

HOUSE BILL NO. HB0276

Women's right to know.

Sponsored by: Representative(s) Brechtel and Gingery

A BILL

for

1 AN ACT relating to women's health information; requiring
 2 informed consent for abortion; providing licensing, civil
 3 and criminal penalties for noncompliance as specified;
 4 providing for publication of informational materials;
 5 requiring reports to the department of health; requiring
 6 statistical reports from the department of health; granting
 7 rulemaking authority; and providing for an effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 35-29-101 through 35-29-108 are
 12 created to read:

13

14

CHAPTER 29

15

WOMEN'S RIGHT TO KNOW

16

17 **35-29-101. Title.**

1 This chapter shall be known and may be cited as the
2 "Women's Right to Know Act."

3

4 **35-29-102. Definitions.**

5

6 (a) As used in this chapter:

7

8 (i) "Abortion" means the act of using or
9 prescribing any instrument, medicine, drug or any other
10 substance, device or means with the intent to terminate the
11 clinically diagnosable pregnancy of a woman with knowledge
12 that the termination by those means will with reasonable
13 likelihood cause the death of the unborn child. Such use,
14 prescription or means is not an abortion if done with the
15 intent to do one (1) or more of the following:

16

17 (A) Save the life or preserve the health of
18 an unborn child;

19

20 (B) Remove a dead unborn child caused by
21 spontaneous abortion;

22

23 (C) Remove an ectopic pregnancy.

24

1 (ii) "Complication" means a condition in
2 association with a pregnancy including but not limited to
3 hemorrhage, infection, uterine perforation, cervical
4 laceration, pelvic inflammatory disease, endometritis and
5 retained products. The department may further define
6 complication by rule and regulation;

7

8 (iii) "Conception" means the fusion of a human
9 spermatozoon with a human ovum;

10

11 (iv) "Department" means the department of
12 health;

13

14 (v) "Medical facility" means any public or
15 private hospital, clinic, center, medical school, medical
16 training institution, health care facility, physician's
17 office, infirmary, dispensary, ambulatory surgical
18 treatment center or other institution or location wherein
19 medical care is provided to any person;

20

21 (vi) "First trimester" means the first twelve
22 (12) weeks of gestation;

23

1 (vii) "Gestational age" means the time that has
2 elapsed since the first day of the woman's last menstrual
3 period;

4
5 (viii) "Hospital" means an institution licensed
6 pursuant to the provisions of the law of this state;

7
8 (ix) "Medical emergency" means that condition
9 which, on the basis of the physician's good faith clinical
10 judgment, so complicates the medical condition of a
11 pregnant woman as to necessitate the immediate termination
12 of her pregnancy to avert her death or for which a delay
13 will create serious risk of substantial and irreversible
14 impairment of a major bodily function;

15
16 (x) "Physician" means any person licensed to
17 practice medicine pursuant to the Medical Practice Act;

18
19 (xi) "Pregnant" or "pregnancy" means that female
20 reproductive condition of having an unborn child in the
21 mother's uterus;

22
23 (xii) "Qualified person" means an agent of the
24 physician who is a psychologist, licensed social worker,

1 licensed professional counselor, registered nurse or
2 physician;

3

4 (xiii) "Unborn child" means the offspring of
5 human beings from conception until birth;

6

7 (xiv) "Viability" means the state of fetal
8 development when, in the judgment of the physician based on
9 the particular facts of the case before the physician and
10 in light of the most advanced medical technology and
11 information available to the physician, there is a
12 reasonable likelihood of sustained survival of the unborn
13 child outside the body of the child's mother, with or
14 without artificial support.

15

16 **35-29-103. Informed consent requirement.**

17

18 (a) No abortion shall be performed or induced without
19 the voluntary and informed consent of the woman upon whom
20 the abortion is to be performed or induced. Except in the
21 case of a medical emergency, consent to an abortion is
22 voluntary and informed only if:

23

1 (i) At least twenty-four (24) hours before the
2 abortion, the physician who is to perform the abortion or
3 the referring physician has informed the woman, orally and
4 in person, of each of the following:

5

6 (A) The name of the physician who will
7 perform the abortion;

8

9 (B) Medically accurate information that a
10 reasonable patient would consider material in deciding
11 whether to undergo an abortion, including a description of
12 the proposed abortion method, the immediate and long-term
13 medical risks associated with the proposed abortion method
14 including, but not limited to, the risks of infection,
15 hemorrhage, cervical or uterine perforation, danger to
16 subsequent pregnancies and increased risk of breast cancer,
17 and alternatives to the abortion;

18

19 (C) The probable gestational age of the
20 unborn child at the time the abortion is to be performed;

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22 (D) The probable anatomical and
23 physiological characteristics of the unborn child at the
24 time the abortion is to be performed;

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(E) The medical risks associated with carrying her child to term;

(F) Any need for anti-Rh immune globulin therapy if she is Rh negative, the likely consequences of refusing such therapy, and the cost of the therapy.

