Fetal Body Parts and Fetal Heartbeat

- H-8441 by Lundgren is a 2nd degree strike-after amendment. It prohibits the sale or donation of fetal tissue in Iowa. It also prohibits an abortion after a fetal heartbeat has been detected, while leaving the 20-week law in place. This amendment includes exceptions to the fetal heartbeat law for medical emergency, rape, incest, and fetal abnormality.

  o Similar legislation from Arkansas and North Dakota were ruled unconstitutional by the 8th Circuit Court of Appeals for infringing on the right to choose to terminate pregnancy before viability.

  o Fiscal Note – The University of Iowa Obstetrics and Gynecology Department claims that this bill risks their accreditation and ability to train residents. This bill may require the UI to make arrangements for resident training at another institution.

H-8441 by Lundgren - Section by Section Analysis

**Division I – New Section - Fetal Body Parts**

Prohibits a person from knowingly acquiring or transferring a fetal body part. “Fetal body part” is defined as “a cell, tissue, organ, or other part of a fetus that is terminated by an abortion.” The definition does not include any cells derived from a spontaneous termination of pregnancy or stillbirth donated for the purposes of medical research, any part of a fetus that is terminated by an abortion prior to July 1, 2018, or any cells and tissues external to the fetal body proper.

Exceptions to this section:

- Tests or procedures that have the sole purpose of determining the life or health of the fetus in order to provide that information to the pregnant woman or to preserve the life or health of the fetus or pregnant woman
- The actions needed to dispose of fetal body parts by burial, interment, cremation, or incineration
- The pathological study of body tissue, including genetic testing, for diagnostic or forensic purposes
- A fetal body part that results from a spontaneous termination of pregnancy or stillbirth and is willingly donated for the purposes of medical research (amendment clarifies this exception)
Division II — Fetal Heartbeat

Section 1 - Strikes the exemptions “to save the life of a pregnant woman” from certain prerequisites for abortion (3-day rule, ultrasound, information).

However, this section also expands the definition of the “medical emergency” exemption to include “a situation in which an abortion is performed to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy, but not including psychological conditions, emotional conditions, familial conditions, or the woman’s age; or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman.”

Section 2 – New Section
Defines “abortion”, “fetal heartbeat”, “medical emergency”, “medically necessary”, “physician”, “reasonable medical judgment”, and “unborn child”.

Medically necessary means:

- The pregnancy is the result of a rape which is reported within 45-days of the incident to a law enforcement agency or to a public or private health agency which may include a family physician.
- The pregnancy is the result of incest which is reported within 140-days (20-weeks) of the incident to a law enforcement agency or to a public or private health agency which may include a family physician.
- Any spontaneous abortion, commonly known as a miscarriage, if not all of the products of conception are expelled.
- The attending physician certifies that the fetus has a fetal abnormality that in the physician’s reasonable medical judgment is incompatible with life.

Section 3 – New Section
This section requires a physician to perform an abdominal ultrasound to detect a fetal heartbeat and inform the pregnant woman, in writing, whether a fetal heartbeat was detected. If a heartbeat is detected, an abortion is prohibited. The pregnant woman must then sign an acknowledgment form that they received this information.

This section allows an exemption for medical emergency and when an abortion is medically necessary from the ultrasound requirement and the abortion prohibition if a fetal heartbeat is detected.

This section makes clear that 146B.1 (20-week prohibition) applies once the unborn child reaches a probable postfertilization age of 20 or more weeks, unless a medical emergency exists.

This section also requires the physician to retain all documentation of the testing and results of the fetal heartbeat and the pregnant woman’s signed acknowledgment form.

This section states that the pregnant woman is not subject to liability if an abortion is performed.

This section requires the board of medicine to adopt rules to administer this bill.
This section also revises the title to be “An Act prohibiting and requiring certain actions relating to a fetus and providing penalties.”

Amendment Analysis

**H-8269 by Human Resources Committee**
Identical to H-8441 by Lundgren, except it does not include the medically necessary exception to the abortion prohibition.

**H-8296 by Wessel-Kroeschell** – Strikes the bill, the amendment, and SF 471 as passed last year (3-day waiting period and 20 week bill). Revises the title.

**H-8436 by Lundgren** – Described above, but did not include a strike-after of the bill. Withdraw.

**H-8441 by Lundgren** – Described above

**H-8295 by Wessel-Kroeschell** – Strikes the bill, 3-day waiting period in 146A.1 and 20 week prohibition in 146B. Replaces 146A with the prerequisites for an abortion that were in place prior to 3-day waiting period bill (opportunity to view an ultrasound and provide information relating continuing pregnancy, adoption, and termination). Revises the title.

**H-8300 by Wessel-Kroeschell** – Strikes H-8295 and instead repeals Sf 471 as passed last year (3-day waiting period and 20 week bill). Revises the title.

**H-8313 by Rizer** – Strike after of the bill. Similar to the 20 week bill, but changes it to 15 weeks, adds a severe fetal abnormality exception as allowed in Mississippi’s bill, and trades the penalties around for falsified and late physician reports. This amendment keeps the 20 week section of Iowa Code in place.

Section 1 – New Section – Legislative Findings
Legislative findings on the risks to the pregnant woman seeking an abortion as the age of the unborn child increases and the government’s interest in the protecting the health of women from the outset of pregnancy.

Section 2 – New Section - Definitions

Probable postfertilization age – 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.

Fertilization – fusion of a human spermatozoon with a human ovum.

Severe fetal abnormality – a life-threatening physical condition that, in the physician’s reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb.

Section 3 – New Section – Certain Abortion Prohibited
This section creates 146C.3, which prohibits an abortion from being performed unless the physician has determined the **probable post-fertilization age of the unborn child is 15 or more weeks**. This section provides an exception to this ban when the physician determines that the pregnant woman has a condition that meets
the definition of “medical emergency”, the abortion is necessary to preserve the life of the unborn child, or the unborn child is afflicted with a severe fetal abnormality.

If an abortion is performed, this section requires the physician to employ methods which provide the best opportunity for the unborn child to survive unless the physician 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 postfertilization age of the unborn child and the method and basis for this determination;
• If the probable postfertilization age determination was not made, the basis on which the determination of a medical emergency or severe fetal abnormality of the unborn child was made;
• If the probable postfertilization age was made and determined to be 15 or more weeks, the basis on which the determination of a medical emergency or severe fetal abnormality of the unborn child 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 the decision was made.

IDPH 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.

A physician that fails to file a report within 30 days of the abortion will be subject to a $100 fine for each 30 day period the report is overdue. 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 $500 fine.

This section also requires medical facilities that allow physicians to perform an abortion to implement written medical policies and procedures consistent with this bill.

IDPH 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 146C.3, with the exception of 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 physician who performed the abortion in intentional or reckless violation of chapter 146C.3 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 146C. 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 formed licensed health care provider of the woman;
• A county attorney with jurisdiction; or
• The Attorney General
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 against the woman upon whom an abortion was performed or attempted, unless she is the plaintiff bringing a frivolous suit.

The court shall be given the power to determine if the name of the woman upon whom the abortion was performed or attempted shall be 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 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.

This chapter does not impose liability on a woman upon whom an abortion is performed or attempted.

*Section 5 – Immediate Effective Date*
Revises the title

H-8362 by Rizer – Identical strike-after, except changes a date for the IDPH report