

House Bill 4042

Sponsored by Representatives LEWIS, STARK, Senator FINDLEY; Representatives CATE, GEORGE, LEVY, MORGAN, OWENS, RESCHKE, SCHARF, SMITH G, Senators HANSELL, THATCHER (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires physician who prescribes drugs for chemical abortion to provide certain information to person to whom drugs are prescribed. Requires Oregon Health Authority to publish on authority website specified information regarding possible reversal of chemical abortion. Allows specified persons to bring cause of action for actual and punitive damages.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to abortion; and prescribing an effective date.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1 to 7 of this 2022 Act:**

5 (1) **“Abortion” means the use or prescription of a drug, instrument, medicine or other**
6 **substance or device to intentionally terminate the pregnancy of a person known to be preg-**
7 **nant with a purpose other than:**

8 (a) **After viability, to produce a live birth and preserve the life and health of the child**
9 **born alive; or**

10 (b) **To remove a dead unborn child.**

11 (2) **“Chemical abortion” means the use or prescription of an abortion-inducing drug dis-**
12 **persed with the intent to cause the death of an unborn child.**

13 (3)(a) **“Medical emergency” means a condition that, in reasonable medical judgment, so**
14 **complicates the medical condition of the pregnant person as to necessitate the immediate**
15 **termination of the pregnancy to avert the person’s death or for which a delay will create**
16 **serious risk of substantial and irreversible physical impairment of a major bodily function,**
17 **not including psychological or emotional functions.**

18 (b) **“Medical emergency” does not include a claim that the pregnant person will engage**
19 **in conduct that would result in the person’s death or in substantial and irreversible physical**
20 **impairment of a major bodily function.**

21 **SECTION 2. (1) Except in the case of a medical emergency, a chemical abortion involving**
22 **the administration of mifepristone and misoprostol may not be performed or induced, or at-**
23 **tempted to be performed or induced, unless the prescribing physician or an agent of the**
24 **prescribing physician, informs, in person or by telephone, the pregnant person to whom the**
25 **drugs described in this subsection are prescribed, at least 24 hours in advance of the chem-**
26 **ical abortion, that:**

27 (a) **There is a possibility of reversing a chemical abortion after the administration of**
28 **mifepristone if the person who is pregnant changes their mind, but that time is of the es-**
29 **sence; and**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (b) A website developed and maintained by the Oregon Health Authority, as described in
2 section 3 of this 2022 Act, provides further information and assistance in the reversal of a
3 chemical abortion following the administration of mifepristone.

4 (2) Following the dispensation of mifepristone, the prescribing physician or agent of the
5 prescribing physician shall provide to the person to whom mifepristone was prescribed the
6 following written statement:

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9 Recent developing research has indicated that mifepristone alone is not always effective
10 in ending a pregnancy. It may be possible to avoid, cease, or even to reverse the intended
11 effects of a chemical abortion using mifepristone if the second pill, misoprostol, has not been
12 taken. Please consult with a knowledgeable health care provider regarding the abortion pill
13 reversal or call the Abortion Pill Reversal Hotline at (877) 558-0333 or visit
14 <https://www.abortionpillreversal.com> as soon as possible.

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17 (3) A civil penalty may not be imposed on a physician for failure to comply with sub-
18 section (1)(b) of this section if the website or information described in subsection (1)(b) of
19 this section is not available at the time the physician or physician's agent is required to
20 provide the information to the pregnant person.

21 **SECTION 3.** (1)(a) The Oregon Health Authority shall develop and maintain a website
22 that, to the extent reasonably practicable, is safeguarded from having the content of the
23 website altered by a person other than the authority. The authority shall use the website to
24 provide the information described in subsection (2) of this section.

25 (b) Information regarding individuals who use or view the website may not be collected
26 or maintained.

27 (c) The authority shall monitor the website daily to prevent and correct tampering.

