

Wyoming

[Johnson v. Wyo., 2023 Wyo. Trial Order LEXIS 1](#) March 22, 2023)

Temporary Restraining order granted blocking [Wyo. Stat. § 35-6-120 et seq.](#) (2023), Owens J.

Temporary Restraining Order granted blocking enforcement of the medication abortion ban (prescription, sale and use) from taking effect. July 1, 2023, (Wy. Dist. Ct. Teton Cnty, June 22, 2023, Owens J.)

Johnson v. State of Wyoming I, No. 18732 (Wy. Dist. Ct. Teton Cnty. Aug. 10, 2022). Court Granted preliminary injunction of Wyo. Stat § 35-6-102 (trigger ban abortion law).

W.S. 35-6-120. Chemical abortions prohibited; exceptions; penalty.

(a) Notwithstanding any other provision of law, it shall be unlawful to prescribe, dispense, distribute, sell or use any drug for the purpose of procuring or performing an abortion on any person.

(b) The prohibition in subsection (a) shall not apply to:

(i) The sale, use, prescription or administration of any contraceptive agent administered before conception or before pregnancy can be confirmed through conventional medical testing;

(ii) The treatment of a natural miscarriage according to currently accepted medical guidelines:

(iii) Treatment necessary to preserve the woman from an imminent peril that substantially endangers her life or health, according to appropriate medical judgment, or the pregnancy is the result of incest as defined by W.S. 6-4-402 or sexual assault as defined by W.S. 6-2-301. As used in this paragraph, "imminent peril" means only a physical condition and shall not include any psychological or emotional conditions. No medical treatment shall form the basis for an exception under this paragraph if it is based on a claim or diagnosis that the pregnant woman will engage in conduct which she intends to result in her death or other self-harm.

(c) Except as otherwise provided in this section, any physician or other person who violates subsection (a) of this section is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine not to exceed nine thousand dollars (\$9,000.00), or both.(d) A woman upon whom a chemical abortion is performed or attempted shall not be criminally prosecuted pursuant to subsection (c) of this section.

W.S. 35-6-120

Added by Laws 2023, ch. 190,§ 1, eff. 7/1/2023.

W.S. 35-6-122. Definitions.

(a) As used in this act:

(i) "Abortion" means the act of using or prescribing any instrument, medicine, drug or any other substance, device or means with the intent to terminate the clinically diagnosable pregnancy of a woman, including the elimination of one (1) or more unborn babies in a multifetal

pregnancy, with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn baby. "Abortion" shall not include any use, prescription or means specified in this paragraph if the use, prescription or means are done with the intent to:

- (A) Save the life or preserve the health of the unborn baby;
- (B) Remove a dead unborn baby caused by spontaneous abortion or intrauterine fetal demise;
- (C) Treat a woman for an ectopic pregnancy; or
- (D) Treat a woman for cancer or another disease that requires medical treatment which treatment may be fatal or harmful to the unborn baby.

(ii) "Pregnant" means the human female reproductive condition of having a living unborn baby or human being within a human female's body throughout the entire embryonic and fetal stages of the unborn human being from fertilization, when a fertilized egg has implanted in the wall of the uterus, to full gestation and childbirth;

(iii) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;

(iv) "Unborn baby" or "unborn human being" means an individual living member of the species homo sapiens throughout the entire embryonic and fetal stages from fertilization to full gestation and childbirth;

(v) "Ectopic pregnancy" means a pregnancy that occurs when a fertilized egg implants and grows outside the main cavity of the uterus;

(vi) "Lethal fetal anomaly" means a fetal condition diagnosed before birth and if the pregnancy results in a live birth there is a substantial likelihood of death of the child within hours of the child's birth;

(vii) "Molar pregnancy" means the development of a tumor or cysts that may or may not include placental tissue from trophoblastic cells after fertilization of an egg that results in spontaneous abortion or intrauterine fetal demise;

(viii) "This act" means W.S. 35-6-120 through 35-6-138.

W.S. 35-6-123. Abortion prohibited.

(a) Except as provided in W.S. 35-6-124, no person shall knowingly:

(i) Administer to, prescribe for or sell to any pregnant woman any medicine, drug or other substance with the specific intent of causing or abetting an abortion; or

(ii) Use or employ any instrument, device, means or procedure upon a pregnant woman with the specific intent of causing or abetting an abortion.

