

Wyoming

State v. Johnson, No. S-24-0326 (Wyo., January 6, 2025) Appeal to the Supreme Court of Wyoming (from Dis. Ct., Teton Cnty.). The Court held Wyoming's abortion ban, Wyo. Stat. Ann. §§ 35-6-120 to 35-6-138 and medication abortion ban Wyo. Stat. Ann. §§ 35-6-139 violates the Wyoming Constitution, Art. 1, § 38 (passed in 2012) by unduly infringing on a woman's right to make health care decisions. The state argued abortion is not within the meaning of healthcare. The lower court's ruling is affirmed.

Johnson v. Wyoming, No. 2025-CV-0115019 (Seventh Jud. Dis. Ct., Natrona Cnty, Wy., April 21, 2025). The judge granted a preliminary injunction preventing abortion restrictions adopted by HB 42 (Wyo. Stat. Ann. §§ 35-6-201-204, 35-6-209(a)) and HB 64 (Wyo. Stat. Ann. § 35-6-201(b)) from being enforced. The enjoined statutory restrictions include medication abortion, ultrasound requirements, surgical abortions, and surgical abortion centers.

Johnson v. Wyoming, No. 2023-CV-18853 (Ninth Jud. Dist. Ct. Teton Cnty. Wy., November 18, 2024). The Court found that the Life Act (Wyo. Stat §§ 35-6-120 to 35-6-138) and Medication Abortion Ban (Wyo. Stat. § 35-6-138) violate Article 1, Section 38 of the Wyoming State Constitution, which provides all individuals with the right to personal autonomy when making medical decisions and granted a permanent injunction. Plaintiffs Motion for Summary Judgement granted, Owens, J.

Johnson v. State of Wyoming I, No. 18732 (Ninth Jud. Dist. Ct., Teton Cnty. Wy., 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. (see *State v. Johnson*, No. S-24-0326 Wyo., January 6, 2025, above)

(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. (See *State v. Johnson*, No. S-24-0326 Wyo., January 6, 2025, above)

(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) Repealed by Laws 2023, Ch. 184, § 6.

(b) No funds appropriated by the legislature of the state of Wyoming shall be used to pay for abortions.

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.

W.S. 35-6-201. Definitions. (Note: See *Johnson v. Wyoming*, preliminary injunction).

(a) As used in this article:
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(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) "Ectopic pregnancy" means the state of carrying an unborn child outside of the uterine cavity;

(iii) "Hospital" means those institutions licensed by the Wyoming department of health as hospitals;

(iv) "Intrauterine fetal demise" means the death of an unborn child inside the uterine cavity after twenty (20) weeks of pregnancy;

(v) "Miscarriage" means the spontaneous loss of the unborn child;

(vi) "Physician" means any person licensed to practice medicine in this state;

(vii) "Pregnancy" or "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 to full gestation and childbirth;

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

(ix) "Surgical abortion" means an induced abortion performed or attempted through use of a machine, medical device, surgical instrument or surgical tool, or any combination thereof, to terminate the clinically diagnosable pregnancy of a woman with knowledge and the intent that the termination by those means will cause, with reasonable likelihood, the death of the unborn child;

(x) "Surgical abortion facility" means any facility that provides a surgical abortion to a woman.

W.S. 35-6-202. Surgical abortion facilities; licensure requirement; prohibitions; penalties. (Note: See *Johnson v. Wyoming*, preliminary injunction).

(a) Each surgical abortion facility other than a hospital in Wyoming shall be licensed as an ambulatory surgical center in accordance with W.S. 35-2-901 through 35-2-914 and the rules of the department of health. Each surgical abortion facility performing surgical abortions shall have a separate license.

(b) No surgical abortion facility shall provide surgical abortions to any pregnant woman without first being licensed as an ambulatory surgical center.

(c) Each surgical abortion facility shall comply with all rules of the department of health concerning the operation and regulation of ambulatory surgical centers. No license issued to a surgical abortion facility shall be transferable or assignable to any other person or facility.

(d) Each licensed physician performing at least one (1) surgical abortion at a surgical abortion facility shall:

(i) Report each surgical abortion to the department of health and attest in the report that the physician is licensed and in good standing with the state board of medicine;

(ii) Submit documentation in a form and frequency required by the department of health that demonstrates that the licensed physician has admitting privileges at a hospital located not more than ten (10) miles from the abortion facility where the licensed physician is performing or will perform surgical abortions.

