

Montana

Planned Parenthood of Montana v. State by & through Knudsen, 2022 MT 157, 409 Mont. 378, 515 P.3d 301 (affirming a preliminary injunction on a number of Montana statutes related to abortion, including but not limited to a 20-week ban and in-person requirement for medication abortion: Mont. Code Annot. § 50-20-109, § 50-20-601, § 50-20-602, § 50-20-603, § 50-20-604, § 50-20-605, § 50-20-606, § 50-20-701, § 50-20-702, § 50-20-703, § 50-20-704, § 50-20-705, § 50-20-706, § 50-20-707, § 50-20-708, § 50-20-709, § 50-20-710, § 50-20-711, § 50-20-712, § 50-20-713, § 50-20-714).

Mont. Const Art. 2, 10 Right of privacy

The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Mont. Code Annot. § 45-5-102(1)(c) Deliberate homicide

(1) A person commits the offense of deliberate homicide if:

(c) the person purposely or knowingly causes the death of a fetus of another with knowledge that the woman is pregnant.

Mont. Code Annot. § 45-5-103(1) Mitigated deliberate homicide

(1) A person commits the offense of mitigated deliberate homicide when the person purposely or knowingly causes the death of another human being or purposely or knowingly causes the death of a fetus of another with knowledge that the woman is pregnant but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the actor's situation.

Mont. Code Annot. § 50-20-104 Definitions

As used in this chapter, the following definitions apply:

(1) “Abortion” means the use or prescription of any instrument, medicine, drug, or other substance or device to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

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

(3) “Department” means the department of public health and human services provided for in 2-15-2201.

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

(5) “Informed consent” means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to the woman by:

(a) the physician who is to perform the abortion of the following information:

(i) the particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to subsequent pregnancies, and infertility;

(ii) the probable gestational age of the unborn child at the time the abortion is to be performed; and

(iii) the medical risks of carrying the child to term;

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

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

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

(iii) that the woman has the right to review the printed materials described in 50-20-304; and

(c) the physician or the agent that the printed materials described in 50-20-304 have been provided by the department and that the materials describe the unborn child and list agencies that offer alternatives to abortion.

(6)

(a) “Viability” means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

(b) A determination of viability must be:

(i) made in writing by the physician or physician assistant performing an abortion and include the review and record of an ultrasound; and

(ii) based on the best available science and survival data, with viability presumed at 24 weeks gestational age and any period of time after that. A calculation of gestational age must take into account a margin of error and, if uncertainty exists regarding viability, there is a presumption of viability.

Mont. Code Annot. § 50-20-106 Informed consent

(1) An abortion may not be performed without the informed consent of the woman upon whom the abortion is to be performed. The informed consent must be received at least 24 hours prior to the abortion and certified prior to or at the time of the abortion.

(2) Informed consent must be certified by a written statement in a form prescribed by the department and signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that the physician has made the full disclosure provided in 50-20-104(5) and in which the woman upon whom the abortion is to be performed acknowledges that the disclosures have been made to the woman and that the woman voluntarily consents to the abortion.

(3) If a woman chooses to review the written materials described in 50-20-304, the materials must be provided to the woman at least 24 hours before the abortion or be mailed to the woman by certified mail, with delivery restricted to the addressee, at least 72 hours before the abortion.

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

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

(6) The informed consent or consent provided for in this section is not required if a licensed physician certifies that the abortion is necessary because of a medical emergency as defined in 50-20-303.

(7) An executive officer, administrative agency, or public employee of the state or of any local governmental body may not issue any order requiring an abortion or coerce any woman to have an abortion. A person may not coerce any woman to have an abortion.

(8) A violation of subsections (1) through (7) is a misdemeanor.

Mont. Code Annot. § 50-20-108. Protection of premature infants born alive

(1) A person commits an offense, as defined in 45-5-102 through 45-5-104, if the person purposely, knowingly, or negligently causes the death of a premature infant born alive, if the infant is viable.

(2) Whenever a premature infant that is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

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

(b) the mother and the mother's spouse or either of them have agreed in writing in advance of the abortion or within 72 hours thereafter to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) A person may not use any premature infant born alive for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of the premature infant born alive.

(4) A violation of subsection (3) is a felony.

50-20-109 Control of practice of abortion.

(1) Except as provided in 50-20-401, an abortion may not be performed within the state of Montana:

(a) except by a licensed physician or physician assistant; and

(b) on an unborn child:

(i) who is capable of feeling pain, except as provided in 50-20-603; or

(ii) who is viable, unless necessary to preserve the life of the mother.

(2) The supervision agreement of a physician assistant may provide for performing abortions.

(3) Violation of subsection (1) is a felony.

[50-20-109, MCA](#) (See above, *Planned Parenthood of Montana v. State by & through Knudsen*, which affirmed a preliminary injunction on this statute.)

Mont. Code Annot. § 50-20-110. Reporting of practice of abortion

(1) Every facility in which an abortion is performed within the state shall keep on file upon a form prescribed by the department a statement dated and certified by the physician who performed the abortion setting forth such information with respect to the abortion as the department by regulation shall require, including but not limited to information on prior pregnancies, the medical procedure employed to administer the abortion, the gestational age of the fetus, the vital signs of the fetus after abortion, if any, and if after viability, the medical procedures employed to protect and preserve the life and health of the fetus.

(2) The physician performing an abortion shall cause such pathology studies to be made in connection therewith as the department shall require by regulation, and the facility shall keep the reports thereof on file.

(3) In connection with an abortion, the facility shall keep on file the original of each of the documents required by this chapter relating to informed consent, consent to abortion, certification of necessity of abortion to preserve the life or health of the mother, and certification of necessity of abortion to preserve the life of the mother.

(4) Such facility shall, within 30 days after the abortion, file with the department a report upon a form prescribed by the department and certified by the custodian of the records or physician in charge of such facility setting forth all of the information required in subsections (1), (2), and (3) of this section, except such information as would identify any individual involved with the abortion. The report shall exclude copies of any documents required to be filed by subsection (3) of this section, but shall certify that such documents were duly executed and are on file.

(5) All reports and documents required by this chapter shall be treated with the confidentiality afforded to medical records, subject to such disclosure as is permitted by law. Statistical data not identifying any individual involved in an abortion shall be made public by the department annually, and the report required by subsection (4) of this section to be filed with the department shall be available for public inspection except insofar as it identifies any individual involved in an abortion. Names and identities of persons submitting to abortion shall remain confidential among medical and medical support personnel directly involved in the abortion and among persons working in the facility where the abortion was performed whose duties include billing the patient or submitting claims to an insurance company, keeping facility records, or processing abortion data required by state law.