35-6-124. Exceptions to abortion prohibition; applicability.

(a) It shall not be a violation of W.S. 35-6-123 for a licensed physician to:

(i) Perform a pre-viability separation procedure necessary in the physician's reasonable medical judgment to prevent the death of the pregnant woman, a substantial risk of death for the pregnant woman because of a physical condition or the serious and permanent impairment of a life-sustaining organ of a pregnant woman, provided that no separation procedure shall be deemed necessary under this paragraph unless the physician makes all reasonable medical efforts under the circumstances to preserve both the life of the pregnant woman and the life of the unborn baby in a manner consistent with reasonable medical judgment;

(ii) Provide medical treatment to a pregnant woman that results in the accidental or unintentional injury to, or the death of, an unborn baby;

(iii) Perform an abortion on a woman when the pregnancy is the result of incest as defined by W.S. 6-4-402 or sexual assault as defined by W.S. 6-2-301. Prior to the performance of any abortion under this paragraph the woman, or the woman's parent or guardian if the woman is a minor or subject to a guardianship, shall report the act of incest or sexual assault to a law enforcement agency and a copy of the report shall be provided to the physician; or

(iv) Perform an abortion on a woman when in the physician's reasonable medical judgment, there is a substantial likelihood that the unborn baby has a lethal fetal anomaly or the pregnancy is determined to be a molar pregnancy.

(b) Nothing in this act shall be construed to prohibit the use, sale, prescription or administration of a contraceptive measure, drug, chemical or device if the contraceptive measure, drug, chemical or device is used, sold, prescribed or administered in accordance with manufacturer instructions and is not used, sold, prescribed or administered with the specific intent to cause or induce an abortion.

W.S. 35-6-125. Penalties and remedies.

(a) Any person who violates W.S. 35-6-123 is guilty of a felony punishable by a fine not to exceed twenty thousand dollars (\$20,000.00), imprisonment for not more than five (5) years, or both.

(b) Nothing in this act shall be construed to subject a pregnant woman upon whom any abortion is performed or attempted to any criminal penalty under this act.

W.S. 35-6-126. Professional sanctions; civil penalties.

(a) In addition to any other penalties available under law, a physician or any other professionally licensed person who intentionally, knowingly or recklessly violates W.S. 35-6-123 commits an act of unprofessional conduct, and the physician's or person's license to practice in Wyoming shall be immediately revoked by the state board of medicine after due process in accordance with the rules and procedures of the state board of medicine. Any person may file a complaint against a physician or other licensed person under this section, or the state board of medicine may on its own accord initiate a complaint against a physician or other licensed person. The state board of medicine may assess or impose the costs of any investigation, fines not to

exceed five thousand dollars (\$5,000.00) and any other disciplinary actions authorized by law that the board deems appropriate.

(b) No civil penalty shall be assessed against a pregnant woman upon whom an abortion is performed or attempted for a violation of this act.

W.S. 35-6-127. Civil remedies.

(a) In addition to any remedies available under law, failure to comply with this act shall provide the basis for a civil action as provided by this section.

(b) Any pregnant woman upon whom an abortion has been performed, induced or coerced in violation of this act may maintain an action against the person or persons who violated this act for actual and punitive damages. In addition to all other damages and separate and distinct from all damages, a plaintiff prevailing in an action under this section shall be entitled to statutory damages of ten thousand dollars (\$10,000.00) for each violation of this act from each defendant for each violation.

(c) A separate and distinct cause of action for injunctive relief against any person who has violated this act to enjoin further violations of this act may be maintained by any of the following:

(i) The woman upon whom an abortion was performed or induced in violation of this act;

(ii) The parent or guardian of the pregnant woman if the woman had not attained eighteen (18) years of age at the time of the abortion or if the woman died as a result of the abortion;

(iii) A district attorney with proper jurisdiction;

(iv) The attorney general.

(d) If judgment is rendered in favor of the plaintiff in a civil action authorized by this section, the plaintiff shall be entitled to receive reasonable costs and attorney fees from the defendant.

W.S. 35-6-128. Construction; severability.

It is the intent of the legislature that each provision of this act shall operate with equal force and shall be severable and that, in the event that any provision of this act shall be held invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable provision shall be deemed severable, and the remaining provisions of this act shall be deemed fully enforceable.

