

FEB 22 2005
HUMAN RESOURCES

HOUSE FILE 380
BY LUKAN

(COMPANION TO 2528SS
BY SEYMOUR)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to establishing the unborn child pain awareness
2 and prevention Act and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HE 380

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

1 Section 1. NEW SECTION. 146A.1 SHORT TITLE.

2 This chapter shall be known and may be cited as the "Unborn
3 Child Pain Awareness and Prevention Act".

4 Sec. 2. NEW SECTION. 146A.2 DEFINITIONS.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "Abortion" means the use or prescription of any
8 instrument, medicine, drug, or any other substance or device
9 to terminate the pregnancy of a woman known to be pregnant
10 with an intention other than to increase the probability of a
11 live birth, to preserve the life or health of the child after
12 live birth, or to remove a fetus following a spontaneous
13 miscarriage.

14 2. "Attempt to perform an abortion" means an act, or an
15 omission of an act required by law, that under the
16 circumstances as the actor believes them to be, constitutes a
17 substantial step in a course of conduct planned to culminate
18 in the performance of an abortion.

19 3. "Department" means the Iowa department of public
20 health.

21 4. "Medical emergency" means any condition which, on the
22 basis of a physician's good faith clinical judgment, so
23 complicates the medical condition of a pregnant woman as to
24 necessitate the immediate performance of an abortion to avert
25 the pregnant woman's death or for which a delay in the
26 performance of an abortion will create a serious risk of
27 substantial and irreversible impairment of a major bodily
28 function.

29 5. "Physician" means a person licensed to practice
30 medicine and surgery pursuant to chapter 148, or an
31 osteopathic physician and surgeon licensed pursuant to chapter
32 150A.

33 6. "Probable gestational age" means what, in the judgment
34 of the physician, will with reasonable probability be the
35 gestational age of the unborn child at the time the abortion

1 is to be performed.

2 7. "Unborn child" means a member of the species homo
3 sapiens from fertilization until birth.

4 Sec. 3. NEW SECTION. 146A.3 INFORMATION.

5 Beginning November 1, 2005, except in the case of a medical
6 emergency, all of the following conditions shall be met prior
7 to the performance of an abortion on a pregnant woman, if the
8 probable gestational age of the unborn child is twenty weeks
9 or more:

10 1. At least twenty-four hours prior to the performance of
11 an abortion on a pregnant woman, the physician performing the
12 abortion or the physician's agent shall inform the pregnant
13 woman, by telephone, by audiotape, or in person that the
14 pregnant woman has the right to review the materials described
15 in section 146A.5, that the materials are available in printed
16 hard copy format and in an electronic format on a state-
17 sponsored website, and the address of the website. The
18 physician performing the abortion or the physician's agent
19 shall inform the pregnant woman that the materials have been
20 provided by the state and that the materials contain
21 information about pain relative to the unborn child.

22 2. If the pregnant woman chooses to view the materials
23 other than on the website, a printed hard copy of the
24 materials shall be provided by the physician or the
25 physician's agent to the pregnant woman at least twenty-four
26 hours prior to the performance of the abortion or mailed to
27 the pregnant woman at least seventy-two hours prior to the
28 performance of the abortion by restricted certified mail as
29 defined in section 618.15.

30 3. The pregnant woman shall certify in writing that the
31 pregnant woman has been informed of the pregnant woman's right
32 to review the materials described in section 146A.5.

33 4. The physician performing the abortion or the
34 physician's agent shall obtain a copy of the written
35 certification from the pregnant woman and shall retain the

1 copy of the written certification in the woman's medical
2 record for at least three years following the date of receipt.

