

House File 657 - Introduced

HOUSE FILE 657
BY COMMITTEE ON GOVERNMENT
OVERSIGHT

(SUCCESSOR TO HF 5)

A BILL FOR

1 An Act relating to abortions including prohibiting late-term
2 abortions with certain exceptions, providing penalties, and
3 including an effective date provision.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. FINDINGS. The general assembly finds all of the
2 following:

3 1. Abortion can cause serious short-term and long-term
4 physical and psychological complications for women including
5 but not limited to uterine perforation, uterine scarring,
6 cervical perforation or other injury, infection, bleeding,
7 hemorrhage, blood clots, failure to actually terminate the
8 pregnancy, incomplete abortion or retained tissue, pelvic
9 inflammatory disease, endometritis, missed ectopic pregnancy,
10 cardiac arrest, respiratory arrest, renal failure, metabolic
11 disorder, shock, embolism, coma, placenta previa in subsequent
12 pregnancies, preterm delivery in subsequent pregnancies,
13 free fluid in the abdomen, organ damage, adverse reactions
14 to anesthesia and other drugs, psychological or emotional
15 complications such as depression, anxiety, sleeping disorders,
16 and death.

17 2. Abortion has a higher medical risk when the procedure is
18 performed later in the pregnancy. Compared to an abortion at
19 eight weeks' gestation or earlier, the relative risk increases
20 exponentially at higher gestations. The incidence of major
21 complications is highest after twenty weeks of gestation.

22 3. The state has a legitimate concern for the public's
23 health and safety.

24 4. The state has a legitimate interest from the outset
25 of pregnancy in protecting the health of the woman. More
26 specifically, the state has a legitimate concern with the
27 health of women who undergo abortions.

28 5. There is substantial evidence that by at least twenty
29 weeks after fertilization, an unborn child has the physical
30 structures necessary to experience pain.

31 6. There is substantial evidence that by twenty weeks
32 after fertilization, an unborn child seeks to evade certain
33 stimuli in a manner which, in an infant or an adult, would be
34 interpreted as a response to pain.

35 7. Anesthesia is routinely administered to an unborn child

1 twenty weeks or more after fertilization when the unborn child
2 undergoes prenatal surgery.

3 8. Even before twenty weeks after fertilization, the unborn
4 child has been observed to exhibit hormonal stress responses to
5 painful stimuli, and a reduction in such response results when
6 pain medication is administered directly to the unborn child.

7 9. It is the purpose of the state of Iowa to assert a
8 compelling state interest in protecting the unborn child from
9 the stage at which substantial medical evidence indicates the
10 unborn child is capable of feeling pain.

11 Sec. 2. NEW SECTION. 146A.1 **Definitions.**

12 As used in this chapter unless the context otherwise
13 requires:

14 1. "*Abortion*" means abortion as defined in section 146.1.

15 2. "*Attempt to perform or induce an abortion*" means an act,
16 or an omission of a statutorily required act, that, under the
17 circumstances as the actor believes them to be, constitutes a
18 substantial step in a course of conduct planned to culminate in
19 the performance or inducing of an abortion.

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

21 4. "*Fertilization*" means the fusion of a human spermatozoon
22 with a human ovum.

23 5. "*Medical emergency*" means a condition which, in
24 reasonable medical judgment, so complicates the medical
25 condition of a pregnant woman as to necessitate the immediate
26 abortion of the human pregnancy to avert the woman's death or
27 for which a delay will create a serious risk of substantial and
28 irreversible physical impairment of a major bodily function.

29 "*Medical emergency*" does not include a condition which is based
30 on a claim or diagnosis that the pregnant woman will engage in
31 conduct which would result in the pregnant woman's death or in
32 substantial and irreversible physical impairment of a major
33 bodily function.

34 6. "*Medical facility*" means any public or private hospital,
35 clinic, center, medical school, medical training institution,

1 health care facility, physician's office, infirmary,
2 dispensary, ambulatory surgical center, or other institution or
3 location where medical care is provided to any person.

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

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

7 9. "*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 10. "*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 11. "*Unborn child*" means an individual organism of the
16 species homo sapiens from fertilization until live birth.

17 Sec. 3. NEW SECTION. 146A.2 Determination of
18 postfertilization age prior to abortion — abortion prohibited
19 at twenty or more weeks postfertilization age — exceptions —
20 reporting requirements — penalties.

