

Amendment - 2nd Reading/2nd House-tan - Requested by: Tom McGillvray - (S) Committee of the Whole

- 2025

69th Legislature 2025

Drafter: Julianne Burkhardt,

HB0388.002.001

HOUSE BILL NO. 388

INTRODUCED BY A. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING TARGETING PREGNANCY CENTERS FOR REGULATION OR OVERSIGHT BECAUSE PREGNANCY CENTERS DO NOT PERFORM, REFER, OR COUNSEL IN FAVOR OF ABORTION OR CONTRACEPTION; ~~PROVIDING A PRIVACY POLICY; REQUIRING CONSENT TO SHARE PERSONAL INFORMATION; CREATING A RIGHT TO REQUEST DELETION OF DATA; PROVIDING DATA SECURITY; PROHIBITING THE SALE OF DATA WITHOUT CONSENT; PROVIDING A PRIVATE RIGHT OF ACTION;~~ PROVIDING DEFINITIONS; PROVIDING REMEDIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, pregnancy centers have a considerable and growing life-affirming impact on the women, men, children, and communities they serve; and

WHEREAS, pregnancy centers serve women in Montana and across the United States with integrity and compassion; and

WHEREAS, pregnancy centers provide comprehensive care to women and men facing unexpected pregnancies, including resources to meet their physical, psychological, emotional, and spiritual needs; and

WHEREAS, pregnancy centers offer women free, confidential, and compassionate services, which can include pregnancy tests, peer counseling, 24-hour telephone hotlines, childbirth and parenting classes, referrals to community health care, adoption referrals, and other support services; and

WHEREAS, many medical pregnancy centers offer ultrasounds and other medical services; and

WHEREAS, pregnancy centers encourage women to make positive life choices by equipping them with complete and accurate information regarding their pregnancy options and the development of their unborn children; and

WHEREAS, pregnancy centers provide important support and resources for women who choose childbirth over abortion; and

WHEREAS, pregnancy centers have faced unprecedented attacks since the Supreme Court's decision

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1 in Dobbs v. Jackson Women's Health Organization, overturning Roe v. Wade and the federal constitutional right
2 to abortion; and

3 WHEREAS, since 2022, at least one-third of the states have introduced legislation seeking to
4 undermine pregnancy centers' freedom of speech and association or interfere with their hiring and staffing
5 decisions, while numerous cities and municipalities have considered similar ordinances.

6

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

8

9 NEW SECTION. Section 1. Definitions. As used in [sections 1 through 4 ~~11 4~~], the following
10 definitions apply:

11 (1) (a) "Abortion" means the act of using or prescribing an instrument, medicine, or drug or a
12 substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman and
13 for the purpose of ensuring the death of her unborn child.

14 (b) The term does not include an act taken with the intent to:

15 (i) save the life or preserve the health of the unborn child;

16 (ii) remove a dead unborn child caused by miscarriage;

17 (iii) remove an ectopic pregnancy; or

18 (iv) perform a previability separation procedure when the procedure is, in reasonable medical
19 judgment, necessary to save or preserve the life of the pregnant woman.

20 (2) (a) "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or
21 dispensed with the intent to terminate the clinically diagnosable pregnancy of a woman and for the purpose of
22 ensuring the death of her unborn child.

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

25 (c) The term does not include drugs that are known to cause an abortion but that are prescribed
26 for other medical indications.

27 ~~(3) "CONSUMER" MEANS A NATURAL PERSON WHO IS A MONTANA RESIDENT OR WHOSE HEALTH OR~~

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~~PERSONAL DATA WAS COLLECTED AT A MEDICAL PREGNANCY CENTER OR PREGNANCY CENTER IN MONTANA~~

