

House File 298 - Introduced

HOUSE FILE 298

BY HEATON

A BILL FOR

1 An Act relating to abortions including prohibiting abortions
2 after a certain postfertilization age with certain
3 exceptions, providing penalties, and including effective
4 date provisions.

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

1 Section 1. NEW SECTION. 146B.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Abortion" means abortion as defined in section 146.1.

5 2. "Attempt to perform or induce an abortion" means an act,
6 or an omission of a statutorily required act, that, under the
7 circumstances as the actor believes them to be, constitutes a
8 substantial step in a course of conduct planned to culminate in
9 the performance or inducing of an abortion.

10 3. "Department" means the department of public health.

11 4. "Fertilization" means the fusion of a human spermatozoon
12 with a human ovum.

13 5. "Human pregnancy" means an individual organism of the
14 species homo sapiens from fertilization until live birth.

15 6. "Medical emergency" means a condition which, in
16 reasonable medical judgment, so complicates the medical
17 condition of a pregnant woman as to necessitate the immediate
18 abortion of the human pregnancy to avert the woman's death or
19 for which a delay will create a serious risk of substantial and
20 irreversible physical impairment of a major bodily function.
21 "Medical emergency" does not include a condition which is based
22 on 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 7. "Medical facility" means any public or private hospital,
27 clinic, center, medical school, medical training institution,
28 health care facility, physician's office, infirmary,
29 dispensary, ambulatory surgical center, or other institution or
30 location where medical care is provided to any person.

31 8. "Physician" means a person licensed under chapter 148.

32 9. "Postfertilization age" means the age of the human
33 pregnancy as calculated from the fertilization of the human
34 ovum.

35 10. "Probable postfertilization age" means what, in

1 reasonable medical judgment, will with reasonable probability
2 be the postfertilization age of the human pregnancy at the time
3 the abortion is to be performed.

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

8 12. *“Unborn child”* means a human pregnancy in the
9 postembryonic stage.

10 Sec. 2. NEW SECTION. **146B.2 Determination of**
11 **postfertilization age — abortion prohibited twenty or more weeks**
12 **postfertilization — exceptions — reporting requirements —**
13 **penalties.**

14 1. Except in the case of a medical emergency, an abortion
15 shall not be performed or induced or be attempted to be
16 performed or induced unless the physician performing or
17 inducing the abortion has first made a determination of the
18 probable postfertilization age of the human pregnancy or relied
19 upon such a determination made by another physician. In making
20 such a determination, a physician shall make such inquiries
21 of the pregnant woman and perform or cause to be performed
22 such medical examinations and tests the physician considers
23 necessary in making a reasonable medical judgment to accurately
24 determine the postfertilization age of the human pregnancy.

25 2. a. A physician shall not perform or induce or attempt
26 to perform or induce an abortion upon a pregnant woman when it
27 has been determined, by the physician performing or inducing
28 the abortion or by another physician upon whose determination
29 that physician relies, that the probable postfertilization age
30 of the human pregnancy is twenty or more weeks unless, in the
31 physician’s reasonable medical judgment, any of the following
32 applies:

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

35 (2) It is necessary to preserve the life of the unborn

1 child.

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

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

20 *a.* If a determination of probable postfertilization age of
21 the human pregnancy was made, the probable postfertilization
22 age determined and the method and basis of the determination.

23 *b.* If a determination of probable postfertilization
24 age of the human pregnancy was not made, the basis of the
25 determination that a medical emergency existed.

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

29 *d.* The method used for the abortion and, in the case of
30 an abortion performed when the probable postfertilization age
31 was determined to be twenty or more weeks, whether the method
32 of abortion used was one that, in the physician's reasonable
33 medical judgment, provided the best opportunity for the unborn
34 child to survive or, if such a method was not used, the basis
35 of the determination that termination of the human pregnancy

1 in that manner would pose a greater risk than would any other
2 available method of the death of the pregnant woman or of the
3 substantial and irreversible physical impairment of a major
4 bodily function.

5 4. a. By June 30, annually, the department shall issue a
6 public report providing statistics for the previous calendar
7 year, compiled from the reports for that year submitted in
8 accordance with subsection 3. Each report shall also provide
9 the statistics for all previous calendar years, adjusted to
10 reflect any additional information from late or corrected
11 reports. The department shall ensure that none of the
12 information included in the public reports could reasonably
13 lead to the identification of any woman upon whom an abortion
14 was performed.

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

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

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

30 5. The department shall adopt rules to implement this
31 section.

32 Sec. 3. NEW SECTION. 146B.3 Civil and criminal actions
33 — penalties.

34 1. Failure of a physician to comply with any provision of
35 section 146B.2, with the exception of the late filing of a

1 report or failure to submit a complete report in compliance
2 with a court order, is grounds for license discipline under
3 chapter 148.

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

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

10 4. A medical facility licensed in this state in which
11 abortions are performed or induced in violation of this chapter
12 is ineligible to receive state funding and is subject to
13 repayment of any state funds received from the state during the
14 time after which an abortion in violation of this chapter was
15 performed or induced.

16 5. A woman upon whom an abortion has been performed in
17 violation of this chapter or the biological father may maintain
18 an action against the physician who performed the abortion in
19 intentional or reckless violation of this chapter for actual
20 damages.

21 6. A woman upon whom an abortion has been attempted in
22 violation of this chapter may maintain an action against the
23 physician who attempted to perform the abortion in intentional
24 or reckless violation of this chapter for actual damages.

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

35 8. A woman upon whom an abortion was performed or was

1 attempted to be performed shall not be subject to prosecution
2 for a violation of this chapter.

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

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

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

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

1 the best opportunity for the unborn child to survive unless
2 such termination would pose a greater risk either of the death
3 of the pregnant woman or of the substantial and irreversible
4 physical impairment of a major bodily function of the woman
5 than would another available method.

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

18 The bill provides for civil and criminal actions and
19 penalties relating to violations of the bill. Failure of a
20 physician to comply with any provision, with the exception of
21 the late filing of a report or failure to submit a complete
22 report in compliance with a court order, is grounds for license
23 discipline. A physician who intentionally or recklessly
24 performs or attempts to perform an abortion in violation of the
25 bill is guilty of a class "C" felony, which is punishable by
26 confinement for no more than 10 years and a fine of at least
27 \$1,000 but not more than \$10,000. The bill also provides that
28 a medical facility licensed in the state in which abortions
29 are performed or induced in violation of the bill is subject
30 to immediate revocation of licensure. Additionally, a
31 medical facility licensed in this state in which abortions are
32 performed or induced in violation of the bill is ineligible to
33 receive state funding and is subject to repayment of any state
34 funds received from the state during the time after which an
35 abortion in violation of the bill was performed or induced.

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

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

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

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

34 The bill takes effect upon enactment.