(6) Violation of this section is a misdemeanor and is punishable as provided in 46-18-212.

Mont. Code Annot. § 50-20-111 Right to refuse participation in abortion

(1) No private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of its staff or governing board to admit any person for the purpose of abortion or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

(2) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in abortion because of religious beliefs or moral convictions. If requested by any hospital or health care facility or person desiring an abortion, such refusal shall be in writing signed by the person refusing, but may refer generally to the grounds of “religious beliefs and moral convictions”. The refusal of any person to advise concerning, perform, assist, or participate in abortion shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

(3) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this section. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

(4) Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

(5) As used in this section, the term “person” includes one or more individuals, partnerships, associations, and corporations.

Mont. Code Annot. § 50-20-112. Penalties

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

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

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

(4)

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

(b) A penalty may not be imposed for failure to comply with the provision of 50-20-106 that requires a written certification that the woman has been informed of the opportunity to review the information referred to in 50-20-304 if the department has not made the written materials available at the time that the physician or the physician's agent is required to inform the woman of the right to review the materials.

Mont. Code Annot. § 50-20-113. Provision of information--exceptions--penalty

(1)

(a) Except as provided in subsection (2), a person performing an abortion on a pregnant woman or that person's agent shall inform the woman of the opportunity to:

(i) view an active ultrasound of the unborn child;

(ii) view an ultrasound image of the unborn child; and

(iii) listen to the fetal heart tone of the unborn child, if audible.

(b) The quality of the active ultrasound, ultrasound image, and auscultation of the fetal heart tone must be consistent with standard medical practices in the community in which the abortion is being performed.

(2) Subsection (1) does not apply to a procedure performed with the intent to:

(a) save the life of the woman;

(b) ameliorate a serious risk of causing the woman substantial and irreversible impairment of a bodily function; or

(c) remove an ectopic pregnancy.

(3) The person performing the abortion or that person's agent shall obtain the woman's signature on a certification form developed by the department that:

(a) contains an acknowledgment that the woman was informed of the opportunities provided for in subsection (1); and

(b) indicates whether the woman viewed the active ultrasound or ultrasound image or listened to the fetal heart tone.

(4)

(a) Before an abortion is performed or attempted, the person who is performing or attempting the abortion must receive a copy of the signed certification form provided for in subsection (3).

(b) A copy of the certification form must be retained in the woman's medical record.

(5) A person who performs or attempts to perform an abortion in violation of this section is subject to a civil penalty of \$1,000.

50-20-303 Definitions.

As used in this part, unless the context requires otherwise, the following definitions apply:

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

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

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

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

[50-20-303, MCA](#)

50-20-304 Publication of materials.

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

(a) include adoption agencies;

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

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

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

(3) The materials must state that:

(a) it is unlawful for any individual to coerce a woman to undergo or not to undergo an abortion;

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

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

(4) The materials must inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at 2-week gestational increments from fertilization to full

term, including pictures or drawings representing the development of unborn children at 2-week gestational increments. The pictures or drawings must contain the dimensions of the unborn child and must be realistic. The materials must include any relevant information on the possibility of the unborn child's survival at each stage depicted. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The materials must contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each procedure, the possible detrimental psychological effects of abortion, the possible detrimental psychological effects of adoption, and the medical risks associated with carrying a child to term.

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

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

[50-20-304, MCA](#)

Mont. Code Annot. § 50-20-305. Emergency

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

Mont. Code Annot. § 50-20-306 Physician reporting requirements--penalty--action--department report

(1) Within 90 days after July 1, 1995, the department shall prepare a reporting form to be used by physicians that contains a reprint of this chapter and on which the physician shall list:

(a) the number of women to whom the physician provided the information described in [50-20-104\(5\)\(a\)](#), including:

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

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

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

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

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

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

(c) the number of women who availed themselves of the opportunity to obtain a copy of the printed information described in 50-20-304 and the number who did not;

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

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

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

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

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

(a) by 120 days after July 1, 1995, to all physicians licensed in this state;

(b) to each physician licensed to practice after July 1, 1995, at the time of licensure;

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

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

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

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

(6) The department may, by rule, alter the dates established by subsection (2)(c), (3), or (5) or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience, achieve fiscal savings, or reduce the burden of reporting

requirements. However, reporting forms must be sent to all licensed physicians at least once a year, and the report described in subsection (5) must be issued at least once a year.

50-20-307 Civil remedies.

(1) A person who performs an abortion in knowing or reckless violation of this chapter may be liable for actual and punitive damages in an action brought by the woman upon whom an abortion was performed 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:

- (a) the father of the unborn child who was the subject of the abortion; or
- (b) the grandparent of an unborn child who was the subject of the abortion.

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

(3) If the department fails to issue the public report required in 50-20-306, a group of 10 or more citizens may seek an injunction, in a court of competent jurisdiction, against the director of the department to require that a complete report be issued within a period established by court order. Failure to comply with an injunction subjects the director to sanctions for civil contempt.

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

(5) An abortion or attempted abortion performed in violation of this chapter is the basis for a professional disciplinary action under 37-1-316.

[50-20-307, MCA](#)

50-20-308 Protection of privacy in court proceedings.

In a civil or criminal proceeding under this chapter, the court shall determine whether the anonymity of a woman upon whom an abortion has been performed or attempted must be preserved from public disclosure, unless the woman waives anonymity. The court shall make a ruling and, upon determining that the woman's anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and the exclusion of individuals from the proceedings to the extent necessary to safeguard the woman's identity from public disclosure. Each order must be accompanied by specific written findings explaining why the anonymity of the woman should be preserved, why the order is necessary, how the order is tailored to protect the woman's privacy, and why no less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, a person other than a public official who brings an action under 50-20-307(1) shall do so under a pseudonym.

[50-20-308, MCA](#)

Mont. Code Annot. § 50-20-401. Offense of partial-birth abortion--exception--definitions--penalties

(1) Except as provided in this section, a person commits an offense if the person purposely, knowingly, or negligently causes a partial-birth abortion.

(2) Subsection (1) does not apply to:

(a) a partial-birth abortion caused to save the life of a woman because the woman's life is endangered by a physical disorder, illness, or injury, including a life-endangering condition caused by or arising from the pregnancy itself, if no other medical procedure would save the life of the woman; or

(b) the woman upon whom a partial-birth abortion is performed.

(3) As used in this section, the following definitions apply:

(a) “Knowingly” has the meaning provided in 45-2-101.

