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HOUSE REPUBLICAN STAFF ANALYSIS

Bill: House File 5
Committee: Human Resources
Floor Manager: Representative Rich Anderson
Date: January 14, 2011
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Late Term Abortion Ban

House File 5 prohibits abortions of an unborn child that has reached the post fertilization age of 20 weeks. A physician who performed one of these abortions would be charged with a class C felony and a medical facility that allowed the prohibited abortion to be performed could lose its state licensure and eligibility for state funding. The bill does include an exception to the ban when a medical emergency exists. This is defined as being necessary to prevent the death of the mother or substantial and irreversible physical impairment of a major bodily function.

The bill is closely modeled on a new Nebraska law which prohibits these abortions. The bill includes language clearly stating that the provision does not create a right to abortion, nor does it establish that life begins at 20 weeks after fertilization. Instead, the bill recognizes that life begins at conception.

Section by Section Analysis

Section 1 – Findings - The section sets out the legislative findings in support of House File 5. These include:

- Abortions can cause serious physical and psychological complications for women;
- Women face higher medical risks from abortions later in the pregnancy;
- The state has a legitimate concern for the public's health and safety;
- The state has a legitimate interest in protecting the health of a woman during pregnancy;
- There is substantial evidence that an unborn child can experience pain by 20 weeks after fertilization;
- There is substantial evidence that an unborn child evades certain stimuli that can be interpreted as a response to pain;
- Anesthesia is administered to an unborn child twenty weeks or more after fertilization when it is undergoing prenatal surgery;
- Even before 20 weeks after fertilization, unborn children have been observed exhibiting hormonal stress responses to painful stimuli; and
- It is the State's purpose to assert a compelling state interest in protecting an unborn child from the stage at which it is capable of feeling pain.

Section 2 – Definitions – The section creates the definitions section of new Iowa Code chapter 146A.

Section 3 – Prohibition on abortion at 20 or more weeks post-fertilization – The section creates Iowa Code section 146A.2, which prohibits an abortion from being performed, induced, or attempted to be performed or induced when the physician performing the procedure has determined that the probably post-fertilization age of the unborn child is 20 or more weeks. The 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 induces an abortion shall report to the Department of Public Health, the following:

- 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; 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 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 – Civil and Criminal Actions – Penalties - The section lays out the penalties for providers that fail to comply with new Iowa Code section 146A.2.

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

A physician that intentionally or recklessly performs, or attempts to perform an abortion in violation of chapter 146A would be guilty of a class C felony.

A medical facility licensed by the state that has abortions performed in it, which are in violation of chapter 146A, is subject to immediate revocation of its license. The facility also would become ineligible to receive state funding, and would be required to repay the state for any funding paid to it after the date on which the abortion was performed.

The woman who had the abortion or the biological father may file suit against the doctor who performed the abortion in intentional or reckless violation of chapter 146A for actual damages.

The woman on whom an abortion was attempted and would have been in violation of chapter 146A may file suit against the doctor who attempted to perform the abortion in intentional or reckless violation of chapter 146A 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 146A. The parties include:

- The spouse of the woman;
- 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; and
- 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 146A.

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.

Section 5 – Construction – 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 conception.

Section 6 – 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 – The section makes the bill go into effect upon the signature of the Governor.