(ii) At least twenty-four (24) hours before the abortion, the physician who is to perform the abortion, the referring physician or a qualified person has informed the woman, orally and in person, of each of the following:

(A) The existence of medical assistance benefits for prenatal care, childbirth and neonatal care, and the availability of more detailed information regarding such assistance in the printed materials and informational video given to her and described in W.S. 35-29-104;

(B) The availability of printed and video materials required by W.S. 35-29-104 describing the unborn child and containing a list of agencies that offer alternatives to abortion;

1 (C) The liability of the father of the
2 unborn child to support of this child, even in instances
3 where he has offered to pay for the abortion. In the case
4 of rape or incest, this information may be omitted;

5

6 (D) The woman's authority to withhold or
7 withdraw her consent to the abortion at any time without
8 affecting her right to future care or treatment and without
9 the loss of any state or federally funded benefits to which
10 she might otherwise be entitled.

11

12 (iii) The information in paragraphs (i) and (ii)
13 of this subsection is provided to the woman individually
14 and in a private room to protect her privacy and maintain
15 the confidentiality of her decision, to ensure that the
16 information focuses on her individual circumstances and
17 that she has an adequate opportunity to ask questions;

18

19 (iv) At least twenty-four (24) hours before the
20 abortion, the woman is given a copy of the printed
21 materials and a viewing of, or a copy of, the informational
22 video described in W.S. 35-29-104. If the woman is unable
23 to read the materials, they shall be read to her. If the
24 woman asks questions concerning any of the information or

1 materials, answers shall be provided to her in a language
2 she can understand;

3

4 (v) Prior to the abortion, the woman certifies
5 in writing on a checklist form provided or approved by the
6 department that the information required to be provided
7 under paragraphs (i) and (ii) of this subsection has been
8 provided in the manner required by paragraph (iii) of this
9 subsection. All physicians who perform abortions shall
10 report monthly to the department the total number of
11 certifications received. The department shall annually
12 make the number of certifications received available to the
13 public.

14

15 (b) Except in the case of a medical emergency, the
16 physician who is to perform the abortion shall receive and
17 sign a copy of the written certification prescribed in
18 paragraph (a)(v) of this section prior to performing the
19 abortion. The physician shall retain a copy of the
20 checklist certification form in the woman's medical record.

21

22 (c) In the event of a medical emergency requiring an
23 immediate termination of pregnancy, the physician who
24 performed the abortion shall clearly certify in writing the

1 nature of the medical emergency and the circumstances which
2 necessitated the waiving of the informed consent
3 requirements of this section. This certification shall be
4 signed by the physician who performed the emergency
5 abortion, and shall be permanently filed in both the
6 records of the physician performing the abortion and the
7 records of the facility where the abortion takes place.

8

9 (d) A physician shall not require or obtain payment
10 for a service provided to a patient who has inquired about
11 an abortion or scheduled an abortion until the expiration
12 of the twenty-four (24) hour reflection period required in
13 paragraphs (a) (i), (ii) and (iv) of this section.

14

15 **35-29-104. Publication of materials.**

16

17 (a) The department shall cause to be published
18 printed materials and an informational video in English and
19 Spanish, within sixty (60) days after this act becomes law,
20 including:

21

22 (i) Geographically indexed materials that inform
23 the woman of public and private agencies and services
24 available to assist a woman through pregnancy, upon

1 childbirth and while her child is dependent, including but
2 not limited to adoption agencies. The materials shall
3 include a comprehensive list of the agencies, a description
4 of the services they offer, and the telephone numbers and
5 addresses of the agencies, and shall inform the woman about
6 available medical assistance benefits for prenatal care,
7 childbirth and neonatal care. The department shall ensure
8 that the materials described in this paragraph are
9 comprehensive and do not directly or indirectly promote,
10 exclude or discourage the use of any agency or service
11 described in this paragraph;

12

13 (ii) A statement that any physician who performs
14 an abortion upon a woman without her informed consent may
15 be liable to her for damages in a civil action at law and
16 that the law permits adoptive parents to pay costs of
17 prenatal care, childbirth and neonatal care;

18

19 (iii) The following statement:

20

21 "There are many public and private agencies
22 willing and able to help you to carry your child
23 to term, and to assist you and your child after
24 your child is born, whether you choose to keep

1 your child or to place her or him for adoption.
2 The state of Wyoming strongly urges you to
3 contact one or more of these agencies before
4 making a final decision about abortion. The law
5 requires that your physician or his agent give
6 you the opportunity to call agencies like these
7 before you undergo an abortion."

