

Senate File 359

H-8362

1 Amend the amendment, H-8313, to Senate File 359, as passed by
2 the Senate, as follows:

3 1. By striking page 1, line 1, through page 8, line 3, and
4 inserting:

5 <Amend Senate File 359, as passed by the Senate, as follows:

6 1. By striking everything after the enacting clause and
7 inserting:

8 <Section 1. NEW SECTION. **146C.1 Legislative findings and**
9 **intent.**

10 1. The general assembly finds all of the following:

11 a. Abortion carries significant physical and psychological
12 risks to the pregnant woman, and these physical and
13 psychological risks increase exponentially with the
14 postfertilization age of the unborn child.

15 b. As the second trimester of a pregnancy progresses, in the
16 vast majority of uncomplicated pregnancies, the health risks to
17 the pregnant woman of undergoing an abortion are greater than
18 the risks of carrying a pregnancy to term.

19 c. Medical complications from dilation and evacuation
20 abortions include but are not limited to pelvic infection;
21 incomplete abortions and retained tissue; blood clots; heavy
22 bleeding or hemorrhage; laceration, tear, or other injury to
23 the cervix; puncture, laceration, tear, or other injury to the
24 uterus; injury to the bowel or bladder; depression; anxiety;
25 substance abuse; and other emotional or psychological problems.
26 Further, in abortions performed in the second trimester, there
27 is a higher risk of requiring a hysterectomy, other reparative
28 surgery, or blood transfusion.

29 d. The state of Iowa has legitimate interests from the
30 outset of pregnancy in protecting the health of women, as the
31 medical, emotional, and psychological consequences of abortion
32 are serious and can be lasting.

33 2. Based upon the findings specified in subsection 1, it is
34 the intent of the general assembly through application of this
35 chapter to restrict the practice of nontherapeutic or elective

1 abortion to the period prior to the unborn child achieving the
2 postfertilization age of fifteen weeks.

3 Sec. 2. NEW SECTION. 146C.2 Definitions.

4 As used in this chapter, unless the context otherwise
5 requires:

6 1. "*Abortion*" means the termination of a human pregnancy
7 with the intent other than to produce a live birth or to remove
8 a dead fetus.

9 2. "*Attempt to perform an abortion*" means an act, or
10 an omission of a statutorily required act, that, under the
11 circumstances as the actor believes them to be, constitutes a
12 substantial step in a course of conduct planned to culminate in
13 the performing of an abortion.

14 3. "*Department*" means the department of public health.

15 4. "*Fertilization*" means the fusion of a human spermatozoon
16 with a human ovum.

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

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

29 7. "*Medical facility*" means any public or private hospital,
30 clinic, center, medical school, medical training institution,
31 health care facility, physician's office, infirmary,
32 dispensary, ambulatory surgical center, or other institution or
33 location where medical care is provided to any person.

34 8. "*Perform*", "*performed*", or "*performing*", relative to an
35 abortion, means the use of any means, including medical or

1 surgical, to terminate the pregnancy of a woman known to be
2 pregnant with the intent other than to produce a live birth or
3 to remove a dead fetus.

4 9. "*Physician*" means a person licensed under chapter 148.

5 10. "*Postfertilization age*" means the age of the unborn
6 child as calculated from fertilization.

7 11. "*Probable postfertilization age*" means what, in
8 reasonable medical judgment, will with reasonable probability
9 be the postfertilization age of the unborn child at the time
10 the abortion is to be performed.

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

15 13. "*Severe fetal abnormality*" means a life-threatening
16 physical condition that, in the physician's reasonable medical
17 judgment, regardless of the provision of life-saving medical
18 treatment, is incompatible with life outside the womb.

19 14. "*Unborn child*" means an individual organism of the
20 species homo sapiens from fertilization to live birth.

21 Sec. 3. NEW SECTION. 146C.3 Determination of
22 postfertilization age — certain abortions prohibited —
23 exceptions — reporting requirements — penalties.

24 1. Except in the case of a medical emergency or a
25 severe fetal abnormality, in addition to compliance with
26 the prerequisites of chapter 146A, an abortion shall not be
27 performed or be attempted to be performed unless the physician
28 performing the abortion has first made a determination of the
29 probable postfertilization age of the unborn child or relied
30 upon such a determination made by another physician. In making
31 such a determination, a physician shall make such inquiries
32 of the pregnant woman and perform or cause to be performed
33 such medical examinations and tests the physician considers
34 necessary in making a reasonable medical judgment to accurately
35 determine the postfertilization age of the unborn child.

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

8 (1) The pregnant woman has a condition which the physician
9 deems a medical emergency.

10 (2) The abortion is necessary to preserve the life of an
11 unborn child.

12 (3) The unborn child is afflicted with a severe fetal
13 abnormality.

