

House File 2316 - Introduced

HOUSE FILE 2316

BY THORUP

A BILL FOR

1 An Act relating to medication abortions and providing
2 penalties.

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

1 Section 1. NEW SECTION. 146E.1 Definitions.

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

4 1. "*Abortion*" means the termination of a human pregnancy
5 with the intent other than to produce a live birth or to remove
6 a dead fetus.

7 2. "*Abortion-inducing drug*" means a drug, medicine, mixture,
8 or preparation, prescribed or administered with the intent
9 to terminate the pregnancy of a woman known to be pregnant.
10 "*Abortion-inducing drug*" includes mifepristone and misoprostol.

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

12 4. "*Medication abortion*" means an abortion induced by an
13 abortion-inducing drug.

14 5. "*Medical emergency*" means the same as defined in section
15 146B.1.

16 6. "*Outpatient surgical facility*" means the same as defined
17 in section 135.61.

18 7. "*Stable*" with reference to an internet website means
19 a website that, to the extent reasonably practicable, is
20 safeguarded from having its content altered other than by the
21 department.

22 Sec. 2. NEW SECTION. 146E.2 Facility where medication
23 abortions performed — posting of signs.

24 1. A private office, freestanding outpatient surgical
25 facility, hospital, or other facility in which medication
26 abortions are performed shall conspicuously post a sign in
27 a location specified in this section, clearly visible to
28 patients, which reads as follows:

29 Recent developing research has indicated that mifepristone
30 alone is not always effective in ending a pregnancy. It may
31 be possible to avoid, cease, or even to reverse the intended
32 effects of a medication abortion utilizing an abortion-inducing
33 drug such as mifepristone if the second pill has not been
34 taken. Please consult with a health care professional
35 immediately.

1 2. The sign required pursuant to subsection 1 shall be
2 printed with lettering that is legible and shall be at least
3 three-quarters of an inch in boldface type.

4 3. A facility in which medication abortions are performed
5 that is a private office or a freestanding outpatient surgical
6 facility shall post the required sign in each patient waiting
7 room and patient consultation room used by patients on whom
8 medication abortions are performed. A hospital or any other
9 facility in which medication abortions are performed that
10 is not a private office or freestanding outpatient surgical
11 facility shall post the required sign in each patient admission
12 area used by patients on whom medication abortions are
13 performed.

14 Sec. 3. NEW SECTION. **146E.3 Medication abortion — informed**
15 **consent.**

16 1. Except in the case of a medical emergency, in addition to
17 compliance with the prerequisites of chapter 146A, a physician
18 shall not perform or attempt to perform a medication abortion
19 involving the two-drug process of first dispensing mifepristone
20 followed by the dispensing of misoprostol unless the physician
21 who will perform the medication abortion, the referring
22 physician, or an agent of either physician obtains written
23 certification from the pregnant woman that the woman has been
24 informed, by telephone or in person, at least twenty-four hours
25 before the medication abortion of all of the following:

26 a. It may be possible to reverse the intended effects of a
27 medication abortion utilizing mifepristone if the woman changes
28 her mind but that time is of the essence.

29 b. Information on and assistance with reversing the effects
30 of a medication abortion utilizing mifepristone is available on
31 the department's internet site.

32 2. Following the dispensing of mifepristone, the attending
33 physician or an agent of the attending physician shall provide
34 written medical discharge instructions to the woman which must
35 include the following statement:

1 Recent developing research has indicated that mifepristone
2 alone is not always effective in ending a pregnancy. It may
3 be possible to avoid, cease, or even to reverse the intended
4 effects of a medication abortion utilizing an abortion-inducing
5 drug such as mifepristone if the second pill has not been
6 taken. Please consult with a health care professional
7 immediately.

8 3. The attending physician or an agent of the attending
9 physician shall maintain documentation verifying compliance
10 with this section in the woman's medical record.

