALL, TOEWS

9  
10 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE "WOMAN'S RIGHT-TO-KNOW ACT";  
11 PROVIDING FOR THE PUBLICATION AND DISSEMINATION OF INFORMATION CONCERNING ABORTION;  
12 CLARIFYING INFORMED CONSENT; PROVIDING CIVIL REMEDIES FOR FAILURE TO OBTAIN INFORMED  
13 CONSENT; AMENDING SECTIONS 50-20-104, 50-20-106, AND 50-20-112, MCA; AND PROVIDING AN  
14 EFFECTIVE DATE."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL  
NOT BE REPRINTED. PLEASE REFER TO SECOND  
READING COPY (YELLOW) FOR COMPLETE TEXT.



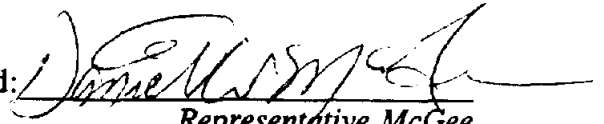
# HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 292  
Representative McGee

March 24, 1995 12:22 pm  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 292 (third reading copy -- blue).

Signed:



*Representative McGee*

And, that such amendments to Senate Bill 292 read as follows:

1. Page 5, line 22.

Following: "."

Insert: "The department shall design the reporting process to ensure that confidentiality regarding the physician or the physician's agent is maintained in the department records."

-END-

ADOPT

REJECT

91-2

SB 292

HOUSE





# HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 292  
Representative McCulloch

March 24, 1995 4:54 pm

Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 292 (third reading copy -- blue).

Signed: *J. McCulloch*  
Representative McCulloch

And, that such amendments to Senate Bill 292 read as follows:

- 1. Page 2, line 28.
- Following: "printed"
- Insert: ", unbiased"

-END-

ADOPT

87-5

~~87-5~~ ①

SB 292

HOUSE

REJECT



# HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 292  
Representative McCulloch

March 24, 1995 4:56 pm  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 292 (third reading copy -- blue).

Signed:   
Representative McCulloch

And, that such amendments to Senate Bill 292 read as follows:

1. Page 3, line 23.

Following: "abortion,"

Insert: "the possible detrimental psychological effects of  
adoption,"

-END-

ADOPT

55-39 (2)

SB 292

HOUSE

REJECT



# HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 292  
Representative Kottel

March 28, 1995 7:32 am

Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 292 (third reading copy -- blue).

Signed: \_\_\_\_\_

*Representative Kottel*

And, that such amendments to Senate Bill 292 read as follows:

1. Page 6, lines 28 and 29.

Strike: "of intervention" on line 28 through "Procedure, a" on line 29

Insert: "to file amicus curiae brief. A"

Following: "right to"

Strike: "intervene"

Insert: "file an amicus curiae brief in the lower court and in any appeal"

-END-

ADOPT

49-46

2

SB 292

HOUSE

REJECT



# HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 292  
Representative Kottel

March 28, 1995 7:37 am  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 292 (third reading copy -- blue).

Signed:   
Representative Kottel

And, that such amendments to Senate Bill 292 read as follows:

1. Page 5, line 30.  
Strike: ":"

2. Page 6, line 1.  
Strike: "(a)"  
Following: "performed"  
Strike: ";"

Insert: "or, if the woman is under 18 years of age or is physically or mentally incapacitated for purposes of being able to decide whether to bring and pursue an action, then, on the woman's behalf, by either:

3. Page 6, line 2.  
Strike: "(b)"  
Insert: "(a)"

4. Page 6, line 3.  
Strike: "(c)"  
Insert: "(b)"

-END-

ADOPT

REJECT

76-18

5

SB 292

HOUSE



# HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 292  
Representative Cobb

March 28, 1995 8:06 am  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 292 (third reading copy -- blue).

Signed: Cobb  
Representative Cobb

And, that such amendments to Senate Bill 292 read as follows:

1. Page 6, lines 28 through 30.  
Strike: section 9 in its entirety  
Renumber: subsequent sections
2. Page 9, lines 28 and 29.  
Strike: "11"  
Insert: "10"

-END-

ADOPT

51-38

①

REJECT

SB 292

HOUSE

## 1 SENATE BILL NO. 292

2 INTRODUCED BY BROWN, PECK, GREEN, HARGROVE, S. SMITH, COLE, SOFT, MCGEE, BERGMAN,  
3 MOLNAR, BAER, WELLS, FOSTER, KITZENBERG, MCCANN, CURTISS, L. SMITH, EMERSON, JORE,  
4 MOHL, BECK, MILLER, GRIMES, ORR, SWYSGOOD, SIMPKINS, MARTINEZ, AHNER, KEATING,  
5 HARDING, ZOOK, HERTEL, TVEIT, BENEDICT, DEVLIN, KASTEN, HERRON, JABS, GROSFIELD,  
6 CRISMORE, KEENAN, HARP, CRIPPEN, VICK, BURNETT, T. NELSON, TASH, ESTRADA, BISHOP,  
7 REHBEIN, BARNETT, MILLS, OHS, MASOLO, FORBES, HAYNE, ARNOTT, MURDOCK, HOLDEN,  
8 MENAHAN, KNOX, JENKINS, STOVALL, TOEWS

9  
10 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE "WOMAN'S RIGHT-TO-KNOW ACT";  
11 PROVIDING FOR THE PUBLICATION AND DISSEMINATION OF INFORMATION CONCERNING ABORTION;  
12 CLARIFYING INFORMED CONSENT; PROVIDING CIVIL REMEDIES FOR FAILURE TO OBTAIN INFORMED  
13 CONSENT; AMENDING SECTIONS 50-20-104, 50-20-106, AND 50-20-112, MCA; AND PROVIDING AN  
14 EFFECTIVE DATE."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17  
18 NEW SECTION. **Section 1. Short title.** [Sections 1 through 8] may be cited as the "Woman's  
19 Right-to-Know Act".

