

As Amended by House Committee

Session of 2019

HOUSE BILL No. 2274

By Representatives Eplee, Arnberger, Awerkamp, 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

2-12

1 AN ACT concerning abortion; relating to medication abortions;
2 notification requirements.

3

4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) As used in this section:

6 (1) "Abortion" means the same as defined in K.S.A. 65-6701, and
7 amendments thereto.

8 (2) "Medication abortion" means the use or prescription of any drug
9 for the purpose of inducing an abortion.

10 (3) "Medical emergency" means the same as defined in K.S.A. 65-
11 6701, and amendments thereto.

12 (b) (1) Any private office, freestanding surgical outpatient clinic,
13 hospital or other facility or clinic where medication abortions that use
14 mifepristone are provided shall post a conspicuous sign that is clearly
15 visible to patients, that is printed with lettering that is legible and at least
16 $\frac{3}{4}$ of an inch boldfaced type and that reads:

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

24 The notice shall also include information about the department of
25 health and environment website, required to be maintained under K.S.A.
26 65-6710, and amendments thereto, and other relevant telephone and
27 internet resources containing information on where the patient can obtain
28 timely assistance to attempt to reverse the medication abortion.

29 (2) (A) Any private office or freestanding surgical outpatient clinic
30 where medication abortions that use mifepristone are provided shall post

1 the sign required by paragraph (1) in each patient waiting room and patient
2 consultation room used by patients for whom medication abortions are
3 provided.

4 (B) A hospital or other facility where medication abortions that use
5 mifepristone are provided that is not a private office or freestanding
6 surgical outpatient clinic shall post the sign required by paragraph (1) in
7 each patient admission area used by patients for whom medication
8 abortions that use mifepristone are provided.

9 (c) (1) Except in the case of a medical emergency, no physician shall
10 provide, induce or attempt to provide or induce a medication abortion that
11 use mifepristone without informing the woman, **in writing, in the manner**
12 **prescribed by K.S.A. 65-6709, and amendments thereto, and also**
13 **either** by telephone or in person, at least 24 hours prior to the medication
14 abortion:

15 (A) That it may be possible to reverse the intended effects of a
16 medication abortion that uses mifepristone, if the woman changes her
17 mind, but that time is of the essence; and

18 (B) information on reversing the effects of a medication abortion that
19 uses mifepristone is available on the department of health and
20 environment's website, required to be maintained under K.S.A. 65-6710,
21 and amendments thereto, and other relevant telephone and internet
22 resources containing information on where the patient can obtain timely
23 assistance to attempt to reverse the medication abortion.

24 (2) After a physician dispenses or provides an initial administration
25 of mifepristone to a patient for the purposes of performing a medication
26 abortion, the physician or an agent of the physician shall provide a legible,
27 written notice to the patient that includes the same information as required
28 under subsection (b)(1).

29 (d) When a medical emergency compels the performance of a
30 medication abortion that use mifepristone, the physician shall inform the
31 woman, prior to the medication abortion, if possible, of the medical
32 indications supporting the physician's judgment that an abortion is
33 necessary to avert the woman's death or that a 24-hour delay would create
34 serious risk of substantial and irreversible impairment of a major bodily
35 function, excluding psychological or emotional conditions.

36 (e) Within 90 days after the effective date of this section, the
37 department of health and environment shall cause to be published, in
38 English and in each language that is the primary language of 2% or more
39 of the state's population, in print and on the website required to be
40 maintained under K.S.A. 65-6710, and amendments thereto,
41 comprehensible materials designed to inform women of the possibility of
42 reversing the effects of a medication abortion that uses mifepristone and
43 information on resources available to reverse the effects of a medication

1 abortion that uses mifepristone. The website shall also include other
2 relevant telephone and internet resources containing information on where
3 the patient can obtain timely assistance to attempt to reverse the
4 medication abortion.

5 (f) Upon a first conviction of a violation of this section, a person shall
6 be guilty of a class A person misdemeanor. Upon a second or subsequent
7 conviction of a violation of this section, a person shall be guilty of a
8 severity level 10, person felony.

9 (g) The department of health and environment shall assess a fine of
10 \$10,000 to any private office, freestanding surgical outpatient clinic,
11 hospital or other clinic or facility that fails to post a sign required by
12 subsection (b). Each day that a medication abortion that uses mifepristone,
13 other than a medication abortion that is necessary to prevent the death of
14 the pregnant woman, is performed in any private office, freestanding
15 surgical outpatient clinic, hospital or other facility or clinic when the
16 required sign is not posted during a portion of that day's business hours
17 when patients or prospective patients are present shall be a separate
18 violation. The department of health and environment shall remit all
19 moneys received from fines under this subsection to the state treasurer in
20 accordance with the provisions of K.S.A. 75-4215, and amendments
21 thereto. Upon receipt of each such remittance, the state treasurer shall
22 deposit the entire amount into the state treasury to the credit of the state
23 general fund.

24 (h) (1) If a physician provides a medication abortion using
25 mifepristone in violation of this section, the following individuals may
26 bring a civil action in a court of competent jurisdiction against the
27 physician for actual damages, exemplary and punitive damages and any
28 other appropriate relief:

29 (A) A woman to whom such medication abortion has been provided;

30 (B) the father of the unborn child who was subject to such medication
31 abortion; or

32 (C) any grandparent of the unborn child who was subject to such
33 medication abortion, if the woman was not 18 years of age or older at the
34 time the medication abortion was performed or if the woman died as a
35 result of the medication abortion.

36 (2) Notwithstanding any other provision of law, any action
37 commenced in accordance with this subsection shall be filed within two
38 years after the later of:

39 (A) The date of the discovery of the violation under this section; or

40 (B) the conclusion of a related criminal case.

41 (3) In any action brought under this section, the court shall award
42 reasonable attorney fees and costs to:

43 (A) A prevailing plaintiff; or

1 (B) a prevailing defendant upon a finding that the action was
2 frivolous and brought in bad faith.

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

23 (j) If any provision of this section, or any application thereof to any
24 person or circumstance, is held invalid by court order, then such invalidity
25 shall not affect the remainder of this section and any application thereof to
26 any person or circumstance that can be given effect without such invalid
27 provision or application, and to this end, the provisions of this section are
28 declared to be severable.

29 Sec. 2. This act shall take effect and be in force from and after its
30 publication in the statute book.