

Senate File 39 - Introduced

SENATE FILE 39

BY JOHNSON, SORENSON,
FEENSTRA, BEHN, ANDERSON,
ZAUN, BOETTGER, and SEYMOUR

A BILL FOR

1 An Act relating to informed consent to an abortion and
2 providing a criminal penalty, and providing effective dates.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 146A.1 Title.

2 This chapter shall be known and may be cited as the "*Woman's*
3 *Right to Know Act*".

4 Sec. 2. NEW SECTION. 146A.2 Definitions.

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

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

8 2. "*Attempt to perform an unlawful abortion*" means an act,
9 or an omission of an act required by law, that constitutes a
10 substantial step in a course of conduct intended to culminate
11 in the performance of an abortion in violation of this chapter.

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

13 4. "*Medical emergency*" means any condition which, on
14 the basis of a physician's good faith clinical judgment,
15 so complicates the medical condition of a pregnant woman
16 as to necessitate the immediate performance of an abortion
17 to avert the pregnant woman's death, or to necessitate the
18 immediate performance of an abortion to avert a serious risk
19 of substantial and irreversible impairment of a major bodily
20 function if the performance of the abortion is delayed.

21 5. "*Physician*" means a person licensed to practice medicine
22 and surgery or osteopathic medicine and surgery pursuant to
23 chapter 148.

24 Sec. 3. NEW SECTION. 146A.3 Voluntary and informed consent.

25 1. An abortion shall not be performed in this state without
26 the voluntary and informed consent of the woman upon whom the
27 abortion is to be performed. Except in the case of a medical
28 emergency, consent to an abortion is voluntary and informed
29 only if the requirements of this section are met.

30 2. The referring physician, the physician who will perform
31 the abortion, or an agent of either physician shall provide
32 all of the following information to the woman by telephone,
33 by audiotape, or in person, at the time the woman initially
34 contacts the physician's private office or a facility
35 that provides abortions to inquire about or to schedule an

1 appointment for an abortion:

2 *a.* Information that medical assistance benefits may be
3 available to the woman for prenatal care, childbirth, and
4 neonatal care.

5 *b.* Information that the putative father is liable to assist
6 in the support of the child and that efforts to collect support
7 may result in, but are not guaranteed to result in, financial
8 support of the child, even if the putative father has offered
9 to pay for the abortion.

10 *c.* Information that the woman has the right to review the
11 printed materials described in subsection 3.

12 *d.* Information that the woman has the right to have an
13 opportunity to receive and view an active ultrasound of
14 the fetus at least twenty-four hours before an abortion is
15 performed.

16 3. *a.* After being informed of the woman's right to review
17 printed materials pursuant to subsection 2, if the woman wishes
18 to review the materials, all of the following shall apply:

19 (1) If the department establishes an internet site, the
20 woman shall be informed that the materials are available
21 through a state-sponsored internet site and shall be informed
22 of the internet site address.

23 (2) If the woman initially contacts the physician's private
24 office or a facility that provides abortions in person, the
25 materials shall be provided to the woman at that time.

26 (3) If the woman initially contacts the physician's private
27 office or a facility that provides abortions by telephone and
28 wishes to review the materials, the materials shall be mailed
29 to the woman by regular mail or by restricted certified mail,
30 as defined in section 618.15, as requested by the woman.

31 (4) The woman shall be informed that the materials have been
32 provided by the state and that they describe the fetus and list
33 agencies that offer alternatives to abortion.

34 *b.* The printed materials shall include all of the following:

35 (1) Geographically indexed materials designed to inform

1 the woman of public and private agencies and services
2 available to assist a woman through pregnancy, at the time
3 of childbirth, and while the child is dependent, including
4 adoption agencies. The materials shall include a comprehensive
5 list of the agencies available, categorized by the type of
6 services offered, and a description of the manner, including
7 telephone numbers, in which the agencies may be contacted. The
8 department may also provide a toll-free, twenty-four-hour-a-day
9 telephone number which may be called to obtain, orally, a list
10 and description of agencies in the locality of the caller and
11 of the services offered.

12 (2) Materials that encourage consideration of placement for
13 adoption. The materials shall inform the woman of the benefits
14 of adoption, including the requirements of confidentiality in
15 the adoption process, the importance of adoption to individuals
16 and society, and the state's interest in promoting adoption by
17 preferring childbirth over abortion.

18 (3) Materials designed to inform the woman of the probable
19 anatomical and physiological characteristics of the fetus
20 at two-week gestational increments from the time that it is
21 medically possible to make a determination of pregnancy to full
22 term. The materials shall include any relevant information
23 regarding the possibility of the survival of the fetus and
24 pictures or drawings representing the development of the fetus
25 at two-week gestational increments, provided that any pictures
26 or drawings shall contain the dimensions of the fetus and
27 shall be realistic and appropriate for the state of pregnancy
28 depicted. The materials shall be objective, nonjudgmental, and
29 designed to convey only accurate scientific information about
30 the fetus at various gestational stages. The materials shall
31 also contain objective information describing the methods of
32 abortion procedures commonly used, the medical risks commonly
33 associated with each such procedure, the possible detrimental
34 psychological effects of abortion, and the medical risks
35 commonly associated with carrying a fetus to term.