(b) “Negligently” has the meaning provided in 45-2-101.

(c)

(i) “Partial-birth abortion” means an abortion in which the person performing the abortion partially vaginally delivers a living human fetus before killing the fetus and completing the delivery.

(ii) A procedure that constitutes a partial-birth abortion is one in which the following steps occur:

(A) the living fetus is removed intact from the uterus until only the head remains in the uterus;

(B) all or a part of the intracranial contents of the fetus are evacuated;

(C) the head of the fetus is compressed; and

(D) following fetal demise, the fetus is removed from the birth canal.

(d) “Purposely” has the meaning provided in 45-2-101.

(4) A person committing the offense provided for in subsection (1) is guilty of a felony and shall be punished by:

(a) a fine of not more than \$50,000;

(b) imprisonment in a correctional facility for a term of not less than 5 years and not more than 10 years; or

(c) both fine and imprisonment as provided in subsections (4)(a) and (4)(b); and

(d) permanent revocation of the license of the physician performing the partial-birth abortion. The provisions of 37-1-203 and 37-1-205 do not apply to a physician whose license is revoked pursuant to this section.

50-20-503 Definitions.

As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) “Coerce” means to restrain or dominate the choice of a minor by force, threat of force, or deprivation of food and shelter.
- (2) “Consent” means a notarized written statement obtained on a form and executed in the manner prescribed by 50-20-505 that is signed by a parent or legal guardian of a minor and that declares that the minor intends to seek an abortion and that the parent or legal guardian of the minor consents to the abortion.
- (3) “Emancipated minor” means a person under 18 years of age who is or has been married or who has been granted an order of limited emancipation by a court as provided in 41-1-503.
- (4) “Medical emergency” means a condition that, on the basis of the good faith clinical judgment of a physician or physician assistant, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of the woman’s pregnancy to avert the woman’s death or a condition for which a delay in treatment will create serious risk of substantial and irreversible impairment of a major bodily function.
- (5) “Minor” means a pregnant female under 18 years of age who is not an emancipated minor.
- (6) “Physical abuse” means any physical injury intentionally inflicted by a parent or legal guardian on a minor.
- (7) “Physician” means a person licensed to practice medicine under Title 37, chapter 3.
- (8) “Physician assistant” means a person licensed pursuant to Title 37, chapter 20, who provides medical services under the supervision of a physician.
- (9) “Sexual abuse” has the meaning provided in 41-3-102.

[50-20-503, MCA](#)

Mont. Code Annot. § 50-20-504. Consent of parent or legal guardian required

- (1) Except as provided in [50-20-507](#), a physician or physician assistant may not perform an abortion on a minor unless the physician or physician assistant or the agent of the physician or physician assistant first obtains the notarized written consent of a parent or legal guardian of the minor.
- (2) The consent of a parent or legal guardian of the minor is invalid unless it is obtained in the manner and on the form prescribed by [50-20-505](#).

Mont. Code Annot. § 50-20-505 Consent form--disclosure--requirements for validity

- (1) The department of public health and human services shall create a consent form to be used by physicians, physician assistants, or their agents in obtaining the consent of a parent or legal guardian as required under [50-20-504](#) or in obtaining the waiver of the consent of a parent or legal guardian as provided for in [50-20-507](#).
- (2) The form must disclose but is not limited to the following:
 - (a) any information that a physician or physician assistant is required by law to provide to the minor and the rights of the minor;
 - (b) the rights of the parent or legal guardian;

- (c) the surgical or medical procedures that may be performed on the minor;
- (d) the risks and hazards related to the procedures planned for the minor, including but not limited to the risks and hazards associated with:

- (i) any surgical, medical, or diagnostic procedure, including the potential for infection, blood clots in veins and lungs, hemorrhage, and allergic reactions;
- (ii) a surgical abortion, including hemorrhage, uterine perforation or other damage to the uterus, sterility, injury to the bowel or bladder, a potential hysterectomy caused by a complication or injury during the procedure, and the possibility of additional procedures being required because of failure to remove all products of conception;
- (iii) a medical or nonsurgical abortion, including hemorrhage, sterility, the continuation of the pregnancy, and the possibility of additional procedures being required because of failure to remove all products of conception; and
- (iv) the particular procedure that is planned for the minor, including cramping of the uterus, pelvic pain, infection of the female reproductive organs, cervical laceration, incompetent cervix, and the requirement of emergency treatment for any complications.

(3) The form must include:

- (a) a minor consent statement that the minor is required to sign. The minor consent statement must include but is not limited to the following points, each of which must be initialed by the minor:

- (i) the minor understands that the physician or physician assistant is going to perform an abortion on the minor and that the abortion will end the minor's pregnancy;
- (ii) the minor is not being coerced into having an abortion, the minor has the choice not to have the abortion, and the minor may withdraw consent at any time prior to the abortion;
- (iii) the minor consents to the procedure;
- (iv) the minor understands the risks and hazards associated with the surgical or medical procedures planned for the minor;
- (v) the minor has been provided the opportunity to ask questions about the pregnancy, alternative forms of treatment, the risk of nontreatment, the procedures to be used, and the risks and hazards involved; and
- (vi) the minor has sufficient information to give informed consent.

- (b) a parental consent statement that a parent or legal guardian is required to sign. The parental consent statement must include but is not limited to the following points, each of which must be initialed by a parent or legal guardian:

- (i) the parent or legal guardian understands that the physician or physician assistant who signed the physician declaration statement provided for in

subsection (3)(c) is going to perform an abortion on the minor that will end the minor's pregnancy;

(ii) the parent or legal guardian had the opportunity to read the consent form or had the opportunity to have the consent form read to the parent or legal guardian;

(iii) the parent or legal guardian had the opportunity to ask questions of the physician or physician assistant or the agent of the physician or physician assistant regarding the information contained in the consent form and the surgical and medical procedures to be performed on the minor;

(iv) the parent or legal guardian has been provided sufficient information to give informed consent.

(c) a physician declaration that the physician or physician assistant is required to sign, declaring that:

(i) the physician or physician assistant or the agent of the physician or physician assistant explained the procedure and contents of the consent form to the minor and a parent or legal guardian of the minor and answered any questions; and

(ii) to the best of the physician's or physician assistant's knowledge, the minor and a parent or legal guardian of the minor have been adequately informed and have consented to the abortion; and

(d) a signature page for a parent or legal guardian of the minor that must be notarized and that includes an acknowledgment by the parent or legal guardian affirming that the parent or legal guardian is the minor's parent or legal guardian.

