

House Bill 4087

Sponsored by Representatives BOICE, YUNKER, Senator SMITH DB, Representatives SMITH G, WRIGHT; Representatives BREESE-IVERSON, BUNCH, DIEHL, EDWARDS, HARBICK, HELFRICH, LEVY B, LEWIS, MANNIX, MCINTIRE, OSBORNE, OWENS, SCHARF, SKARLATOS, Senator THATCHER (Presession filed.)

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act requires that a doctor provide the same standard of care to any child born alive that requires life-saving treatment. (Flesch Readability Score: 62.6).

Requires a health care practitioner to exercise the proper degree of care to preserve the health and life of a child born alive, regardless of whether the birth was the result of an induced abortion. Allows specified persons to bring an action against a health care practitioner for violations.

Allows the court to order that the identity or personally identifiable information of specified persons is protected from disclosure.

A BILL FOR AN ACT

Relating to infants born alive; amending ORS 677.190.

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

SECTION 1. Sections 2 to 8 of this 2026 Act shall be known and may be cited as the Born-Alive Infants Protection Act.

SECTION 2. As used in sections 2 to 8 of this 2026 Act:

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

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

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

(A) To produce a live birth and preserve the life and health of the child; or

(B) To remove a dead unborn child.

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

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

SECTION 3. For purposes of determining the meaning of any statute, rule or regulation, or interpretation thereof by an agency of this state, the terms "person," "human being," "child" and "individual" include an infant member of the species Homo sapiens who is born alive at any stage of the member's development.

SECTION 4. (1) When a child is born alive and requires lifesaving treatment to survive, regardless of whether the child's birth occurred by natural or induced labor, cesarean section or induced abortion, any health care practitioner who is present at the time the child is born alive shall:

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.

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

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

(2) A health care practitioner, or an employee of a health care clinic where a pregnancy results in a child born alive, who has knowledge of a violation of subsection (1) of this section shall immediately report the violation to a state law enforcement agency.

SECTION 5. Nothing in sections 2 to 8 of this 2026 Act shall be construed to affirm, deny, expand or limit any legal status or legal right of a member of the species *Homo sapiens* at any point prior to being born alive.

SECTION 6. Intentional or reckless failure by a health care practitioner to meet the requirements of section 4 of this 2026 Act:

(1) Constitutes unprofessional conduct for purposes of ORS 677.190.

(2) May be the basis for disciplinary action under ORS 678.111.

SECTION 7. (1)(a) Except as provided in paragraph (b) of this subsection, a person whose pregnancy resulted in a child born alive who required lifesaving treatment to survive but who was not provided with the standard of care required under section 4 of this 2026 Act, or the person responsible for the fertilization that resulted in the pregnancy, may maintain an action against the health care practitioner who failed to provide the standard of care required by section 4 of this 2026 Act for actual and punitive damages.

(b) Damages may not be awarded under this subsection if the pregnancy described in paragraph (a) of this subsection was the result of criminal conduct by the person responsible for fertilization that resulted in the pregnancy described in this subsection.

(2) A cause of action for injunctive relief against a health care practitioner who intentionally or recklessly violates section 4 of this 2026 Act may be brought against the health care practitioner by:

(a) A person whose pregnancy resulted in the child born alive;

(b) The representative of a person whose pregnancy resulted in the child born alive if the person is deceased;

(c) The person responsible for the fertilization that resulted in the pregnancy;

(d) A prosecuting attorney with competent jurisdiction; or

(e) The Attorney General.

(3) Injunctive relief may not be granted to the person responsible for fertilization that resulted in the pregnancy if the pregnancy is the result of criminal conduct by the person described in this subsection.

(4) If the plaintiff prevails in the action described in this section, the court shall also award reasonable attorney fees to the plaintiff.

(5) If the defendant prevails in the action described in this section, and the court finds that the action was frivolous and brought in bad faith, the court shall award attorney fees to the defendant.