3 Sec. 4. NEW SECTION. 146A.4 ELIMINATION OR ALLEVIATION
4 OF ORGANIC PAIN TO UNBORN CHILD -- INFORMATION AND CONSENT.

5 1. Except in the case of a medical emergency, prior to the
6 performance of an abortion on a pregnant woman, if the
7 probable gestational age of the unborn child is twenty weeks
8 or more, the physician performing the abortion or the
9 physician's agent shall do all of the following:

10 a. Inform the pregnant woman if an anesthetic or analgesic
11 would eliminate or alleviate organic pain to the unborn child
12 caused by the particular method of abortion being performed.

13 b. Inform the pregnant woman of the particular medical
14 risks associated with the particular anesthetic or analgesic.

15 2. After being provided the information pursuant to
16 subsection 1, if the pregnant woman consents, the physician
17 performing the abortion may administer the particular
18 anesthetic or analgesic described under subsection 1.

19 Sec. 5. NEW SECTION. 146A.5 MATERIALS -- PUBLISHED IN
20 HARD COPY PRINTED FORMAT.

21 1. By October 1, 2005, the department shall cause to be
22 published in a printed, hard copy format, in English and in
23 each language which is the primary language of two percent or
24 more of the state's population, materials which include the
25 following:

26 a. Materials which are objective, nonjudgmental, and
27 designed to convey only accurate scientific information about
28 the unborn child at the various stages of gestational age.

29 b. The following statement:

30 "By twenty weeks' gestational age, an unborn child has the
31 physical structures necessary to experience pain. There is
32 evidence that by twenty weeks' gestational age, an unborn
33 child seeks to evade certain stimuli in a manner which in an
34 infant or an adult would be interpreted to be a response to
35 pain. Anesthesia is routinely administered to unborn children

1 who are twenty weeks' or more gestational age and undergo
2 prenatal surgery."

3 2. The materials shall be printed in a typeface large
4 enough to be clearly legible.

5 3. The materials shall be available at no cost from the
6 Iowa department of public health upon request and in
7 appropriate numbers to any person.

8 Sec. 6. NEW SECTION. 146A.6 INTERNET SITE.

9 1. By October 1, 2005, the department shall establish and
10 maintain an internet site to provide the information contained
11 in the materials described in section 146A.5.

12 2. The internet site shall be maintained at a resolution
13 of seventy dots per inch. All pictures on the internet site
14 shall be a minimum of two hundred by three hundred pixels.
15 All print on the internet site shall be a minimum of eleven
16 point font. All print information and pictures shall be
17 accessible with an industry standard browser, requiring no
18 additional plug-ins.

19 3. The internet site shall provide for confidentiality of
20 individuals who access the site, and information identifying
21 the individual shall not be collected or maintained. The
22 department shall monitor the internet site to ensure that the
23 site is secure and to prevent and correct any tampering with
24 the site.

25 Sec. 7. NEW SECTION. 146A.7 PROCEDURE IN CASE OF A
26 MEDICAL EMERGENCY.

27 Beginning November 1, 2005, if a medical emergency
28 necessitates the performance of an abortion, the physician
29 shall inform the woman prior to the abortion, if possible, of
30 the medical indications supporting the physician's judgment
31 that an abortion is necessary to avert the woman's death or
32 that a delay in performing the abortion will create serious
33 risk of substantial and irreversible impairment of a major
34 bodily function.

35 Sec. 8. NEW SECTION. 146A.8 REPORTING FORM -- REPORTING

1 REQUIREMENTS -- FAILURE TO REPORT -- FINES.

2 1. The department shall prepare a reporting form to be
3 provided to physicians to complete beginning November 1, 2005,
4 containing a reprint of this chapter and providing for the
5 recording of all of the following:

6 a. The number of women informed by the physician or the
7 physician's agent of the woman's right to review the materials
8 described in section 146A.5; of that number, the number
9 informed by telephone, audiotape, or in person; and of each of
10 those numbers, whether the capacity of the person informing
11 the woman was that of a referring physician, a physician
12 performing the abortion, or an agent of either physician.

13 b. The number of women who chose to obtain a printed, hard
14 copy of the materials described in section 146A.5 and the
15 number who did not; and of each of these numbers, the number
16 who obtained an abortion.

