

By: Patrick

S.B. No. 1790

A BILL TO BE ENTITLED

AN ACT

relating to distributing or prescribing abortion-inducing drugs;
providing penalties.

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

SECTION 1. Chapter 171, Health and Safety Code, is amended
by adding Subchapter D to read as follows:

SUBCHAPTER D. ABORTION-INDUCING DRUGS

Sec. 171.081. DEFINITIONS. In this subchapter:

(1) "Abortion" means the act of using or prescribing
an instrument, a medicine, a drug, or any other substance, device,
or means with the intent to terminate a clinically diagnosable
pregnancy of a woman and with knowledge that the termination by
those means will, with reasonable likelihood, cause the death of
the woman's unborn child. An act is not an abortion if the act is
done with the intent to:

(A) save the life or preserve the health of an
unborn child;

(B) remove a dead, unborn child whose death was
caused by spontaneous abortion;

(C) remove an ectopic pregnancy; or

(D) treat a maternal disease or illness for which
the prescribed drug is indicated.

(2) "Abortion-inducing drug" means a medicine, a drug,
or any other substance prescribed or dispensed with the intent of

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

9 (3) "Drug label" means a pamphlet accompanying an
10 abortion-inducing drug that:

11 (A) outlines the protocol tested and authorized
12 by the United States Food and Drug Administration and agreed to by
13 the drug company applying for authorization of the drug by that
14 agency; and

15 (B) delineates how a drug is to be used according
16 to approval by that agency.

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

19 (5) "Medical abortion" means the use of
20 abortion-inducing drugs to induce an abortion.

21 (6) "Physician" means an individual who is licensed to
22 practice medicine in this state, including a medical doctor and a
23 doctor of osteopathic medicine.

24 (7) "Pregnant" means the female reproductive
25 condition of having an unborn child in a woman's uterus.

26 (8) "Unborn child" means an offspring of human beings
27 from conception until birth.

1 Sec. 171.082. DISTRIBUTION OF ABORTION-INDUCING DRUG. (a)

2 Unless the person is a physician and the provision or prescription
3 of the abortion-inducing drug satisfies the protocol tested and
4 authorized by the United States Food and Drug Administration as
5 outlined in the drug's drug label, a person may not knowingly give,
6 sell, dispense, administer, provide, or prescribe an
7 abortion-inducing drug to a pregnant woman for the purpose of:

8 (1) inducing an abortion in the pregnant woman; or

9 (2) enabling another person to induce an abortion in a
10 pregnant woman.

11 (b) The physician must examine the pregnant woman and
12 document, in the woman's medical record, the gestational age and
13 intrauterine location of the pregnancy before giving, selling,
14 dispensing, administering, providing, or prescribing the
15 abortion-inducing drug.

16 (c) The physician shall provide a copy of the
17 abortion-inducing drug's drug label to the pregnant woman.

18 (d) The physician must:

19 (1) have a signed contract with another physician who
20 agrees to treat emergencies arising from the drug; and

21 (2) produce the signed contract on demand by the
22 pregnant woman or the department.

23 (e) The physician shall provide the pregnant woman with the
24 name and phone number of:

25 (1) the physician who would treat an emergency arising
26 from the drug; and

27 (2) the hospital at which an emergency arising from

1 the drug would be treated.

2 (f) A physician who contracts to treat an emergency arising
3 from an abortion-inducing drug must have active admitting,
4 gynecological, and surgical privileges at the hospital designated
5 to treat the emergency.

6 (g) The physician who gives, sells, dispenses, administers,
7 provides, or prescribes an abortion-inducing drug or the
8 physician's agent must schedule a follow-up visit for the woman to
9 occur not more than 14 days after the administration of the
10 abortion-inducing drug. At the follow-up visit, the physician
11 must:

12 (1) confirm that the pregnancy is completely
13 terminated; and

14 (2) assess the degree of bleeding.

15 (h) The physician or the physician's agent shall make a
16 reasonable effort to ensure that the woman returns for the
17 scheduled appointment. The physician or the physician's agent
18 shall include a brief description of any effort made to comply with
19 this subsection, including the date, time, and name of the person
20 making the effort, in the woman's medical record.

21 (i) If a physician provides an abortion-inducing drug to a
22 pregnant woman for the purpose of inducing an abortion as
23 authorized by this section and the physician knows that a person who
24 uses the drug experiences a serious adverse event, as defined by the
25 MedWatch Reporting System, during or after using the drug, the
26 physician shall report the event to the United States Food and Drug
27 Administration through the MedWatch Reporting System within three

1 days of the event.

2 Sec. 171.083. CRIMINAL PENALTY. (a) A person commits an
3 offense if the person violates Section 171.082.

4 (b) An offense under this section is a Class A misdemeanor.

5 (c) Each violation constitutes a separate offense.

6 (d) A penalty may not be assessed under this section against
7 a pregnant woman who receives a medical abortion.

8 Sec. 171.084. CIVIL PENALTY. (a) A person who knowingly
9 violates Section 171.082 is liable for a civil penalty of not less
10 than \$100 or more than \$500 for each violation if the department
11 determines that the violation threatens the health and safety of a
12 woman.

13 (b) Each violation constitutes a separate ground for
14 recovery.

15 (c) A penalty may not be assessed under this section against
16 a pregnant woman who receives a medical abortion.

17 Sec. 171.085. ADMINISTRATIVE PENALTY. (a) The department
18 may assess an administrative penalty against a person who violates
19 Section 171.082.

20 (b) The penalty may not exceed \$1,000 for each violation.

21 (c) Each violation constitutes a separate violation.

22 (d) In determining the amount of an administrative penalty
23 assessed under this section, the department shall consider:

24 (1) the seriousness of the violation;

25 (2) the history of previous violations;

26 (3) the amount necessary to deter future violations;

27 (4) efforts made to correct the violation; and

1 (5) any other matters that justice may require.

2 (e) All proceedings for the assessment of an administrative
3 penalty under this section are subject to Chapter 2001, Government
4 Code.

5 (f) A penalty may not be assessed under this section against
6 a pregnant woman who receives a medical abortion.

7 SECTION 2. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2011.