20  
21 NEW SECTION. **Section 2. Legislative purpose and findings.** (1) The legislature finds that:  
22 (a) it is essential to the psychological and physical well-being of a woman who is considering an  
23 abortion that the woman receive complete and accurate information on alternatives;  
24 (b) the knowledgeable exercise of a woman's decision to have an abortion depends on the extent  
25 to which the woman receives sufficient information to make an informed choice between the alternatives  
26 of giving birth and having an abortion;  
27 (c) in most instances, the only contact with a physician that a woman who has an abortion has  
28 occurs simultaneously with the abortion procedure, with little opportunity to receive counseling concerning  
29 the decision;  
30 (d) the decision to abort is an important and often stressful one, and it is desirable and imperative

1 that it be made with full knowledge of its nature and consequences;

2 (e) the medical, emotional, and psychological consequences of an abortion are serious and can be  
3 lasting;

4 (f) SOME abortion facilities or providers offer only limited or impersonal counseling opportunities;  
5 and

6 (g) ~~many~~ SOME abortion facilities or providers hire untrained and unprofessional counselors whose  
7 primary goal is to sell abortion services.

8 (2) Based on the findings in subsection (1), it is the purpose of [sections 1 through 8] to:

9 (a) ensure that every woman who is considering an abortion receive complete information on  
10 alternatives and that every woman submitting to an abortion do so only after giving informed consent to  
11 the abortion procedure;

12 (b) protect unborn children from a woman's uninformed decision to have an abortion; and

13 (c) reduce the risk that a woman may elect an abortion, only to discover later, with devastating  
14 psychological consequences, that the decision was not fully informed.

15

16 NEW SECTION. Section 3. Definitions. As used in [sections 1 through 8], unless the context  
17 requires otherwise, the following definitions apply:

18 (1) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical  
19 judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate  
20 abortion of the woman's pregnancy to avert the woman's death or for which a delay will create serious risk  
21 of substantial and irreversible impairment of a major bodily function.

22 (2) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

23 (3) "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child  
24 in the woman's body.

25 (4) "Unborn child" means the offspring of human beings from conception until birth.

26

27 NEW SECTION. Section 4. Publication of materials. (1) The department shall publish and annually  
28 update easily comprehensible printed, UNBIASED materials that are geographically indexed and designed  
29 to inform women of public and private agencies and services available to assist a woman through  
30 pregnancy, during childbirth, and while a woman's child is dependent. The materials must:

1 (a) include adoption agencies;

2 (b) include a comprehensive list of the agencies, a description of the services offered, and the  
3 telephone numbers and addresses of the agencies;

4 (c) inform a woman about medical assistance benefits for prenatal care, childbirth, neonatal care,  
5 and child support obligations of a father of a child.

6 (2) The department shall ensure that the materials described in this section are comprehensive and  
7 do not directly or indirectly promote, exclude, or discourage the use of any agency or service. The  
8 materials must include a toll-free, 24-hour telephone number that may be called to orally obtain a list and  
9 description of agencies in the locality of the caller and of the services offered by the agencies.

10 (3) The materials must state that:

11 (a) it is unlawful for any individual to coerce a woman to undergo an abortion;

12 (b) a physician who performs an abortion on a woman without the woman's informed consent may  
13 be liable to the woman for damages in a civil action; and

14 (c) the law allows adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care.

15 (4) The materials must inform the pregnant woman of the probable anatomical and physiological  
16 characteristics of the unborn child at 2-week gestational increments from fertilization to full term, including  
17 pictures or drawings representing the development of unborn children at 2-week gestational increments.  
18 The pictures or drawings must contain the dimensions of the unborn child and must be realistic. The  
19 materials must include any relevant information on the possibility of the unborn child's survival at each  
20 stage depicted. The materials must be objective, nonjudgmental, and designed to convey only accurate  
21 scientific information about the unborn child at the various gestational ages. The materials must contain  
22 objective information describing the methods of abortion procedures commonly employed, the medical risks  
23 commonly associated with each procedure, the possible detrimental psychological effects of abortion, THE  
24 POSSIBLE DETRIMENTAL PSYCHOLOGICAL EFFECTS OF ADOPTION, and the medical risks associated with  
25 carrying a child to term.

26 (5) The materials must be printed in a clearly legible typeface.

27 (6) The materials required to be produced under this section must be provided at no cost upon  
28 request and must be provided in appropriate quantities to any person, facility, or hospital.

