

SESSION OF 2019

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 67**

As Agreed to April 5, 2019

Brief*

SB 67 would require certain notifications be posted in facilities where medication abortions that use mifepristone are provided and be given by physicians providing such abortions. The bill would provide relevant definitions and create civil and criminal penalties for violating the notification requirements.

Definitions

The bill would define the following terms:

- “Medication abortion” to mean the use or prescription of any drug for the purpose of inducing an abortion;
- “Abortion” to mean the use or prescription of any instrument, medicine, drug, or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant

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woman or her unborn child, and which causes the premature termination of the pregnancy; and

- “Medical emergency” to mean a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the woman or for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that would result in her death or in substantial and irreversible physical impairment of a major bodily function.

Notification Requirements

The bill would require any private office, freestanding surgical outpatient clinic, hospital, or other facility or clinic where medication abortions that use mifepristone are provided to post a conspicuous sign that is clearly visible to patients, that is printed with lettering that is legible and at least 3/4 of an inch boldfaced type, and that would read as follows:

“NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS THAT USE MIFEPRISTONE: Mifepristone, also known as RU-486 or mifeprex, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by accessing available resources.”

The notice would be required to include information about the Kansas Department of Health and Environment (KDHE) website, which is required to be maintained by law, and other relevant telephone and Internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

Facilities

The bill would require any private office or freestanding surgical outpatient clinic where medication abortions that use mifepristone are provided to post the sign in each patient waiting room and patient consultation room used by patients for whom medication abortions are provided.

A hospital or other facility where medication abortions that use mifepristone are provided that is not a private office or freestanding surgical outpatient clinic would be required to post the sign in each patient admission area used by patients for whom medication abortions that use mifepristone are provided.

Physician

The bill would prohibit a physician from providing, inducing, or attempting to provide or induce a medication abortion that uses mifepristone without informing the woman, in writing as prescribed in the Woman's-Right-to-Know Act and by telephone or in person, at least 24 hours prior to the medication abortion, except in the case of a medical emergency, of the following:

- It could be possible to reverse the intended effects of a medication abortion that uses mifepristone, if the woman changes her mind, but that time is of the essence; and

- Information on reversing the effects of a medication abortion that uses mifepristone would be available on KDHE's website as required by law, and other relevant telephone and Internet resources containing information on where the patient could obtain timely assistance to attempt to reverse the medication abortion.

The bill would require, after a physician dispenses or provides an initial administration of mifepristone to a patient for the purposes of performing a medication abortion, the physician or an agent of the physician to provide a legible, written notice to the patient that includes the same information stated above.

The bill would require, when a medical emergency compels the performance of a medication abortion that uses mifepristone, the physician to inform the woman, prior to the medication abortion, if possible, of the medical indications supporting the physician's judgment an abortion would be necessary to avert the woman's death or a 24-hour delay would create serious risk of substantial and irreversible impairment of a major bodily function, excluding psychological or emotional conditions.

KDHE Website

The bill would require, within 90 days after the effective date of the bill, KDHE cause to be published, in English and in each language that is the primary language of 2.0 percent of more of the state's population, in print and on the website required by law, comprehensible materials deigned to inform women of the possibility of reversing the effects of a medication abortion that uses mifepristone and information on resources available to reverse the effects of a medication abortion that uses mifepristone. The website would also include other relevant telephone and Internet resources containing information on where the patient could obtain

timely assistance to attempt to reverse the medication abortion.

Criminal Penalties

The bill would provide that upon a first conviction of a violation of failing to provide notification as outlined in the bill, a person would be guilty of a class A person misdemeanor and upon second or subsequent conviction of such violation, a person would be guilty of a severity level 10, person felony.

Civil Penalties

The bill would require KDHE to assess a fine of \$10,000 to any private office, freestanding surgical outpatient clinic, hospital, or other clinic or facility that fails to post the sign. Each day the required sign is not posted would be a separate violation. KDHE would be required to remit all moneys received from fines to the State Treasurer. The State Treasurer would be required to deposit the entire amount of money remitted in the State Treasury to the credit of the State General Fund (SGF).

Civil Action

The bill would allow the following individuals to bring a civil action against a physician who provided a medication abortion using mifepristone in violation of the provisions in the bill for actual damages, exemplary and punitive damages, and any other appropriate relief:

- A woman to whom such medication abortion has been provided;
- The father of the unborn child who was subject to such medication abortion; or

- Any grandparent of the unborn child who was subject to such medication abortion, if the woman was not 18 years of age or older at the time the medication abortion was performed or if the woman died as a result of the medication abortion.

The bill would require such civil action be commenced within two years after the later of:

- The date of the discovery of the violation; or
- The conclusion of a related criminal case.

A court would be required to award reasonable attorney fees and costs to a prevailing plaintiff or a prevailing defendant upon a finding that the action was frivolous and brought in bad faith.

Anonymity

In any civil or criminal proceeding or action brought under the provisions of bill, the bill would require the court to rule whether the anonymity of any woman to whom a medication abortion has been provided, induced, or attempted to be provided or induced would be preserved from public disclosure, if she does not give her consent to such disclosure. The bill would require the court, upon motion of a party or on its own accord, to make such a ruling and, upon determining the woman's anonymity should be preserved, to issue orders to the parties, witnesses, and counsel and to direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. The bill would require each such order to be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent

of the woman to whom a medication abortion has been provided, induced, or attempted to be provided or induced, any person, other than a public official, who brings an action under this section would be required to do so under a pseudonym. The bill would not be construed to conceal the identity of the plaintiff or witnesses from the defendant.

