

HOUSE BILL No. 2439

By Committee on Federal and State Affairs

2-22

1 AN ACT concerning health and healthcare; relating to medication
2 abortions; requiring certain notifications for patients under the woman's
3 right-to-know act; amending K.S.A. 65-6708 and repealing the existing
4 section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

12 (3) "Medical emergency" means the same as defined in K.S.A. 65-
13 6701, and amendments thereto.

14 (b) (1) Any private office, freestanding surgical outpatient clinic,
15 hospital or other medical care facility or clinic or any pharmacy where
16 mifepristone is prescribed, dispensed or administered for the purpose of
17 inducing a medication abortion shall post a conspicuous sign that is clearly
18 visible to patients and customers, that is printed with lettering that is
19 legible and at least $\frac{3}{4}$ of an inch boldfaced type and that reads:

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

27 The notice shall also include information about the department of
28 health and environment website, required to be maintained under K.S.A.
29 65-6710, and amendments thereto, and other relevant telephone and
30 internet resources containing information on where the patient can obtain
31 timely assistance to attempt to reverse the medication abortion.

32 (2) (A) Any private office or freestanding surgical outpatient clinic
33 where mifepristone is prescribed, dispensed or administered for the
34 purpose of inducing a medication abortion shall post the sign required by
35 paragraph (1) in each patient waiting room and patient consultation room
36 used by patients seeking medication abortions.

1 (B) A hospital or other medical care facility or clinic where
2 mifepristone is prescribed, dispensed or administered for the purpose of
3 inducing a medication abortion that is not a private office or freestanding
4 surgical outpatient clinic shall post the sign required by paragraph (1) in
5 each patient admission area used by patients seeking medication abortions
6 that use mifepristone.

7 (C) A pharmacy where mifepristone is prescribed, dispensed or
8 administered for the purpose of inducing a medication abortion shall post
9 the sign required by paragraph (1) in the area inside the premises where
10 customers are provided prescription medications and on the exterior of the
11 premises in the area where customers are provided prescription
12 medications via a drive-through window.

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

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

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

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

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

39 (e) Within 90 days after the effective date of this section, the
40 department of health and environment shall cause to be published, in
41 English and in each language that is the primary language of 2% or more
42 of the state's population, in print and on the website required to be
43 maintained under K.S.A. 65-6710, and amendments thereto,

1 comprehensible materials designed to inform women of the possibility of
2 reversing the effects of a medication abortion that uses mifepristone and
3 information on resources available to reverse the effects of a medication
4 abortion that uses mifepristone. The website shall also include other
5 relevant telephone and internet resources containing information on where
6 the patient can obtain timely assistance to attempt to reverse the
7 medication abortion.

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

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

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

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

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

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

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

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

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

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

3 (A) A prevailing plaintiff; or

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

6 (4) Except for the woman to whom the medication abortion was
7 provided, no action may be brought by any person whose criminal conduct
8 resulted in the pregnancy, and any such person shall not be awarded any
9 damages in any action brought pursuant to this section.

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

30 (j) If any provision of this section, or any application thereof to any
31 person or circumstance, is held invalid by court order, then such invalidity
32 shall not affect the remainder of this section and any application thereof to
33 any person or circumstance that can be given effect without such invalid
34 provision or application, and to this end, the provisions of this section are
35 declared to be severable.

36 (k) The provisions of this section shall be a part of and supplemental
37 to the woman's-right-to-know act.

38 Sec. 2. K.S.A. 65-6708 is hereby amended to read as follows: 65-
39 6708. K.S.A. 65-6701 and K.S.A. 65-6708 ~~to through 65-6715, inclusive,~~
40 and amendments thereto, *and section 1, and amendments thereto*, shall be
41 known and may be cited as the woman's-right-to-know act.

42 Sec. 3. K.S.A. 65-6708 is hereby repealed.

43 Sec. 4. This act shall take effect and be in force from and after its

- 1 publication in the statute book.