~~(4) "CONSUMER HEALTH DATA" MEANS PERSONAL INFORMATION THAT IS LINKED OR REASONABLY~~

~~LINKABLE TO A CONSUMER AND THAT IDENTIFIES THE CONSUMER'S PAST, PRESENT, OR FUTURE PHYSICAL OR MENTAL~~

~~HEALTH STATUS. HEALTH STATUS INCLUDES BUT IS NOT LIMITED TO:~~

~~(A) INDIVIDUAL HEALTH CONDITIONS, TREATMENT, DISEASES, OR DIAGNOSIS;~~

~~(B) SOCIAL, PSYCHOLOGICAL, BEHAVIORAL, AND MEDICAL INTERVENTIONS;~~

~~(C) HEALTH-RELATED SURGERIES OR PROCEDURES;~~

~~(D) USE OR PURCHASE OF PRESCRIBED MEDICATION;~~

~~(E) BODILY FUNCTIONS, VITAL SIGNS, SYMPTOMS, OR MEASUREMENTS;~~

~~(F) DIAGNOSES OR DIAGNOSTIC TESTING, TREATMENT, OR MEDICATION;~~

~~(G) REPRODUCTIVE OR SEXUAL HEALTH INFORMATION;~~

~~(H) BIOMETRIC DATA; AND~~

~~(I) GENETIC DATA;~~

~~(3)(5)(3)~~ "Contraception" means the use of any natural or artificial means to prevent the fertilization of a human ovum.

~~(4)(6)(4)~~ "Ectopic pregnancy" means the state of carrying an unborn child outside of the uterine cavity.

~~(5)(7)(5)~~ "Medical pregnancy center" means a pregnancy center that provides medical testing, counseling, and pregnancy-related care.

~~(6)(8)(6)~~ "Miscarriage" means the spontaneous loss of an unborn child.

~~(9) "PERSONAL DATA" MEANS ANY INFORMATION THAT IS LINKED OR REASONABLY LINKABLE TO AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL. PERSONALLY IDENTIFYING INFORMATION IS PERSONAL DATA AND INCLUDES PRECISE LOCATION INFORMATION THAT COULD REASONABLY INDICATE A CONSUMER'S ATTEMPT TO ACQUIRE OR RECEIVE HEALTH SERVICES OR SUPPLIES, DATA THAT IDENTIFIES A CONSUMER SEEKING SERVICES, OR ANY INFORMATION THAT A MEDICAL PREGNANCY CENTER OR PREGNANCY CENTER, OR PROCESSORS OR AFFILIATES, USES TO IDENTIFY OR ASSOCIATE A CONSUMER WITH THE DATA THAT IS DERIVED OR EXTRAPOLATED FROM NONHEALTH INFORMATION.~~

~~(7)(10)(7)~~ "Pregnancy center" means a private, nonprofit organization that promotes childbirth

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1 and alternatives to abortion and provides women, children, and families with resources, counseling, classes,
2 referrals, and information related to pregnancy, childbearing, adoption, and parenting.

3 ~~(8)(11)(8)~~ (a) "Previability separation procedure" means a medical procedure performed by a
4 qualified health care provider to remove an unborn child from the mother's uterine cavity before the stage of
5 fetal development when, in the reasonable medical judgment of the qualified health care provider based on the
6 particular facts of the case and in light of the most advanced medical technology and information available,
7 there is a reasonable likelihood of sustained survival of the unborn child outside the mother's body, with or
8 without artificial support.

9 (b) The term does not include an abortion.

10
11 **NEW SECTION. Section 2. Prohibition on interference with work of pregnancy center.** The state
12 or a local government may not adopt or enact a law, rule, policy, or similar measure that:

13 (1) requires a pregnancy center to:

14 (a) offer or perform abortions;

15 (b) offer, provide, or distribute abortion-inducing drugs or contraception;

16 (c) refer a patient for an abortion, an abortion-inducing drug, or contraception;

17 (d) counsel a patient in favor of an abortion, an abortion-inducing drug, or contraception; or

18 (e) post an advertisement, sign, flyer, or similar material that promotes or provides information
19 about obtaining an abortion, abortion-inducing drugs, or contraception;

20 (2) prohibits a pregnancy center from:

21 (a) providing information, care, counseling, classes, or other services related to pregnancy,
22 childbirth, or parenting because the pregnancy center does not perform, refer, or counsel in favor of abortion,
23 abortion-inducing drugs, or contraception;

