

## HOUSE BILL NO. HB0159

Protecting water from chemical abortion waste.

Sponsored by: Representative(s) Bear, Andrew, Brady, Brown, G, Campbell, K, Guggenmos, Haroldson, Heiner, Hoeft, Kelly, McCann, Rodriguez-Williams and Wasserburger and Senator(s) Hicks, Pearson, Salazar, Smith, D and Steinmetz

## A BILL

for

1 AN ACT relating to abortions and environmental quality;  
2 specifying requirements for the provision of chemical  
3 abortions; specifying criminal and civil penalties and  
4 liability; specifying exceptions to criminal liability;  
5 specifying requirements for manufacturers of chemical  
6 abortion drugs; specifying environmental and disposal  
7 requirements for abortion drugs; specifying duties of the  
8 department of environmental quality; specifying  
9 applicability; providing for the conflict of laws;  
10 providing definitions; requiring rulemaking; and providing  
11 for an effective date.

12

13 *Be It Enacted by the Legislature of the State of Wyoming:*

1

2           **Section 1.** W.S. 35-6-201 through 35-6-204 are created  
3 to read:

4

5

## ARTICLE 2

6

## REGULATION OF CHEMICAL ABORTIONS

7

8

**35-6-201. Definitions.**

9

10           (a) As used in this article:

11

12                   (i) "Abortion" means the act of using or  
13 prescribing any instrument, medicine, drug or any other  
14 substance, device or means with the intent to terminate the  
15 pregnancy of a woman, including the elimination of one (1)  
16 or more unborn babies, with knowledge that the termination  
17 by those means will, with reasonable likelihood, cause the  
18 death of the unborn baby. "Abortion" shall not include any  
19 use, prescription or means specified in this paragraph if  
20 the use, prescription or means are done with the intent to:

21

22                           (A) Save the life or preserve the health of  
23 the unborn baby;

1

2 (B) Remove a dead unborn baby caused by  
3 spontaneous abortion or intrauterine fetal demise;

4

5 (C) Treat a woman for an ectopic pregnancy;

6 or

7

8 (D) Treat a woman for cancer or another  
9 disease that requires medical treatment which treatment may  
10 be fatal or harmful to the unborn baby.

11

12 (ii) "Abortion drug" means any medicine, drug or  
13 other substance, or combination thereof and excluding  
14 medicines, drugs and substances used for contraceptive  
15 purposes, when used to intentionally:

16

17 (A) Kill the unborn baby of a woman known  
18 to be pregnant; or

19

20 (B) Terminate the pregnancy of a woman  
21 known to be pregnant with an intention other than to  
22 produce a live birth or to remove a dead unborn baby.

23

1           (iii) "Catch kit" means a collection container  
2 designed to catch and hold medical waste or infectious  
3 waste, including containers used for collecting samples for  
4 testing;

5

6           (iv) "Chemical abortion" means the use of an  
7 abortion drug to intentionally:

8

9                   (A) Kill the unborn baby of a woman known  
10 to be pregnant; or

11

12                   (B) Terminate the pregnancy of a woman  
13 known to be pregnant, with an intention other than to  
14 produce a live birth or to remove a dead unborn baby.

15

16           (v) "Health care provider" means any person  
17 licensed to prescribe prescription drugs under federal law  
18 or state law;

19

20           (vi) "Medical waste bag" means a biohazardous  
21 waste container made to contain medical or biohazardous  
22 waste;

23

1           (vii) "Pregnancy" or "pregnant" means the human  
2 female reproductive condition of having a living unborn  
3 baby or human being within a human female's body throughout  
4 the entire embryonic and fetal stages of the unborn human  
5 being from fertilization, when a fertilized egg has  
6 implanted in the wall of the uterus, to full gestation and  
7 childbirth;

8  
9           (viii) "Unborn baby" means an individual living  
10 member of the species homo sapiens throughout the entire  
11 embryonic and fetal stages from fertilization to full  
12 gestation and childbirth.