17 c. The number of abortions performed by the physician in
18 which information otherwise required to be provided at least
19 twenty-four hours prior to the abortion was not provided
20 because an immediate abortion was necessary to avert the
21 woman's death, and the number of abortions performed by the
22 physician in which information otherwise required to be
23 provided at least twenty-four hours prior to the abortion was
24 not provided because an immediate abortion was performed
25 because a delay would create a serious risk of substantial and
26 irreversible impairment of a major bodily function.

27 2. The department shall ensure that copies of the
28 reporting forms are distributed as follows:

29 a. By October 1, 2005, to all physicians licensed to
30 practice in this state.

31 b. To each physician who subsequently becomes licensed to
32 practice in this state, at the same time as official
33 notification to that physician that the physician is licensed.

34 c. Annually, on a date determined by rule of the
35 department, to all physicians licensed to practice in this

1 state.

2 3. On or before a date determined by rule of the
3 department beginning in calendar year 2006, and on or before
4 that date annually thereafter, each physician who, or whose
5 agent informed a woman of the woman's right to review the
6 materials described in section 146A.5, shall submit a copy of
7 the reporting form to the department, with the requested data
8 entered accurately and completely.

9 4. a. A physician who does not submit a report by thirty
10 days following the due date is subject to a fee of five
11 hundred dollars for each additional thirty-day period or
12 portion of a thirty-day period during which the report is not
13 submitted.

14 b. A physician who has not submitted a report or has
15 submitted only an incomplete report more than one year
16 following the original due date may be directed by a court of
17 competent jurisdiction, in an action brought by the
18 department, to submit a complete report within a period stated
19 by the court or be subject to contempt of court.

20 5. On or before a date determined by rule of the
21 department beginning in calendar year 2006, and on or before
22 that date annually thereafter, the department shall issue a
23 public report providing statistics for the previous calendar
24 year compiled from all of the reports submitted. Each report
25 shall provide the statistics for the previous calendar year,
26 adjusted to reflect any additional information from late or
27 corrected reports. The department shall ensure that the
28 information included in the public reports could not lead to
29 the identification of any individual who is the subject of the
30 information provided or who provided the information.

31 Sec. 9. NEW SECTION. 146A.9 CRIMINAL PENALTIES.

32 1. A person who knowingly or recklessly performs an
33 abortion or attempts to perform an abortion in violation of
34 this chapter is guilty of a class "C" felony.

35 2. A physician who knowingly or recklessly submits a false

1 report under section 146A.8 is guilty of a simple misdemeanor.

2 3. A criminal or civil penalty shall not be assessed under
3 this chapter against a woman upon whom an abortion is
4 performed or attempted to be performed.

5 4. A criminal or civil penalty shall not be assessed
6 against a physician or physician's agent for failure to comply
7 with section 146A.3 requiring written certification that a
8 woman has been informed of the woman's right to review the
9 materials described in section 146A.5, if the department has
10 not made the materials available at the time the physician or
11 physician's agent is required to inform the woman of the
12 woman's right to review the materials.

13 Sec. 10. NEW SECTION. 146A.10 CIVIL REMEDIES.

14 1. A woman upon whom an abortion has been performed in
15 violation of this chapter, the father of the unborn child that
16 was aborted, or the grandparent of the unborn child that was
17 aborted may maintain an action against the person who
18 knowingly or recklessly performed the abortion in violation of
19 this chapter for actual and punitive damages.

20 2. A woman upon whom a person has attempted to perform an
21 abortion in violation of this chapter may maintain an action
22 against the person who knowingly or recklessly attempted to
23 perform the abortion in violation of this chapter for actual
24 and punitive damages.