29

30 NEW SECTION. **Section 5. Emergency.** When a medical emergency compels the performance of



1 an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications  
2 supporting the physician's judgment that an abortion is necessary to avert the woman's death or that a  
3 24-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

4  
5 **NEW SECTION. Section 6. Physician reporting requirements -- penalty -- action -- department**  
6 **report.** (1) Within [90 days after the effective date of this section], the department shall prepare a  
7 reporting form to be used by physicians that contains a reprint of this chapter and on which the physician  
8 shall list:

9 (a) the number of women to whom the physician provided the information described in  
10 50-20-104(5)(a), including:

11 (i) the number of women provided the information by telephone and the number to whom it was  
12 provided in person; and

13 (ii) the number of women in each group referred to in subsection (1)(a)(i) to whom the physician  
14 provided the information in the capacity of a referring physician and the number to whom it was provided  
15 in the capacity of a physician who is to perform the abortion;

16 (b) the number of women to whom the physician or an agent of the physician provided the  
17 information described in 50-20-104(5)(b), including:

18 (i) the number of women to whom the physician provided the information by telephone and the  
19 number to whom it was provided in person;

20 (ii) the number of women in each group referred to in subsection (1)(b)(i) to whom the physician  
21 provided the information in the capacity of a referring physician and the number to whom it was provided  
22 in the capacity of a physician who is to perform the abortion; and

23 (iii) the number of women in each group referred to in subsection (1)(b)(ii) to whom information was  
24 provided by the physician and the number to whom it was provided by an agent of the physician;

25 (c) the number of women who availed themselves of the opportunity to obtain a copy of the printed  
26 information described in [section 4] and the number who did not;

27 (d) of each of the numbers described in subsections (1)(a) through (1)(c), the number who, to the  
28 best of the reporting physician's information and belief, obtained an abortion; and

29 (e) the number of abortions that were performed by the physician but in which information  
30 otherwise required to be provided at least 24 hours before the abortion was not provided because:

1 (i) an immediate abortion was necessary to avert the woman's death; or  
2 (ii) a delay would create serious risk of substantial and irreversible impairment of a major bodily  
3 function.

4 (2) The department shall ensure that copies of the reporting forms described in subsection (1) are  
5 provided:

6 (a) by [120 days after the effective date of this section] to all physicians licensed in this state;

7 (b) to each physician licensed to practice after [the effective date of this section], at the time of  
8 licensure;

9 (c) by December 1 of each succeeding year, to all physicians licensed to practice in this state.

10 (3) By February 28 of each year, each physician or the physician's agent who provided information  
11 to one or more women in accordance with 50-20-106 shall submit a copy of the reporting form described  
12 in subsection (1) to the department with the requested data entered accurately and completely.

13 (4) Reports that are not submitted by March 31 are subject to a penalty of \$500 for each 30-day  
14 period that the reports are overdue. A physician who is required to report but who, more than 1 year after  
15 the due date, has not submitted a report or who has submitted an incomplete report may, in an action  
16 brought by the department, be directed by a district court to submit a complete report within a period  
17 stated in the court order or be subject to sanctions for civil contempt.

18 (5) By June 30 of each year, the department shall issue a public report providing statistics for the  
19 previous calendar year submitted in accordance with this section for each of the items listed in subsection  
20 (1). Each report must provide the statistics for all previous calendar years, adjusted to reflect information  
21 from late or corrected reports. The department shall ensure that none of the information included in the  
22 public reports could reasonably lead to the identification of an individual who was provided information of  
23 in accordance with 50-20-106. THE DEPARTMENT SHALL DESIGN THE REPORTING PROCESS TO ENSURE  
24 THAT CONFIDENTIALITY REGARDING THE PHYSICIAN OR THE PHYSICIAN'S AGENT IS MAINTAINED IN  
25 THE DEPARTMENT RECORDS.

26 (6) The department may, by rule, alter the dates established by subsection (2)(c), (3), or (5) or  
27 consolidate the forms or reports described in this section with other forms or reports to achieve  
28 administrative convenience, achieve fiscal savings, or reduce the burden of reporting requirements.  
29 However, reporting forms must be sent to all licensed physicians at least once a year, and the report  
30 described in subsection (5) must be issued at least once a year.

1           **NEW SECTION. Section 7. Civil remedies.** (1) A person who performs an abortion in knowing  
 2 or reckless violation of this chapter may be liable for actual and punitive damages in an action brought by:  
 3           ~~(a)~~ the woman upon whom an abortion was performed; OR, IF THE WOMAN IS UNDER 18 YEARS  
 4 OF AGE OR IS PHYSICALLY OR MENTALLY INCAPACITATED FOR PURPOSES OF BEING ABLE TO DECIDE  
 5 WHETHER TO BRING AND PURSUE AN ACTION, THEN, ON THE WOMAN'S BEHALF, BY EITHER:

6           ~~(b)~~(A) the father of the unborn child who was the subject of the abortion; or

7           ~~(c)~~(B) the grandparent of an unborn child who was the subject of the abortion.

8           (2) A person who attempts to perform an abortion in knowing or reckless violation of this chapter  
 9 may be liable for actual and punitive damages in an action brought by the woman upon whom an abortion  
 10 was attempted.

11           (3) If the department fails to issue the public report required in [section 6], a group of 10 or more  
 12 citizens may seek an injunction, in a court of competent jurisdiction, against the director of the department  
 13 to require that a complete report be issued within a period established by court order. Failure to comply  
 14 with an injunction subjects the director to sanctions for civil contempt.

15           (4) If judgment is rendered in favor of the plaintiff in any action described in this section, the court  
 16 shall award reasonable attorney fees in favor of the plaintiff against the defendant.

17           (5) An abortion or attempted abortion performed in violation of this chapter is the basis for a  
 18 professional disciplinary action under 37-3-322.