24 (b) providing prenatal and postnatal resources, such as diapers, baby clothes, baby furniture,
25 formula, and similar items, because the pregnancy center does not perform, refer, or counsel in favor of
26 abortion, abortion-inducing drugs, or contraception;

27 (c) providing medical testing, counseling, and care related to pregnancy or childbirth because the

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pregnancy center does not perform, refer, or counsel in favor of abortion, abortion-inducing drugs, or contraception; or

(d) counseling a woman on pregnancy-related care or treatment, including care or treatment that may reverse the effects of abortion-inducing drugs; or

(3) interferes with the pregnancy center's staffing or hiring decisions by requiring the pregnancy center to interview, hire, or continue to employ a person who does not affirm the center's mission statement or agree to comply with the center's pro-life ethic and operating procedures.

NEW SECTION. SECTION 3.—PRIVACY POLICY. (1) MEDICAL PREGNANCY CENTERS AND PREGNANCY CENTERS SHALL MAINTAIN A CONSUMER HEALTH DATA AND PERSONAL DATA PRIVACY POLICY THAT CLEARLY AND CONSPICUOUSLY DISCLOSES:

(A) THE CATEGORIES OF PERSONALLY IDENTIFIABLE INFORMATION AND MEDICAL DATA COLLECTED AND THE PURPOSE FOR WHICH THE DATA IS COLLECTED, INCLUDING HOW THE DATA WILL BE USED;

(B) THE CATEGORIES OF SOURCES FROM WHICH THE DATA IS COLLECTED;

(C) THE CATEGORIES OF THIRD PARTIES AND SPECIFIC AFFILIATES WITH WHOM THE MEDICAL PREGNANCY CENTER AND PREGNANCY CENTER SHARES THE CONSUMER HEALTH DATA; AND

(D) HOW A CONSUMER MAY EXERCISE THEIR RIGHTS TO PROTECT THIS INFORMATION;

(2) A MEDICAL PREGNANCY CENTER OR A PREGNANCY CENTER SHALL PROMINENTLY PUBLISH A LINK TO ITS CONSUMER HEALTH DATA PRIVACY POLICY ON ITS HOMEPAGE;

(3) MEDICAL PREGNANCY CENTERS AND PREGNANCY CENTERS SHALL POST A CLEAR STATEMENT THAT THEIR ENTITY IS NOT CONSIDERED A REGULATED ENTITY UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT;

(4) MEDICAL PREGNANCY CENTERS OR PREGNANCY CENTERS MAY NOT COLLECT, USE, OR SHARE ADDITIONAL CATEGORIES OF CONSUMER HEALTH DATA NOT DISCLOSED IN THE POLICY WITHOUT FIRST DISCLOSING THE ADDITIONAL CATEGORIES AND OBTAINING THE CONSUMER'S AFFIRMATIVE WRITTEN CONSENT PRIOR TO THE COLLECTION, USE, OR SHARING OF THE CONSUMER HEALTH DATA;

(5) IT IS A VIOLATION OF THIS CHAPTER FOR A MEDICAL PREGNANCY CENTER OR PREGNANCY CENTER TO

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CONTRACT WITH A PROCESSOR TO PROCESS CONSUMER HEALTH DATA IN A MANNER THAT IS INCONSISTENT WITH THE MEDICAL PRIVACY CENTER OR PREGNANCY CENTER CONSUMER DATA PRIVACY POLICY.

NEW SECTION. SECTION 4. — CONSENT TO COLLECT AND SHARE INFORMATION REQUIRED. (1) MEDICAL PREGNANCY CENTERS AND PREGNANCY CENTERS MAY NOT COLLECT ANY CONSUMER HEALTH DATA EXCEPT:

(A) — WITH CONSENT FROM THE CONSUMER FOR COLLECTION FOR A SPECIFIC PURPOSE;

(B) — TO THE EXTENT NECESSARY TO PROVIDE A PRODUCT OR SERVICE THAT THE CONSUMER HAS REQUESTED FROM THE MEDICAL PREGNANCY CENTER OR PREGNANCY CENTERS;

(2) — MEDICAL PREGNANCY CENTERS OR PREGNANCY CENTERS MAY NOT SHARE ANY CONSUMER HEALTH DATA EXCEPT:

(A) — WITH CONSENT FROM THE CONSUMER FOR SHARING THAT IS SEPARATE AND DISTINCT FROM THE CONSENT OBTAINED TO COLLECT CONSUMER HEALTH DATA; OR

(B) — TO THE EXTENT NECESSARY TO PROVIDE A PRODUCT OR SERVICE THAT THE CONSUMER TO WHOM THE DATA RELATES HAS REQUESTED;

(3) — CONSENT MUST BE OBTAINED PRIOR TO THE COLLECTION OR SHARING OF ANY CONSUMER HEALTH DATA, AND THE REQUEST FOR CONSENT MUST CLEARLY AND CONSPICUOUSLY DISCLOSE

(A) — THE CATEGORIES OF CONSUMER HEALTH DATA COLLECTED OR SHARED;

(B) — THE PURPOSE OF THE COLLECTION OR SHARING OF THE CONSUMER HEALTH DATA, INCLUDING THE SPECIFIC WAYS IN WHICH IT WILL BE USED;

(C) — THE CATEGORIES OF ENTITIES WITH WHOM THE CONSUMER HEALTH DATA IS SHARED; AND

(D) — HOW THE CONSUMER CAN WITHDRAW CONSENT FROM FUTURE COLLECTION OR SHARING OF THE CONSUMER'S HEALTH DATA.

NEW SECTION. SECTION 5. — RIGHT TO REQUEST DATA DELETION. (1) A CONSUMER HAS THE RIGHT TO CONFIRM WHETHER THE MEDICAL PREGNANCY CENTER OR PREGNANCY CENTER IS COLLECTING, SHARING, OR SELLING DATA CONCERNING THE CONSUMER AND TO ACCESS THAT DATA, INCLUDING A LIST OF ALL THIRD PARTIES AND AFFILIATES WITH WHOM THE MEDICAL PREGNANCY CENTER OR PREGNANCY CENTER HAS SHARED OR SOLD THE

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CONSUMER DATA AND AN ACTIVE E-MAIL ADDRESS OR OTHER ONLINE MECHANISM THAT THE CONSUMER MAY USE TO CONTACT THIRD PARTIES;

(2) (A) A CONSUMER HAS THE RIGHT TO WITHDRAW CONSENT FROM THE MEDICAL PREGNANCY CENTER OR PREGNANCY CENTER'S COLLECTION AND SHARING OF THE CONSUMER'S DATA.

(B) A MEDICAL PREGNANCY CENTER OR PREGNANCY CENTER THAT RECEIVES THE REQUEST TO DELETE ANY DATA SHALL:

(i) DELETE THE DATA FROM ITS RECORDS, INCLUDING FROM ALL PARTS OF THE CENTER'S NETWORK, INCLUDING ARCHIVED OR BACKUP SYSTEMS; AND

(ii) NOTIFY ALL AFFILIATES, PROCESSORS, CONTRACTORS, AND OTHER THIRD PARTIES WITH WHOM THE CENTER HAS SHARED CONSUMER HEALTH DATA OF THE DELETION REQUEST.

(C) ALL AFFILIATES, PROCESSORS, CONTRACTORS, AND OTHER THIRD PARTIES WITH WHOM MEDICAL PREGNANCY CENTERS OR PREGNANCY CENTERS HAVE SHARED DATA SHALL HONOR THE CONSUMER'S DELETION REQUEST AND DELETE THE DATA FROM ITS RECORDS.

(D) A CONSUMER MAY EXERCISE THESE RIGHTS BY SUBMITTING A WRITTEN REQUEST TO THE MEDICAL PREGNANCY CENTER OR PREGNANCY CENTER. THE CENTER MAY NOT REQUIRE THE CONSUMER TO PAY TO DELETE THE INFORMATION OR TO SET UP AN ONLINE ACCOUNT OR REQUEST ADDITIONAL PERSONAL INFORMATION TO GET THE INFORMATION DELETED.

(E) THE MEDICAL PREGNANCY CENTER OR PREGNANCY CENTER SHALL COMPLETE REMOVAL WITHIN 45 DAYS OF THE REQUEST.

