

By: Lucio

S.B. No. 394

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of drug-induced abortion procedures,
3 providers, and facilities; providing criminal penalties.

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

5 SECTION 1. The Legislature of the State of Texas finds that:

6 (1) The state has an interest to protect the health and
7 welfare of every woman considering a drug-induced abortion.

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

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

14 SECTION 2. Section [171.061](#), Health and Safety Code, is
15 amended to read as follows:

16 Sec. 171.061. DEFINITIONS. In this subchapter:

17 (1) "Abortion" has the meaning assigned by Section
18 [245.002](#). This definition, as applied in this subchapter, may not be
19 construed to apply to an act done with the intent to treat a
20 maternal disease or illness for which a prescribed drug, medicine,
21 or other substance is indicated.

22 (2) "Abortion-inducing drug" means a drug, a medicine,
23 or any other substance, including a regimen of two or more drugs,
24 medicines, or substances, prescribed, dispensed, or administered

1 with the intent of terminating a clinically diagnosable pregnancy
2 of a woman and with knowledge that the termination will, with
3 reasonable likelihood, cause the death of the woman's unborn child.
4 The term includes off-label use of drugs, medicines, or other
5 substances known to have abortion-inducing properties that are
6 prescribed, dispensed, or administered with the intent of causing
7 an abortion, including the Mifeprex regimen, misoprostol
8 (Cytotec), and methotrexate. The term does not include a drug,
9 medicine, or other substance that may be known to cause an abortion
10 but is prescribed, dispensed, or administered for other medical
11 reasons.

12 ~~(3) "Final printed label" or "FPL" means the~~
13 ~~informational document approved by the United States Food and Drug~~
14 ~~Administration for an abortion-inducing drug that:~~

15 ~~(A) outlines the protocol authorized by that~~
16 ~~agency and agreed to by the drug company applying for authorization~~
17 ~~of the drug by that agency; and~~

18 ~~(B) delineates how a drug is to be used according~~
19 ~~to approval by that agency.~~

20 (3) "Adverse event" means any adverse physical
21 condition arising from the performance of an abortion, including
22 the complications listed in Section 171.006, Health and Safety
23 Code.

24 (4) "Gestational age" means the amount of time that
25 has elapsed since the first day of a woman's last menstrual period.

26 (5) "Medical abortion" means the administration or use
27 of an abortion-inducing drug to induce an abortion. The use of such

1 drugs to induce abortion is also known as "medical," "medication,"
2 "RU-486," "chemical," "Mifeprex regimen," or "drug-induced"
3 abortion.

4 ~~(6) "Mifeprex regimen," "RU-486 regimen," or "RU-486"~~
5 ~~means the abortion-inducing drug regimen approved by the United~~
6 ~~States Food and Drug Administration that consists of administering~~
7 ~~mifepristone and misoprostol.~~

8 ~~(7)~~ (6) "Physician" means an individual who is
9 licensed to practice medicine in this state, including a medical
10 doctor and a doctor of osteopathic medicine.

11 ~~(8)~~(7) "Pregnant" means the female reproductive
12 condition of having an unborn child in a woman's uterus.

13 (8) "Provide" means, when used regarding
14 abortion-inducing drugs, any act of giving, selling, dispensing,
15 administering, transferring possession to or otherwise providing
16 or prescribing an abortion-inducing drug.

17 (9) "Unborn child" means an offspring of human beings
18 from conception until birth.

19 SECTION 3. Section 171.063, Health and Safety Code, is
20 amended by amending Subsections (a), (b), and (c) to read as
21 follows:

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

27 (1) the person who gives, sells, dispenses,

1 administers, provides, or prescribes the abortion-inducing drug is
2 a physician; and

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

9 (b) ~~A person may provide, prescribe, or administer the~~
10 ~~abortion-inducing drug in the dosage amount prescribed by the~~
11 ~~clinical management guidelines defined by the American Congress of~~
12 ~~Obstetricians and Gynecologists Practice Bulletin as those~~
13 ~~guidelines existed on January 1, 2013.~~ It shall be unlawful for any
14 manufacturer, supplier, physician, or any other person to provide
15 any abortion-inducing drug via courier, delivery, or mail service.

16 (c) Before the physician gives, sells, dispenses,
17 administers, provides, or prescribes an abortion-inducing drug,
18 the physician must:

19 (1) examine the pregnant woman in-person;
20 (2) independently verify that a pregnancy exists;
21 (3) and document, in the woman's medical record, the
22 gestational age and intrauterine location of the pregnancy in order
23 to rule out ectopic pregnancy;

24 (4) determine the woman's blood type, and if she is Rh
25 negative, be able to and offer to administer Rh immunoglobulin
26 (RhoGAM) at the time of the abortion to prevent Rh incompatibility,
27 complications, or miscarriage in future pregnancies;

1 (5) document whether she received treatment for Rh
2 negativity, as diagnosed by the most accurate standard of medical
3 care; and

4 (6) ensure that they do not give, sell, dispense,
5 administers, provide, or prescribe an abortion-inducing drug for a
6 pregnant woman whose pregnancy is beyond 49 days gestational age.

7 SECTION 4. Subchapter D, Chapter 171, Health and Safety
8 Code, is amended by adding Sections 171.0631, 171.0632, 171.065,
9 and 171.066 to read as follows:

10 Sec. 171.0631. VOLUNTARY AND INFORMED CONSENT REQUIREMENTS
11 FOR ABORTION-INDUCING DRUGS. No abortion-inducing drug shall be
12 provided to a pregnant woman without satisfying the informed
13 consent requirements of Sections 171.011-171.018, Subchapter B,
14 Health and Safety Code, as applicable.

15 Sec. 171.0632. REPORTING ON ABORTION-INDUCING DRUGS AND
16 DRUG-INDUCED ABORTIONS. A physician who gives, sells, dispenses,
17 administers, provides, or prescribes an abortion-inducing drug
18 must comply with the applicable Physician Reporting Requirements in
19 Sec. 245.011, Health and Safety Code.

20 Sec. 171.065. CRIMINAL PENALTY. (a) In addition to
21 penalties permitted under Sec. 171.066, a person who intentionally,
22 knowingly, or recklessly violates any provision of this Act is
23 guilty of a state jail felony. In this Section, "intentionally",
24 "knowingly", and "recklessly," are defined by Section 6.03(a)-(c),
25 Penal Code.

26 (b) No criminal penalty may be assessed against the pregnant
27 woman upon whom the drug-induced abortion is attempted, induced, or

1 performed.

2 Sec. 171.066. CONSTRUCTION. A state executive or
3 administrative official may not decline to enforce this subchapter,
4 or adopt a construction of this subchapter in a way that narrows its
5 applicability, based on the official's own beliefs about what the
6 state or federal constitution requires, unless the official is
7 enjoined by a state or federal court from enforcing this
8 subchapter.

9 SECTION 5. CONSTRUCTION. (a) Nothing in this Act shall be
10 construed as creating or recognizing a right to abortion.

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

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

15 SECTION 6. SEVERABILITY. Any provision of this Act held to
16 be invalid or unenforceable by its terms or as applied to any person
17 or circumstance shall be construed so as to give it the maximum
18 effect permitted by law, unless such holding shall be one of utter
19 invalidity or unenforceability, in which event such provision shall
20 be deemed severable herefrom and shall not affect the remainder
21 hereof or the application of such provision to other persons not
22 similarly situated or to other, dissimilar circumstances.

23 SECTION 7. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2021.