Severability Clause

The bill would provide that if any provision of the bill, or any application thereof to any person or circumstance, would be held invalid by court order, then such invalidity would not affect the remainder of the bill and any application thereof to any person or circumstance that could be given effect without such invalid provision or application, and to this end, the provisions of the bill would be declared to be severable.

Reporting Requirements

The bill would require any person licensed by the State Board of Healing Arts or the Board of Nursing who prescribes or administers progesterone for the purpose of reversing a medication abortion to:

- Report to KDHE within 14 days of prescription or administration the person has prescribed or administered progesterone to a patient for such purpose;
- If the progesterone treatment fails to reverse the effects of the medication abortion, report to KDHE within 14 days of such failure; and
- If the woman to whom progesterone is prescribed or administered for the purpose of reversing a medication abortion successfully carries the pregnancy to term, report to KDHE the maternal

and newborn health conditions at the time of birth within 14 days of the birth.

Conference Committee Action

The Conference Committee agreed to remove the contents of SB 67; insert the contents of HB 2274, as amended by the House Committee; and amend the contents of HB 2274 to require a report be made to KDHE regarding the prescription and administration of progesterone for the purpose of reversing a medication abortion by a person licensed by the State Board of Healing Arts or the Board of Nursing, as follows:

- The prescription or administration of progesterone for such purpose;
- The failure of the progesterone treatment to reverse the effects of the medication abortion; and
- The maternal and newborn health conditions at the time of birth if the woman to whom progesterone is prescribed or administered for the purpose of reversing a medication abortion successfully carries the pregnancy to term.

Background

The Conference Committee removed the contents of SB 67; inserted the contents of HB 2274, as amended by the House Committee; and amended HB 2274 to require the reporting of certain information to KDHE regarding the prescription or administration of progesterone for the purpose of reversing a medication abortion. [Note: The contents of SB 67 previously addressed establishing the Unclaimed Life Insurance Benefits Act and amending the unfair trade practices law relating to the refusal to insure or limiting of life insurance coverage to certain individuals. A Conference

Committee report for HB 2209, which includes the provisions of SB 67, was adopted by the Senate and the House.]

HB 2274 (Notification Requirements for Medication Abortions Using Mifepristone)

HB 2274 was introduced by the House Committee on Health and Human Services at the request of Representatives Eplee, Arnberger, Averkamp, Barker, Bergquist, Blex, Burris, Capps, B. Carpenter, W. Carpenter, Clark, Collins, Corbet, Croft, Delperdang, Dietrich, Donohoe, Dove, Ellis, Erickson, Esau, Finch, French, Garber, Hawkins, Helmer, Highland, Hoffman, Howard, Huebert, Humphries, Jacobs, Johnson, Karleskint, Kelly, Landwehr, Lewis, Lynn, Mason, Mastroni, Owens, Patton, Proehl, Rahjes, Ralph, Resman, Rhiley, Ryckman, Samsel, Schreiber, A. Smith, E. Smith, Sutton, Tarwater, Thimesch, Thomas, Toplikar, Vickrey, Warren, and Wasinger.

In the House Committee hearing, representatives from Kansans for Life and Family Policy Alliance of Kansas testified in favor of the bill, generally stating women who begin a medication abortion should be provided information about protocols for abortion pill reversal. Proponent written-only testimony was provided by representatives of American Association of Pro-life Obstetricians and Gynecologists, Concerned Women for America of Kansas, Kansas Catholic Conference, a private citizen board-certified obstetrician and gynecologist, a private citizen medical doctor, and a private citizen.

Opponent testimony was provided by a private citizen obstetrician and gynecologist and representatives of American Civil Liberties Union of Kansas, Planned Parenthood Great Plains Votes, and Trust Women Foundation, Inc. The opponents generally stated abortion reversal has not been studied and has not been proven safe for patients. Opponent written-only testimony was provided by a private citizen board-certified obstetrician and gynecologist

and representatives of Mainstream Coalition and University of California at San Francisco.

The House Committee amended the bill by inserting an additional notification requirement, in written form, to be provided to a woman 24 hours prior to a medication abortion. [Note: The Conference Committee retained this amendment.]

According to the fiscal note prepared by the Division of the Budget on HB 2274, as introduced, KDHE indicates consultation with a medical provider to develop comprehensible, accurate content to be added to existing print and online resources and materials would be required. KDHE also indicates the agency would need staff to coordinate and review materials, printing, distributing, orders, and other activities, but these expenses would be absorbed within existing resources. Printing, postage, and contractual services for the agency is estimated to cost \$27,450 from the SGF for FY 2020. Additionally, KDHE states it is not possible to estimate the revenue to the SGF. The Office of Judicial administration (Office) indicates the bill has the potential for increasing litigation in the courts because of the new violation created by the bill. If that happens, the Office indicates there would be a fiscal effect on the operation of the court system. Further, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be; therefore, the precise fiscal effect cannot be determined. Any fiscal effect associated with enactment of HB 2274 is not reflected in *The FY 2020 Governor's Budget Report*.

medication abortion; notification; criminal penalties; civil penalties; reports

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