(e) Any person who violates this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000.00). Each calendar day in which a violation of this section occurs or continues is a separate offense.

W.S. 35-6-203. Abortion facilities; surgical abortions; requirements; rulemaking. (Note: See *Johnson v. Wyoming*, preliminary injunction).

(a) Any surgical abortion performed at a surgical abortion facility in the state shall only be performed by a physician licensed in the state of Wyoming.

(b) Any person who performs a surgical abortion in the state in violation of subsection (a) of this section is guilty of a felony punishable by imprisonment for not less than one (1) year nor more than fourteen (14) years.

(c) No person shall perform a surgical abortion at a surgical abortion facility in Wyoming who is not a licensed physician with admitting privileges at a hospital located not more than ten (10) miles from the abortion facility where the surgical abortion is performed.

(d) Any person who violates subsection (c) of this section shall be guilty of a misdemeanor punishable by a fine of one thousand dollars (\$1,000.00). For purposes of this subsection, each surgical abortion shall constitute a separate offense of subsection (c) of this section.

(e) The department of health shall promulgate rules necessary to regulate surgical abortion facilities as ambulatory surgical centers under W.S. 35-2-901 through 35-2-914. Rules promulgated under this subsection shall:

(i) Not be less stringent than those rules applicable to ambulatory surgical centers;

(ii) Provide for the physical inspection of surgical abortion facilities by the department of health every three (3) years.

W.S. 35-6-204. Applicability; effect. (Note: See *Johnson v. Wyoming*, preliminary injunction). If any provision of this article conflicts with the Life is a Human Right Act or W.S. 35-6-139, the provisions of the Life is a Human Right Act and W.S. 35-6-139 shall control over this article to the extent that the Life is a Human Right Act and W.S. 35-6-139 are in effect.

W.S. 35-6-301. Chemical abortions; ultrasound requirement; definitions; penalties. (Note: See *Johnson v. Wyoming*, preliminary injunction).

(a) As used in this article:

(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 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) "Chemical abortion" means the use of any medication, drug, substance or combination thereof that is prescribed or administered for the purpose of terminating a pregnancy once the pregnancy can be confirmed through conventional medical testing;

(iii) "Health care provider" means a person licensed, certified or authorized in a health care profession under title 33 of the Wyoming statutes;

(iv) "Pregnancy" or "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 baby or human being from fertilization, when a fertilized egg has implanted in the wall of the uterus, to full gestation and childbirth.

(b) Not less than forty-eight (48) hours before a pregnant woman procures the drugs or substances for a chemical abortion or before a health care provider dispenses the drugs or substances necessary for a chemical abortion, whichever is earlier, the pregnant woman shall receive an ultrasound in order to provide the pregnant woman the opportunity to view the active ultrasound of the unborn baby and view the fetal heart motion or hear the heartbeat of the unborn baby if the heartbeat is audible.

(c) The ultrasound required under subsection (b) of this section shall be of a quality consistent with standard medical practice in the community.

(d) Upon providing an ultrasound under this section, the provider of the ultrasound shall provide the pregnant woman with a document that specifies:

(i) The date, time and place of the ultrasound;

(ii) The health care provider who ordered or requested the ultrasound;

(iii) The health care provider who performed the ultrasound;

(iv) Confirmation of intrauterine pregnancy and the gestational age of the unborn baby.

(e) Before a health care provider dispenses the drugs or substances necessary for a chemical abortion to a pregnant woman, the health care provider shall verify that the ultrasound required by this section occurred.

(f) Except as otherwise provided in this subsection, any person who violates this section shall be 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. Nothing in this section shall be construed to subject a pregnant woman to any criminal penalty under this subsection.

W.S. 35-6-302. Ultrasound requirement; conflict of laws; applicability. (Note: See *Johnson v. Wyoming*, preliminary injunction).

If any provision of this article conflicts with the Life is a Human Right or W.S. 35-6-139, the provisions of the Life is a Human Right Act and W.S. 35-6-139 shall control over this article to the extent that the Life is a Human Right Act and W.S. 35-6-139 are enforceable.

Section 2. 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.