

Senate File 42 - Introduced

SENATE FILE 42

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

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. "*Human pregnancy*" means an individual organism of the
24 species homo sapiens from fertilization until live birth.

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

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

1 7. "*Medical facility*" means any public or private hospital,
2 clinic, center, medical school, medical training institution,
3 health care facility, physician's office, infirmary,
4 dispensary, ambulatory surgical center, or other institution or
5 location where medical care is provided to any person.

6 8. "*Physician*" means a person licensed under chapter 148.

7 9. "*Postfertilization age*" means the age of the human
8 pregnancy as calculated from the fertilization of the human
9 ovum.

10 10. "*Probable postfertilization age*" means what, in
11 reasonable medical judgment, will with reasonable probability
12 be the postfertilization age of the human pregnancy at the time
13 the abortion is to be performed.

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

18 12. "*Unborn child*" means a human pregnancy in the
19 postembryonic stage.

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

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

35 2. a. A physician shall not perform or induce or attempt

1 to perform or induce an abortion upon a pregnant woman when it
2 has been determined, by the physician performing or inducing
3 the abortion or by another physician upon whose determination
4 that physician relies, that the probable postfertilization age
5 of the human pregnancy is twenty or more weeks unless, in the
6 physician's reasonable medical judgment, any of the following
7 applies:

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

10 (2) It is necessary to preserve the life of the unborn
11 child.

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

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 human pregnancy was made, the probable postfertilization
32 age determined and the method and basis of the determination.

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

1 *c.* If the probable postfertilization age of the human
2 pregnancy was determined to be twenty or more weeks, the basis
3 of the determination of a medical emergency.

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

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

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

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

1 be subject to contempt of court.

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

5 5. The department shall adopt rules to implement this
6 section.

7 Sec. 4. NEW SECTION. **146A.3 Civil and criminal actions**
8 **— penalties.**

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

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

17 3. A medical facility licensed in this state in which
18 abortions are performed or induced in violation of this chapter
19 is subject to immediate revocation of licensure.

20 4. A medical facility licensed in this state in which
21 abortions are performed or induced in violation of this chapter
22 is ineligible to receive state funding and is subject to
23 repayment of any state funds received from the state during the
24 time after which an abortion in violation of this chapter was
25 performed or induced.

26 5. A woman upon whom an abortion has been performed in
27 violation of this chapter or the biological father may maintain
28 an action against the physician who performed the abortion in
29 intentional or reckless violation of this chapter for actual
30 damages.

31 6. A woman upon whom an abortion has been attempted in
32 violation of this chapter may maintain an action against the
33 physician who attempted to perform the abortion in intentional
34 or reckless violation of this chapter for actual damages.

35 7. A cause of action for injunctive relief to prevent a

1 physician from performing abortions may be maintained against a
2 physician who has intentionally violated this chapter by the
3 woman upon whom the abortion was performed or attempted to be
4 performed, by the spouse of the woman, by a parent or guardian
5 of the woman if the woman is less than eighteen years of age or
6 unmarried at the time the abortion was performed or attempted
7 to be performed, by a current or former licensed health care
8 provider of the woman, by a county attorney with appropriate
9 jurisdiction, or by the attorney general.

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

13 9. If the plaintiff prevails in an action brought under
14 this section, the plaintiff shall be entitled to an award for
15 reasonable attorney fees.

16 10. If the defendant prevails in an action brought under
17 this section and the court finds that the plaintiff's suit was
18 frivolous and brought in bad faith, the defendant shall be
19 entitled to an award for reasonable attorney fees.

20 11. Damages and attorney fees shall not be assessed against
21 the woman upon whom an abortion was performed or attempted to
22 be performed except as provided in subsection 10.