1 4. A physician shall not perform an abortion on a woman
2 unless both of the following conditions are met:

3 a. The physician obtains written certification that the
4 information required pursuant to subsection 2 was provided
5 to the woman. The physician shall retain a copy of the
6 certification and shall provide a copy of the certification to
7 the woman.

8 b. The physician certifies that the woman has been offered
9 an opportunity to receive and view an active ultrasound of
10 the fetus. The offer and opportunity to receive and view an
11 ultrasound shall occur at least twenty-four hours before the
12 abortion is scheduled to be performed. In order to comply
13 with this requirement, the active ultrasound image must be
14 of a quality consistent with standard medical practice in
15 the community, must contain the dimensions of the fetus, and
16 must accurately portray the presence of external members
17 and internal organs, including the heartbeat, if present or
18 viewable, of the fetus. The auscultation of the fetal heart
19 tone also must be of a quality consistent with standard medical
20 practice in the community. The physician shall document the
21 woman's response to the offer, including the date and time of
22 the offer and the woman's signature attesting to the woman's
23 informed decision.

24 5. a. By October 1, 2011, the department shall cause
25 the information described in subsection 3 to be published in
26 printed format. The information shall be provided in an easily
27 comprehensible manner. The information shall be published in
28 a typeface large enough to be clearly legible. The printed
29 information shall be available from the department at no cost,
30 upon request, and in an appropriate number, to any person.

31 b. The department may establish and maintain an internet
32 site to provide the information described in subsection 3. The
33 internet site shall provide for confidentiality of individuals
34 who access the site and no information identifying the
35 individual shall be collected or maintained. The department

1 shall monitor the internet site to ensure that the site is
2 secure and to prevent and correct any tampering with the site.

3 Sec. 4. NEW SECTION. **146A.4 Procedure in case of medical**
4 **emergency.**

5 If a medical emergency necessitates the performance of
6 an abortion, the physician shall inform the woman, prior to
7 the performance of the abortion, if possible, of the medical
8 indications supporting the physician's judgment that the
9 immediate performance of an abortion is necessary to avert the
10 woman's death or that a delay in the performance of an abortion
11 will create a serious risk of substantial and irreversible
12 impairment of a major bodily function.

13 Sec. 5. NEW SECTION. **146A.5 Criminal penalties.**

14 1. A person who knowingly or recklessly performs or attempts
15 to perform an abortion in violation of this chapter is guilty
16 of a simple misdemeanor.

17 2. A criminal penalty shall not be imposed under this
18 chapter on a woman upon whom an abortion is performed or
19 attempted to be performed. A criminal penalty shall not be
20 imposed for failure of a woman to comply with the requirement
21 of written certification pursuant to section 146A.3, if the
22 department has not made the information available at the time
23 the physician or the physician's agent is required to inform
24 the woman of the woman's right to review the information.

25 Sec. 6. NEW SECTION. **146A.6 Protection of privacy in court**
26 **proceedings — penalty.**

27 1. In every criminal proceeding brought pursuant to this
28 chapter, the court proceedings shall be conducted in a manner
29 which protects the confidentiality of the woman, and all
30 court documents pertaining to the proceedings shall remain
31 confidential and shall be sealed. The court shall direct the
32 exclusion of individuals from courtrooms or hearing rooms to
33 the extent necessary to safeguard the woman's identity from
34 public disclosure.

35 2. This section shall not be construed to conceal the

1 identity of witnesses from the defendant.

2 3. A person who knowingly violates the confidentiality
3 requirements of this section relating to court proceedings and
4 documents is guilty of a simple misdemeanor.

5 **Sec. 7. Effective dates.**

6 1. The provisions of this Act requiring the department
7 of public health to publish information described in section
8 146A.3, subsection 3, as enacted in this Act, by October 1,
9 2011, being deemed of immediate importance, take effect upon
10 enactment.

11 2. The remainder of this Act takes effect October 1, 2011.

12 **EXPLANATION**

13 This bill establishes new Code chapter 146A, relating to
14 informed consent prior to an abortion. The Code chapter is
15 known and cited as the "Woman's Right to Know Act".

16 The bill specifies the required informed consent provisions,
17 including provision of certain information to a woman by
18 the physician or an agent of the physician, and required
19 certification by the woman of provision to the woman of the
20 required information, receipt of the certification by the
21 physician prior to the performance of an abortion, and receipt
22 of documentation by the physician regarding the offering of an
23 active ultrasound, prior to the performance of an abortion.
24 The bill requires the department of public health to publish
25 information by October 1, 2011, relating to options for
26 managing a pregnancy. The bill authorizes the department
27 to establish and maintain an internet site to provide the
28 information.

29 The bill also provides for alternatives to providing
30 informed consent in the case of a medical emergency.

31 The bill establishes a criminal penalty of a simple
32 misdemeanor for a person who knowingly or recklessly performs
33 or attempts to perform an abortion in violation of the new
34 Code chapter. The bill prohibits the imposition of a criminal
35 penalty against a woman upon whom an abortion is performed

1 or attempted to be performed, and prohibits the imposition
2 of a criminal penalty against a woman for failure to comply
3 with certification requirements if the department has not made
4 the printed materials available as required. The bill also
5 provides for protection of confidentiality of a woman relative
6 to criminal court proceedings with regard to an action under
7 the new Code chapter.

8 The provisions relating to the department of public health
9 publishing information as prescribed in the bill take effect
10 upon enactment. The remainder of the bill takes effect October
11 1, 2011.