11 Sec. 4. NEW SECTION. **146E.4 Printed information and**
12 **internet site.**

13 1. The department shall publish, in English and in each
14 language which is the primary language of two percent or
15 more of the state's population, and shall make available
16 on the department's internet site, materials designed to
17 inform a woman of the possibility of reversing the effects
18 of a medication abortion utilizing mifepristone if the woman
19 changes her mind, and information on and assistance with
20 resources that may be available to help reverse the effects
21 of a medication abortion. The materials shall be printed or
22 typed in an easy-to-read font, size, and style, and in a clear,
23 understandable manner calculated to ensure that the information
24 is easily comprehensible.

25 2. The department shall ensure that the department's
26 internet site is stable and information regarding internet site
27 visits, views, or hits shall not be collected or maintained.
28 The department shall monitor the internet site on a daily basis
29 to prevent and correct tampering.

30 Sec. 5. NEW SECTION. **146E.5 Penalties.**

31 1. A person who intentionally performs or attempts to
32 perform a medication abortion in violation of this chapter is
33 guilty of a class "D" felony.

34 2. A physician or physician's agent shall not be civilly or
35 criminally liable for failure to comply with section 146E.3,

1 subsection 1, paragraph "b", regarding information to be
2 provided on the department's internet site if the information
3 is not available on the department's internet site at the time
4 the physician or physician's agent is required to inform a
5 woman of the information.

6 3. A private office, freestanding outpatient surgical
7 facility, hospital, or other facility that intentionally
8 or recklessly fails to post a required sign in violation
9 of section 146E.2 shall be assessed a civil penalty of ten
10 thousand dollars. Each day on which a medication abortion is
11 performed, not including a medication abortion performed in a
12 medical emergency, during which the required sign is not posted
13 during business hours when patients or prospective patients are
14 present, constitutes a separate violation.

15 4. Failure of a physician to comply with this chapter is
16 grounds for licensee discipline under chapter 148.

17 Sec. 6. NEW SECTION. 146E.6 Civil remedies.

18 1. A woman upon whom a medication abortion has been
19 performed or attempted to be performed in violation of this
20 chapter may maintain an action against the physician who
21 performed or attempted to perform the medication abortion in
22 intentional or reckless violation of this chapter for actual
23 damages.

24 2. A parent or guardian of a woman who is less than eighteen
25 years of age at the time the medication abortion was performed
26 or was attempted to be performed upon the woman in violation of
27 this chapter may maintain an action against the physician who
28 performed or attempted to perform the medication abortion in
29 intentional or reckless violation of this chapter for actual
30 damages.

31 3. If the plaintiff prevails in an action brought under
32 this section, the plaintiff shall be entitled to an award of
33 reasonable attorney fees.

34 4. If the defendant prevails in an action brought under
35 this section and the court finds that the plaintiff's suit was

1 frivolous and brought in bad faith, the defendant shall be
2 entitled to an award of reasonable attorney fees.

3 5. Damages and attorney fees shall not be assessed against
4 the woman upon whom a medication abortion was performed or
5 attempted except as provided in subsection 4.

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

29 7. This chapter shall not be construed to impose civil or
30 criminal liability on a woman upon whom a medication abortion
31 is performed or attempted.

32

EXPLANATION

33

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

35

This bill relates to medication abortions.

1 A medication abortion is defined in the bill as an abortion
2 induced by an abortion-inducing drug, defined as a drug,
3 medicine, mixture, or preparation, when it is prescribed or
4 administered with the intent to terminate the pregnancy of a
5 woman known to be pregnant. An abortion-inducing drug includes
6 mifepristone and misoprostol.

7 The bill requires a private office, freestanding outpatient
8 surgical facility, hospital, or other facility in which
9 medication abortions are performed to conspicuously post a sign
10 in a location as described in the bill.

11 The bill specifies that the sign shall be printed with
12 lettering that is legible and shall be at least three-quarters
13 of an inch in boldface type. A facility required to post
14 the sign that is a private office or freestanding outpatient
15 surgical facility must post the sign in each patient waiting
16 room and patient consultation room used by patients on whom
17 medication abortions are performed. A hospital or any other
18 facility in which medication abortions are performed that
19 is not a private office or freestanding outpatient surgical
20 facility shall post the required sign in each patient admission
21 area used by patients on whom medication abortions are
22 performed.