8
9 (iv) Materials that include information on the
10 support obligations of the father of a child who is born
11 alive, including but not limited to the father's legal duty
12 to support his child, which may include child support
13 payments and health insurance, and the fact that paternity
14 may be established by the father's signature on a birth
15 certificate or statement of paternity, or by court action;

16
17 (v) A statement that more information concerning
18 paternity establishment and child support services and
19 enforcement may be obtained by calling state or county
20 public assistance agencies;

21
22 (vi) Materials that inform the pregnant woman of
23 the probable anatomical and physiological characteristics
24 of the unborn child at two (2) week gestational increments

1 from fertilization to full term, including photo or
2 caricature of the developing unborn child at two (2) week
3 gestational increments. The descriptions shall include
4 information about brain and heart function, the presence of
5 external members and internal organs during the applicable
6 stages of development and any relevant information on the
7 possibility of the unborn child's survival. If a
8 photograph is not available, a picture shall contain the
9 dimensions of the unborn child and shall be realistic. The
10 materials shall be objective, nonjudgmental and designed to
11 convey only accurate scientific information about the
12 unborn child at the various gestational ages;

13

14 (vii) Materials which contain objective
15 information describing the various surgical and drug
16 induced methods of abortion, as well as the immediate and
17 long-term medical risks commonly associated with each
18 abortion method including, but not limited to, the risks of
19 infection, hemorrhage, cervical or uterine perforation or
20 rupture, danger to subsequent pregnancies, increased risk
21 of breast cancer, the possible adverse psychological
22 effects associated with an abortion, and the medical risks
23 associated with carrying a child to term;

24

1 (viii) A checklist certification form to be used
2 by the physician or a qualified person under W.S.
3 35-29-103(a)(v), which will list all the items of
4 information which are to be given to the woman by a
5 physician or the agent under this chapter.

6
7 (b) The materials required by this section shall be
8 printed in a typeface large enough to be clearly legible.
9 The materials shall be available at no cost from the
10 department of health upon request and in appropriate number
11 to any person, facility or hospital.

12

13 **35-29-105. Emergencies.**

14

15 When a medical emergency compels the performance of an
16 abortion, the physician shall inform the woman, before the
17 abortion if possible, of the medical indications supporting
18 the physician's judgment that an immediate abortion is
19 necessary to avert her death or that a twenty-four (24)
20 hour delay will cause substantial and irreversible
21 impairment of a major bodily function.

22

23 **35-29-106. Civil Penalties.**

24

1 (a) Failure to comply with the requirements of this
2 chapter shall:

3

4 (i) Provide a basis for a civil malpractice
5 action. Any intentional violation of this chapter shall be
6 admissible in a civil suit as prima facie evidence of a
7 failure to obtain informed consent. When requested, the
8 court shall allow a woman to proceed using solely her
9 initials or a pseudonym and may close any proceedings in
10 the case and enter other protective orders to preserve the
11 privacy of the woman upon whom the abortion was performed;

12

13 (ii) Provide a basis for professional
14 disciplinary action under the Medical Practice Act;

15

16 (iii) Provide a basis for recovery for the woman
17 for the wrongful death of her unborn child pursuant to
18 chapter 38 of title 1 of the Wyoming statutes, whether or
19 not the unborn child was born alive or was viable at the
20 time the abortion was performed.