19  
 20           **NEW SECTION. Section 8. Protection of privacy in court proceedings.** In a civil or criminal  
 21 proceeding under this chapter, the court shall determine whether the anonymity of a woman upon whom  
 22 an abortion has been performed or attempted must be preserved from public disclosure, unless the woman  
 23 waives anonymity. The court shall make a ruling and, upon determining that the woman's anonymity  
 24 should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing  
 25 of the record and the exclusion of individuals from the proceedings to the extent necessary to safeguard  
 26 the woman's identity from public disclosure. Each order must be accompanied by specific written findings  
 27 explaining why the anonymity of the woman should be preserved, why the order is necessary, how the  
 28 order is tailored to protect the woman's privacy, and why no less restrictive alternative exists. In the  
 29 absence of written consent of the woman upon whom an abortion has been performed or attempted, a  
 30 person other than a public official who brings an action under [section 7(1)] shall do so under a pseudonym.

1 ~~NEW SECTION. Section 9. Right of intervention. Pursuant to Rule 24(a), Montana Rules of Civil~~  
 2 ~~Procedure, a TO FILE AMICUS CURIAE BRIEF. A legislator has the right to intervene FILE AN AMICUS~~  
 3 ~~CURIAE BRIEF IN THE LOWER COURT AND IN ANY APPEAL in any case in which the constitutionality of~~  
 4 ~~Title 50, chapter 20, is challenged.~~

5

6 Section 9. Section 50-20-104, MCA, is amended to read:

7 "50-20-104. Definitions. As used in this chapter, the following definitions apply:

8 (1) "Abortion" means ~~the performance of, assistance or participation in the performance of, or~~  
 9 ~~submission to an act or operation intended to terminate a pregnancy without live birth~~ the use or  
 10 prescription of any instrument, medicine, drug, or other substance or device to intentionally terminate the  
 11 pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of  
 12 a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

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

16 ~~(2)(3)~~ (3) "Department" means the department of health and environmental sciences provided for in  
 17 Title 2, chapter 15, part 21.

18 ~~(3)(4)~~ (4) "Facility" means a hospital, health care facility, physician's office, or other place in which  
 19 an abortion is performed.

20 ~~(4)(5)~~ (5) "Informed consent" means voluntary consent to an abortion by the woman upon whom the  
 21 abortion is to be performed only after full disclosure to ~~her~~ the woman by:

22 (a) the physician who is to perform the abortion of ~~such~~ of the following information ~~as is~~  
 23 ~~reasonably chargeable to the knowledge of the physician in his professional capacity:~~

24 (a)(i) ~~the stage of development of the fetus, the method of~~ particular medical risks associated with  
 25 the particular abortion procedure to be utilized employed, including, and the effects of such abortion method  
 26 upon the fetus when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to  
 27 subsequent pregnancies, and infertility;

28 (b)(ii) ~~the physical and psychological effects of~~ probable gestational age of the unborn child at the  
 29 time the abortion is to be performed; and

30 (c)(iii) ~~available alternatives to abortion, including childbirth and adoption~~ the medical risks of

1 carrying the child to term-;

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

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

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

6 (iii) that the woman has the right to review the printed materials described in [section 4]; and

7 (c) the physician or the agent that the printed materials described in [section 4] have been provided  
8 by the department and that the materials describe the unborn child and list agencies that offer alternatives  
9 to abortion.

10 ~~(5)~~(6) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial  
11 aid."

12  
13 **Section 10.** Section 50-20-106, MCA, is amended to read:

14 **"50-20-106. ~~Consent to abortion~~ Informed consent.** (1) ~~No~~ An abortion may not be performed ~~upon~~  
15 ~~any woman in the absence of~~ without the informed consent of the woman upon whom the abortion is to  
16 be performed. The informed consent must be received and certified at least 24 hours prior to the abortion  
17 AND CERTIFIED PRIOR TO OR AT THE TIME OF THE ABORTION.

18 (2) Informed consent ~~may~~ must be ~~evidenced~~ certified by a written statement in a form prescribed  
19 by the department and signed by the physician and the woman upon whom the abortion is to be performed  
20 in which the physician certifies that ~~he~~ the physician has made the full disclosure provided in  
21 50-20-104~~(4)~~(5) and in which the woman upon whom the abortion is to be performed acknowledges that  
22 the ~~above~~ disclosures have been made to ~~her~~ the woman and that ~~she~~ the woman voluntarily consents to  
23 the abortion.

24 (3) If a woman chooses to review the written materials described in [section 4], the materials must  
25 be provided to her at least 24 hours before the abortion or be mailed to the woman by certified mail, with  
26 delivery restricted to the addressee, at least 72 hours before the abortion.

27 (4) The information required in 50-20-104(5)(a) may be provided by telephone without conducting  
28 a physical examination or tests of the patient. The information may be based on facts supplied to the  
29 physician by the woman and other relevant information that is reasonably available to the physician. The  
30 information may not be provided by a tape recording but must be provided during a consultation in which

1 the physician is able to ask questions of the woman and the woman is able to ask questions of the  
 2 physician. If a physical examination, tests, or the availability of other information subsequently indicates,  
 3 in the medical judgment of the physician, a revision of information previously provided to the patient, the  
 4 revised information may be communicated to the patient at any time prior to the performance of the  
 5 abortion.

6 (5) The information required in 50-20-104(5)(b) may be provided by a tape recording if provision  
 7 is made to record or otherwise register specifically whether the woman does or does not choose to review  
 8 the printed materials.

9 ~~(3)(6)~~ The ~~above~~ informed consent or consent provided for in this section is not required if a  
 10 licensed physician certifies that the abortion is necessary to preserve the life of the mother because of a  
 11 medical emergency as defined in [section 3].

