

By: Lucio, et al.

S.B. No. 394

A BILL TO BE ENTITLED

AN ACT

1
2 relating to abortion complication reporting and the regulation of
3 drug-induced abortion procedures, providers, and facilities;
4 creating a criminal offense.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The legislature finds that:

7 (1) this state has an interest to protect the health
8 and welfare of every woman considering a drug-induced abortion;

9 (2) the use of Mifeprex or mifepristone presents
10 significant medical complications including, but not limited to,
11 uterine hemorrhage, viral infections, abdominal pain, cramping,
12 vomiting, headache, fatigue, and pelvic inflammatory disease; and

13 (3) the risk of failure rate and complications
14 increases with advancing gestational age.

15 SECTION 2. Sections 171.006(a) and (b), Health and Safety
16 Code, as added by Chapter 4 (H.B. 13), Acts of the 85th Legislature,
17 1st Called Session, 2017, are amended to read as follows:

18 (a) In this section, "abortion complication" or "adverse
19 event" means any harmful event or adverse outcome with respect to a
20 patient related to an abortion that is performed or induced on the
21 patient and that is diagnosed or treated by a health care
22 practitioner or at a health care facility and includes:

23 (1) shock;

24 (2) uterine perforation;

- 1 (3) cervical laceration;
- 2 (4) hemorrhage;
- 3 (5) aspiration or allergic response;
- 4 (6) infection;
- 5 (7) sepsis;
- 6 (8) death of the patient;
- 7 (9) incomplete abortion;
- 8 (10) damage to the uterus; [~~or~~]
- 9 (11) an infant born alive after the abortion;
- 10 (12) blood clots resulting in pulmonary embolism or
- 11 deep vein thrombosis;
- 12 (13) failure to actually terminate the pregnancy;
- 13 (14) pelvic inflammatory disease;
- 14 (15) endometritis;
- 15 (16) missed ectopic pregnancy;
- 16 (17) cardiac arrest;
- 17 (18) respiratory arrest;
- 18 (19) renal failure;
- 19 (20) metabolic disorder;
- 20 (21) embolism;
- 21 (22) coma;
- 22 (23) placenta previa in subsequent pregnancies;
- 23 (24) preterm delivery in subsequent pregnancies;
- 24 (25) fluid accumulation in the abdomen;
- 25 (26) hemolytic reaction resulting from the
- 26 administration of ABO-incompatible blood or blood products;
- 27 (27) adverse reactions to anesthesia or other drugs;

1 or

2 (28) any other adverse event as defined by the United
3 States Food and Drug Administration's criteria provided by the
4 MedWatch Reporting System.

5 (b) The reporting requirements of this section apply only
6 to:

7 (1) a physician who:

8 (A) performs or induces at an abortion facility
9 an abortion that results in an abortion complication diagnosed or
10 treated by that physician; or

11 (B) diagnoses or treats [~~at an abortion facility~~]
12 an abortion complication that is the result of an abortion
13 performed or induced by another physician [~~at the facility~~]; or

14 (2) a health care facility that is a hospital,
15 abortion facility, freestanding emergency medical care facility,
16 or health care facility that provides emergency medical care, as
17 defined by Section 773.003.

18 SECTION 3. Section 171.061, Health and Safety Code, is
19 amended by amending Subdivisions (2) and (5) and adding
20 Subdivisions (2-a) and (8-a) to read as follows:

21 (2) "Abortion-inducing drug" means a drug, a medicine,
22 or any other substance, including a regimen of two or more drugs,
23 medicines, or substances, prescribed, dispensed, or administered
24 with the intent of terminating a clinically diagnosable pregnancy
25 of a woman and with knowledge that the termination will, with
26 reasonable likelihood, cause the death of the woman's unborn child.
27 The term includes off-label use of drugs, medicines, or other

1 substances known to have abortion-inducing properties that are
2 prescribed, dispensed, or administered with the intent of causing
3 an abortion, including the Mifeprex regimen, misoprostol
4 (Cytotec), and methotrexate. The term does not include a drug,
5 medicine, or other substance that may be known to cause an abortion
6 but is prescribed, dispensed, or administered for other medical
7 reasons.

8 (2-a) "Adverse event" or "abortion complication"
9 means any harmful event or adverse outcome with respect to a patient
10 related to an abortion, including the abortion complications listed
11 in Section 171.006, as added by Chapter 4 (H.B. 13), Acts of the
12 85th Legislature, 1st Called Session, 2017.

13 (5) "Medical abortion" means the administration or use
14 of an abortion-inducing drug to induce an abortion, and may also be
15 referred to as a "medication abortion," a "chemical abortion," a
16 "drug-induced abortion," "RU-486," or the "Mifeprex regimen".

17 (8-a) "Provide" means, when used regarding
18 abortion-inducing drugs, any act of giving, selling, dispensing,
19 administering, transferring possession, or otherwise providing or
20 prescribing an abortion-inducing drug.

