

HOUSE BILL NO. HB0144

Women's right to know.

Sponsored by: Representative(s) Brechtel, Anderson, R., Buchanan, Davison, Edmonds, Harshman, Iekel, Petersen and Semlek and Senator(s) Jennings and Meier

A BILL

for

1 AN ACT relating to public health and safety; providing for
2 the provision of women's health information as specified;
3 requiring informed consent for abortion; providing for the
4 creation and publication of informational materials;
5 providing penalties; and providing for an effective date.

6

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

8

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

11

12

CHAPTER 29

13

WOMEN'S RIGHT TO KNOW

14

15

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 laws 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;

21

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

1

2

3

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

4

5

6

7

(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.

8

9

10

11

12

13

(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:

14

15

16

17

18

19

(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;

20

21

22

23

24

(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.

10

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

17

18 (c) In the event of a medical emergency requiring an
19 immediate termination of pregnancy, the physician who
20 performed the abortion shall clearly certify in writing the
21 nature of the medical emergency and the circumstances which
22 necessitated the waiving of the informed consent
23 requirements of this section. This certification shall be
24 signed by the physician who performed the emergency

1 abortion, and shall be permanently filed in both the
2 records of the physician performing the abortion and the
3 records of the facility where the abortion takes place.

4

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

10

11 **35-29-104. Publication of materials.**

12

13 (a) The department shall cause to be published
14 printed materials and an informational video in English and
15 Spanish, within sixty (60) days after this act becomes law,
16 including:

17

18 (i) Geographically indexed materials that inform
19 the woman of public and private agencies and services
20 available to assist a woman through pregnancy, upon
21 childbirth and while her child is dependent, including but
22 not limited to adoption agencies. The materials shall
23 include a comprehensive list of the agencies, a description
24 of the services they offer, and the telephone numbers and

1 addresses of the agencies, and shall inform the woman about
2 available medical assistance benefits for prenatal care,
3 childbirth and neonatal care. The department shall ensure
4 that the materials described in this paragraph are
5 comprehensive and do not directly or indirectly promote,
6 exclude or discourage the use of any agency or service
7 described in this paragraph;

8

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

14

15 (iii) The following statement:

16

17 "There are many public and private agencies willing
18 and able to help you to carry your child to term, and to
19 assist you and your child after your child is born, whether
20 you choose to keep your child or to place her or him for
21 adoption. The state of Wyoming strongly urges you to
22 contact one or more of these agencies before making a final
23 decision about abortion. The law requires that your

1 physician or his agent give you the opportunity to call
2 agencies like these before you undergo an abortion."

3

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

11

12 (v) A statement that more information concerning
13 paternity establishment and child support services and
14 enforcement may be obtained by calling state or county
15 public assistance agencies;

16

17 (vi) Materials that inform the pregnant woman of
18 the probable anatomical and physiological characteristics
19 of the unborn child at two (2) week gestational increments
20 from fertilization to full term, including photo or
21 caricature of the developing unborn child at two (2) week
22 gestational increments. The descriptions shall include
23 information about brain and heart function, the presence of
24 external members and internal organs during the applicable

1 stages of development and any relevant information on the
2 possibility of the unborn child's survival. If a
3 photograph is not available, a picture shall contain the
4 dimensions of the unborn child and shall be realistic. The
5 materials shall be objective, nonjudgmental and designed to
6 convey only accurate scientific information about the
7 unborn child at the various gestational ages;

8
9 (vii) Materials which contain objective
10 information describing the various surgical and drug
11 induced methods of abortion, as well as the immediate and
12 long-term medical risks commonly associated with each
13 abortion method including, but not limited to, the risks of
14 infection, hemorrhage, cervical or uterine perforation or
15 rupture, danger to subsequent pregnancies, increased risk
16 of breast cancer, the possible adverse psychological
17 effects associated with an abortion, and the medical risks
18 associated with carrying a child to term;

19
20 (viii) A checklist certification form to be used
21 by the physician or a qualified person under W.S.
22 35-29-103(a)(v), which will list all the items of
23 information which are to be given to the woman by a
24 physician or the agent under this chapter.

1

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

7

8 **35-29-105. Emergencies.**

9

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

17

18 **35-29-106. Civil penalties.**

19

20 (a) Failure to comply with the requirements of this
21 chapter shall:

22

23 (i) Provide a basis for a civil malpractice
24 action. Any intentional violation of this chapter shall be

1 admissible in a civil suit as prima facie evidence of a
2 failure to obtain informed consent. When requested, the
3 court shall allow a woman to proceed using solely her
4 initials or a pseudonym and may close any proceedings in
5 the case and enter other protective orders to preserve the
6 privacy of the woman upon whom the abortion was performed;

7

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

10

11 (iii) Provide a basis for recovery for the woman
12 for the wrongful death of her unborn child pursuant to
13 chapter 38 of title 1 of the Wyoming statutes, whether or
14 not the unborn child was born alive or was viable at the
15 time the abortion was performed.

16

17 **35-29-107. Confidential information.**

18

19 (a) Certifications required pursuant to W.S.
20 35-29-103(b) and (c) shall not be deemed public records and
21 shall remain confidential, except that disclosure may be
22 made to a licensing board or to law enforcement officials
23 upon an order of a court after application showing good

1 cause. The court may condition disclosure of the
2 information upon any appropriate safeguards it may impose.

3

4 (b) Any person who willfully discloses any
5 information obtained from certifications filed pursuant to
6 W.S. 35-29-103(b) or (c), other than that disclosure
7 authorized under subsection (a) of this section, or as
8 otherwise authorized by law, is guilty of a misdemeanor
9 punishable by a fine not to exceed five hundred dollars
10 (\$500.00).

11

12 **35-29-108. Construction.**

13

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

16

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

19

20 **Section 2.** The department shall create and publish
21 the printed materials described in this act within ninety
22 (90) days after the effective date of this act. No
23 provision of this act requiring the distribution of printed
24 materials published by the department pursuant to this act

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

4

5 **Section 3.** This act is effective July 1, 2007.

6

7

(END)