21 1. Except in the case of a medical emergency, an abortion
22 shall not be performed or induced or be attempted to be
23 performed or induced unless the physician performing or
24 inducing the abortion has first made a determination of the
25 probable postfertilization age of the unborn child or relied
26 upon such a determination made by another physician. In making
27 such a determination, a physician shall make such inquiries
28 of the pregnant woman and perform or cause to be performed
29 such medical examinations and tests the physician considers
30 necessary in making a reasonable medical judgment to accurately
31 determine the postfertilization age of the unborn child.

32 2. a. A physician shall not perform or induce or attempt
33 to perform or induce an abortion upon a pregnant woman when it
34 has been determined, by the physician performing or inducing
35 the abortion or by another physician upon whose determination

1 that physician relies, that the probable postfertilization age
2 of the unborn child is twenty or more weeks unless, in the
3 physician's reasonable medical judgment, any of the following
4 applies:

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

7 (2) It is necessary to preserve the life of an unborn child.

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

22 *c.* An abortion performed or induced under this subsection
23 shall be performed or induced in a medical facility that
24 provides the appropriate level of perinatal care as specified
25 in 641 IAC 150.

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

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

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

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

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

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

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

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

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

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

8 6. The department shall adopt rules to implement this
9 section.

10 Sec. 4. NEW SECTION. **146A.3 Civil and criminal actions**
11 **— penalties.**

12 1. Failure of a physician to comply with any provision of
13 section 146A.2, with the exception of the late filing of a
14 report or failure to submit a complete report in compliance
15 with a court order, is grounds for license discipline under
16 chapter 148.

17 2. A physician who intentionally or recklessly performs or
18 attempts to perform an abortion in violation of this chapter is
19 guilty of a class "C" felony.

20 3. A woman upon whom an abortion has been performed in
21 violation of this chapter or the biological father may maintain
22 an action against the physician who performed the abortion in
23 intentional or reckless violation of this chapter for actual
24 damages. This subsection shall not be interpreted to apply to
25 a biological father when the pregnancy is the result of rape
26 or incest.

27 4. A woman upon whom an abortion has been attempted in
28 violation of this chapter may maintain an action against the
29 physician who attempted to perform the abortion in intentional
30 or reckless violation of this chapter for actual damages.

31 5. A cause of action for injunctive relief to prevent a
32 physician from performing abortions may be maintained against a
33 physician who has intentionally violated this chapter by the
34 woman upon whom the abortion was performed or attempted to be
35 performed, by the spouse of the woman, by a parent or guardian

1 of the woman if the woman is less than eighteen years of age or
2 unmarried at the time the abortion was performed or attempted
3 to be performed, by a current or former licensed health care
4 provider of the woman, by a county attorney with appropriate
5 jurisdiction, or by the attorney general.

6 6. A woman upon whom an abortion was performed or was
7 attempted to be performed shall not be subject to prosecution
8 for a violation of this chapter.

9 7. If the plaintiff prevails in an action brought under
10 this section, the plaintiff shall be entitled to an award for
11 reasonable attorney fees.

12 8. If the defendant prevails in an action brought under
13 this section and the court finds that the plaintiff's suit was
14 frivolous and brought in bad faith, the defendant shall be
15 entitled to an award for reasonable attorney fees.

16 9. Damages and attorney fees shall not be assessed against
17 the woman upon whom an abortion was performed or attempted to
18 be performed except as provided in subsection 8.

19 10. In a civil or criminal proceeding or action brought
20 under this chapter, the court shall rule whether the anonymity
21 of any woman upon whom an abortion has been performed or
22 attempted shall be preserved from public disclosure if the
23 woman does not provide consent to such disclosure. The court,
24 upon motion or on its own motion, shall make such a ruling
25 and, upon determining that the woman's anonymity should be
26 preserved, shall issue orders to the parties, witnesses,
27 and counsel and shall direct the sealing of the record and
28 exclusion of individuals from courtrooms or hearing rooms to
29 the extent necessary to safeguard the woman's identity from
30 public disclosure. Each such order shall be accompanied by
31 specific written findings explaining why the anonymity of the
32 woman should be preserved from public disclosure, why the
33 order is essential to that end, how the order is narrowly
34 tailored to serve that interest, and why no reasonable less
35 restrictive alternative exists. In the absence of written

1 consent of the woman upon whom an abortion has been performed
2 or attempted, anyone, other than a public official, who brings
3 an action under this section shall do so under a pseudonym.
4 This subsection shall not be construed to conceal the identity
5 of the plaintiff or of witnesses from the defendant or from
6 attorneys for the defendant.

7 Sec. 5. NEW SECTION. **146A.4 Construction.**

8 1. Nothing in this chapter shall be construed as creating or
9 recognizing a right to an abortion.