SECTION 8. (1) In any action or proceeding brought under section 7 of this 2026 Act, the

1 court shall determine whether the anonymity of a person whose pregnancy resulted in the
 2 child born alive must be exempt from public disclosure under ORS 192.311 to 192.478 if the
 3 person does not consent to disclosure.

4 (2) If the court determines that the person's anonymity must be preserved, the court
 5 shall issue orders to the parties, witnesses and counsel, direct the sealing of the record and
 6 order exclusion from the courtroom or hearing room of all persons who are not parties,
 7 witnesses or counsel. The orders described in this subsection must be accompanied by writ-
 8 ten findings that explain why the person's anonymity must be preserved, why the order is
 9 essential to that end, how the order is narrowly tailored to serve that interest and why no
 10 reasonable less-restrictive alternative exists.

11 (3) If the person described in subsection (1) of this section does not consent to disclose
 12 the person's identity, any person other than a public official who brings an action under
 13 section 7 of this 2026 Act that is related to the person's pregnancy shall bring the action
 14 under a pseudonym.

15 (4) This section may not be construed to conceal the identity of the plaintiff or witnesses
 16 from the defendant or defendant's counsel.

17 **SECTION 9.** ORS 677.190 is amended to read:

18 677.190. The Oregon Medical Board may refuse to grant, or may suspend or revoke, a license
 19 to practice for any of the following reasons:

20 (1)(a) Unprofessional or dishonorable conduct.

21 (b) For purposes of this subsection, the use of an alternative medical treatment shall not by it-
 22 self constitute unprofessional conduct. For purposes of this paragraph:

23 (A) "Alternative medical treatment" means:

24 (i) A treatment that the treating physician, based on the physician's professional experience, has
 25 an objective basis to believe has a reasonable probability for effectiveness in its intended use even
 26 if the treatment is outside recognized scientific guidelines, is unproven, is no longer used as a gen-
 27 erally recognized or standard treatment or lacks the approval of the United States Food and Drug
 28 Administration;

29 (ii) A treatment that is supported for specific usages or outcomes by at least one other physician
 30 licensed by the Oregon Medical Board; and

31 (iii) A treatment that poses no greater risk to a patient than the generally recognized or
 32 standard treatment.

33 (B) "Alternative medical treatment" does not include use by a physician of controlled substances
 34 in the treatment of a person for chemical dependency resulting from the use of controlled sub-
 35 stances.

36 (2) Employing any person to solicit patients for the licensee. However, a managed care organ-
 37 ization, independent practice association, preferred provider organization or other medical service
 38 provider organization may contract for patients on behalf of physicians.

39 (3) Representing to a patient that a manifestly incurable condition of sickness, disease or injury
 40 can be cured.

41 (4) Obtaining any fee by fraud or misrepresentation.

42 (5) Willfully or negligently divulging a professional secret without the written consent of the
 43 patient.

44 (6)(a) Except as provided in paragraph (b) of this subsection, conviction of any offense
 45 punishable by incarceration in a Department of Corrections institution or in a federal prison, subject

1 to ORS 670.280. A copy of the record of conviction, certified to by the clerk of the court entering
2 the conviction, shall be conclusive evidence of the conviction.

3 (b) The board may not suspend or revoke a person's license, or refuse to grant a license to a
4 person, because of a conviction resulting solely from the person's provision of a reproductive or
5 gender-affirming health care service that is otherwise lawful in this state but unlawful in the juris-
6 diction in which the person provided the service, so long as the service provided was performed in
7 accordance with the standard of care applicable to the service.

8 (7) Impairment as defined in ORS 676.303.

9 (8) Fraud or misrepresentation in applying for or procuring a license to practice in this state,
10 or in connection with applying for or procuring registration.

11 (9) Making statements that the licensee knows, or with the exercise of reasonable care should
12 know, are false or misleading, regarding skill or the efficacy or value of the medicine, treatment or
13 remedy prescribed or administered by the licensee or at the direction of the licensee in the treat-
14 ment of any disease or other condition of the human body or mind.