12 ~~(4)(7) No An~~ executive officer, administrative agency, or public employee of the state or of any  
 13 local governmental body ~~has power to~~ may not issue any order requiring an abortion or ~~shall~~ coerce any  
 14 woman to have an abortion, ~~nor shall any A~~ person may not coerce any woman to have an abortion.

15 ~~(5)(8)~~ Violation of subsections (1) ~~and (4)~~ through (7) of this section is a misdemeanor."  
 16

17 **Section 11.** Section 50-20-112, MCA, is amended to read:

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

20 (2) A person convicted of a felony other than deliberate, mitigated, or negligent homicide under  
 21 this chapter is subject to a fine not to exceed \$1,000, imprisonment in the state prison for a term not to  
 22 exceed 5 years, or both.

23 (3) A person convicted of a misdemeanor under this chapter is subject to a fine not to exceed  
 24 \$500, imprisonment in the county jail for a term not to exceed 6 months, or both.

25 (4)(a) A penalty may not be imposed against the woman upon whom the abortion is performed or  
 26 attempted to be performed.

27 (b) A penalty may not be imposed for failure to comply with the provision of 50-20-106 that  
 28 requires a written certification that the woman has been informed of the opportunity to review the  
 29 information referred to in [section 4] if the department has not made the written materials available at the  
 30 time that the physician or the physician's agent is required to inform the woman of the right to review the

1 materials."

2

3 **NEW SECTION. Section 12. Construction.** [Sections 1 through ~~44~~ 10] may not be construed as  
4 creating or recognizing a right to abortion. [Sections 1 through ~~44~~ 10] do not make lawful any abortion  
5 that is currently unlawful.

6

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

11

12 **NEW SECTION. Section 14. Codification instruction.** [Sections 1 through 8] are intended to be  
13 codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to  
14 [sections 1 through 8].

15

16 **NEW SECTION. Section 15. Effective date.** [This act] is effective July 1, 1995.

17

-END-

Free Conference Committee  
on SB 292  
Report No. 1, April 7, 1995

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Free Conference Committee on SB 292, met April 7, 1995,  
and considered:

House Committee of the Whole amendment to the third reading  
copy.

We recommend that SB 292 (reference copy - salmon) be amended as  
follows:

1. Page 3, line 11.  
Following: "undergo"  
Insert: "or not to undergo"

And that this Free Conference Committee report be adopted.

For the Senate:

Brown B. C. Brown  
Chair

Crippen [Signature]

Brooke [Signature]

Amd. Coord. [Signature]  
Sec. of Senate

For the House:

Grimes [Signature]  
Chair

McGee [Signature]

Peck [Signature]

ADOPT  
REJECT

SB 292  
FCR #1  
801511CC.SPV



## SENATE BILL NO. 292

INTRODUCED BY BROWN, PECK, GREEN, HARGROVE, S. SMITH, COLE, SOFT, MCGEE, BERGMAN,  
 MOLNAR, BAER, WELLS, FOSTER, KITZENBERG, MCCANN, CURTISS, L. SMITH, EMERSON, JORE,  
 MOHL, BECK, MILLER, GRIMES, ORR, SWYSGOOD, SIMPKINS, MARTINEZ, AHNER, KEATING,  
 HARDING, ZOOK, HERTEL, TVEIT, BENEDICT, DEVLIN, KASTEN, HERRON, JABS, GROSFIELD,  
 CRISMORE, KEENAN, HARP, CRIPPEN, VICK, BURNETT, T. NELSON, TASH, ESTRADA, BISHOP,  
 REHBEIN, BARNETT, MILLS, OHS, MASOLO, FORBES, HAYNE, ARNOTT, MURDOCK, HOLDEN,  
 MENAHAN, KNOX, JENKINS, STOVALL, TOEWS

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE "WOMAN'S RIGHT-TO-KNOW ACT";  
 PROVIDING FOR THE PUBLICATION AND DISSEMINATION OF INFORMATION CONCERNING ABORTION;  
 CLARIFYING INFORMED CONSENT; PROVIDING CIVIL REMEDIES FOR FAILURE TO OBTAIN INFORMED  
 CONSENT; AMENDING SECTIONS 50-20-104, 50-20-106, AND 50-20-112, MCA; AND PROVIDING AN  
 EFFECTIVE DATE."

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

**NEW SECTION. Section 1. Short title.** [Sections 1 through 8] may be cited as the "Woman's  
 Right-to-Know Act".

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

(a) it is essential to the psychological and physical well-being of a woman who is considering an  
 abortion that the woman receive complete and accurate information on alternatives;

(b) the knowledgeable exercise of a woman's decision to have an abortion depends on the extent  
 to which the woman receives sufficient information to make an informed choice between the alternatives  
 of giving birth and having an abortion;

(c) in most instances, the only contact with a physician that a woman who has an abortion has  
 occurs simultaneously with the abortion procedure, with little opportunity to receive counseling concerning  
 the decision;

(d) the decision to abort is an important and often stressful one, and it is desirable and imperative

1 that it be made with full knowledge of its nature and consequences;

2 (e) the medical, emotional, and psychological consequences of an abortion are serious and can be  
3 lasting;

4 (f) SOME abortion facilities or providers offer only limited or impersonal counseling opportunities;  
5 and

6 (g) ~~many~~ SOME abortion facilities or providers hire untrained and unprofessional counselors whose  
7 primary goal is to sell abortion services.

