



BILL BRIEF

SB 5768 – Distributing Abortion Medication

Executive Summary

- On April 4, Governor Inslee executed an emergency contract to purchase 30,000 doses of the abortion medication known as mifepristone.
- This bill directs the Department of Corrections to distribute the 30,000 doses of mifepristone to healthcare providers and healthcare entities across the state.
- The Department is required to charge no more than list price plus a fee of \$5 per dose.

Passed the Senate 28-18-3 (party lines); Passed House Appropriations 19-11-1 (party lines, Harris excused)

Background

Mifepristone, which is known by the brand name Mifeprex and RU 486, is a pill used in a two-dose regimen along with another drug, misoprostol, to terminate a pregnancy or to assist with a miscarriage. Mifepristone is the first drug taken in the regimen (200 mg orally) followed by 800 mcg of misoprostol 24 to 48 hours later.

Mifepristone blocks the hormone progesterone, which is needed for a pregnancy to continue. A mifepristone-misoprostol regimen is approved by the federal Food & Drug Administration (FDA) to terminate a pregnancy up to 10 weeks after conception. The mifepristone-misoprostol regimen is used to terminate a pregnancy, which is different from the emergency contraceptive drugs ulipristal (Ella) and levonorgestrel (Plan B). Both Ella and Plan B prevent a pregnancy from happening but cannot terminate a pregnancy.

Ongoing litigation

Last year, a coalition of pro-life groups called the Alliance for Hippocratic Medicine (Alliance) sued the FDA alleging that it improperly approved mifepristone more than 20 years ago.

On April 7, a federal judge in Texas ruled in favor of *Alliance*, suspended the FDA's approval of mifepristone, and ordered a nationwide injunction on its sale. That same day, a federal judge in Seattle issued a separate ruling in *State of WA v. FDA* precluding the FDA from imposing additional regulations on the sale of mifepristone, in direct conflict with the ruling in *Alliance*.

Key messages

The Department of Corrections lacks the experience and resources to be a widescale pharmaceutical distributor and should be focused on keeping our correctional facilities and communities safe.

State residents already have the right to obtain an abortion, this bill simply forces state taxpayers to help pay for it.

A recent poll shows that 58% of Americans oppose or strongly oppose using taxpayer dollars to support abortion, including 65% of Independents and 31% of Democrats.

This program exposes the state to increased liability from tort claims and medical malpractice.

This bill is premature and unnecessary since mifepristone continues to be available in Washington, and the state should delay this program to review the risks to the state.

On April 12, the 5th Circuit Court of Appeals temporarily narrowed the ruling in *Alliance* and allowed mifepristone to be sold, but reimposed past restrictions on obtaining and using the drug, including reducing the time period when the drug can be taken and providing that it cannot be dispensed by mail.

On April 13, the U.S. Supreme Court temporarily blocked the lower court rulings restricting access to mifepristone until Wednesday, to give the Court time to consider its next steps. On Wednesday, the Supreme Court extended the stay until Friday, which means that mifepristone continues to be available for distribution.

Governor's executive action

In anticipation of these rulings, on April 5, Governor Inslee used an emergency contract to purchase 30,000 doses of mifepristone at a cost of \$1.275 million (or \$42.50 per pill) using DOC's existing pharmacy license. Mifepristone pills have a 5-year shelf life. In this case, we do not know the manufacture date of the pills the state has purchased to know when to begin the clock in terms of assessing shelf life.

Governors in other (blue) states have also begun stockpiling mifepristone including California (2 million doses), Massachusetts (15,000 doses), and New York (150,000 doses).

What this legislation does

Authorizes the Department of Corrections (DOC) to distribute the 30,000 doses of mifepristone purchased by Governor Inslee to healthcare providers and healthcare entities. The drug must be dispensed at list price plus a fee of \$5 per dose to offset the cost of storage and delivery.

DOC was directed to procure and distribute the abortion pills because it is the only state agency with a pharmacy license. DOC provides medically necessary health and mental health care to incarcerated individuals, including pharmaceuticals, which are provided from a centralized pharmacy in Centralia and shipped to state prisons across the state.

Fiscal information

DOC assumes that it will distribute 10,000 doses per year for three years at list price plus a fee of \$5 per dose, which will generate \$475,000 per year to the general fund. That revenue will be used to pay for the cost of the drug (\$1.275 million) and to partially offset DOC's administrative costs. The net-cost to the state is \$336,000 per year or about \$1 million over the next three years.

Stakeholders

- PRO (1436 signed in pro): Cedar River Clinics; Planned Parenthood; League of Women Voters of Washington, Governor Jay Inslee; Department of Corrections; Washington Medical Commission.
- CON (3668 signed in con): Washington State Catholic Conference; Family Policy Institute of Washington; Remnant Church; Church in the Woods; Human Life of Washington; Conservative Ladies of WA.

Additional resources

- Bill History: <https://app.leg.wa.gov/billsummary?BillNumber=5768&Year=2023&Initiative=false>
- HRC Issue Brief – Abortion: <https://houserepublicans.wa.gov/central/doc/abortion/>
- Americans' Opinions on Abortions: <https://bit.ly/3KLtwWy>