Mont. Code Annot. § 50-20-506. Proof of identification and relationship to minor--retention of records

(1) A parent or legal guardian of a minor who is consenting to the performance of an abortion on the minor shall provide the attending physician or physician assistant or the agent of the physician or physician assistant with government-issued proof of identity and written documentation that establishes that the parent or legal guardian is the lawful parent or legal guardian of the minor.

(2) A physician or physician assistant shall retain the completed consent form and the documents provided pursuant to subsection (1) in the minor's medical file for 5 years after the minor reaches 18 years of age, but in no event less than 7 years.

(3) A physician or physician assistant receiving documentation under this section shall execute for inclusion in the minor's medical record an affidavit stating: "I, (insert name of physician or physician assistant), certify that according to my best information and belief, a reasonable person under similar circumstances would rely on the information presented by both the minor and the minor's parent or legal guardian as sufficient evidence of identity and relationship."

Mont. Code Annot. § 50-20-507 Exceptions

Consent is not required under 50-20-504 if:

- (1) the attending physician or physician assistant certifies in the minor's medical record that a medical emergency exists and there is insufficient time to provide consent;
- (2) consent is waived, in a notarized writing, by the person entitled to give consent; or
- (3) consent is waived under 50-20-509.

Mont. Code Annot. § 50-20-508. Coercion prohibited

A parent, a legal guardian, or any other person may not coerce a minor to have an abortion. If a minor is denied financial support by the minor's parents, legal guardian, or custodian because of the minor's refusal to have an abortion, the minor must be considered an emancipated minor for the purposes of eligibility for public assistance benefits. The public assistance benefits may not be used to obtain an abortion.

MCA 50-20-509. Procedure for judicial waiver of consent

- (1) The requirements and procedures under this section are available to minors whether or not they are residents of this state.
- (2) A minor may petition the youth court for a waiver of the requirement for consent and may participate in the proceedings on the minor's own behalf. The petition must include a statement that the minor is pregnant and is not emancipated. The court may appoint a guardian ad litem for the minor. A guardian ad litem is required to maintain the confidentiality of the proceedings. The youth court shall advise the minor of the right to assigned counsel and shall order the office of state public defender, provided for in 2-15-1029, to assign counsel upon request.
- (3) Proceedings under this section are confidential and must ensure the anonymity of the minor. All proceedings under this section must be sealed. The minor may file the petition using a pseudonym or using the minor's initials. All documents related to the petition and the proceedings on the petition are confidential and are not available to the public. The proceedings on the petition must be given preference over other pending matters to the extent necessary to ensure that the court reaches a prompt decision. The court shall issue written findings of fact and conclusions of law and rule within 48 hours of the time that the petition is filed unless the time is extended at the request of the minor. If the court fails to rule within 48 hours and the time is not extended, the petition is granted and the requirement for consent is waived.
- (4) If the court finds that the minor is competent to decide whether to have an abortion, the court shall issue an order authorizing the minor to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian.
- (5) The court shall issue an order authorizing the minor to consent to an abortion without the consent of a parent or legal guardian if the court finds that:
 - (a) there is evidence of physical abuse, sexual abuse, or emotional abuse of the minor by one or both parents, a legal guardian, or a custodian; or
 - (b) the consent of a parent or legal guardian is not in the best interests of the minor.

(6) If the court does not make a finding specified in subsection (4) or (5), the court shall dismiss the petition.

(7) A court that conducts proceedings under this section shall issue written and specific findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence, findings, and conclusions be maintained.

(8) The supreme court may adopt rules providing an expedited confidential appeal by a minor if the youth court denies a petition. An order authorizing an abortion without the consent of a parent or legal guardian is not subject to appeal.

(9) Filing fees may not be required of a minor who petitions a court for a waiver of the requirement for consent or who appeals a denial of a petition.

Mont. Code Annot. § 50-20-510 Criminal and civil penalties

(1) A person convicted of performing an abortion in violation of 50-20-504 shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not less than \$500 or more than \$50,000 and be imprisoned in the state prison for a term of not less than 10 days or more than 5 years, or both.

(2) Failure to obtain the consent required under 50-20-504 is prima facie evidence in an appropriate civil action for a violation of a professional obligation. The evidence does not apply to issues other than failure to obtain the consent of a parent or legal guardian. A civil action may be based on a claim that the failure to obtain consent was the result of a violation of the appropriate legal standard of care. Failure to obtain consent is presumed to be actual malice pursuant to the provisions of 27-1-221. This part does not limit the common-law rights of parents.

(3) A person who coerces a minor to have an abortion is guilty of a misdemeanor and upon conviction shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. On a second or subsequent conviction, the person shall be fined an amount not less than \$500 or more than \$50,000 and be imprisoned in the state prison for a term of not less than 10 days or more than 5 years, or both.

(4) A person not authorized to grant consent under 50-20-504 who signs a consent form provided for in 50-20-505 is guilty of a misdemeanor.

50-20-602 Definitions.

As used in this part, the following definitions apply:

(1) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

(2) "Gestational age" means the age of an unborn child, calculated from the first day of the woman's last menstrual period.

(3) "Knowing" or "knowingly" has the meaning provided in 45-2-101.

(4)

(a) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of a pregnant woman that it necessitates the immediate

abortion of the woman's pregnancy without first determining gestational age in order to avert the woman's death or for which the delay necessary to determine gestational age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

(b) The term does not include a condition that is based on a claim or diagnosis that the woman will engage in conduct that the woman intends to result in the woman's death or in substantial and irreversible physical impairment of a major bodily function.

(5) "Medical practitioner" means a person authorized under 50-20-109 to perform an abortion.

(6) "Probable gestational age of an unborn child" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed or attempted.

(7) "Purposeful" or "purposely" has the meaning provided in 45-2-101.

(8) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent medical practitioner who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(9) "Serious health risk to the unborn child's mother" means that, in reasonable medical judgment, the mother has a condition that so complicates the mother's medical condition that it necessitates the abortion of the mother's pregnancy to avert the mother's death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No greater risk may be determined to exist if it is based on a claim or diagnosis that the mother will engage in conduct that the mother intends to result in the mother's death or in substantial and irreversible impairment of a major bodily function.

(10) "Unborn child" or "fetus" means an individual organism of the species homo sapiens from fertilization until live birth.

[50-20-602, MCA](#)

Mont. Code Annot. § 50-20-603. Protection of unborn child capable of feeling pain from abortion

(1)

(a) A person may not perform or attempt to perform an abortion of an unborn child capable of feeling pain unless it is necessary to prevent a serious health risk to the unborn child's mother.