8 (2) Based on the findings in subsection (1), it is the purpose of [sections 1 through 8] to:

9 (a) ensure that every woman who is considering an abortion receive complete information on  
10 alternatives and that every woman submitting to an abortion do so only after giving informed consent to  
11 the abortion procedure;

12 (b) protect unborn children from a woman's uninformed decision to have an abortion; and

13 (c) reduce the risk that a woman may elect an abortion, only to discover later, with devastating  
14 psychological consequences, that the decision was not fully informed.

15

16 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 8], unless the context  
17 requires otherwise, the following definitions apply:

18 (1) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical  
19 judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate  
20 abortion of the woman's pregnancy to avert the woman's death or for which a delay will create serious risk  
21 of substantial and irreversible impairment of a major bodily function.

22 (2) "Physician" means a person licensed to practice medicine under Title 37, chapter 3.

23 (3) "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child  
24 in the woman's body.

25 (4) "Unborn child" means the offspring of human beings from conception until birth.

26

27 **NEW SECTION. Section 4. Publication of materials.** (1) The department shall publish and annually  
28 update easily comprehensible printed, UNBIASED materials that are geographically indexed and designed  
29 to inform women of public and private agencies and services available to assist a woman through  
30 pregnancy, during childbirth, and while a woman's child is dependent. The materials must:

1 (a) include adoption agencies;

2 (b) include a comprehensive list of the agencies, a description of the services offered, and the  
3 telephone numbers and addresses of the agencies;

4 (c) inform a woman about medical assistance benefits for prenatal care, childbirth, neonatal care,  
5 and child support obligations of a father of a child.

6 (2) The department shall ensure that the materials described in this section are comprehensive and  
7 do not directly or indirectly promote, exclude, or discourage the use of any agency or service. The  
8 materials must include a toll-free, 24-hour telephone number that may be called to orally obtain a list and  
9 description of agencies in the locality of the caller and of the services offered by the agencies.

10 (3) The materials must state that:

11 (a) it is unlawful for any individual to coerce a woman to undergo OR NOT TO UNDERGO an  
12 abortion;

13 (b) a physician who performs an abortion on a woman without the woman's informed consent may  
14 be liable to the woman for damages in a civil action; and

15 (c) the law allows adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care.

16 (4) The materials must inform the pregnant woman of the probable anatomical and physiological  
17 characteristics of the unborn child at 2-week gestational increments from fertilization to full term, including  
18 pictures or drawings representing the development of unborn children at 2-week gestational increments.  
19 The pictures or drawings must contain the dimensions of the unborn child and must be realistic. The  
20 materials must include any relevant information on the possibility of the unborn child's survival at each  
21 stage depicted. The materials must be objective, nonjudgmental, and designed to convey only accurate  
22 scientific information about the unborn child at the various gestational ages. The materials must contain  
23 objective information describing the methods of abortion procedures commonly employed, the medical risks  
24 commonly associated with each procedure, the possible detrimental psychological effects of abortion, THE  
25 POSSIBLE DETRIMENTAL PSYCHOLOGICAL EFFECTS OF ADOPTION, and the medical risks associated with  
26 carrying a child to term.

27 (5) The materials must be printed in a clearly legible typeface.

28 (6) The materials required to be produced under this section must be provided at no cost upon  
29 request and must be provided in appropriate quantities to any person, facility, or hospital.

30

1           **NEW SECTION. Section 5. Emergency.** When a medical emergency compels the performance of  
 2 an abortion, the physician shall inform the woman, before the abortion if possible, of the medical indications  
 3 supporting the physician’s judgment that an abortion is necessary to avert the woman’s death or that a  
 4 24-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

5  
 6           **NEW SECTION. Section 6. Physician reporting requirements -- penalty -- action -- department**  
 7 **report.** (1) Within [90 days after the effective date of this section], the department shall prepare a  
 8 reporting form to be used by physicians that contains a reprint of this chapter and on which the physician  
 9 shall list:

10           (a) the number of women to whom the physician provided the information described in  
 11 50-20-104(5)(a), including:

12           (i) the number of women provided the information by telephone and the number to whom it was  
 13 provided in person; and

14           (ii) the number of women in each group referred to in subsection (1)(a)(i) to whom the physician  
 15 provided the information in the capacity of a referring physician and the number to whom it was provided  
 16 in the capacity of a physician who is to perform the abortion;

17           (b) the number of women to whom the physician or an agent of the physician provided the  
 18 information described in 50-20-104(5)(b), including:

19           (i) the number of women to whom the physician provided the information by telephone and the  
 20 number to whom it was provided in person;

21           (ii) the number of women in each group referred to in subsection (1)(b)(i) to whom the physician  
 22 provided the information in the capacity of a referring physician and the number to whom it was provided  
 23 in the capacity of a physician who is to perform the abortion; and

24           (iii) the number of women in each group referred to in subsection (1)(b)(ii) to whom information was  
 25 provided by the physician and the number to whom it was provided by an agent of the physician;

26           (c) the number of women who availed themselves of the opportunity to obtain a copy of the printed  
 27 information described in [section 4] and the number who did not;

28           (d) of each of the numbers described in subsections (1)(a) through (1)(c), the number who, to the  
 29 best of the reporting physician’s information and belief, obtained an abortion; and

30           (e) the number of abortions that were performed by the physician but in which information

1 otherwise required to be provided at least 24 hours before the abortion was not provided because:

2 (i) an immediate abortion was necessary to avert the woman's death; or

3 (ii) a delay would create serious risk of substantial and irreversible impairment of a major bodily  
4 function.