23 The bill requires that, except in the case of a medical
24 emergency, in addition to compliance with the abortion
25 prerequisites of Code chapter 146A, a physician shall not
26 perform or attempt to perform a medication abortion involving
27 the two-drug process of first dispensing mifepristone followed
28 by the dispensing of misoprostol, unless the physician who will
29 perform the medication abortion, the referring physician, or an
30 agent of either physician obtains written certification from
31 the pregnant woman. The written certification shall provide
32 that the woman has been informed, by telephone or in person,
33 at least 24 hours before the medication abortion, that it may
34 be possible to reverse the intended effects of a medication
35 abortion utilizing mifepristone if the woman changes her mind

1 but that time is of the essence, and that information on and
2 assistance with reversing the effects of a medication abortion
3 utilizing mifepristone is available on the department of public
4 health's (department) internet site. Following the dispensing
5 of mifepristone, the attending physician or an agent of the
6 attending physician shall provide written medical discharge
7 instructions to the woman which must include the statement
8 specified in the bill.

9 The bill requires the department to publish, in English and
10 in each language which is the primary language of 2 percent
11 or more of the state's population, and to make available
12 on the department's internet site, materials designed to
13 inform a woman of the possibility of reversing the effects
14 of a medication abortion utilizing mifepristone if the woman
15 changes her mind, and information on and assistance with the
16 resources that may be available to help reverse the effects
17 of a medication abortion. The materials shall be printed or
18 typed in an easy-to-read font, size, and style, and in a clear,
19 understandable manner calculated to ensure that the information
20 is easily comprehensible. The department shall ensure that the
21 department's internet site is stable and information regarding
22 internet site visits, views, or hits shall not be collected or
23 maintained. The department shall monitor the internet site on
24 a daily basis to prevent and correct tampering.

25 The bill provides penalties for a violation of the bill.
26 The bill provides that a person who intentionally performs or
27 attempts to perform a medication abortion in violation of the
28 bill is guilty of a class "D" felony. A class "D" felony is
29 punishable by confinement for no more than five years and a
30 fine of at least \$750 but not more than \$7,500.

31 Under the bill, a physician or physician's agent shall not
32 be civilly or criminally liable for failure to comply with
33 the provision regarding information to be provided on the
34 department's internet site if the information is not available
35 on the internet site at the time the physician or physician's

1 agent is required to inform a woman of the information. A
2 private office, freestanding outpatient surgical facility,
3 hospital, or other facility that intentionally or recklessly
4 fails to post a required sign in violation of the bill shall
5 be assessed a civil penalty of \$10,000. Each day on which a
6 medication abortion is performed, not including a medication
7 abortion performed in a medical emergency, during which the
8 required sign is not posted during business hours when patients
9 or prospective patients are present, constitutes a separate
10 violation. Failure of a physician to comply with the bill is
11 grounds for licensee discipline under Code chapter 148.

12 The bill provides civil remedies for violation of the
13 provisions of the bill. A woman upon whom a medication
14 abortion has been performed or attempted to be performed in
15 violation of the bill may maintain an action against the
16 physician who performed or attempted to perform the medication
17 abortion in intentional or reckless violation of the bill
18 for actual damages. A parent or guardian of a woman who is
19 less than 18 years of age at the time the medication abortion
20 was performed or attempted to be performed upon the woman
21 in violation of the bill may maintain an action against the
22 physician who performed or attempted to perform the medication
23 abortion in intentional or reckless violation of the bill for
24 actual damages. If the plaintiff prevails in an action brought
25 under the bill, the plaintiff shall be entitled to an award
26 of reasonable attorney fees. If the defendant prevails in an
27 action brought under the bill and the court finds that the
28 plaintiff's suit was frivolous and brought in bad faith, the
29 defendant shall be entitled to an award of reasonable attorney
30 fees. Damages and attorney fees shall not be assessed against
31 the woman upon whom a medication abortion was performed or
32 attempted unless the defendant prevails and the court finds
33 that the plaintiff's suit was frivolous and brought in bad
34 faith.

35 The bill also provides protections to guard the anonymity of

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1 the woman in a civil action under the bill. The bill is not to
2 be construed to impose civil or criminal liability on a woman
3 upon whom a medication abortion is performed or attempted.