13

14           **35-6-202. Chemical abortions; requirements;**  
15 **penalties; liability; exceptions.**

16

17           (a) No health care provider shall knowingly provide  
18 or attempt to provide a chemical abortion without  
19 completing all of the following:

20

21           (i) Physically examining the patient;

22

1           (ii) Being physically present with the patient  
2 at a hospital or the health care provider's facility when  
3 the woman ingests the first abortion drug or drugs  
4 necessary for a chemical abortion;

5

6           (iii) Scheduling a follow-up visit for the  
7 patient that occurs not later than seven (7) days after the  
8 administration or use of the abortion drug in order to  
9 assess the patient's condition;

10

11           (iv) Providing a catch kit and medical waste bag  
12 to the patient, including instructions for the patient on  
13 how to use the catch kit and to bring the catch kit and  
14 medical waste bag to the health care provider for proper  
15 disposal.

16

17           (b) Any health care provider who violates subsection  
18 (a) of this section shall be guilty of a felony punishable  
19 by imprisonment for not to exceed three (3) years, a fine  
20 not to exceed ten thousand dollars (\$10,000.00), or both.

21

22           (c) Subsections (a) and (b) of this section shall not  
23 apply to:

1

2 (i) A pregnant woman who procures or attempts to  
3 procure a chemical abortion;

4

5 (ii) Efforts by a health care provider to treat  
6 a diagnosed ectopic pregnancy.

7

8 (d) Medical waste bags provided to pregnant women  
9 seeking a chemical abortion under this article shall:

10

11 (i) Contain warning labels that state  
12 "BIOHAZARD" and the universal biological hazard symbol;

13

14 (ii) Be fluorescent orange or orange-red with  
15 lettering and symbols in a contrasting color.

16

17 **35-6-203. Applicability; conflict of laws.**

18

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

1

2           **35-6-204. Prohibited acts; abortion drugs in**  
3 **wastewater.**

4

5           (a) No abortion drug shall enter wastewater or any  
6 public water supply, community water system or the waters  
7 of the state. The manufacturer or manufacturers of any  
8 abortion drug shall be responsible for ensuring proper  
9 disposal of discarded abortion drugs and for mitigating and  
10 remediating any environmental effects of abortion drugs,  
11 including endocrine-disrupting chemical byproducts of  
12 abortion drugs, that may enter any disposal system,  
13 sewerage system, public water supply, community water  
14 system or the waters of the state as a result of the  
15 disposal of tainted human remains from at-home abortions.

16

17           (b) If endocrine-disrupting chemicals from abortion  
18 drugs are found in wastewater, a public water supply, a  
19 community water system or the waters of the state, the  
20 manufacturer or manufacturers of the abortion drugs shall  
21 be strictly, absolutely, jointly and severally liable for  
22 the cleanup, remediation and any further preventative  
23 measures that the department of environmental quality may



1 require. If a plaintiff who brings suit under this section  
2 is unable to identify the specific manufacturer of the  
3 abortion drug found in the wastewater, public water supply,  
4 community water system or waters of the state, then  
5 liability shall be apportioned among all manufacturers of  
6 abortion drugs in proportion to each manufacturer's share  
7 of the national production for abortion drugs at the time  
8 of the discovery.

9

10 (c) Notwithstanding any other provision of law:

11

12 (i) A person may bring an action under this  
13 section against a manufacturer or manufacturers of abortion  
14 drugs not later than six (6) years after the discovery of  
15 the abortion drug in the wastewater, public water supply,  
16 community water system or waters of the state;

17

18 (ii) The following shall not be a defense to an  
19 action brought under this subsection:

20

21 (A) Ignorance or mistake of the law;

22

1                   (B) A defendant's belief that the  
2 requirements or provisions of this article are or were  
3 unconstitutional;

4

5                   (C) A defendant's reliance on:

6

7                   (I) Any court decision that has been  
8 vacated, reversed or overruled on appeal or by a subsequent  
9 court, even if that court decision had not been vacated,  
10 reversed or overruled when the cause of action accrued;

11

12                   (II) Any state or federal court  
13 decision that is not binding on the court in which the  
14 action is brought;

15

16                   (III) Any federal statute, agency rule  
17 or action or treaty that has been repealed, superseded or  
18 declared invalid or unconstitutional, even if that federal  
19 statute, agency rule or action or treaty had not been  
20 repealed, superseded or declared invalid or  
21 unconstitutional when the cause of action accrued.