14 *b.* If an abortion is performed under this subsection, the
15 physician shall terminate the pregnancy in the manner which,
16 in the physician's reasonable medical judgment, provides the
17 best opportunity for an unborn child to survive, unless, in the
18 physician's reasonable medical judgment, termination of the
19 pregnancy in that manner would pose a greater risk than any
20 other available method of the death of the pregnant woman or
21 of the substantial and irreversible physical impairment of a
22 major bodily function. A greater risk shall not be deemed to
23 exist if it is based on a claim or diagnosis that the pregnant
24 woman will engage in conduct which would result in the pregnant
25 woman's death or in substantial and irreversible physical
26 impairment of a major bodily function.

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

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

34 *b.* If a determination of probable postfertilization age of
35 the unborn child was not made, the basis of the determination

1 that a medical emergency existed or that the unborn child was
2 afflicted with a severe fetal abnormality.

3 *c.* If the probable postfertilization age of the unborn
4 child was determined to be fifteen or more weeks, the basis
5 of the determination of a medical emergency, the basis of the
6 determination that the unborn child was afflicted with a severe
7 fetal abnormality, or the basis of the determination that the
8 abortion was necessary to preserve the life of an unborn child.

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

20 4. *a.* By April 1, annually, the department shall issue a
21 public report providing statistics for the previous calendar
22 year, compiled from the reports for that year submitted in
23 accordance with subsection 3. The department shall ensure that
24 none of the information included in the public reports could
25 reasonably lead to the identification of any woman upon whom an
26 abortion was performed.

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

31 (2) A physician required to report in accordance with
32 subsection 3 who has not submitted a report or who has
33 submitted only an incomplete report more than one year
34 following the due date, may, in an action brought in the
35 manner in which actions are brought to enforce chapter 148,

1 be directed by a court of competent jurisdiction to submit a
2 complete report within a time period stated by court order or
3 be subject to contempt of court.

4 (3) A physician who intentionally or recklessly falsifies
5 a report required under this section is subject to a civil
6 penalty of five hundred dollars.

7 5. Any medical facility in which a physician is authorized
8 to perform an abortion shall implement written medical
9 policies and procedures consistent with the requirements and
10 prohibitions of this chapter.

11 6. The department shall adopt rules to implement this
12 section.

13 Sec. 4. NEW SECTION. **146C.4 Civil actions and penalties.**

14 1. Failure of a physician to comply with any provision of
15 section 146C.3, with the exception of the late filing of a
16 report or failure to submit a complete report in compliance
17 with a court order, is grounds for licensee discipline under
18 chapter 148.

19 2. A woman upon whom an abortion has been performed in
20 violation of this chapter may maintain an action against the
21 physician who performed the abortion in intentional or reckless
22 violation of this chapter for actual damages.

23 3. A woman upon whom an abortion has been attempted in
24 violation of this chapter may maintain an action against the
25 physician who attempted the abortion in intentional or reckless
26 violation of this chapter for actual damages.

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

1 5. If the plaintiff prevails in an action brought under
2 this section, the plaintiff shall be entitled to an award for
3 reasonable attorney fees.

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

8 7. Damages and attorney fees shall not be assessed against
9 the woman upon whom an abortion was performed or attempted
10 except as provided in subsection 6.

11 8. In a civil proceeding or action brought under this
12 chapter, the court shall rule whether the anonymity of any
13 woman upon whom an abortion has been performed or attempted
14 shall be preserved from public disclosure if the woman does not
15 provide consent to such disclosure. The court, upon motion
16 or on its own motion, shall make such a ruling and, upon
17 determining that the woman's anonymity should be preserved,
18 shall issue orders to the parties, witnesses, and counsel
19 and shall direct the sealing of the record and exclusion of
20 individuals from courtrooms or hearing rooms to the extent
21 necessary to safeguard the woman's identity from public
22 disclosure. Each such order shall be accompanied by specific
23 written findings explaining why the anonymity of the woman
24 should be preserved from public disclosure, why the order is
25 essential to that end, how the order is narrowly tailored to
26 serve that interest, and why no reasonable less restrictive
27 alternative exists. In the absence of written consent of the
28 woman upon whom an abortion has been performed or attempted,
29 anyone, other than a public official, who brings an action
30 under this section shall do so under a pseudonym. This
31 subsection shall not be construed to conceal the identity
32 of the plaintiff or of witnesses from the defendant or from
33 attorneys for the defendant.

34 9. This chapter shall not be construed to impose civil
35 or criminal liability on a woman upon whom an abortion is

1 performed or attempted.

2 Sec. 5. EFFECTIVE DATE. This Act, being deemed of immediate
3 importance, takes effect upon enactment.>>

4 2. Title page, lines 1 and 2, by striking <fetal body parts
5 and providing penalties.> and inserting <an unborn child,
6 providing penalties, and including effective date provisions.>

7 3. By renumbering as necessary.>

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