25 3. If the department fails to issue the public report
26 required pursuant to section 146A.8, any group of ten or more
27 citizens may seek a writ of mandamus against the director of
28 public health in a court of competent jurisdiction requiring
29 that a complete report be issued within a period stated by the
30 writ. If the director fails to comply with the writ, the
31 director of public health shall be subject to contempt of
32 court.

33 4. If a judgment is rendered in favor of a plaintiff in
34 any action described in this section, the court shall also
35 award reasonable attorney fees in favor of the plaintiff. If

1 judgment is rendered in favor of the defendant and the court
2 finds the plaintiff's action was frivolous and brought in bad
3 faith, the court shall award reasonable attorney fees in favor
4 of the defendant.

5 Sec. 11. NEW SECTION. 146A.11 PROTECTION OF PRIVACY IN
6 COURT PROCEEDINGS -- PENALTY.

7 1. In every civil or criminal proceeding or action brought
8 under this chapter, the court shall rule whether the anonymity
9 of the woman upon whom the abortion was performed or was
10 attempted to be performed shall be preserved from public
11 disclosure, if the woman does not consent to such disclosure.
12 The court upon a motion or sua sponte shall make such a
13 ruling. If the court rules that the woman's anonymity shall
14 be preserved, the order shall direct the parties, witnesses,
15 and counsel to comply with the ruling and shall direct the
16 sealing of the record and the exclusion of individuals from
17 courtrooms or hearing rooms to the extent necessary to
18 safeguard the woman's identity from public disclosure. Each
19 order issued by the court shall be accompanied by specific
20 written findings explaining why the anonymity of the woman
21 should be preserved from public disclosure, why the order is
22 essential to maintain the woman's anonymity, how the order is
23 narrowly tailored to specifically attain the desired result,
24 and why no reasonable less restrictive alternative exists.

25 2. If a woman upon whom an abortion was performed or was
26 attempted to be performed does not provide written consent,
27 anyone other than a public official who brings an action under
28 section 146A.10, subsection 1 or 2, shall do so under a
29 pseudonym.

30 3. This section shall not be construed to conceal the
31 identity of the plaintiff or witnesses from the defendant.

32

EXPLANATION

33 This bill creates a new Code chapter, the short title of
34 which is the "Unborn Child Pain Awareness and Prevention Act".

35 The bill requires certain conditions to be met, except in

1 the case of a medical emergency, prior to the performance of
2 an abortion on a pregnant woman, if the probable gestational
3 age of the unborn child is 20 weeks or more. The conditions
4 include, beginning November 1, 2005, all of the following:

5 1. At least 24 hours prior to the performance of an
6 abortion on a pregnant woman, the physician performing the
7 abortion or the physician's agent is to inform the pregnant
8 woman of her right to review the materials described in the
9 bill regarding the unborn child at various stages of
10 gestational age. The person informing the pregnant woman is
11 to also inform the pregnant woman that the materials are
12 available in printed hard copy format or on an internet site,
13 that the materials have been provided by the state, and that
14 the materials contain information about pain relative to the
15 unborn child.

16 2. If the pregnant woman chooses to view the materials in
17 the printed hard copy format, the materials are to be provided
18 at least 24 hours prior to the performance of the abortion or
19 mailed to the pregnant woman at least 72 hours prior to the
20 performance of the abortion by restricted certified mail.

21 3. The pregnant woman is required to certify in writing
22 that she has been informed of her right to review the
23 materials.

24 4. The physician performing the abortion or the
25 physician's agent is required to obtain a copy of the written
26 certification from the pregnant woman and retain the copy of
27 the written certification in the woman's medical record for at
28 least three years following the date of receipt.

29 The bill also provides that except in the case of a medical
30 emergency, prior to the performance of an abortion on a
31 pregnant woman, if the probable gestational age of the unborn
32 child is 20 weeks or more, the physician performing the
33 abortion or the physician's agent is to inform the pregnant
34 woman if an anesthetic or analgesic would eliminate or
35 alleviate organic pain to the unborn child caused by the

1 particular method of abortion being performed, inform the
2 pregnant woman of the particular medical risks associated with
3 the particular anesthetic or analgesic, and if the pregnant
4 woman consents, the physician performing the abortion may
5 administer the particular anesthetic or analgesic.