22

1                   (D) Nonmutual issue preclusion or nonmutual  
2 claim preclusion;

3

4                   (E) The consent of the plaintiff or the  
5 unborn baby's mother to the abortion, or the consent of one  
6 (1) or both of the parents of the unborn baby's mother to  
7 the abortion or the consent of the legal guardian of the  
8 unborn baby's mother to the abortion;

9

10                   (F) Contributory or comparative negligence;

11

12                   (G) Assumption of risk;

13

14                   (H) A lack of but-for proximate causation;

15

16                   (J) Any claim that the enforcement of this  
17 article or the imposition of civil liability against the  
18 defendant will violate the constitutional rights of third  
19 parties, except as provided by subsection (d) of this  
20 section.

21

22                   (iii) The courts of this state shall have and  
23 may exercise personal jurisdiction over any defendant sued

1 under this subsection to the maximum extent permitted by  
2 the Wyoming and United States constitutions;

3

4 (iv) The law of the state of Wyoming shall apply  
5 to any action brought under this subsection to the maximum  
6 extent permitted by the United States constitution;

7

8 (v) Any contractual choice-of-law provision that  
9 requires or purports to require the application of the laws  
10 of a different jurisdiction shall be void as against public  
11 policy and shall not be enforceable in any court.

12

13 (d) A defendant against whom an action is brought  
14 under subsection (c) of this section may assert an  
15 affirmative defense to liability if the defendant  
16 demonstrates one (1) or more of the following by a  
17 preponderance of the evidence:

18

19 (i) The imposition of civil liability on the  
20 defendant will violate constitutional or federally  
21 protected rights that belong to the defendant personally;

22

1           (ii) The defendant has standing to assert the  
2 rights of a third party under the tests for third-party  
3 standing established by the United States supreme court and  
4 demonstrates that the imposition of civil liability on the  
5 defendant will violate constitutional or federally  
6 protected rights belonging to that third party;

7

8           (iii) The imposition of civil liability on the  
9 defendant will violate the Wyoming constitution, as  
10 interpreted by the Wyoming supreme court;

11

12           (iv) The imposition of civil liability on the  
13 defendant would violate the limits on extraterritorial  
14 jurisdiction imposed by the United States constitution or  
15 the Wyoming constitution.

16

17           (e) Notwithstanding any other provision of law, the  
18 following shall apply to any action, claim, counterclaim or  
19 any other type of legal or equitable action brought under  
20 this section:

21

22           (i) The state and each of its officers and  
23 employees shall have sovereign immunity;

1

2 (ii) The political subdivisions of the state and  
3 their officers and employees shall have governmental  
4 immunity;

5

6 (iii) Each officer and employee of the state and  
7 its political subdivisions shall have official immunity,  
8 governmental immunity and sovereign immunity, as  
9 appropriate;

10

11 (iv) The immunity conferred under this  
12 subsection shall apply to:

13

14 (A) Any action, claim or counterclaim  
15 brought under this section;

16

17 (B) Any type of legal or equitable action  
18 that challenges the validity of any provision or  
19 application of this section;

20

21 (C) Any rule issued under this article,  
22 W.S. 35-11-302 or 35-6-133;

23

1                   (D) Any constitutional challenge brought  
2 challenging the validity of this article;

3

4                   (E) Any action that seeks to prevent or  
5 enjoin the state, its political subdivisions or any  
6 officer, employee or agent of the state or a political  
7 subdivision from enforcing any provision or application of  
8 this article, any rule issued under this article, W.S.  
9 35-11-302 or 35-6-133 or from hearing, adjudicating or  
10 docketing a civil action brought under this section, unless  
11 the immunity has been abrogated or preempted by federal law  
12 in a manner consistent with the United States constitution.