(b) For the purposes of this subsection (1), an unborn child is capable of feeling pain when it has been determined by the medical practitioner performing or attempting the abortion or by another medical practitioner on whose determination the medical practitioner relies that the probable gestational age of the unborn child is 20 or more weeks.

(2) Except in the case of a medical emergency, an abortion may not be performed or attempted unless the medical practitioner has first made a determination of the probable gestational age of the unborn child or relied on a determination made by another medical practitioner. In making this determination, the medical practitioner shall make inquiries of the woman and perform or cause to be performed medical examinations and tests that a reasonably prudent practitioner who is knowledgeable about the case and the medical conditions involved would consider necessary to perform in making an accurate diagnosis with respect to gestational age.

(3) When an abortion of an unborn child capable of feeling pain is necessary to prevent a serious health risk to the unborn child's mother, the medical practitioner shall terminate the pregnancy in the manner that, in reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods. No greater risk may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct that the woman intends to result in the woman's death or in substantial and irreversible physical impairment of a major bodily function.

(See above, *Planned Parenthood of Montana v. State by & through Knudsen*, which affirmed a preliminary injunction on this statute.)

Mont. Code Annot. § 50-20-604. Criminal penalties

A person who purposely or knowingly performs or attempts to perform an abortion in violation of 50-20-603 is guilty of a felony punishable in accordance with 50-20-112.

(See above, *Planned Parenthood of Montana v. State by & through Knudsen*, which affirmed a preliminary injunction on this statute.)

50-20-703 Definitions.

As used in this part, the following definitions apply:

(1) "Abortion" means the act of using or prescribing an instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, with knowledge that termination by those means will with reasonable likelihood cause the death of the unborn child. The term does not include an act to terminate a pregnancy with the intent to:

- (a) save the life or preserve the health of the unborn child;
- (b) remove a dead unborn child caused by spontaneous abortion;
- (c) remove an ectopic pregnancy; or
- (d) treat a maternal disease or illness for which the prescribed drug is indicated.

(2) "Abortion-inducing drug" or "chemical abortion" means a medicine, drug, or any other substance provided with the intent of terminating the clinically diagnosable pregnancy of a woman with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes the off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as mifepristone, misoprostol, and methotrexate. The term does not include drugs that may be known to cause an abortion that are prescribed for other medical indications.

(3) "Adverse event" means an untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug related. The term does not include an adverse event or suspected adverse reaction that, had it occurred in a more severe form, might have caused death.

(4) "Associated medical practitioner" means a person authorized under 50-20-109 to perform an abortion who has entered into an associated medical practitioner agreement.

(5) “Complication” means an adverse physical or psychological condition arising from the performance of an abortion, including but not limited to uterine perforation, cervical perforation, infection, heavy or uncontrolled bleeding, hemorrhage, blood clots resulting in pulmonary embolism or deep vein thrombosis, failure to actually terminate the pregnancy, incomplete abortion, pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm delivery in subsequent pregnancies, free fluid in the abdomen, hemolytic reaction due to the administration of ABO-incompatible blood or blood products, adverse reactions to anesthesia and other drugs, subsequent development of breast cancer, death, psychological complications such as depression, suicidal ideation, anxiety, and sleeping disorders, and any other adverse event.

(6) “Last menstrual period” or “gestational age” means the time that has elapsed since the first day of the woman’s last menstrual period.

(7) “Medical practitioner” means a person authorized under 50-20-109 to perform an abortion in this state.

(8) “Pregnant” or “pregnancy” means the female reproductive condition of having an unborn child in the uterus.

(9) “Provide” mean any act of giving, selling, dispensing, administering, transferring possession to, or otherwise providing or prescribing an abortion-inducing drug.

(10) “Qualified medical practitioner” means a medical practitioner who has the ability to:

(a) identify and document a viable intrauterine pregnancy;

(b) assess the gestational age of pregnancy and inform the woman of gestational age-specific risks;

(c) diagnose ectopic pregnancy;

(d) determine blood type and administer RhoGAM if a woman is Rh negative;

(e) assess for signs of domestic abuse, reproductive control, human trafficking, and other signals of coerced abortion;

(f) provide surgical intervention or who has entered into a contract with another qualified medical practitioner to provide surgical intervention; and

(g) supervise and bear legal responsibility for any agent, employee, or contractor who is participating in any part of a procedure, including but not limited to preprocedure evaluation and care.

(11) “Unborn child” means an individual organism of the species homo sapiens, beginning at fertilization, until the point of being born alive as defined in 1 U.S.C. 8(b).

[50-20-703, MCA](#)

Mont. Code Annot. § 50-20-704. In-person requirement

An abortion-inducing drug may be provided only by a qualified medical practitioner following the procedures set forth in this part. A manufacturer, supplier, medical practitioner, qualified medical practitioner, or any other person may not provide an abortion-inducing drug via courier, delivery, or mail service.

(See above, *Planned Parenthood of Montana v. State by & through Knudsen*, which affirmed a preliminary injunction on this statute.)

Mont. Code Annot. § 50-20-705. Distribution of abortion-inducing drugs

(1) Because the failure and complication rates from a chemical abortion increase with advancing gestational age and because the physical symptoms of chemical abortion can be identical to the symptoms of ectopic pregnancy and abortion-inducing drugs do not treat ectopic pregnancies and are contraindicated in ectopic pregnancies, the qualified medical practitioner providing an abortion-inducing drug shall examine the woman in person and, prior to providing an abortion-inducing drug, shall:

- (a) independently verify that a pregnancy exists;
- (b) determine the woman's blood type, and if the woman is Rh negative, be able to and offer to administer RhoGAM at the time of the abortion;
- (c) inform the woman that the woman may see the remains of the unborn child in the process of completing the abortion; and
- (d) document in the woman's medical chart the gestational age and intrauterine location of the pregnancy and whether the woman received treatment for Rh negativity, as diagnosed by the most accurate standard of medical care.

(2) A qualified medical practitioner providing an abortion-inducing drug must be credentialed and competent to handle complications management, including emergency transfer, or must have a signed contract with an associated medical practitioner who is credentialed to handle complications and must be able to produce the signed contract on demand by the woman or by the department. Each woman to whom a qualified medical practitioner provides an abortion-inducing drug must be given the name and phone number of the associated medical practitioner.

