

CHAPTER 146B

ABORTION — POSTFERTILIZATION AGE

Legislative intent; 2017 Acts, ch 108, §5

146B.1	Definitions.	146B.3	Civil actions and penalties.
146B.2	Determination of postfertilization age — certain abortions prohibited — exceptions — reporting requirements — penalties.		

146B.1 Definitions.

As used in [this chapter](#), unless the context otherwise requires:

1. “*Abortion*” means the termination of a human pregnancy with the intent other than to produce a live birth or to remove a dead fetus.

2. “*Attempt to perform an abortion*” 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 performing of an abortion.

3. “*Department*” means the department of public health.

4. “*Fertilization*” means the fusion of a human spermatozoon with a human ovum.

5. “*Major bodily function*” includes but is not limited to functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

6. “*Medical emergency*” means a situation in which an abortion is performed to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.

7. “*Medical facility*” means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician’s office, infirmary, dispensary, ambulatory surgical center, or other institution or location where medical care is provided to any person.

8. “*Perform*”, “*performed*”, or “*performing*”, relative to an abortion, means the use of any means, including medical or surgical, to terminate the pregnancy of a woman known to be pregnant with the intent other than to produce a live birth or to remove a dead fetus.

9. “*Physician*” means a person licensed under [chapter 148](#).

10. “*Postfertilization age*” means the age of the unborn child as calculated from fertilization.

11. “*Probable postfertilization age*” means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is to be performed.

12. “*Reasonable medical judgment*” means a medical judgment made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

13. “*Unborn child*” means an individual organism of the species homo sapiens from fertilization until live birth.

[2017 Acts, ch 108, §2, 7](#)

Referred to in [§146C.2](#)

146B.2 Determination of postfertilization age — certain abortions prohibited — exceptions — reporting requirements — penalties.

1. Except in the case of a medical emergency, in addition to compliance with the prerequisites of [chapter 146A](#), an abortion shall not be performed or be attempted to be performed unless the physician performing the abortion has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, a physician shall make such

inquiries of the pregnant woman and perform or cause to be performed such medical examinations and tests the physician considers necessary in making a reasonable medical judgment to accurately determine the postfertilization age of the unborn child.

2. *a.* A physician shall not perform or attempt to perform an abortion upon a pregnant woman when it has been determined, by the physician performing the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the unborn child is twenty or more weeks unless, in the physician's reasonable medical judgment, any of the following applies:

- (1) The pregnant woman has a condition which the physician deems a medical emergency.
- (2) The abortion is necessary to preserve the life of an unborn child.

b. If an abortion is performed under [this subsection](#), the physician shall terminate the human pregnancy in the manner which, in the physician's reasonable medical judgment, provides the best opportunity for an unborn child to survive, unless, in the physician's reasonable medical judgment, termination of the human pregnancy in that manner would pose a greater risk than any other available method of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function. A greater risk shall not be deemed to exist if it is based on a claim or diagnosis that the pregnant woman will engage in conduct which would result in the pregnant woman's death or in substantial and irreversible physical impairment of a major bodily function.

3. A physician who performs or attempts to perform an abortion shall report to the department, on a schedule and in accordance with forms and rules adopted by the department, all of the following:

a. If a determination of probable postfertilization age of the unborn child was made, the probable postfertilization age determined and the method and basis of the determination.

b. If a determination of probable postfertilization age of the unborn child was not made, the basis of the determination that a medical emergency existed.

c. If the probable postfertilization age of the unborn child was determined to be twenty or more weeks, the basis of the determination of a medical emergency, or the basis of the determination that the abortion was necessary to preserve the life of an unborn child.

d. The method used for the abortion and, in the case of an abortion performed when the probable postfertilization age was determined to be twenty or more weeks, whether the method of abortion used was one that, in the physician's reasonable medical judgment, provided the best opportunity for an unborn child to survive or, if such a method was not used, the basis of the determination that termination of the human pregnancy in that manner would pose a greater risk than would any other available method of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function.

4. *a.* By June 30, annually, the department shall issue a public report providing statistics for the previous calendar year, compiled from the reports for that year submitted in accordance with [subsection 3](#). The department shall ensure that none of the information included in the public reports could reasonably lead to the identification of any woman upon whom an abortion was performed.

b. (1) A physician who fails to submit a report by the end of thirty days following the due date shall be subject to a late fee of five hundred dollars for each additional thirty-day period or portion of a thirty-day period the report is overdue.

(2) A physician required to report in accordance with [subsection 3](#) who has not submitted a report or who has submitted only an incomplete report more than one year following the due date, may, in an action brought in the manner in which actions are brought to enforce [chapter 148](#), be directed by a court of competent jurisdiction to submit a complete report within a time period stated by court order or be subject to contempt of court.

(3) A physician who intentionally or recklessly falsifies a report required under [this section](#) is subject to a civil penalty of one hundred dollars.

5. Any medical facility in which a physician is authorized to perform an abortion shall implement written medical policies and procedures consistent with the requirements and prohibitions of [this chapter](#).

6. The department shall adopt rules to implement [this section](#).

[2017 Acts, ch 108, §3, 7](#)

Referred to in [§146B.3](#)

146B.3 Civil actions and penalties.

1. Failure of a physician to comply with any provision of [section 146B.2](#), with the exception of the late filing of a report or failure to submit a complete report in compliance with a court order, is grounds for licensee discipline under [chapter 148](#).

2. A woman upon whom an abortion has been performed in violation of [this chapter](#) may maintain an action against the physician who performed the abortion in intentional or reckless violation of [this chapter](#) for actual damages.

3. A woman upon whom an abortion has been attempted in violation of [this chapter](#) may maintain an action against the physician who attempted the abortion in intentional or reckless violation of [this chapter](#) for actual damages.

4. A cause of action for injunctive relief to prevent a physician from performing abortions may be maintained against a physician who has intentionally violated [this chapter](#) by the woman upon whom the abortion was performed or attempted, by a parent or guardian of the woman if the woman is less than eighteen years of age at the time the abortion was performed or attempted, by a current or former licensed health care provider of the woman, by a county attorney with appropriate jurisdiction, or by the attorney general.

5. If the plaintiff prevails in an action brought under [this section](#), the plaintiff shall be entitled to an award for reasonable attorney fees.

6. If the defendant prevails in an action brought under [this section](#) and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the defendant shall be entitled to an award for reasonable attorney fees.

7. Damages and attorney fees shall not be assessed against the woman upon whom an abortion was performed or attempted except as provided in [subsection 6](#).

8. In a civil proceeding or action brought under [this chapter](#), the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if the woman does not provide consent to such disclosure. The court, upon motion or on its own motion, shall make such 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 exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under [this section](#) shall do so under a pseudonym. [This subsection](#) shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

9. [This chapter](#) shall not be construed to impose civil or criminal liability on a woman upon whom an abortion is performed or attempted.

[2017 Acts, ch 108, §4, 7](#)