

Senate Bill 1042

Sponsored by Senators LINTHICUM, KNOPP, HEARD, Representative STARK; Senators BAERTSCHIGER JR, BENTZ, BOQUIST, GIROD, HANSELL, THATCHER, THOMSEN, Representatives BARRETO, BONHAM, BOSHAART DAVIS, DRAZAN, LEIF, LEWIS, NEARMAN, NOBLE, POST, RESCHKE, SMITH DB, SMITH G, SPRENGER, WALLAN, WILSON, ZIKA

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires health care practitioner to exercise proper degree of care to preserve health and life of child born alive after abortion or attempted abortion. Requires health care practitioner to ensure child born alive is transported to hospital. Creates crime for failure to exercise proper standard of care, punishable by maximum of five years' imprisonment, \$125,000 fine, or both.

Allows specified person to bring civil action for damages and equitable relief against health care practitioner for failure to exercise proper standard of care. Directs court to award attorney fees to prevailing plaintiff.

Allows court to order identity or personally identifiable information of specified person protected from disclosure.

A BILL FOR AN ACT

1
2 Relating to abortion.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Sections 1 to 7 of this 2019 Act shall be known and may be cited as the**
5 **Born-Alive Infants Protection Act.**

6 **SECTION 2. As used in sections 1 to 7 of this 2019 Act:**

7 (1) "Abortion" means the use or prescription of a drug, medicine, instrument or other
8 substance or device in order to:

9 (a) Intentionally kill the unborn child of a pregnant person; or

10 (b) Terminate a person's pregnancy with a purpose other than:

11 (A) After viability, to produce a live birth and preserve the life and health of the child;

12 or

13 (B) To remove a dead unborn child.

14 (2) "Born alive" means the complete expulsion or extraction of a child from a person at
15 any stage of the child's development and after the expulsion or extraction, the child is
16 breathing or has a beating heart, pulsation of the umbilical cord or definite movement of
17 voluntary muscles, whether the umbilical cord has been severed or not. Expulsion or ex-
18 traction may occur by natural or induced labor, cesarean section or induced abortion.

19 (3) "Health care practitioner" means a person who is authorized by a health professional
20 regulatory agency in this state to engage in the practice of a health care discipline.

21 **SECTION 3. In determining the meaning of any statute, rule, regulation or interpretation**
22 **thereof by an agency of this state, "person," "human being," "child" and "individual," in ad-**
23 **dition to any other definition, means an infant member of the species homo sapiens who is**
24 **born alive at any stage of the member's development.**

25 **SECTION 4. (1) When an abortion or attempted abortion results in a child born alive, any**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 health care practitioner who is present at the time the child is born alive shall:

2 (a) Exercise the same degree of professional skill, care and diligence to preserve the life
3 and health of the child that a reasonably diligent and conscientious health care practitioner
4 would render to any other child born alive at the same gestational age; and

5 (b) Following the exercise of skill, care and diligence required under paragraph (a) of this
6 subsection, if the child was not born alive in a hospital, ensure that the child born alive is
7 immediately transported and admitted to a hospital. If the child was born alive at a hospital,
8 the health care practitioner shall continue to exercise the skill, care and diligence required
9 under paragraph (a) of this subsection.

10 (2) A health care practitioner or an employee of a health care clinic where an abortion
11 or attempted abortion results in a child born alive and who has knowledge of a violation of
12 subsection (1) of this section shall immediately report the violation to a state law enforce-
13 ment agency.

14 **SECTION 5.** Nothing in sections 1 to 7 of this 2019 Act shall be construed to affirm, deny,
15 expand or limit any legal status or legal right of a member of the species homo sapiens at
16 any point prior to being born alive.

17 **SECTION 6.** A person who knowingly or recklessly violates section 4 of this 2019 Act shall
18 be guilty of a Class C felony, except the person upon whom the abortion was performed or
19 attempted may not be prosecuted for a violation of section 4 of this 2019 Act.

20 **SECTION 7.** (1) A person upon whom an abortion was performed or attempted to be
21 performed may maintain a civil action against a person who knowingly or recklessly violates
22 section 4 of this 2019 Act for damages and equitable relief.

23 (2)(a) A court shall award attorney fees to a plaintiff who prevails in an action described
24 in subsection (1) of this section.

25 (b) A court shall award attorney fees to a defendant against whom an action described
26 in subsection (1) of this section is brought if the action is not successful and the court de-
27 termines that the action is frivolous or was brought in bad faith.

28 (3) A civil action for violation of section 4 of this 2019 Act may not be maintained against
29 a person upon whom an abortion was performed or attempted to be performed.

30 **SECTION 8.** (1) In an action brought under sections 1 to 7 of this 2019 Act, the court
31 shall rule, either by the court's own motion or that of a party, whether the identity or any
32 personally identifiable information of the person upon whom an abortion was performed or
33 attempted to be performed in violation of section 4 of this 2019 Act should be exempt from
34 disclosure, unless the person consents in a signed writing to the disclosure of the person's
35 identity or personally identifiable information.

36 (2) If the court determines, under subsection (1) of this section, that the person's identity
37 or any personally identifiable information should be exempt from disclosure, the court shall
38 issue orders to the parties, witnesses and counsel regarding the protection from disclosure
39 and shall direct that the court record be sealed and that the proceedings be closed to the
40 public to the extent necessary to protect from disclosure the person's identity or personally
41 identifiable information.

42 (3) An order issued under this section must include written findings explaining:

43 (a) Why the person's identity or personally identifiable information should be protected
44 from disclosure;

45 (b) Why the order is necessary to protect the person's identity or personally identifiable

1 **information from disclosure;**

2 **(c) How the order is narrowly tailored to achieve protection from disclosure; and**

3 **(d) Why no reasonable less restrictive alternative means exist to ensure protection from**
4 **disclosure.**

5 **(4) This section may not be construed to prevent the disclosure of the identity of the**
6 **plaintiff or of witnesses from the defendant.**

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