5 (2) The department shall ensure that copies of the reporting forms described in subsection (1) are  
6 provided:

7 (a) by [120 days after the effective date of this section] to all physicians licensed in this state;

8 (b) to each physician licensed to practice after [the effective date of this section], at the time of  
9 licensure;

10 (c) by December 1 of each succeeding year, to all physicians licensed to practice in this state.

11 (3) By February 28 of each year, each physician or the physician's agent who provided information  
12 to one or more women in accordance with 50-20-106 shall submit a copy of the reporting form described  
13 in subsection (1) to the department with the requested data entered accurately and completely.

14 (4) Reports that are not submitted by March 31 are subject to a penalty of \$500 for each 30-day  
15 period that the reports are overdue. A physician who is required to report but who, more than 1 year after  
16 the due date, has not submitted a report or who has submitted an incomplete report may, in an action  
17 brought by the department, be directed by a district court to submit a complete report within a period  
18 stated in the court order or be subject to sanctions for civil contempt.

19 (5) By June 30 of each year, the department shall issue a public report providing statistics for the  
20 previous calendar year submitted in accordance with this section for each of the items listed in subsection  
21 (1). Each report must provide the statistics for all previous calendar years, adjusted to reflect information  
22 from late or corrected reports. The department shall ensure that none of the information included in the  
23 public reports could reasonably lead to the identification of an individual who was provided information ~~of~~  
24 in accordance with 50-20-106. THE DEPARTMENT SHALL DESIGN THE REPORTING PROCESS TO ENSURE  
25 THAT CONFIDENTIALITY REGARDING THE PHYSICIAN OR THE PHYSICIAN'S AGENT IS MAINTAINED IN  
26 THE DEPARTMENT RECORDS.

27 (6) The department may, by rule, alter the dates established by subsection (2)(c), (3), or (5) or  
28 consolidate the forms or reports described in this section with other forms or reports to achieve  
29 administrative convenience, achieve fiscal savings, or reduce the burden of reporting requirements.  
30 However, reporting forms must be sent to all licensed physicians at least once a year, and the report

1 described in subsection (5) must be issued at least once a year.

2

3 **NEW SECTION. Section 7. Civil remedies.** (1) A person who performs an abortion in knowing  
 4 or reckless violation of this chapter may be liable for actual and punitive damages in an action brought by:  
 5 ~~(a)~~ the woman upon whom an abortion was performed; OR, IF THE WOMAN IS UNDER 18 YEARS  
 6 OF AGE OR IS PHYSICALLY OR MENTALLY INCAPACITATED FOR PURPOSES OF BEING ABLE TO DECIDE  
 7 WHETHER TO BRING AND PURSUE AN ACTION, THEN, ON THE WOMAN'S BEHALF, BY EITHER:

8 ~~(b)~~(A) the father of the unborn child who was the subject of the abortion; or

9 ~~(c)~~(B) the grandparent of an unborn child who was the subject of the abortion.

10 (2) A person who attempts to perform an abortion in knowing or reckless violation of this chapter  
 11 may be liable for actual and punitive damages in an action brought by the woman upon whom an abortion  
 12 was attempted.

13 (3) If the department fails to issue the public report required in [section 6], a group of 10 or more  
 14 citizens may seek an injunction, in a court of competent jurisdiction, against the director of the department  
 15 to require that a complete report be issued within a period established by court order. Failure to comply  
 16 with an injunction subjects the director to sanctions for civil contempt.

17 (4) If judgment is rendered in favor of the plaintiff in any action described in this section, the court  
 18 shall award reasonable attorney fees in favor of the plaintiff against the defendant.

19 (5) An abortion or attempted abortion performed in violation of this chapter is the basis for a  
 20 professional disciplinary action under 37-3-322.

21

22 **NEW SECTION. Section 8. Protection of privacy in court proceedings.** In a civil or criminal  
 23 proceeding under this chapter, the court shall determine whether the anonymity of a woman upon whom  
 24 an abortion has been performed or attempted must be preserved from public disclosure, unless the woman  
 25 waives anonymity. The court shall make a ruling and, upon determining that the woman's anonymity  
 26 should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing  
 27 of the record and the exclusion of individuals from the proceedings to the extent necessary to safeguard  
 28 the woman's identity from public disclosure. Each order must be accompanied by specific written findings  
 29 explaining why the anonymity of the woman should be preserved, why the order is necessary, how the  
 30 order is tailored to protect the woman's privacy, and why no less restrictive alternative exists. In the

1 absence of written consent of the woman upon whom an abortion has been performed or attempted, a  
 2 person other than a public official who brings an action under [section 7(1)] shall do so under a pseudonym.

3  
 4 ~~NEW SECTION. Section 9. Right of intervention. Pursuant to Rule 24(a), Montana Rules of Civil~~  
 5 ~~Procedure, a TO FILE AMICUS CURIAE BRIEF. A legislator has the right to intervene FILE AN AMICUS~~  
 6 ~~CURIAE BRIEF IN THE LOWER COURT AND IN ANY APPEAL in any case in which the constitutionality of~~  
 7 ~~Title 50, chapter 20, is challenged.~~

8  
 9 **Section 9.** Section 50-20-104, MCA, is amended to read:

10 **"50-20-104. Definitions.** As used in this chapter, the following definitions apply:

11 (1) "Abortion" means ~~the performance of, assistance or participation in the performance of, or~~  
 12 ~~submission to an act or operation intended to terminate a pregnancy without live birth~~ the use or  
 13 prescription of any instrument, medicine, drug, or other substance or device to intentionally terminate the  
 14 pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of  
 15 a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

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

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

21 (3)(4) "Facility" means a hospital, health care facility, physician's office, or other place in which  
 22 an abortion is performed.