(3) The qualified medical practitioner providing an abortion-inducing drug, or an agent of the qualified medical practitioner, shall schedule a followup visit for the woman at approximately 7 to 14 days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding. The qualified medical practitioner shall make all reasonable efforts to ensure that the woman returns for the scheduled appointment. A brief description of the efforts made to comply with this subsection, including the date, time, and identification by name of the person making the efforts, must be included in the woman's medical record.

(See above, *Planned Parenthood of Montana v. State by & through Knudsen*, which affirmed a preliminary injunction on this statute.)

Mont. Code Annot. § 50-20-706. Prohibition on providing abortion-inducing drugs at elementary, secondary, and postsecondary schools

An abortion-inducing drug may not be provided in an elementary, secondary, or postsecondary school facility or on school grounds.

(See above, *Planned Parenthood of Montana v. State by & through Knudsen*, which affirmed a preliminary injunction on this statute.)

Mont. Code Annot. § 50-20-707. Informed consent requirements for abortion-inducing drugs

(1) An abortion-inducing drug may not be provided without the informed consent of the pregnant woman to whom the abortion-inducing drug is being provided.

(2) Informed consent to a chemical abortion must be obtained at least 24 hours before the abortion-inducing drug is provided to the pregnant woman except when, in reasonable medical judgment, compliance with this subsection would pose a greater risk of:

(a) the death of the pregnant woman; or

(b) the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the pregnant woman.

(3) A form created by the department must be used by a qualified medical practitioner to obtain the consent required prior to providing an abortion-inducing drug.

(4) A consent form is not valid and consent is not sufficient unless:

(a) the woman initials each entry, list, description, or declaration required to be included in the consent form as provided in subsection (5);

(b) the woman signs the consent statement described in subsection (5)(j); and

(c) the qualified medical practitioner signs the qualified medical practitioner declaration described in subsection (5)(k).

(5) The consent form must include, but is not limited to the following:

(a) the probable gestational age of the unborn child as determined by both patient history and ultrasound results used to confirm gestational age;

(b) a detailed description of the steps to complete the chemical abortion;

(c) a detailed list of the risks related to the specific abortion-inducing drug or drugs to be used, including but not limited to hemorrhage, failure to remove all tissue of the unborn child, which may require an additional procedure, sepsis, sterility, and possible continuation of pregnancy;

(d) information about Rh incompatibility, including that if the pregnant woman has an Rh negative blood type, the woman should receive an injection of Rh immunoglobulin at the time of the abortion to prevent Rh incompatibility in future pregnancies, which can lead to complications and miscarriage in future pregnancies;

(e) a description of the risks of complications from a chemical abortion, including incomplete abortion, which increase with advancing gestational age;

(f) information about the possibility of reversing the effects of the chemical abortion if the pregnant woman changes the woman's mind and that time is of the essence;

(g) information that the pregnant woman could see the remains of the unborn child in the process of completing the abortion;

(h) information that initial studies suggest that children born after reversing the effects of an abortion-inducing drug have no greater risk of birth defects than the general population and that initial studies suggest that there is no increased risk of maternal mortality after reversing the effects of an abortion-inducing drug;

- (i)** notice that information on and assistance with reversing the effects of abortion-inducing drugs are available in the state-prepared materials;
- (j)** an acknowledgment of risks and consent statement, which must be signed by the woman. The statement must include but is not limited to the following declarations, which must be individually initialed by the woman, that:
- (i)** the woman understands that the abortion-inducing drug regimen or procedure is intended to end the woman's pregnancy and will result in the death of the unborn child;
 - (ii)** the woman is not being forced to have an abortion, the woman has the choice not to have the abortion, and the woman may withdraw the woman's consent to the abortion-inducing drug regimen even after beginning the abortion-inducing drug regimen;
 - (iii)** the woman understands that the chemical abortion regimen or procedure to be used has specific risks and may result in specific complications;
 - (iv)** the woman has been given the opportunity to ask questions about the woman's pregnancy, the development of the unborn child, alternatives to abortion, the abortion-inducing drug or drugs to be used, and the risks and complications inherent to the abortion-inducing drug or drugs to be used;
 - (v)** the woman was specifically told that “information on the potential ability of qualified medical professionals to reverse the effects of an abortion obtained through the use of abortion-inducing drugs is available at www.abortionpillreversal.com, or you can contact (877) 558-0333 for assistance in locating a medical professional who can aid in the reversal of an abortion”;
 - (vi)** the woman has been provided access to state-prepared, printed materials on informed consent for abortion;
 - (vii)** if applicable, the woman has been given the name and phone number of the associated medical practitioner who has agreed to provide medical care and treatment in the event of complications associated with the abortion-inducing drug regimen or procedure;
 - (viii)** the qualified medical practitioner will schedule an in-person follow-up visit for the woman approximately 7 to 14 days after providing the abortion-inducing drug or drugs to confirm that the pregnancy is completely terminated and to assess the degree of bleeding and other complications;
 - (ix)** the woman has received or been given sufficient information to give the woman's informed consent to the abortion-inducing drug regimen or procedure; and
 - (x)** the woman has a private right of action to sue the qualified medical practitioner under the laws of the state if the woman feels coerced or misled prior to obtaining an abortion and how to access state resources regarding the woman's legal right to obtain relief.

(k) a qualified medical practitioner declaration that must be signed by the qualified medical practitioner stating that the qualified medical practitioner has explained the abortion-inducing drug or drugs to be used, has provided all of the information required in this subsection (5), and has answered all of the woman's questions.

(See above, *Planned Parenthood of Montana v. State by & through Knudsen*, which affirmed a preliminary injunction on this statute.)

50-20-708 Information required in state-prepared materials.

(1) The department shall publish state-prepared, printed materials on informed consent for abortion and shall include the following statement:

“Information on the potential ability of qualified medical practitioners to reverse the effects of an abortion obtained through the use of abortion-inducing drugs is available at www.abortionpillreversal.com, or you can contact (877) 558-0333 for assistance in locating a medical professional who can aid in the reversal of an abortion.”

(2) The department shall annually review and update, if necessary, the statement requirement under subsection (1).

(3) As part of the informed consent counseling services required in 50-20-707, the qualified medical practitioner shall inform the pregnant woman about abortion pill reversal and provide the woman with the state-prepared materials described in subsection (1).

[50-20-708, MCA](#)

Mont. Code Annot. § 50-20-709. Reporting on chemical abortions

(1) For the purpose of promoting maternal health and adding to the sum of medical and public health knowledge through the compilation of relevant data, a report of each chemical abortion performed must be made to the department on forms prescribed by the department. The reports must be completed by the facility in which the abortion-inducing drug was provided, signed by the qualified medical practitioner who provided the abortion-inducing drug, and transmitted to the department within 15 days after each reporting month.