Section 2. W.S. 5-8-102(a)(v) is amended to read:

W.S. 35-8-102. Jurisdiction.

(a) The juvenile court has general jurisdiction in all matters and proceedings commenced therein or transferred to it by order of the district court concerning:

(v) The parents, guardian or custodian of any minor alleged to be delinquent, in need of supervision or neglected, and all persons living in the household with the minor, ~~and~~

Section 3. W.S. 35-6-108 as 35-6-132, 35-6-113 as 35-6-134, 35-6-114 as 35-6-135 and 35-6-117 as 35-6-138 are amended and renumbered to read:

W.S. 35-6-132. Compilations of abortions; matter of record; exception.

(a) The state office of vital records services shall prepare and keep on file for seven (7) years compilations of the information submitted on the abortion reporting forms. The compilations shall be available as provided in this section. The state health officer, in order to maintain and keep such compilations current, shall file with the reports any new or amended information. The information submitted under W.S. ~~35-6-107~~ 35-6-131 and compiled under this section, except the report required under subsection (c) of this section, shall not be stored in any computer.

(b) An abortion reporting form received under W.S. ~~35-6-107~~ 35-6-131 shall be maintained in strict confidence by the state office of vital records services, shall not be a public record and shall not be made available except to the attorney general or a district attorney with appropriate jurisdiction pursuant to a criminal investigation or to the state board of medicine pursuant to an investigation. The attorney general or a district attorney receiving an abortion form pursuant to this subsection shall keep the form and information from the form confidential except as may be required by law for a criminal prosecution. The state board of medicine receiving an abortion form pursuant to this subsection shall keep the form and information from the form confidential except as may be required by law to determine or enforce an action regarding licensure.

(c) Not later than June 30 of each year the office of vital records services shall issue a public report providing summary statistics for the previous calendar year compiled from all of the abortion reporting forms from that year submitted in accordance with this section for each of the items listed in W.S. ~~35-6-131~~. The report shall also include the statistics for all previous calendar years during which this subsection was in effect, adjusted to reflect any additional information from late or corrected reports. The office shall ensure that no information included in the public reports could reasonably lead to the identification of any woman upon whom an abortion was performed, induced or attempted. The report shall be transmitted to the United States centers for disease control and prevention for the national abortion surveillance report.

W.S. 35-6-134. Penalty for violating W.S. 35-6-130.

Any person, firm, corporation, group or association who violates W.S. ~~35-6-106~~ 35-6-130 is guilty of an offense punishable by a fine of not more than ten thousand dollars (\$10,000.00).

W.S. 35-6-135. Right to damages for discriminatory employment practices for refusal to perform abortion.

Any person or persons injured by any action prohibited in W.S. 35-6-130 may by civil action obtain injunctive relief or damages.

W.S. 35-6-138. Use of appropriated funds for abortion prohibited.

~~(a) No funds appropriated by the legislature of the state of Wyoming shall be used to pay for abortions except when the pregnancy is the result of incest as defined by W.S. 6-4-402 or sexual assault as defined by W.S. 6-2-301 if the assault is reported to a law enforcement agency within five (5) days after the assault or within five (5) days after the time the victim is capable of~~

~~reporting the assault, or when the life of the mother would be endangered if the unborn child was carried to full term. This subsection is repealed on the date that subsection (b) of this section becomes effective.~~

(b) No funds appropriated by the legislature of the state of Wyoming shall be used to pay for abortions, ~~except when necessary to preserve the woman from a serious risk of death or of substantial and irreversible physical impairment of a major bodily function, not including any psychological or emotional conditions, or the pregnancy is the result of incest as defined by W.S. 6-4-402 or sexual assault as defined by W.S. 6-2-301. This subsection is effective on the same date that W.S. 35-6-102(b) is effective.~~

Section 4. W.S. 35-6-105 through 35-6-107, 35-6-109, 35-6-115 and 35-6-116 are renumbered as 35-6-129 through 35-6-131, 35-6-133, 35-6-136 and 35-6-137.

Section 5. W.S. 5-8-102(a)(vi), 35-6-101 through 35-6-104, 35-6-110 through 35-6-112, 35-6-118 and 35-6-119 are repealed.

Section 6. W.S. 35-6-117(a), renumbered as 35-6-138(a) by section 3 of this act, is repealed.

Section 7. The department of health shall promulgate all rules necessary to implement this act.

Section 8. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.