23 (4)(5) "Informed consent" means voluntary consent to an abortion by the woman upon whom the  
 24 abortion is to be performed only after full disclosure to her the woman by:

25 (a) the physician who is to perform the abortion of ~~such of~~ the following information ~~as is~~  
 26 ~~reasonably chargeable to the knowledge of the physician in his professional capacity:~~

27 (a)(i) ~~the stage of development of the fetus, the method of~~ particular medical risks associated with  
 28 the particular abortion procedure to be utilized employed, including, and the effects of such abortion method  
 29 upon the fetus when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to  
 30 subsequent pregnancies, and infertility;

1 ~~(b)(ii)~~ the physical and psychological effects of probable gestational age of the unborn child at the  
 2 time the abortion is to be performed; and

3 ~~(c)(iii)~~ available alternatives to abortion, including childbirth and adoption the medical risks of  
 4 carrying the child to term;

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

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

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

9 (iii) that the woman has the right to review the printed materials described in [section 4]; and

10 (c) the physician or the agent that the printed materials described in [section 4] have been provided  
 11 by the department and that the materials describe the unborn child and list agencies that offer alternatives  
 12 to abortion.

13 ~~(5)(6)~~ "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial  
 14 aid."

15  
 16 **Section 10.** Section 50-20-106, MCA, is amended to read:

17 **"50-20-106. ~~Consent to abortion~~ Informed consent.** (1) ~~No~~ An abortion may not be performed ~~upon~~  
 18 ~~any woman in the absence of~~ without the informed consent of the woman upon whom the abortion is to  
 19 be performed. The informed consent must be received and certified at least 24 hours prior to the abortion  
 20 AND CERTIFIED PRIOR TO OR AT THE TIME OF THE ABORTION.

21 (2) Informed consent ~~may~~ must be ~~evidenced~~ certified by a written statement in a form prescribed  
 22 by the department and signed by the physician and the woman upon whom the abortion is to be performed  
 23 in which the physician certifies that ~~he~~ the physician has made the full disclosure provided in  
 24 50-20-104(4)(5) and in which the woman upon whom the abortion is to be performed acknowledges that  
 25 the ~~above~~ disclosures have been made to ~~her~~ the woman and that ~~she~~ the woman voluntarily consents to  
 26 the abortion.

27 (3) If a woman chooses to review the written materials described in [section 4], the materials must  
 28 be provided to her at least 24 hours before the abortion or be mailed to the woman by certified mail, with  
 29 delivery restricted to the addressee, at least 72 hours before the abortion.

30 (4) The information required in 50-20-104(5)(a) may be provided by telephone without conducting



1 a physical examination or tests of the patient. The information may be based on facts supplied to the  
 2 physician by the woman and other relevant information that is reasonably available to the physician. The  
 3 information may not be provided by a tape recording but must be provided during a consultation in which  
 4 the physician is able to ask questions of the woman and the woman is able to ask questions of the  
 5 physician. If a physical examination, tests, or the availability of other information subsequently indicates,  
 6 in the medical judgment of the physician, a revision of information previously provided to the patient, the  
 7 revised information may be communicated to the patient at any time prior to the performance of the  
 8 abortion.

9 (5) The information required in 50-20-104(5)(b) may be provided by a tape recording if provision  
 10 is made to record or otherwise register specifically whether the woman does or does not choose to review  
 11 the printed materials.

12 ~~(3)(6)~~ The above informed consent or consent provided for in this section is not required if a  
 13 licensed physician certifies that the abortion is necessary to preserve the life of the mother because of a  
 14 medical emergency as defined in [section 3].

15 ~~(4)(7)~~ No An executive officer, administrative agency, or public employee of the state or of any  
 16 local governmental body has power to may not issue any order requiring an abortion or shall coerce any  
 17 woman to have an abortion, nor shall any A person may not coerce any woman to have an abortion.

18 ~~(5)(8)~~ Violation of subsections (1) and (4) through (7) of this section is a misdemeanor."

20 **Section 11.** Section 50-20-112, MCA, is amended to read:

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

23 (2) A person convicted of a felony other than deliberate, mitigated, or negligent homicide under  
 24 this chapter is subject to a fine not to exceed \$1,000, imprisonment in the state prison for a term not to  
 25 exceed 5 years, or both.

26 (3) A person convicted of a misdemeanor under this chapter is subject to a fine not to exceed  
 27 \$500, imprisonment in the county jail for a term not to exceed 6 months, or both.

28 (4)(a) A penalty may not be imposed against the woman upon whom the abortion is performed or  
 29 attempted to be performed.

30 (b) A penalty may not be imposed for failure to comply with the provision of 50-20-106 that

1 requires a written certification that the woman has been informed of the opportunity to review the  
2 information referred to in [section 4] if the department has not made the written materials available at the  
3 time that the physician or the physician's agent is required to inform the woman of the right to review the  
4 materials."

5  
6 **NEW SECTION. Section 12. Construction.** [Sections 1 through ~~44~~ 10] may not be construed as  
7 creating or recognizing a right to abortion. [Sections 1 through ~~44~~ 10] do not make lawful any abortion  
8 that is currently unlawful.

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

14  
15 **NEW SECTION. Section 14. Codification instruction.** [Sections 1 through 8] are intended to be  
16 codified as an integral part of Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to  
17 [sections 1 through 8].

18  
19 **NEW SECTION. Section 15. Effective date.** [This act] is effective July 1, 1995.

20

-END-