10 2. Nothing in this chapter shall be construed as determining
11 life to begin at twenty weeks' gestation. Instead, it is
12 recognized that life begins at fertilization.

13 Sec. 6. NEW SECTION. **146A.5 Severability clause.**

14 If any provision of this chapter or its application to any
15 person or circumstance is held invalid, the invalidity does
16 not affect other provisions or application of this chapter
17 which can be given effect without the invalid provision or
18 application, and to this end the provisions of this chapter are
19 severable.

20 Sec. 7. **EFFECTIVE UPON ENACTMENT.** This Act, being deemed of
21 immediate importance, takes effect upon enactment.

22 **EXPLANATION**

23 This bill relates to abortions. The bill provides findings
24 of the general assembly and definitions.

25 The bill provides that, except in the case of a medical
26 emergency, an abortion shall not be performed or induced
27 or be attempted to be performed or induced unless the
28 physician performing or inducing the abortion has first made
29 a determination of the probable postfertilization age of the
30 unborn child. Additionally, the bill prohibits a physician
31 from performing or inducing or attempting to perform or induce
32 an abortion upon a pregnant woman when it has been determined,
33 that the probable postfertilization age is 20 or more weeks
34 unless, in the physician's reasonable medical judgment, either
35 the pregnant woman has a condition which the physician deems a

1 medical emergency or it is necessary to preserve the life of
2 the unborn child. If an abortion is performed or induced when
3 the probable postfertilization age is 20 or more weeks, the
4 physician is required to terminate the pregnancy in a manner
5 which, in the physician's reasonable medical judgment, provides
6 the best opportunity for the unborn child to survive unless
7 such termination would pose a greater risk either of the death
8 of the pregnant woman or of the substantial and irreversible
9 physical impairment of a major bodily function of the woman
10 than would another available method.

11 The bill also requires certain reports to be filed by a
12 physician who performs or induces or attempts to perform or
13 induce an abortion with the department of public health, on
14 a schedule and in accordance with forms and rules adopted by
15 the department. The department is required to compile the
16 information collected annually and issue a public report,
17 ensuring that none of the information included in the public
18 reports could reasonably lead to the identification of any
19 pregnant woman upon whom an abortion was performed. The bill
20 provides monetary penalties for a physician who fails to submit
21 a report in a timely manner, submits an incomplete report, or
22 intentionally or recklessly falsifies a required report.

23 The bill provides for civil and criminal actions and
24 penalties relating to violations of the bill. Failure of a
25 physician to comply with any provision, with the exception of
26 the late filing of a report or failure to submit a complete
27 report in compliance with a court order, is grounds for license
28 discipline. A physician who intentionally or recklessly
29 performs or attempts to perform an abortion in violation of
30 the bill is guilty of a class "C" felony, which is punishable
31 by confinement for no more than 10 years and a fine of at
32 least \$1,000 but not more than \$10,000. However, the woman
33 upon whom the abortion was performed or was attempted to be
34 performed is not subject to prosecution for a violation of
35 the bill. The bill provides for the maintaining of actions

1 by certain people based on alleged violations of the bill. A
2 woman upon whom an abortion has been performed in violation
3 of the bill or the biological father may maintain an action
4 against the physician who performed the abortion in intentional
5 or reckless violation of the bill for actual damages. However,
6 the bill is not to be interpreted to apply to a biological
7 father when the pregnancy is the result of rape or incest. A
8 woman upon whom an abortion has been attempted in violation
9 of the bill may maintain an action against the physician who
10 attempted to perform the abortion in intentional or reckless
11 violation of the bill for actual damages. Additionally, a
12 cause of action for injunctive relief to prevent a physician
13 from performing abortions may be maintained against a physician
14 who has intentionally violated the bill by the woman upon whom
15 the abortion was performed or attempted to be performed, by the
16 spouse of the woman, by a parent or guardian of the woman if
17 the woman is less than 18 years of age or unmarried at the time
18 the abortion was performed or attempted to be performed, by a
19 current or former licensed health care provider of the woman,
20 by a county attorney with appropriate jurisdiction, or by the
21 attorney general.

22 The bill provides a process for preserving the anonymity of
23 the woman upon whom an abortion has been performed or attempted
24 from public disclosure if the woman does not provide consent to
25 such disclosure during any proceeding or action under the bill.

26 The bill also provides that the bill is not to be construed
27 as creating or recognizing a right to an abortion, and the
28 bill is not to be construed as determining life to begin at 20
29 weeks' gestation; instead, it is recognized that life begins
30 at fertilization.

31 The bill includes a severability clause as is applicable to
32 every Act or statute pursuant to Code section 4.12.

33 The bill takes effect upon enactment.