(2) A report must include, at a minimum, the following information:

(a) identification of the qualified medical practitioner who provided the abortion-inducing drug;

(b) whether the chemical abortion was completed at the facility in which the abortion-inducing drug was provided or at an alternative location;

(c) the referring medical practitioner, agency, or service, if any;

(d) the pregnant woman's county, state, and country of residence;

(e) the pregnant woman's age and race;

(f) the number of previous pregnancies, number of live births, and number of previous abortions of the pregnant woman;

(g) the probable gestational age of the unborn child as determined by both patient history and ultrasound results used to confirm the gestational age. The report must include the date of the ultrasound and gestational age determined on that date.

(h) the abortion-inducing drug or drugs used, the date each was provided to the pregnant woman, and the reason for the abortion, if known;

(i) preexisting medical conditions of the pregnant woman that would complicate the pregnancy, if any;

(j) whether the woman returned for a follow-up examination to determine completion of the abortion procedure and to assess bleeding, the date and results of the follow-up examination, and what reasonable efforts were made by the qualified medical practitioner to encourage the woman to return for a follow-up examination if the woman did not;

(k) whether the woman suffered any complications and, if so, what specific complications arose and what follow-up treatment was needed; and

(l) the amount billed to cover the treatment for specific complications, including whether the treatment was billed to medicaid, private insurance, private pay, or another method, including charges for any physician, hospital, emergency room, prescription or other drugs, laboratory tests, and other costs for treatment rendered.

(3) Reports required under this section may not contain:

(a) the name of the pregnant woman;

(b) common identifiers, such as a social security number or driver's license number; or

(c) other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a pregnant woman who has obtained or seeks to obtain a chemical abortion.

(4) A qualified medical practitioner who provides an abortion-inducing drug to a pregnant woman who knows that the woman experiences, during or after the use of the abortion-inducing drug, an adverse event shall provide a written report of the adverse event within 3 days of the event to the United States food and drug administration via the medwatch reporting system, to the department, and to the state board of medical examiners.

(5)

(a) A medical practitioner, qualified medical practitioner, associated medical practitioner, or other health care provider who treats a woman, either contemporaneously to or at any time after a chemical abortion, for an adverse event or complication related to a chemical abortion shall make a report of the adverse event to the department on forms prescribed by the department. The reports must be completed by the facility in which the adverse event or complication treatment was provided, signed by the medical practitioner, qualified medical practitioner, associated medical practitioner, or other health care provider who treated the adverse event or complication, and transmitted to the department within 15 days after each reporting month.

(b) The report must include, at a minimum:

(i) the information required under subsections (2)(a) through (2)(j) and (2)(l); and

(ii) information about the specific complications that arose, whether an emergency transfer was required, and whether any followup treatment was needed, including whether additional drugs or medications were provided in order to complete the abortion.

(6) The department shall prepare a comprehensive annual statistical report for the legislature based on the data gathered from reports under this section. The aggregated data must also be made available to the public by the department in a downloadable format.

(7) The department shall summarize aggregate data from the reports required under this part and submit the data to the U.S. centers for disease control and prevention for the purpose of inclusion in the annual vital statistics report.

(8) Reports filed pursuant to this section must be deemed public records and must be available to the public in accordance with the confidentiality and public records reporting laws of this state. Original copies of all reports filed under this section must be available to the state board of medical examiners, state board of pharmacy, state law enforcement officials, and child protective services for use in the performance of their official duties.

(9) Absent a valid court order or judicial subpoena, the department or any other state department, agency, office, or employee may not compare data concerning chemical abortions or abortion complications maintained in an electronic or other information system file with data in any other electronic or other information system, the comparison of which could result in identifying, in any manner or under any circumstances, a woman obtaining or seeking to obtain a chemical abortion.

(10) Statistical information that may reveal the identity of a woman obtaining or seeking to obtain a chemical abortion may not be maintained by the department or any other state department, agency, office, employee, or contractor.

(11) The department shall communicate the reporting requirements of this section to all medical professional organizations, medical practitioners, and facilities operating in the state.

(See above, *Planned Parenthood of Montana v. State by & through Knudsen*, which affirmed a preliminary injunction on this statute.)

Mont. Code Annot. § 50-20-711. Criminal penalties

(1) A person who purposely or knowingly or negligently violates any provision of this part is guilty of a felony and upon conviction shall be fined an amount not to exceed \$50,000, be imprisoned in a state prison for a term not to exceed 20 years, or both. As used in this section, “purposely”, “knowingly”, and “negligently” have the meanings provided in 45-2-101.

(2) A criminal penalty may not be assessed against the pregnant woman on whom the chemical abortion is attempted or performed.

(See above, *Planned Parenthood of Montana v. State by & through Knudsen*, which affirmed a preliminary injunction on this statute.)

50-20-712 Civil remedies and professional sanctions.

(1) In addition to all other remedies available under the laws of this state, failure to comply with the requirements of this part:

(a) provides a basis for a civil malpractice action for actual and punitive damages;

(b) provides a basis for professional disciplinary action under Title 37 for the suspension or revocation of the license of a health care provider; and

(c) provides a basis for recovery for the woman's survivors for the wrongful death of the woman under 27-1-513.

(2) Civil liability may not be imposed against the pregnant woman on whom the chemical abortion is attempted or performed.

(3) When requested, the court shall allow a woman to proceed using solely the woman's initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman on whom the chemical abortion was attempted or performed.

(4) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for reasonable attorney fees in favor of the plaintiff against the defendant.

(5) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court may render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.

[50-20-712, MCA](#)

50-20-803. Definitions. As used in this part, the following definitions apply:

(1) "Abortion clinic" means a health care provider that performs any abortion procedure or provides an abortion-inducing drug.

(2) (a) "Abortion-inducing drug" means a medicine, drug, or any other substance provided, prescribed, or dispensed with the intent to terminate the clinically diagnosable pregnancy of a woman with the knowledge that the termination will with reasonable likelihood cause the death of the unborn child.

(b) The term includes the off-label use of drugs known to have abortion-inducing properties that are prescribed specifically with the intent of causing an abortion.

(c) The term does not include a drug that may be known to cause an abortion that is prescribed for other medical indications.

(3) "Born alive" means the complete expulsion or extraction from the mother of a human infant, at any stage of development, who, after expulsion or extraction, breathes, has a beating heart, or has definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, induced abortion, or another method.

