

# HOUSE BILL REPORT

## SB 5768

---

---

**As Passed House:**

April 20, 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:**

Appropriations: 4/18/23, 4/19/23 [DP].

**Floor Activity:**

Passed House: 4/20/23, 55-40.

**Brief Summary of Bill**

- Authorizes the Department of Corrections (DOC) to engage in any activity constituting the practice of pharmacy or wholesale distribution of abortion medications for the benefit of any person.
- Requires the DOC to establish and operate a program to deliver, dispense, and distribute abortion medications individually or wholesale at cost plus a fee of \$5 per dose to offset the cost of secure storage and delivery of the medication.
- Exempts the DOC from obtaining a wholesaler license for purposes of delivering, dispensing, and distributing abortion medications.

---

**HOUSE COMMITTEE ON APPROPRIATIONS**

---

*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.*

**Majority Report:** Do pass. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Hansen, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 11 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Connors, Couture, Dye, Rude, Sandlin, Schmick and Steele.

**Staff:** Yvonne Walker (786-7841) and Kim Weidenaar (786-7120).

**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 state prisons across the state. The DOC centralized pharmacy also dispenses prescriptions on an emergent basis to patients who have been released without medication and provides contract pharmacy services to the Department of Social and Health Services Special Commitment Center.

Wholesaler's License.

A wholesaler is an individual or entity which buys drugs or medical devices for resale and distribution to corporations, individuals, or other entities other than consumers. A wholesaler may only sell legend prescription drugs and nonprescription drugs in Washington if they are licensed as a wholesaler. The wholesaler must pay a license fee to obtain a wholesaler's license for selling legend drugs and nonprescription drugs at a specific location for a specified time period.

Mifepristone.

Mifepristone sold as Mifeprex and its generic, mifepristone tablets, are approved, in a regimen with misoprostol, to end an intrauterine pregnancy through 10 weeks gestation. The United States Food and Drug Administration (FDA) first approved Mifeprex in 2000 and approved the generic version in 2019.

A Risk Evaluation and Mitigation Strategy (REMS) is a drug safety program that the FDA can require for certain medications with serious safety concerns to support safe use of the medication. Mifeprex and mifepristone tablets are available under a single, shared REMS, which sets forth the requirements that must be followed for medical termination of pregnancy through 10 weeks gestation. The FDA approval of mifepristone and its previous and current REMS have been the subject of a number of recent challenges and conflicting rulings in April 2023.

**Summary of Bill:**

The Department of Corrections (DOC) is authorized to acquire, receive, possess, sell, resell, deliver, dispense, distribute, and engage in any activity constituting the practice of pharmacy or wholesale distribution with respect to abortion medications. The DOC may exercise this authority for the benefit of any person, whether or not the person is in the custody or under supervision of the DOC. The 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 entity, the DOC may only sell, distribute, or deliver abortion medications to health care providers or 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. All revenue generated from the fee must be deposited into the State General Fund.

The DOC must comply with any applicable law, including any licensing requirements, however, the DOC is exempt from obtaining a wholesaler's license for the purposes of delivering, dispensing, and distributing abortion medications. Abortion medications are defined as substances used in the course of medical treatment intended to induce the termination of a pregnancy including, but not limited to, Mifepristone.

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

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill supports access to health care for all, including access to abortion care. This bill secures access to a medication that has over a 20-year safety profile, was approved after a scientific and clinical study, and is recommended by the groups that provide reproductive health care. Mifepristone is 99 percent safe and effective and has been used by five million Americans since its approval.

The Governor directed the Department of Corrections (DOC) to purchase a three-year supply of mifepristone in anticipation of the legal challenge, which was the right thing to do because we should not gamble with access to this safe and effective abortion medication.

The DOC is in possession of 30,000 doses of mifepristone and will work with the Governor's Office and others to distribute it to health care providers and entities.

No provision of state or federal law says that an unapproved drug cannot be sold, marketed, or prescribed. Accordingly, nothing has changed for Washington prescribers and the rulings do not alter the standard of care. Prescribing practitioners should have no fear in prescribing in accordance with the standard of care.

Since the United States Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, there has been a national health care crisis with providers in Washington serving many individuals seeking abortions from other states. This crisis is about to become worse with the Texas decision and states prohibiting abortion medications. The Texas case is part of a decades long strategy to control women's bodies and they handpicked the judge to issue this decision who willfully ignored medical evidence and patient stories.

The will of the majority is clear, they support abortion in most situations and support this bill. Abortion is a fundamental right, and everyone should be able to make decisions for their own body. Everyone should have access to safe and effective health care, including those who are incarcerated.

(Opposed) No one is trying to regulate anyone else's body, however, there are a lot of people who do not want to pay for someone else's abortion. This bill is a political act to allow for the stockpiling of an unapproved drug. There are questions about what the Constitution says about this, and it is atrocious if this bill is passed.

This is bad legislation. There is no emergency that justifies this bill. A federal court in Washington prohibited interference with this abortion medication and there is no state or federal law that prohibits drugs from being sold that are not approved by the United States Food and Drug Administration (FDA).

This bill completely disregards the separation of powers and is a slap in the face coming after the purchase of these pills. Mifepristone is four times more dangerous than surgical abortion and 20 percent of women who use mifepristone require additional treatment. Women who use mifepristone with an ectopic pregnancy could die. Aside from the risks and dangers this drug poses, the bill also comes with a hefty fiscal note and the citizens of Washington overwhelmingly oppose it.

Federal law should be protecting babies. Federal law protects turtles in their gestation phase, but not humans. Birth control is safe, effective, cost effective, and widely available. We should respect the inherent dignity of all human life.

The fiscal impact of this bill is unnecessary and substantial. This bill puts responsibilities on the DOC that are not part of their core functions. The DOC is already endangering incarcerated women and not protecting them by placing men in women's prisons.

The FDA never studied mifepristone on adolescents. Mifepristone blocks progesterone which is a key hormone and is very dangerous. The state is taking on liability by purchasing this drug.

**Persons Testifying:** (In support) Jody Disney, League of Women Voters of Washington; Nicole Kern, Planned Parenthood Alliance Advocates; Molly Voris, Office of the Governor; Sean Murphy, Department of Corrections; Micah Matthews, Washington Medical Commission; Mercedes Sanchez, Cedar River Clinics; Loni Rogers; and Diva Mehta.

(Opposed) Theresa Schrempp; Julie Barrett, Conservative Ladies of Washington; Eric Pratt; Sarah Davenport-Smith, Human Life of Washington; Sharon Damoff; Gabriel Jacobs; Adrienne Joyce, Washington State Catholic Conference; and Beth Daranciang.

**Persons Signed In To Testify But Not Testifying:** None.