6 The bill directs the Iowa department of public health, by
7 October 1, 2005, to publish the materials to be provided to
8 the pregnant woman in printed hard copy format and to
9 establish an internet site to provide for the electronic
10 version of these materials.

11 The bill provides a procedure, beginning November 1, 2005,
12 in the case of a medical emergency. The bill requires the
13 Iowa department of public health, by October 1, 2005, to
14 prepare a reporting form for distribution to physicians to
15 complete, containing a reprint of the provisions of the bill
16 and providing for the recording of information specified in
17 the bill. The bill specifies the schedule for distribution of
18 the reporting forms, the annual submission schedule for the
19 completed reporting forms, and penalties for failure to timely
20 submit forms or for incomplete forms. The bill directs the
21 department to issue a public report, annually, compiling the
22 information contained in the reporting forms.

23 The bill provides that any person who knowingly or
24 recklessly performs an abortion or attempts to perform an
25 abortion in violation of the bill is guilty of a class "C"
26 felony. Additionally, a physician who knowingly or recklessly
27 submits a false report is guilty of a simple misdemeanor. The
28 bill prohibits a criminal or civil penalty from being assessed
29 under the bill against a woman upon whom an abortion is
30 performed or attempted to be performed, and provides that if
31 the department has not made materials available at the time
32 the physician or the physician's agent is required to inform
33 the woman of the woman's right to review the materials, a
34 criminal or civil penalty is not to be assessed against the
35 physician or physician's agent.

1 The bill provides that any woman upon whom an abortion has
2 been performed in violation of the bill, the father of the
3 unborn child that was aborted, or the grandparent of the
4 unborn child that was aborted may maintain an action against
5 the person who knowingly or recklessly performed the abortion
6 for actual and punitive damages. Additionally, under the
7 bill, any woman upon whom a person has attempted to perform an
8 abortion in violation of the bill may maintain an action
9 against the person who knowingly or recklessly attempted to
10 perform the abortion for actual and punitive damages.

11 The bill also provides that if the department fails to
12 issue the public report required under the bill, any group of
13 10 or more citizens may seek a writ of mandamus against the
14 director of public health requiring that a complete report be
15 issued within a period stated by the writ. If the director
16 fails to comply with the writ, the director of public health
17 is subject to contempt of court. The bill provides for
18 awarding of reasonable attorney fees against the plaintiff or
19 defendant under certain conditions in actions brought under
20 the bill.

21 The bill provides that in any proceeding or action brought
22 under the bill, the court is to rule whether the anonymity of
23 the woman upon whom the abortion was performed or was
24 attempted to be performed shall be preserved from public
25 disclosure, if the woman does not consent to such disclosure.
26 If the court rules that the woman's anonymity is to be
27 preserved, the order is to direct the parties, witnesses, and
28 counsel to comply with the ruling and to direct the sealing of
29 the record and the exclusion of individuals from courtrooms or
30 hearing rooms to the extent necessary to safeguard the woman's
31 identity from public disclosure. Each order issued by the
32 court is to be accompanied by specific written findings
33 explaining why the anonymity of the woman should be preserved
34 from public disclosure, why the order is essential to maintain
35 the woman's anonymity, how the order is narrowly tailored to

1 specifically attain the desired result, and why no reasonable
2 less restrictive alternative exists.

3 The bill also provides that if a woman upon whom an
4 abortion was performed or was attempted to be performed does
5 not provide written consent, anyone other than a public
6 official who brings a civil action under the bill for actual
7 and punitive damages is to do so under a pseudonym.

8 The provisions relating to protection of privacy in court
9 proceedings are not to be construed to conceal the identity of
10 the plaintiff or witnesses from the defendant.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35