23 12. In a civil or criminal proceeding or action brought
24 under this chapter, the court shall rule whether the anonymity
25 of any woman upon whom an abortion has been performed or
26 attempted shall be preserved from public disclosure if the
27 woman does not provide consent to such disclosure. The court,
28 upon motion or on its own motion, shall make such a ruling
29 and, upon determining that the woman's anonymity should be
30 preserved, shall issue orders to the parties, witnesses,
31 and counsel and shall direct the sealing of the record and
32 exclusion of individuals from courtrooms or hearing rooms to
33 the extent necessary to safeguard the woman's identity from
34 public disclosure. Each such order shall be accompanied by
35 specific written findings explaining why the anonymity of the

1 woman should be preserved from public disclosure, why the
2 order is essential to that end, how the order is narrowly
3 tailored to serve that interest, and why no reasonable less
4 restrictive alternative exists. In the absence of written
5 consent of the woman upon whom an abortion has been performed
6 or attempted, anyone, other than a public official, who brings
7 an action under this section shall do so under a pseudonym.
8 This subsection shall not be construed to conceal the identity
9 of the plaintiff or of witnesses from the defendant or from
10 attorneys for the defendant.

11 Sec. 5. NEW SECTION. 146A.4 Construction.

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

14 2. Nothing in this chapter shall be construed as determining
15 life to begin at twenty weeks' gestation. Instead, it is
16 recognized that life begins at conception.

17 Sec. 6. NEW SECTION. 146A.5 Severability clause.

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

24 Sec. 7. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
25 immediate importance, takes effect upon enactment.

26 EXPLANATION

27 This bill relates to abortions. The bill provides findings
28 of the general assembly and definitions.

29 The bill provides that, except in the case of a medical
30 emergency, an abortion shall not be performed or induced
31 or be attempted to be performed or induced unless the
32 physician performing or inducing the abortion has first made
33 a determination of the probable postfertilization age of the
34 human pregnancy. Additionally, the bill prohibits a physician
35 from performing or inducing or attempting to perform or induce

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

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

27 The bill provides for civil and criminal actions and
28 penalties relating to violations of the bill. Failure of a
29 physician to comply with any provision, with the exception of
30 the late filing of a report or failure to submit a complete
31 report in compliance with a court order, is grounds for license
32 discipline. A physician who intentionally or recklessly
33 performs or attempts to perform an abortion in violation of the
34 bill is guilty of a class "C" felony, which is punishable by
35 confinement for no more than 10 years and a fine of at least

1 \$1,000 but not more than \$10,000. The bill also provides that
2 a medical facility licensed in the state in which abortions
3 are performed or induced in violation of the bill is subject
4 to immediate revocation of licensure. Additionally, a
5 medical facility licensed in this state in which abortions are
6 performed or induced in violation of the bill is ineligible to
7 receive state funding and is subject to repayment of any state
8 funds received from the state during the time after which an
9 abortion in violation of the bill was performed or induced.
10 However, the woman upon whom the abortion was performed or was
11 attempted to be performed is not subject to prosecution for a
12 violation of the bill. The bill provides for the maintaining
13 of actions by certain people based on alleged violations of
14 the bill. A woman upon whom an abortion has been performed in
15 violation of the bill or the biological father may maintain
16 an action against the physician who performed the abortion
17 in intentional or reckless violation of the bill for actual
18 damages. A woman upon whom an abortion has been attempted
19 in violation of the bill may maintain an action against the
20 physician who attempted to perform the abortion in intentional
21 or reckless violation of the bill for actual damages.
22 Additionally, a cause of action for injunctive relief to
23 prevent a physician from performing abortions may be maintained
24 against a physician who has intentionally violated the bill by
25 the woman upon whom the abortion was performed or attempted
26 to be performed, by the spouse of the woman, by a parent or
27 guardian of the woman if the woman is less than 18 years of
28 age or unmarried at the time the abortion was performed or
29 attempted to be performed, by a current or former licensed
30 health care provider of the woman, by a county attorney with
31 appropriate jurisdiction, or by the attorney general.
32 The bill provides a process for preserving the anonymity of
33 the woman upon whom an abortion has been performed or attempted
34 from public disclosure if the woman does not provide consent to
35 such disclosure during any proceeding or action under the bill.

1 The bill also provides that the bill is not to be construed
2 as creating or recognizing a right to an abortion, and the
3 bill is not to be construed as determining life to begin at 20
4 weeks' gestation; instead, it is recognized that life begins
5 at conception.

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

8 The bill takes effect upon enactment.