(F) THE MEDICAL PREGNANCY CENTER OR PREGNANCY CENTER MAY NOT UNLAWFULLY DISCRIMINATE AGAINST A CONSUMER FOR EXERCISING ANY RIGHT TO REMOVE INFORMATION.

NEW SECTION. SECTION 6. DATA SECURITY. (1) MEDICAL PREGNANCY CENTERS OR PREGNANCY CENTERS SHALL RESTRICT ACCESS TO CONSUMER HEALTH DATA BY THE EMPLOYEES, PROCESSORS, AND CONTRACTORS OF THE REGULATED ENTITY TO ONLY THOSE NECESSARY TO SERVE THE CONSUMER.

(2) MEDICAL PREGNANCY CENTERS OR PREGNANCY CENTERS SHALL ESTABLISH, IMPLEMENT, AND MAINTAIN ADMINISTRATIVE, TECHNICAL, AND PHYSICAL DATA SECURITY PRACTICES THAT, AT A MINIMUM, SATISFY

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REASONABLE STANDARDS OF CARE WITHIN THE INDUSTRY.

NEW SECTION. ~~SECTION 7.~~ SALE OF DATA WITHOUT CONSENT PROHIBITED. (1) IT IS UNLAWFUL FOR A MEDICAL PREGNANCY CENTER OR PREGNANCY CENTER TO SELL OR OFFER TO SELL CONSUMER HEALTH DATA OR PERSONAL DATA WITHOUT VALID AUTHORIZATION FROM THE CONSUMER.

(2) A CONSUMER AUTHORIZATION FORM MUST BE WRITTEN IN PLAIN LANGUAGE AND MUST, AT MINIMUM, INCLUDE:

(A) THE SPECIFIC DATA THAT THE CENTER INTENDS TO SELL;

(B) THE NAME AND CONTACT INFORMATION OF THE SELLER;

(C) THE NAME AND CONTACT INFORMATION OF THE PURCHASER; AND

(D) A DESCRIPTION OF THE PURPOSE OF THE SALE.

NEW SECTION. ~~SECTION 8.~~ DISCLAIMER. [SECTIONS 1 THROUGH 11] DO NOT APPLY TO THE HEALTH CARE ENTITIES ALREADY GOVERNED BY THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT, AND TITLE 50, CHAPTER 16.

NEW SECTION. ~~SECTION 9.~~ RIGHT OF ACTION. A PERSON HARMED BY A VIOLATION OF [SECTIONS 1 THROUGH 11] MAY BRING A CAUSE OF ACTION AGAINST A MEDICAL PREGNANCY CENTER OR PREGNANCY CENTER FOR INJUNCTIVE RELIEF, MONETARY DAMAGES, REASONABLE ATTORNEY FEES AND COSTS, AND ANY OTHER APPROPRIATE RELIEF.

NEW SECTION. Section 3. Legal remedies -- damages. (1) A pregnancy center or a party aggrieved by a violation of [section 2] may commence a civil action for damages, declaratory relief, injunctive relief, and any other appropriate relief.

(2) On a finding of a violation of [section 2], the prevailing party is entitled to recover actual damages or statutory damages of \$50,000, whichever is greater, plus attorney fees and costs. If the person acted with malice, the court may award treble actual damages or treble statutory damages, whichever is

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1 greater.

2 (3) Damages awarded under this section are cumulative and are not limited by other remedies that
3 may be available under federal or state law.

4
5 NEW SECTION. Section 4. Right of intervention. The legislature, by joint resolution, may appoint
6 one or more of its members who sponsored or cosponsored [sections 1 through 4 ~~114~~] in the member's official
7 capacity to intervene as a matter of right in a case in which the constitutionality of this ~~part~~ SECTIONS 1 THROUGH
8 ~~11~~ this part is challenged.

9
10 NEW SECTION. Section 5. Codification instruction. [Sections 1 through 4 ~~114~~] are intended to be
11 codified as a new part in Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1
12 through 4 ~~114~~].

13
14 NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are
15 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
16 the part remains in effect in all valid applications that are severable from the invalid applications.

17
18 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

19 - END -