



## HOUSE REPUBLICAN STAFF ANALYSIS

Bill:	Senate File 471	House Committee:	<b>PASSED 3/29/17 (11-8)</b>
Committee:	Human Resources	House Floor:	<b>PASSED 4/5/17 (55-42)</b>
Floor Manager:	Rep. Lundgren	Senate Floor:	<b>PASSED 3/14/17 (32-17)</b>
Date:	Final	Governor:	<b>Signed on May 5, 2017</b>
Staff:	Carrie Malone (5-2063)		

### Late Term Abortion Ban

- This bill prohibits abortions at twenty weeks postfertilization.

### Section by Section Analysis

#### DIVISION I

#### PREREQUISITES FOR ABORTION

##### Section 1 - Prerequisites for abortion - ultrasound - licensee discipline - interpretation

This section includes a list of requirements before an abortion can be performed including: a 72 hour wait period, ultrasounds, description of the child, option to hear the heartbeat, information on the abortion and options for adoption, information on the child's development, and risk factors related to an abortion. However, this is not required in cases of medical emergency. Physicians who violate this section is subject to discipline under applicable medical professional chapters. This section gives the Board of Medicine rulemaking authority.

#### DIVISION II

#### PROHIBITIONS ON ABORTION - TWENTY WEEKS POSTFERTILIZATION

##### Section 2 - New Section - Definitions

Fertilization - means the fusion of a human spermatozoon with a human ovum.

Post-fertilization age - means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is to be performed.

##### Section 3 - Determination of postfertilization age - abortion prohibited at twenty or more weeks postfertilization age - exceptions - reporting requirements - penalties

This section creates Iowa Code section 146B.2, which prohibits an abortion from being performed unless the physician has determined the probable post-fertilization age of the unborn child is 20 or more weeks. This section provides an exception to this ban, when the doctor determines that the pregnant woman has a

condition that meets the definition of “medical emergency,” or is necessary to preserve the life of the unborn child.

If an abortion is performed or induced due to a medical emergency, the section requires the physician to employ method which provides the best opportunity for the unborn child to survive unless the doctor determines that utilizing that method would pose a greater threat to the pregnant woman than any other potential method.

A physician who performs or attempts to perform an abortion shall report to the Department of Public Health, the following:

- The probable post-fertilization age of the unborn child and the method and basis for this determination, if such a determination was made;
- If the probable post-fertilization age determination was not made, the basis on which the determination of a medical emergency was made;
- If the probable post-fertilization age was made, the basis on which the determination of a medical emergency was made or the basis on which the determination that the abortion was necessary to preserve the life of the unborn child; and
- The method used for the abortion, and whether the method used provided the best opportunity for the unborn child to live. If that method was not used, the physician must report the basis on which his decision was made.

The Department of Public Health will issue an annual report on the statistics related to procedures performed under this chapter. The report shall be filled annually by June 30, and shall be done in a manner that information does not lead to the identification of any woman on whom an abortion was performed, if the information from the report is made public. A physician that fails to file a report will be subject to a \$500 fine for each 30 day period in which it is not filed. Additionally, a physician who fails to file a report or files an incomplete report that is at least one year late may be subject to court order to provide the report. If a physician intentionally or recklessly falsifies a report, they are subject to a civil penalty of \$100.

The Department of Public Health is given rule-making authority to implement this section.

#### Section 4 - New Section - Civil actions and Penalties

A physician who fails to comply with a provision of 146B.2, with the exception of late filing of a report, is grounds for discipline by the Board of Medicine.

The woman who had the abortion or attempted to have an abortion may file suit against the doctor who performed the abortion in intentional or reckless violation of chapter 146B.2 for actual damages.

A variety of parties are authorized to seek injunctive relief to prevent a physician from performing an abortion in violation of chapter 146B. The parties include:

- A parent or guardian of the woman, if they are less than 18 years old when the abortion would be performed;
- A current or former licensed health care provider of the woman;
- A county attorney with jurisdiction; or
- The Attorney General.

A woman on whom the abortion was performed or was attempted to be performed shall not be subject to prosecution for a violation of chapter 146B.

If an action is brought under this chapter and the plaintiff in the case prevails, they are entitled to reasonable attorney fees. If the defendant prevails and the court determines that the plaintiff's suit was frivolous or in bad faith, then the defendant is entitled to reasonable attorney fees.

Damages and attorney fees shall not be assessed on the woman upon whom the abortion was performed or was attempted to be performed, unless they brought suit which was found to be frivolous or in bad faith.

The court shall be given the power to determine if the name of the woman upon whom the abortion was performed or was attempted to be performed shall be kept confidential. If the court decides to maintain confidentiality, it is empowered to issue orders to maintain that confidentiality. The court is required to provide specific written findings as to why the confidentiality is necessary. Unless the woman upon whom the abortion was performed or was attempted to be performed provides written consent, any action under this chapter shall be filed under a pseudonym. The exception would be a filing by a public official. This confidentiality provision shall not keep the identity of the plaintiff or witnesses from the defendant or their attorneys.

DIVISION III  
LEGISLATIVE INTENT

Section 5 - New Section - Legislative intent

The section states that nothing in the bill shall be considered to recognize a right to abortion and that nothing in the bill shall be considered to determine that life begins at 20 weeks after fertilization. Instead, the section recognizes that life begins at fertilization.

DIVISION IV  
SEVERABILITY - EFFECTIVE DATE

Section 6 - New Section - Severability Clause

The section states that if one provision of the bill is found to be invalid, that action does not affect the application of the chapter or other provisions of the chapter that were not ruled upon.

Section 7 - Effective upon enactment

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