By: Lucio, et al. S.B. No. 4

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. The legislature finds that:

(1) this state has an interest in protecting the health and welfare of every woman considering a drug-induced abortion;

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

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

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

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

(1) shock;

(2) uterine perforation;

(3) cervical laceration;

(4) hemorrhage;

(5) aspiration or allergic response;

(6) infection;

(7) sepsis;

(8) death of the patient;

(9) incomplete abortion;

(10) damage to the uterus; [~~or~~]

(11) an infant born alive after the abortion;

(12) blood clots resulting in pulmonary embolism or deep vein thrombosis;

(13) failure to actually terminate the pregnancy;

(14) pelvic inflammatory disease;

(15) endometritis;

(16) missed ectopic pregnancy;

(17) cardiac arrest;

(18) respiratory arrest;

(19) renal failure;

(20) metabolic disorder;

(21) embolism;

(22) coma;

(23) placenta previa in subsequent pregnancies;

(24) preterm delivery in subsequent pregnancies;

(25) fluid accumulation in the abdomen;

(26) hemolytic reaction resulting from the administration of ABO-incompatible blood or blood products;

(27) adverse reactions to anesthesia or other drugs; or

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

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

(1) a physician who:

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

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

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

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

(2) "Abortion-inducing drug" means a drug, a medicine, or any other substance, including a regimen of two or more drugs, medicines, or substances, prescribed, dispensed, or administered with the intent of terminating a clinically diagnosable pregnancy of a woman and with knowledge that the termination will, with reasonable likelihood, cause the death of the woman's unborn child.

The term includes off-label use of drugs, medicines, or other substances known to have abortion-inducing properties that are prescribed, dispensed, or administered with the intent of causing an abortion, including the Mifeprex regimen, misoprostol (Cytotec), and methotrexate. The term does not include a drug, medicine, or other substance that may be known to cause an abortion but is prescribed, dispensed, or administered for other medical reasons.

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

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

(8-a) "Provide" means, as used with regard to abortion-inducing drugs, any act of giving, selling, dispensing, administering, transferring possession, or otherwise providing or prescribing an abortion-inducing drug.

SECTION 4. The heading to Section 171.063, Health and Safety Code, is amended to read as follows:

Sec. 171.063. PROVISION [~~DISTRIBUTION~~] OF ABORTION-INDUCING DRUG.

SECTION 5. Section 171.063, Health and Safety Code, is amended by amending Subsections (a), (c), and (e) and adding

Subsection (b-1) to read as follows:

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

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

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

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

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

(1) examine the pregnant woman in person;

(2) independently verify that a pregnancy exists;

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

(4) determine the pregnant woman's blood type, and for

a woman who is Rh negative, offer to administer Rh immunoglobulin (RhoGAM) at the time the abortion-inducing drug is administered or used or the abortion is performed or induced to prevent Rh incompatibility, complications, or miscarriage in future pregnancies;

(5) document whether the pregnant woman received treatment for Rh negativity, as diagnosed by the most accurate standard of medical care; and

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

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

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

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

SECTION 6. Subchapter D, Chapter 171, Health and Safety Code, is amended by adding Sections 171.0631, 171.0632, 171.065, and 171.066 to read as follows:

Sec. 171.0631. VOLUNTARY AND INFORMED CONSENT REQUIRED. A

person may not provide an abortion-inducing drug to a pregnant woman without satisfying the applicable informed consent requirements of Subchapter B.

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

Sec. 171.065. CRIMINAL OFFENSE. (a) A person who intentionally, knowingly, or recklessly violates this subchapter commits an offense. An offense under this subsection is a state jail felony.

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

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

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

SECTION 7. The following provisions of the Health and Safety Code are repealed:

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

(2) Section 171.063(b).

SECTION 8. (a) Nothing in this Act shall be construed as creating or recognizing a right to abortion.

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

(c) Except as specifically provided by Section 7 of this Act, nothing in this Act repeals, replaces, or otherwise invalidates existing Texas laws, regulations, or policies.

SECTION 9. Any provision of this Act held to be invalid or unenforceable by its terms or as applied to any person or circumstance shall be construed to give the provision the maximum effect permitted by law, unless such holding is one of utter invalidity or unenforceability, in which event the provision shall be considered severable from the other provisions of this Act and shall not affect the remainder or the application of the provisions to other persons not similarly situated or to other, dissimilar circumstances.

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

(b) Section 171.065, Health and Safety Code, as added by this Act, applies only to an abortion performed or induced on or after January 1, 2022.

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

effect, this Act takes effect on the 91st day after the last day of the legislative session.