13

14                   (v) The sovereign immunity conferred under this  
15 subsection shall include the constitutional sovereign  
16 immunity recognized by the United States supreme court in  
17 Seminole Tribe v. Florida, 517 U.S. 44 (1996) and Alden v.  
18 Maine, 527 U.S. 706 (1999), which applies in both state and  
19 federal court and which may not be abrogated by Congress or  
20 by any state or federal court except pursuant to  
21 congressional legislation authorized by section 5 of the  
22 Fourteenth Amendment to the United States constitution, by  
23 the bankruptcy clause of article I of the United States

1 constitution or by Congress's powers to raise and support  
2 armies and to provide and maintain a navy or by any other  
3 ground that might be recognized by the United States  
4 supreme court.

5

6 (f) Notwithstanding any other provision of law, the  
7 immunity conferred under subsection (e) of this section  
8 shall apply in every court, both state and federal, and in  
9 every adjudicative proceeding of any type whatsoever.

10

11 (g) Notwithstanding any other provision of law, no  
12 provision of state law shall be construed to waive or  
13 abrogate any immunity provided under subsection (e) of this  
14 section unless the state law expressly waives or abrogates  
15 the immunity provided in subsection (e) of this section.

16

17 (h) Notwithstanding any other provision of law, no  
18 attorney representing the state or its political  
19 subdivisions or an officer, employee or agent thereof shall  
20 waive an immunity described in subsection (e) of this  
21 section or take any action that would result in an express  
22 or implied waiver of that immunity. Any action taken in



1 violation of this subsection shall be regarded as a legal  
2 nullity and an ultra vires act.

3

4 (j) Notwithstanding any other provision of law, no  
5 court of this state shall award declaratory or injunctive  
6 relief or any type of state or writ, including a writ of  
7 prohibition, that would pronounce any provision or  
8 application of this article invalid or unconstitutional or  
9 that would restrain the state and its political  
10 subdivisions or any officer, employee or agent thereof from  
11 enforcing any provision or application of this article, any  
12 rule promulgated under W.S. 35-11-302 or 35-6-133 or from  
13 hearing, adjudicating, docketing or filing a civil action  
14 brought under this section. No court of this state shall  
15 have jurisdiction to consider any action, claim or  
16 counterclaim that seeks a form of relief specified in this  
17 subsection unless required by the Wyoming constitution and  
18 no action, claim or counterclaim brought for a form of  
19 relief specified in this subsection shall be litigated on  
20 behalf of a plaintiff or defendant class, notwithstanding  
21 rule 23 of the Wyoming rules of civil procedure. No court  
22 shall certify a plaintiff or defendant class in any action  
23 seeking the relief specified in this subsection.

1

2 (k) Nothing in this article shall be construed to  
3 prevent a litigant from asserting the invalidity or  
4 unconstitutionality of any provision or application of this  
5 article as a defense to any action, claim or counterclaim  
6 brought against that litigant.

7

8 (m) Recognizing Leavitt v. Jane L., 518 U.S. 137  
9 (1996), where the United States supreme court held that, in  
10 the context of determining the severability of a state  
11 statute regulating abortion, an explicit statement of  
12 legislative intent is controlling, it is the intent of the  
13 legislature that every provision, section, subsection,  
14 sentence, clause, phrase or word in this article, and every  
15 application of the provisions of this article to every  
16 person, group of persons or circumstances, are severable  
17 from each other. The following shall apply to this article:

18

19 (i) If any application of any provision in this  
20 article to any person, group of persons or circumstances is  
21 found by a court to be invalid, preempted or  
22 unconstitutional for any reason whatsoever, then the  
23 remaining applications of that provision to all other

1 persons and circumstances shall be severed and preserved  
2 and shall remain in effect. All constitutionally valid  
3 applications of the provisions in this article shall be  
4 severed from any applications that a court finds to be  
5 invalid, preempted or unconstitutional because it is the  
6 legislature's intent and priority that every single valid  
7 application of every statutory provision be allowed to  
8 stand alone;

