

SENATE BILL REPORT

SB 5768

As Passed Senate, April 14, 2023

Title: An act relating to protecting access to abortion medications by authorizing the department of corrections to acquire, sell, deliver, distribute, and dispense abortion medications.

Brief Description: Protecting access to abortion medications by authorizing the department of corrections to acquire, sell, deliver, distribute, and dispense abortion medications.

Sponsors: Senators Keiser, Dhingra, Cleveland, Frame, Hunt, Kuderer, Lovelett, Nobles, Pedersen, Randall, Robinson, Stanford, Trudeau, Valdez, Wellman and Wilson, C..

Brief History:

Committee Activity: Ways & Means: 4/10/23, 4/12/23 [DP, DNP].

Floor Activity: Passed Senate: 4/14/23, 28-18.

Brief Summary of Bill

- Authorizes the Department of Corrections (DOC) to engage in an activity constituting the practice of pharmacy or wholesale distribution of abortion medications.
- Requires DOC to establish and operate a program to deliver, dispense, and distribute abortion medications individually or wholesale at cost not to exceed list price.
- Requires DOC to charge a fee of \$5 per dose to offset the cost of secure storage and delivery of medication.
- Exempts DOC from obtaining a wholesaler license.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue;

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Mullet, Vice Chair, Capital; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Nguyen, Pedersen, Saldaña, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Boehnke, Braun, Muzzall and Torres.

Staff: Sarian Scott (786-7729)

Background: Washington State Department of Corrections. The Department of Corrections (DOC) provides medically necessary health and mental health care to incarcerated individuals at all DOC facilities in the state of Washington. Pharmacy services are provided from a DOC centralized pharmacy located in Centralia and prescription drugs are shipped to facilities across the state.

DOC has a formulary manual that lists drugs and supplies that will be provided when prescribed by a DOC health care practitioner. Per the formulary manual, which is developed by DOC's pharmacy and therapeutics committee, all medication used in DOC facilities is generally procured through DOC contracts and dispensed by a DOC pharmacy.

Wholesaler's License. A wholesaler is a corporation, individual, or other entity which buys drugs or devices for resale and distribution to corporations, individuals, or other entities other than consumers. A wholesaler may sell legend—prescription—drugs and nonprescription drugs as long as they are licensed as a wholesaler. The wholesaler must pay a license fee, determined by the Department of Health, to obtain a wholesaler's license for selling legend drugs and nonprescription drugs at a specific location for a specified time period.

Mifepristone. Mifeprex, and its generic, Mifepristone are approved, in a regimen with misoprostol, to end an intrauterine pregnancy through ten weeks gestation. The Food and Drug Administration first approved Mifeprex in 2000, and approved the generic version, Mifepristone, in 2019.

Summary of Bill: DOC is authorized to engage in any activity constituting the practice of pharmacy or wholesale distribution with respect to abortion medications. DOC may exercise this authority for the benefit of any person, whether or not the person is in the custody or under supervision of DOC.

DOC must establish and operate a program to deliver, dispense, and distribute abortion medications. In circumstances where DOC is selling, delivering, or distributing abortion medications to a health care provider or health care entity, DOC may only sell, distribute, or deliver abortion medications to health care providers or health care entities that will only use the medications for providing abortion care or medical management of early pregnancy

loss.

Any abortion medications sold, resold, delivered, dispensed, or distributed, whether individually or wholesale, must be conducted at cost, not to exceed list price, plus a fee of \$5 per dose to offset the cost of secure storage and delivery of medication. Revenue generated from the fee must be deposited into the state general fund.

DOC must comply with any applicable law, including any licensing requirements, except DOC is exempt from obtaining a wholesaler's license. Nothing in this act diminishes any existing authority of DOC.

Abortion medications means substances used in the course of medical treatment intended to induce the termination of a pregnancy, including but not limited to Mifepristone.

The act must be liberally construed to give effect to the policies and purposes of this act. The act applies retroactively and prospectively.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: The Governor made the right call when he directed DOC to purchase a three-year supply of mifepristone in anticipation of the court ruling in Texas. The uncertainty of the final outcome in the judicial process is not something that should be gambled on, and this bill gives DOC appropriate authority to dispense mifepristone to clinics and providers to ensure there is as much safe access as possible to mifepristone in Washington.

This is a fundamental right in this state. The DOC is prepared to implement the bill as written and will work with the Governor and others to develop plans to distribute the 30,000 doses of mifepristone in its possession to health care providers and health care entities that currently provide abortion services. The DOC is prepared to charge the cost of the prescription and the \$5 fee as laid out in the bill.

There is no state or federal law that prevents a drug from being sold or distributed if FDA approval is invalidated. Prescribers should have no fear in prescribing mifepristone consistent with the standard of care in Washington State if there are legitimate reasons to prescribe the medication. Mifepristone has been safely used for the past 23 years, and individuals should be able to choose the method of abortion.

Washington State providers are providing more care to a growing number of patients from out of state. This bill will create a safety net to provide compassionate care to Washingtonians and those who travel to Washington. This bill does not force anyone to take mifepristone who does not want to take it.

CON: This bill is anti-human reproduction as it ends life and will make abortions easier. Mifepristone ends the life of a developing fetus or human being. Life is sacred. The interests of the pre-born child are not being served. Abortion is not health care and it is not reproductive freedom. Serious side effects are well documented and the use of mifepristone can be fatal if the individual has an abnormal pregnancy.

The state should not be getting into the pharmaceutical business of destroying life, and should not be using state funds to stockpile a medication that may no longer be approved. The purchase of the three-year supply is unprecedented and a gross breach of ethical practices.

There is concern about the health of individuals who take mifepristone without the supervision of doctors in hospitals or clinics. This bill should not be passed in haste, but should be an invitation to take a closer look at the safety of mifepristone.

Persons Testifying: PRO: Senator Karen Keiser, Prime Sponsor; Mercedes Sanchez, Cedar River Clinics; Nicole Kern, Planned Parenthood Alliance Advocates; Madeline Bishop; Jody Disney, LWVWA; Molly Voris, Office of Governor Jay Inslee; Cheryl Strange, Department of Corrections; Micah Matthews, Washington Medical Commission.

CON: Laurie Layne; Patti Whitmarsh; Mario Villanueva, Washington State Catholic Conference; Beth Daranciang; Theresa Schrempp; Brad Payne, Family Policy Institute of Washington; Pastor David Sellstrom, The Remnant Church; Pastor Ken Ramey, Family Policy Institute of Washington; Maxine Johnson; Erling K Selstad; christopher pettit, Church in the Woods; Evan Coleman.

Persons Signed In To Testify But Not Testifying: No one.