15 (10) Impersonating another licensee licensed under this chapter or permitting or allowing any
16 person to use the license.

17 (11) Aiding or abetting the practice of medicine or podiatry by a person not licensed by the
18 board, when the licensee knows, or with the exercise of reasonable care should know, that the per-
19 son is not licensed.

20 (12) Using the name of the licensee under the designation "doctor," "Dr.," "D.O." or "M.D.,"
21 "D.P.M.," "Acupuncturist," "P.A." or any similar designation in any form of advertising that is
22 untruthful or is intended to deceive or mislead the public.

23 (13) Gross negligence or repeated negligence in the practice of medicine or podiatry.

24 (14) Incapacity to practice medicine or podiatry. If the board has evidence indicating incapacity,
25 the board may order a licensee to submit to a standardized competency examination. The licensee
26 shall have access to the result of the examination and to the criteria used for grading and evaluat-
27 ing the examination. If the examination is given orally, the licensee shall have the right to have the
28 examination recorded.

29 (15)(a) Except as provided in paragraph (b) of this subsection, disciplinary action by another
30 state of a license to practice, based upon acts by the licensee similar to acts described in this sec-
31 tion. A certified copy of the record of the disciplinary action of the state is conclusive evidence
32 thereof.

33 (b) The board may not suspend or revoke a person's license, or refuse to grant a license to a
34 person, because of a disciplinary action by another state resulting solely from the person's provision
35 of a reproductive or gender-affirming health care service that is otherwise lawful in this state but
36 unlawful in the jurisdiction in which the person provided the service, so long as the service provided
37 was performed in accordance with the standard of care applicable to the service.

38 (16) Failing to designate the degree appearing on the license under circumstances described in
39 ORS 677.184 (3).

40 (17) Willfully violating any provision of this chapter or any rule adopted by the board, board
41 order, or failing to comply with a board request pursuant to ORS 677.320.

42 (18) Failing to report the change of the location of practice of the licensee as required by ORS
43 677.172.

44 (19) Imprisonment as provided in ORS 677.225.

45 (20) Making a fraudulent claim.

1 (21)(a) Performing psychosurgery.

2 (b) For purposes of this subsection and ORS 426.385, “psychosurgery” means any operation de-
3 signed to produce an irreversible lesion or destroy brain tissue for the primary purpose of altering
4 the thoughts, emotions or behavior of a human being. “Psychosurgery” does not include procedures
5 which may produce an irreversible lesion or destroy brain tissues when undertaken to cure well-
6 defined disease states such as brain tumor, epileptic foci and certain chronic pain syndromes.

7 (22) Refusing an invitation for an informal interview with the board requested under ORS
8 677.415.

9 (23) Violation of the federal Controlled Substances Act.

10 (24) Prescribing controlled substances without a legitimate medical purpose, or prescribing
11 controlled substances without following accepted procedures for examination of patients, or pre-
12 scribing controlled substances without following accepted procedures for record keeping.

13 (25) Providing written documentation for purposes of ORS 475C.783 without having legitimately
14 diagnosed a debilitating medical condition, as defined in ORS 475C.777, or without having followed
15 accepted procedures for the examination of patients or for keeping records.

16 (26) Failure by the licensee to report to the board any adverse action taken against the licensee
17 by another licensing jurisdiction or any peer review body, health care institution, professional or
18 medical society or association, governmental agency, law enforcement agency or court for acts or
19 conduct similar to acts or conduct that would constitute grounds for disciplinary action as described
20 in this section.

21 (27) Failure by the licensee to notify the board of the licensee’s voluntary resignation from the
22 staff of a health care institution or voluntary limitation of a licensee’s staff privileges at the insti-
23 tution if that action occurs while the licensee is under investigation by the institution or a com-
24 mittee thereof for any reason related to medical incompetence, unprofessional conduct, physical
25 incapacity or impairment.

26 **(28) Violation of section 4 of this 2026 Act.**
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