(4) "Health care provider" means an individual who may be asked to participate in any way in a health care service or procedure, including but not limited to a physician, physician's assistant, nurse, certified nursing assistant, medical assistant, hospital employee, medical facility employee, or abortion clinic employee.

(5) "Knowingly" has the meaning provided in **45-2-101**.

(6) "Medical facility" means a public or private hospital, clinic, center, medical school, medical training institute, health care facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location where medical care or treatment is provided to an individual.

(7) "Purposely" has the meaning provided in **45-2-101**.

50-20-804. Infant safety and protection.

(1) A health care provider present at the time an infant is born alive following an abortion or an attempted abortion shall:

(a) exercise the same degree of professional skill, care, and diligence to preserve the life and health of the infant as a reasonably diligent and conscientious health care provider would render to any other infant born alive at the same gestational age; and

(b) following the exercise of skill, care, and diligence required under subsection (1)(a), ensure the infant born alive is immediately transported and admitted to a medical facility.

(2) The requirements of this section may not be construed to prevent an infant's parents or guardian from refusing to give consent to medical treatment or surgical care that is not medically necessary or reasonable, including care or treatment that:

(a) is not necessary to save the life of the infant;

(b) has a potential risk to the infant's life or health that outweighs the potential benefit to the infant from the treatment or care; or

(c) will do no more than temporarily prolong the act of dying when death is imminent.

50-20-805. Criminal penalties -- professional sanctions -- civil liability.

(1) A health care provider who purposely or knowingly violates **50-20-804** commits a felony offense and, on conviction, shall be subject to a fine not to exceed \$1,000, imprisonment in the state prison for a term not to exceed 5 years, or both.

(2) A licensed health care provider who purposely or knowingly violates the prohibition in **50-20-804** commits an act of unprofessional conduct, and the individual's license to practice medicine in this state must be suspended for a minimum of 1 year pursuant to Title 37.

(3) In addition to all other remedies available under the laws of this state, failure to comply with the requirements of this part provides a basis for:

(a) a civil malpractice action for actual and punitive damages; and

(b) a civil fine of not less than \$5,000 for each violation imposed by the department of justice.

50-20-806. Mandatory reporting.

A health care provider, medical facility, abortion clinic, or employee or volunteer of a medical facility or abortion clinic with knowledge of a violation of this part shall immediately report the violation to the department of justice.

50-20-901. Definitions. As used in this part, the following definitions apply:

(1) (a) "Abortion clinic" means a facility that:

(i) performs surgical abortion procedures; or

(ii) provides an abortion-inducing drug.

(b) The term does not include:

(i) a hospital as defined in **50-5-101**;

(ii) a critical access hospital as defined in **50-5-101**;

(iii) an outpatient center for surgical services as defined in **50-5-101**; or

(iv) a facility that provides, prescribes, administers, or dispenses an abortion-inducing drug to fewer than five patients each year.

(2) (a) "Abortion-inducing drug" means a medicine, drug, or other substance provided with the intent of terminating the clinically diagnosable pregnancy of a woman.

(b) The term includes the off-label use of drugs known to have abortion-inducing properties that are prescribed specifically with the intent of causing an abortion.

(c) The term does not include the use of drugs that may be known to cause an abortion if the drugs are prescribed for a medical indication other than abortion.

(3) "Affiliate" means an organization that directly or indirectly:

(a) owns or controls another organization;

(b) is owned or controlled, in whole or in part, by another organization;

(c) is related by shareholdings or other means of control to another organization;

(d) is a parent or subsidiary of another organization; or

(e) is under common control with another organization.

(4) "Medical practitioner" means a person authorized under **50-20-109** to perform an abortion in this state.

50-20-902. Licensure of abortion clinics -- application -- fee.

(1) A person may not operate or advertise the operation of an abortion clinic unless the person is licensed by the department.

(2) An applicant for licensure as an abortion clinic shall apply on a form prescribed by the department containing information requested by the department pursuant to **50-20-903**, including:

- (a) an attestation that the applicant is of reputable and responsible character and is able to comply with rules adopted under **50-20-903**;
- (b) the name of the applicant;
- (c) the location of the abortion clinic and the name of the person in charge of the abortion clinic;
- (d) the qualifications of the applicant or of the medical practitioners employed by or to be employed by the abortion clinic to perform surgical abortion procedures or to prescribe, administer, or provide abortion-inducing drugs; and
- (e) disclosures regarding:
 - (i) whether the applicant or an owner or affiliate of the applicant operated an abortion clinic that was closed as a direct result of patient health and safety;
 - (ii) whether an owner or clinic staff member has been convicted of a felony offense; and
 - (iii) whether an owner or clinic staff member was ever employed by a facility owned or operated by the applicant that closed because of administrative or legal action.

(3) An applicant for licensure shall include with the application copies of:

- (a) administrative and legal documentation relating to information required under subsections (2)(e)(i) and (2)(e)(ii);
- (b) inspection reports, if any; and
- (c) violation remediation contracts, if any.

50-20-903. Department regulation of abortion clinics -- rulemaking.

(1) In accordance with Title 50, chapter 5, the department shall license and regulate abortion clinics as provided in this part and shall enforce the provisions of this part.

(2) The department shall adopt administrative rules for the licensure and operation of abortion clinics, including rules:

- (a) establishing minimum license qualifications;
- (b) establishing requirements for:
 - (i) sanitation standards;
 - (ii) staff qualifications;
 - (iii) necessary emergency equipment;
 - (iv) providing emergency care;
 - (v) monitoring patients after the administration of anesthesia;

- (vi) providing follow-up care for patient complications;
 - (vii) quality assurance;
 - (viii) infection control;
 - (ix) the architecture or layout of an abortion clinic;
 - (x) providing to patients a hotline telephone number to assist women who are coerced into an abortion or who are victims of sex trafficking; and
 - (xi) obtaining annual training by law enforcement on identifying and assisting women who are coerced into an abortion or who are victims of sex trafficking;
- (c) establishing operating policies for maintaining medical records, including the requirement that forms requiring a patient signature be stored in the patient's medical record;
- (d) establishing procedures for the issuance, renewal, denial, and revocation of licenses, including:
- (i) the form and content of the license; and
 - (ii) the collection of an annual license fee of \$450, payable to the department for deposit in the general fund;
- (e) establishing procedures and standards for inspections; and
- (f) establishing procedures for addressing any violations of this section or rules adopted pursuant to this section.

50-20-904. Inspections.

In accordance with Title 50, chapter 5, the department shall inspect an abortion clinic at least once each calendar year. If the department receives a complaint involving an abortion clinic, the department may conduct additional investigations as needed.