21

22 **35-29-107. Reporting.**

23

1 (a) For the purpose of promotion of maternal health
2 and life by adding to the sum of medical and public health
3 knowledge through the compilation of relevant data, and to
4 promote the state's interest in protection of the unborn
5 child, a report of each abortion performed shall be made to
6 the department on forms prescribed by it. The reports
7 shall be completed by the hospital or other licensed
8 facility in which the abortion occurred, signed by the
9 physician who performed the abortion, and transmitted to
10 the department within fifteen (15) days after each
11 reporting month. The report forms shall not identify the
12 individual patient by name and shall include the following
13 information:

14

15 (i) Identification of the physician who
16 performed the abortion and the facility where the abortion
17 was performed and identification of the referring
18 physician, agency or service, if any. Notwithstanding any
19 provision of law to the contrary, the department shall
20 ensure that the identification of any physician or other
21 health care provider reporting under this section shall not
22 be released or otherwise made available to the general
23 public;

24

1 (ii) The county and state in which the woman
2 resides;

3

4 (iii) The woman's age;

5

6 (iv) The number of prior pregnancies and prior
7 abortions of the woman;

8

9 (v) The probable gestational age of the unborn
10 child;

11

12 (vi) The type of procedure performed or
13 prescribed and the date of the abortion;

14

15 (vii) Preexisting medical condition of the woman
16 which would complicate pregnancy, if any, and, if known,
17 medical complications which resulted from the abortion;

18

19 (viii) The length and weight of the aborted
20 child for any abortion performed pursuant to a medical
21 emergency as defined in W.S. 35-29-105;

22

1 (ix) The basis for any medical judgment that a
2 medical emergency existed which excused the physician from
3 compliance with any provision of this chapter.

4
5 (b) When there is an abortion performed during the
6 first trimester of pregnancy, the tissue that is removed
7 shall be subjected to a gross or microscopic examination,
8 as needed, by the physician or a qualified person
9 designated by the physician to determine if a pregnancy
10 existed and was terminated. If the examination indicates
11 no fetal remains, that information shall immediately be
12 made known to the physician and sent to the department
13 within fifteen (15) days of the analysis.

14
15 (c) When there is an abortion performed after the
16 first trimester of pregnancy, the physician shall certify
17 whether or not the child is viable, and the dead unborn
18 child and all tissue removed at the time of the abortion
19 shall be submitted for tissue analysis to a board eligible
20 or certified pathologist. If the report reveals evidence
21 of viability or live birth, the pathologist shall report
22 such findings to the department within fifteen (15) days,
23 and a copy of the report shall also be sent to the
24 physician performing the abortion. The department shall

1 prescribe a form on which pathologists may report any
2 evidence of live birth, viability or absence of pregnancy.

3

4 (d) Every facility in which an abortion is performed
5 within this state during any quarter year shall file with
6 the department a report showing the total number of
7 abortions performed within the hospital or other facility
8 during that quarter year. This report shall also show the
9 total abortions performed in each trimester of pregnancy.
10 These reports shall be submitted on a form prescribed by
11 the department that will enable a facility to indicate
12 whether or not it is receiving state appropriated funds.
13 The reports shall be available for public inspection and
14 copying only if the facility receives state appropriated
15 funds within the twelve (12) calendar month period
16 immediately preceding the filing of the report. If the
17 facility indicates on the form that it is not receiving
18 state appropriated funds, the department shall regard that
19 facility's report as confidential unless it receives other
20 evidence that causes it to conclude that the facility
21 receives state-appropriated funds.

22

23 (e) After thirty (30) days public notice following
24 the enactment of this chapter, the department shall require

1 that all reports of maternal deaths occurring within the
2 state arising from pregnancy, childbirth or intentional
3 abortion state the cause of death, the duration of the
4 woman's pregnancy, when her death occurred and whether or
5 not the woman was under the care of a physician during her
6 pregnancy prior to her death. The department shall issue
7 any necessary regulations to assure that information is
8 reported, and conduct its own investigation, if necessary,
9 to ascertain the data. Known incidents of maternal
10 mortality of nonresident women arising from induced
11 abortion performed in this state shall be included in the
12 report as incidents of maternal mortality arising from
13 induced abortions. Incidents of maternal mortality arising
14 from continued pregnancy or childbirth and occurring after
15 induced abortion has been attempted but not completed,
16 including deaths occurring after induced abortion has been
17 attempted but not completed as a result of ectopic
18 pregnancy, shall be included as incidents of maternal
19 mortality arising from induced abortion.