21 SECTION 4. Section 171.063, Health and Safety Code, is
22 amended by amending Subsections (a), (c), and (e) and adding
23 Subsection (b-1) to read as follows:

24 (a) A person may not knowingly [~~give, sell, dispense,~~
25 ~~administer,~~] provide[~~, or prescribe~~] an abortion-inducing drug to a
26 pregnant woman for the purpose of inducing an abortion in the
27 pregnant woman or enabling another person to induce an abortion in

1 the pregnant woman unless:

2 (1) the person who [~~gives, sells, dispenses,~~
3 ~~administers,~~] provides[~~, or prescribes~~] the abortion-inducing drug
4 is a physician; and

5 (2) [~~except as otherwise provided by Subsection (b),~~]
6 the provision[~~, prescription, or administration~~] of the
7 abortion-inducing drug satisfies the protocol [~~tested and~~]
8 authorized by this subchapter [~~the United States Food and Drug~~
9 ~~Administration as outlined in the final printed label of the~~
10 ~~abortion-inducing drug~~].

11 (b-1) A manufacturer, supplier, physician, or any other
12 person may not provide to a patient any abortion-inducing drug by
13 courier, delivery, or mail service.

14 (c) Before the physician [~~gives, sells, dispenses,~~
15 ~~administers,~~] provides[~~, or prescribes~~] an abortion-inducing drug,
16 the physician must:

17 (1) examine the pregnant woman in person;

18 (2) independently verify that a pregnancy exists;

19 (3) [~~and~~] document, in the woman's medical record, the
20 gestational age and intrauterine location of the pregnancy to
21 determine if an ectopic pregnancy exists;

22 (4) determine the pregnant woman's blood type, and for
23 a woman who is Rh negative, offer to administer Rh immunoglobulin
24 (RhoGAM) at the time the abortion is performed or induced to prevent
25 Rh incompatibility, complications, or miscarriage in future
26 pregnancies;

27 (5) document whether the pregnant woman received

1 treatment for Rh negativity, as diagnosed by the most accurate
2 standard of medical care; and

3 (6) ensure the physician does not provide an
4 abortion-inducing drug for a pregnant woman whose pregnancy is more
5 than 49 days of gestational age.

6 (e) A [The] physician who [~~gives, sells, dispenses,~~
7 ~~administers,~~] provides[~~, or prescribes~~] the abortion-inducing
8 drug, or the physician's agent, must schedule a follow-up visit for
9 the woman to occur not later [~~more~~] than the 14th day [~~14 days~~]
10 after the earliest date on which the abortion is performed or
11 induced or the drug is administered [~~administration~~] or used [~~use~~
12 ~~of the drug~~]. At the follow-up visit, the physician must:

13 (1) confirm that the woman's pregnancy is completely
14 terminated; and

15 (2) assess any continued blood loss [~~the degree of~~
16 ~~bleeding~~].

17 SECTION 5. Subchapter D, Chapter 171, Health and Safety
18 Code, is amended by adding Sections 171.0631, 171.0632, 171.065,
19 and 171.066 to read as follows:

20 Sec. 171.0631. VOLUNTARY AND INFORMED CONSENT REQUIRED. A
21 person may not provide an abortion-inducing drug to a pregnant
22 woman without satisfying the applicable informed consent
23 requirements of Subchapter B.

24 Sec. 171.0632. REPORTING REQUIREMENTS. A physician who
25 provides an abortion-inducing drug must comply with the applicable
26 physician reporting requirements under Section 245.011.

27 Sec. 171.065. CRIMINAL OFFENSE. (a) A person who

1 intentionally, knowingly, or recklessly violates this subchapter
2 commits an offense. An offense under this subsection is a state
3 jail felony.

4 (b) A pregnant woman on whom a drug-induced abortion is
5 attempted, induced, or performed in violation of this subchapter is
6 not criminally liable for the violation.

7 (c) Conduct constituting an offense under this section may
8 also be the basis for an administrative violation under Section
9 171.064.

10 Sec. 171.066. ENFORCEMENT OF SUBCHAPTER. A state executive
11 or administrative official may not decline to enforce this
12 subchapter, or adopt a construction of this subchapter in a way that
13 narrows its applicability, based on the official's own beliefs on
14 the requirements of the state or federal constitution, unless the
15 official is enjoined by a state or federal court from enforcing this
16 subchapter.

17 SECTION 6. The following provisions of the Health and
18 Safety Code are repealed:

19 (1) Sections 171.061(3) and (6); and

20 (2) Section 171.063(b).

21 SECTION 7. (a) Nothing in this Act shall be construed as
22 creating or recognizing a right to abortion.

23 (b) It is not the intention of this Act to make lawful an
24 abortion that is otherwise unlawful.

25 (c) Nothing in this Act repeals, replaces, or otherwise
26 invalidates existing Texas laws, regulations, or policies.

27 SECTION 8. Any provision of this Act held to be invalid or

1 unenforceable by its terms or as applied to any person or
2 circumstance shall be construed so as to give the provision the
3 maximum effect permitted by law, unless such holding is one of utter
4 invalidity or unenforceability, in which event the provision shall
5 be considered severable from the other provisions of this Act and
6 shall not affect the remainder or the application of the provisions
7 to other persons not similarly situated or to other, dissimilar
8 circumstances.

9 SECTION 9. (a) Except as provided by Subsection (b) of this
10 section, the changes in law made by this Act apply only to an
11 abortion performed or induced on or after the effective date of this
12 Act.

13 (b) Section 171.065, Health and Safety Code, as added by
14 this Act, applies only to an abortion performed or induced on or
15 after September 1, 2021.

16 SECTION 10. This Act takes effect immediately if it
17 receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas Constitution.
19 If this Act does not receive the vote necessary for immediate
20 effect, this Act takes effect September 1, 2021.