9

10 (ii) The legislature further declares that it  
11 would have enacted this article and each provision,  
12 section, subsection, sentence, clause, phrase or word, and  
13 all constitutional applications of the provisions of this  
14 article, irrespective of the fact that any provision,  
15 section, subsection, sentence, clause, phrase or word, or  
16 applications of this article, were declared to be invalid,  
17 preempted or unconstitutional;

18

19 (iii) If any provision of this article is found  
20 by any court to be unconstitutionally vague, then the  
21 applications of that provision that do not present  
22 unconstitutional vagueness problems shall be severed and

1 remain in force, consistent with the severability  
2 requirements of this subsection;

3

4 (iv) No court shall decline to enforce the  
5 severability requirements of this subsection on the ground  
6 that severing would rewrite the statute or involve the  
7 court in legislative or lawmaking activity. A court that  
8 declines to enforce or that enjoins a state official from  
9 enforcing a statutory provision is never rewriting a  
10 statute or engaging in legislative or lawmaking activity,  
11 as the statute continues to contain the same words as  
12 before the court's decision. A judicial injunction or  
13 declaration of unconstitutionality:

14

15 (A) Is nothing more than an edict  
16 prohibiting enforcement of the disputed statute against the  
17 named parties to that lawsuit, which may subsequently be  
18 vacated by a later court if that court has a different  
19 understanding of the requirements of the Wyoming  
20 constitution or the United States constitution;

21

22 (B) Is not a formal amendment of the  
23 language in a statute; and

1

2 (C) No more rewrites a statute than a  
3 decision by the executive branch not to enforce a duly  
4 enacted statute in a limited and defined set of  
5 circumstances.

6

7 (v) If any state or federal court disregards any  
8 of the severability requirements of this subsection and  
9 declares or finds any provision of this article facially  
10 invalid, preempted or unconstitutional when there are  
11 discrete applications of that provision that can be  
12 enforced against a person, group of persons or  
13 circumstances without violating federal law, the United  
14 States constitution or the Wyoming constitution, then that  
15 provision shall be interpreted, as a matter of state law,  
16 as if the legislature had enacted a provision limited to  
17 the persons, group of persons or circumstances for which  
18 the provision's application will not violate federal law,  
19 the United States constitution or the Wyoming constitution.  
20 Every court and every state official shall adopt this  
21 saving construction of that provision until the court  
22 ruling that pronounced the provision facially invalid,

1 preempted or unconstitutional is vacated, overruled or  
2 abrogated.

3

4 **Section 2.** W.S. 35-6-133 and 35-11-302(a) by creating  
5 a new paragraph (xii) are amended to read:

6

7 **35-6-133. Rules and regulations for disposal of**  
8 **bodies and parts thereof.**

9

10 The state department of health ~~may~~shall prescribe rules  
11 and regulations for the disposal of the bodies, tissues,  
12 organs and parts thereof of an unborn child, human fetus or  
13 human embryo which has been aborted.

14

15 **35-11-302. Administrator's authority to recommend**  
16 **standards, rules, regulations or permits.**

17

18 (a) The administrator, after receiving public comment  
19 and after consultation with the advisory board, shall  
20 recommend to the director rules, regulations, standards and  
21 permit systems to promote the purposes of this act. Such  
22 rules, regulations, standards and permit systems shall  
23 prescribe:

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**Section 3.**

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(xii) Standards for the collection and disposal of discarded abortion drugs as defined by W.S. 35-6-201(a)(ii) and for the mitigation and remediation necessary to address the environmental effects of abortion drugs that are discharged into any disposal system, sewerage system, public water supply, community water system or the waters of the state. Rules promulgated under this paragraph shall include requirements for the testing of community water systems and public water supplies to ensure that endocrine-disrupting chemical byproducts of abortion drugs do not enter a water system or water supply.

(a) The department of health shall promulgate all rules within its authority necessary to implement this act.

(b) The environmental quality council, upon recommendation from the department of environmental quality, shall promulgate all rules within its authority necessary to implement this act.

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

5

6

(END)