28 (d) The website must be maintained at a minimum resolution of 70 dots per inch. Any
29 images appearing on the website must be a minimum of 200 x 300 pixels and the font size
30 used on the website must be a minimum of 12 points. All information and images on the
31 website must be accessible with an industry-standard Internet browser and may not require
32 additional plug-ins.

33 (2) The authority shall publish, on the website described in subsection (1) of this section,
34 materials designed to inform a pregnant person of the possibility of reversing the effects of
35 a chemical abortion if the person no longer wishes to complete the chemical abortion and
36 information about and assistance with resources available to reverse the effects of a chemi-
37 cal abortion.

38 (3) The information described in subsection (2) of this section must be:

39 (a) Published in English and in each language that is the primary language of two percent
40 or more of the state's population; and

41 (b) Easily comprehensible.

42 **SECTION 4.** If a medical emergency requires the performance of an abortion, the physi-
43 cian who performs the abortion shall, prior to the performance of the abortion if possible,
44 inform the pregnant person upon whom the abortion is to be performed of the medical indi-
45 cations supporting the physician's judgment that an abortion is necessary to avert the

1 person's death or that a delay of 24 hours or more will create a serious risk of substantial
 2 and irreversible physical impairment of a major bodily function, not including psychological
 3 or emotional conditions.

4 **SECTION 5.** A penalty may not be assessed against the person upon whom an abortion
 5 is performed or induced, or attempted to be performed or induced, in violation of section 2
 6 or 4 of this 2022 Act.

7 **SECTION 6.** (1)(a) Except as provided in paragraph (b) of this subsection, the following
 8 persons may maintain an action against the person who performed or induced an abortion,
 9 or attempted to perform or induce an abortion, in violation of section 2 or 4 of this 2022 Act
 10 for actual, economic, noneconomic or punitive damages:

11 (A) The person upon whom the abortion was performed or induced, or attempted to be
 12 performed or induced;

13 (B) The person responsible for the fertilization that resulted in the pregnancy that is the
 14 subject of the abortion; or

15 (C) A grandparent of the unborn child that would have been born but for the abortion if
 16 the person described in subparagraph (A) of this paragraph was under 18 years of age at the
 17 time of the abortion or died as a result of the abortion.

18 (b) Damages may not be awarded under this subsection if the pregnancy described in
 19 paragraph (a)(B) of this subsection was the result of criminal conduct by the person main-
 20 taining the action described in paragraph (a)(B) of this subsection.

21 (2) If the plaintiff prevails in the action described in this section, the court shall also
 22 award reasonable attorney fees to the plaintiff.

23 **SECTION 7.** (1) In any action brought under section 6 of this 2022 Act, the court shall
 24 determine whether the anonymity of the person upon whom an abortion was performed must
 25 be exempt from public disclosure under ORS 192.311 to 192.478 if the person does not consent
 26 to disclosure.

27 (2) If the court determines that the person's anonymity must be preserved, the court
 28 shall issue orders to the parties, witnesses and counsel, direct the sealing of the record and
 29 order exclusion from the courtroom of all persons who are not parties, witnesses or counsel.
 30 The orders described in this subsection must be accompanied by written findings that explain
 31 why the person's anonymity must be preserved, why the orders are essential to that end,
 32 how the orders are narrowly tailored to serve that interest and why no reasonable less-
 33 restrictive alternative exists.

34 (3) If the person described in subsection (1) of this section does not consent to disclose
 35 the person's identity, any person other than a public official who brings an action under
 36 section 6 of this 2022 Act that is related to the person's pregnancy shall bring the action
 37 under a pseudonym.

38 (4) This section shall not be construed to conceal the identity of the plaintiff or witnesses
 39 from the defendant or defendant's counsel.

40 **SECTION 8.** This 2022 Act takes effect on the 91st day after the date on which the 2022
 41 regular session of the Eighty-first Legislative Assembly adjourns sine die.