

SENATE BILL No. 167

By Senators Baumgardner, Alley, Berger, Billinger, Braun, Estes, Goddard, Hilderbrand, Kerschen, Longbine, Lynn, Masterson, Olson, Petersen, Pilcher-Cook, Pyle, Rucker, Suellentrop, Tyson, Wagle and Wilborn

2-13

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

34 (B) A hospital or other facility where medication abortions that use

1 mifepristone are provided that is not a private office or freestanding
2 surgical outpatient clinic shall post the sign required by paragraph (1) in
3 each patient admission area used by patients for whom medication
4 abortions that use mifepristone are provided.

5 (c) (1) Except in the case of a medical emergency, no physician shall
6 provide, induce or attempt to provide or induce a medication abortion that
7 use mifepristone without informing the woman, by telephone or in person,
8 at least 24 hours prior to the medication abortion:

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

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

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

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

30 (e) Within 90 days after the effective date of this section, the
31 department of health and environment shall cause to be published, in
32 English and in each language that is the primary language of 2% or more
33 of the state's population, in print and on the website required to be
34 maintained under K.S.A. 65-6710, and amendments thereto,
35 comprehensible materials designed to inform women of the possibility of
36 reversing the effects of a medication abortion that uses mifepristone and
37 information on resources available to reverse the effects of a medication
38 abortion that uses mifepristone. The website shall also include other
39 relevant telephone and internet resources containing information on where
40 the patient can obtain timely assistance to attempt to reverse the
41 medication abortion.

42 (f) Upon a first conviction of a violation of this section, a person shall
43 be guilty of a class A person misdemeanor. Upon a second or subsequent

1 conviction of a violation of this section, a person shall be guilty of a
2 severity level 10, person felony.

3 (g) The department of health and environment shall assess a fine of
4 \$10,000 to any private office, freestanding surgical outpatient clinic,
5 hospital or other clinic or facility that fails to post a sign required by
6 subsection (b). Each day that a medication abortion that uses mifepristone,
7 other than a medication abortion that is necessary to prevent the death of
8 the pregnant woman, is performed in any private office, freestanding
9 surgical outpatient clinic, hospital or other facility or clinic when the
10 required sign is not posted during a portion of that day's business hours
11 when patients or prospective patients are present shall be a separate
12 violation. The department of health and environment shall remit all
13 moneys received from fines under this subsection to the state treasurer in
14 accordance with the provisions of K.S.A. 75-4215, and amendments
15 thereto. Upon receipt of each such remittance, the state treasurer shall
16 deposit the entire amount into the state treasury to the credit of the state
17 general fund.

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

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

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

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

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

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

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

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

37 (A) A prevailing plaintiff; or

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

40 (i) In any civil or criminal proceeding or action brought under this
41 section, the court shall rule whether the anonymity of any woman to whom
42 a medication abortion has been provided, induced or attempted to be
43 provided or induced shall be preserved from public disclosure, if she does

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

17 (j) If any provision of this section, or any application thereof to any
18 person or circumstance, is held invalid by court order, then such invalidity
19 shall not affect the remainder of this section and any application thereof to
20 any person or circumstance that can be given effect without such invalid
21 provision or application, and to this end, the provisions of this section are
22 declared to be severable.

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