20

21 (f) Every physician who is called upon to provide
22 medical care or treatment to a woman who is in need of
23 medical care because of a complication or complications
24 resulting, in the good faith judgment of the physician,

1 from having undergone an abortion or attempted abortion,
2 shall prepare a report. The report shall be filed with the
3 department within thirty (30) days of the date of the
4 physician's first examination of the woman. The report
5 shall be on forms prescribed by the department. The forms
6 shall contain the following information together with other
7 information except the name of the patient, as the
8 department may from time to time require:

9

10 (i) Age of patient;

11

12 (ii) Number of pregnancies patient may have had
13 prior to the abortion;

14

15 (iii) Number and type of abortions patient may
16 have had prior to this abortion;

17

18 (iv) Name and address of the facility where the
19 abortion was performed;

20

21 (v) Gestational age of the unborn child at the
22 time of the abortion, if known;

23

24 (vi) Type of abortion performed, if known;

1

2 (vii) Nature of complication or complications;

3

4 (viii) Medical treatment given;

5

6 (ix) The nature and extent, if known, of any
7 permanent condition caused by any complication.

8

9 (g) Reports filed pursuant to subsection (a) or (f)
10 of this section shall not be deemed public records and
11 shall remain confidential, except that disclosure may be
12 made to law enforcement officials upon an order of a court
13 after application showing good cause. The court may
14 condition disclosure of the information upon any
15 appropriate safeguards it may impose.

16

17 (h) The department shall prepare a comprehensive
18 annual statistical report for the legislature based upon
19 the data gathered from reports under subsections (a) and
20 (f) of this section. The statistical report shall not lead
21 to the disclosure of the identity of any physician or
22 person filing a report under subsections (a) or (f) of this
23 section, nor of any patient about whom a report is filed.

1 The statistical report shall be available for public
2 inspection and copying.

3

4 (j) Original copies of all reports filed under
5 subsections (a), (c) and (f) of this section shall be
6 available to the state board of medicine for use in the
7 performance of its official duties.

8

9 (k) The following penalties shall apply:

10

11 (i) Any person required under this section to
12 file a report, keep any records, or supply any information,
13 who willfully fails to file the report, keep the records,
14 or supply the information at the time or times required by
15 law or regulation, is guilty of unprofessional conduct, and
16 the person's license for the practice of medicine and
17 surgery shall be subject to suspension or revocation in
18 accordance with procedures provided under the Medical
19 Practice Act;

20

21 (ii) Any person who willfully delivers or
22 discloses to the department any report, record or
23 information known by the person to be false is guilty of a
24 misdemeanor punishable by imprisonment for up to fifteen

1 (15) days, a fine of up to five hundred dollars (\$500.00),
2 or both;

3

4 (iii) Any person who willfully discloses any
5 information obtained from reports filed pursuant to
6 subsection (a) or (f) of this section, other than that
7 disclosure authorized under subsection (g) of this section,
8 or as otherwise authorized by law, is guilty of a
9 misdemeanor punishable by imprisonment for up to fifteen
10 (15) days, a fine of up to five hundred dollars (\$500.00),
11 or both;

12

13 (iv) Intentional, knowing, reckless or negligent
14 failure of the physician to submit an unborn child or
15 tissue remains to a pathologist as required by subsection
16 (b) of this section, or intentional, knowing or reckless
17 failure of the pathologist to report any evidence of live
18 birth or viability to the department in the manner and
19 within the time prescribed in subsection (b) of this
20 section is a misdemeanor punishable by imprisonment for up
21 to thirty (30) days, a fine of up to one thousand dollars
22 (\$1,000.00), or both;

23

1 (v) In addition to the penalties in paragraphs
2 (i) through (iv) of this subsection, any person,
3 organization or facility who willfully violates any of the
4 provisions of this section requiring reporting shall:

5

6 (A) Upon a first conviction, have its
7 license suspended for a period of six (6) months;

8

9 (B) Upon a second conviction within two (2)
10 years, have its license suspended for a period of one (1)
11 year;

12

13 (C) Upon a third conviction within three
14 (3) years, have its license revoked.

15

16 (m) The department shall create the forms required by
17 this chapter within sixty (60) days after the effective
18 date of this act and shall cause to be published, within
19 ninety (90) days after the effective date of this act, the
20 printed materials described in this chapter. No provision
21 of this chapter requiring the reporting of information on
22 forms published by the department, or requiring the
23 distribution of printed materials published by the
24 department pursuant to this chapter, shall be applicable

1 until ten (10) days after the requisite forms are first
2 created and printed materials are first published by the
3 department or until the effective date of this act,
4 whichever is later.

5

6 **35-29-108. Construction.**

7

8 (a) Nothing in this chapter shall be construed as
9 creating or recognizing a right to abortion.

10

11 (b) Nothing in this chapter shall be construed to
12 make lawful an abortion that is currently unlawful.

13

14 **Section 2.** This act is effective July 1, 2005.

15

16

(END)