

**Senate File 26 - Introduced**

SENATE FILE 26  
BY CHELGREN

**A BILL FOR**

1 An Act establishing a civil cause of action for physical injury  
2 or emotional distress resulting from an abortion.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 686.1 Cause of action — abortion  
2 resulting in emotional distress.

3 1. A woman upon whom an abortion has been performed may  
4 maintain a cause of action against the physician who performed  
5 the abortion to recover damages for any emotional distress,  
6 whether or not independent of the physical injury, proximately  
7 caused as the result of the physician's negligence or failure  
8 to obtain informed consent prior to performance of the  
9 abortion.

10 2. Notwithstanding any law to the contrary regarding  
11 limitations of actions, an action under this section may be  
12 brought at any time during the lifetime of the woman.

13 3. The signing of a consent form by the woman prior to the  
14 abortion shall not negate the cause of action, but may reduce  
15 the recovery of damages to the extent that the content of the  
16 consent form informed the woman of the risk of the type of  
17 injuries for which the woman is seeking damages.

18 4. This section shall not be construed to render any other  
19 statutory or common law cause of action for medical malpractice  
20 otherwise available inapplicable to abortion procedures or  
21 diminish the nature or the extent of those causes of action.  
22 The cause of action expressly specified in this section is in  
23 addition to any other statutory or common law cause of action.

24 5. A cause of action shall not be brought under this section  
25 if the abortion was performed due to a medical emergency.

26 6. For the purposes of this section:

27 a. "Abortion" means abortion as defined in section 146.1.

28 b. "Damages" means all special and general damages which  
29 are recoverable in tort for injuries incurred by the woman  
30 including but not limited to actual and punitive damages.

31 c. "Emotional distress" means a severe, debilitating, and  
32 persistent negative emotional or mental reaction including  
33 but not limited to mental anguish, fright, nervousness,  
34 grief, anxiety, worry, mortification, shock, humiliation, and  
35 indignity, as well as physical pain.

1 *d. "Informed consent"* means the duty of a physician to  
2 disclose all facts about the nature of the procedure, the risks  
3 of the procedure, and the alternatives to the procedure that a  
4 reasonable patient would consider significant to the patient's  
5 decision to undergo or forego an abortion.

6 *e. "Medical emergency"* means any condition which, on the  
7 basis of the physician's good faith clinical judgment, so  
8 complicates the medical condition of a pregnant woman as to  
9 necessitate the immediate abortion of her pregnancy to avert  
10 her death or for which a delay will create serious risk of  
11 substantial and irreversible impairment of a major bodily  
12 function.

13 EXPLANATION

14 The inclusion of this explanation does not constitute agreement with  
15 the explanation's substance by the members of the general assembly.

16 This bill establishes a cause of action that may be  
17 maintained by a woman upon whom an abortion has been performed  
18 against the physician who performed the abortion to recover  
19 damages for any emotional distress, whether or not independent  
20 of a physical injury, proximately caused as the result of the  
21 physician's negligence or failure to obtain informed consent  
22 prior to performance of the abortion. The action may be  
23 brought at any time during the lifetime of the woman. The  
24 bill provides that the signing of a consent form by the woman  
25 prior to the abortion does not negate the cause of action,  
26 but may reduce the recovery of damages to the extent that the  
27 content of the consent form informed the woman of the risk of  
28 the type of injuries for which the woman is seeking damages.  
29 The bill also provides that other existing statutory or common  
30 law causes of action for medical malpractice are not to be  
31 construed to be rendered inapplicable to abortion procedures or  
32 diminish the nature or the extent of those causes of action.  
33 The cause of action expressly specified in the bill is in  
34 addition to any other statutory or common law cause of action.  
35 A cause of action is prohibited under the bill if the abortion

1 was performed due to a medical emergency.

2 The bill defines "abortion", "damages", "emotional  
3 distress", "informed consent", and "medical emergency" for the  
4 purposes of the bill.