BILL ANALYSIS

C.S.H.B. 2337
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

At least some abortion-inducing drugs are included in the FDA's Risk Evaluation and Mitigation Strategies program due to their potential harmful impact, according to some. Interested parties contend that if the federal classification were to change while the legislature is not in a regular session, Texas would not be able to maintain these safety standards until the legislature reconvenes. It has been suggested that enhancing a state abortion complication reporting system and regulating drug-induced abortion procedures will give the state a mechanism to track the health and safety impacts of these drugs with data reports. C.S.H.B. 2337 amends current law relating to abortion complication reporting and regulation of drug-induced abortion procedures, providers, and facilities and creates an applicable criminal offense.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2337 amends the Health and Safety Code to prohibit a person from providing an abortion-inducing drug to a pregnant woman without satisfying the applicable informed consent requirements for abortions and to require a physician who provides an abortion-inducing drug to comply with the applicable physician reporting requirements regarding abortions. The bill creates a state jail felony offense for a person who intentionally, knowingly, or recklessly violates provisions relating to abortion-inducing drugs but exempts a pregnant woman on whom a drug-induced abortion is attempted, induced, or performed from criminal liability. Conduct constituting such an offense may also be the basis for an administrative violation for which the Texas Medical Board may take disciplinary action or assess an administrative penalty. The bill's provisions relating to the offense apply only to an abortion performed or induced on or after September 1, 2021.

C.S.H.B. 2337 prohibits a state executive or administrative official from declining to enforce provisions relating to abortion-inducing drugs, or adopting a construction of those provisions in a way that narrows the 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 those provisions.

C.S.H.B. 2337 extends the abortion complication reporting requirements to apply to complications resulting from induced abortions and provides for complications to be reported by any physician who diagnoses or treats a complication that is the result of an abortion

performed or induced by another physician, regardless of whether the diagnosis or treatment occurs at an abortion facility. The bill expands the list of events and outcomes that are expressly included in the definition of "abortion complication" for purposes of those reporting requirements to include the following:

- blood clots resulting in pulmonary embolism or deep vein thrombosis;
- failure to actually terminate the pregnancy;
- pelvic inflammatory disease;
- endometritis;
- missed ectopic pregnancy;
- cardiac arrest;
- respiratory arrest;
- renal failure;
- metabolic disorder;
- embolism;
- coma;
- placenta previa in subsequent pregnancies;
- preterm delivery in subsequent pregnancies;
- fluid accumulation in the abdomen;
- hemolytic reaction resulting from the administration of ABO-incompatible blood or blood products;
- adverse reactions to anesthesia or other drugs; or
- any other adverse event as defined by the United States Food and Drug Administration's criteria provided by the MedWatch Reporting System.

The bill clarifies that the same definition applies to the term "adverse event."

C.S.H.B. 2337 revises definitions for provisions relating to abortion-inducing drugs by doing the following:

- including misoprostol (Cytotec) and methotrexate in the definition of "abortion-inducing drug";
- clarifying that a "medical abortion" may also be referred to as a "medication abortion," a "chemical abortion," a "drug-induced abortion," "RU-486," or the "Mifeprex regimen";
- defining "adverse event" or "abortion complication" as any harmful event or adverse outcome with respect to a patient related to an abortion, including the abortion complications that must be reported; and
- defining the term "provide," when used regarding abortion-inducing drugs, as any act of giving, selling, dispensing, administering, transferring possession, or otherwise providing or prescribing an abortion-inducing drug.

C.S.H.B. 2337 clarifies that the provision of an abortion-inducing drug must satisfy the protocol authorized by applicable state law. The bill removes language requiring the provision of an abortion-inducing drug to satisfy the protocol tested and authorized by the FDA as outlined in the drug's final printed label and repeals a provision authorizing the provision, prescription, or administration of an abortion-inducing drug in the dosage amount prescribed by certain clinical management guidelines defined by the American Congress of Obstetricians and Gynecologists Practice Bulletin.

C.S.H.B. 2337 prohibits a manufacturer, supplier, physician, or any other person from providing a patient with any abortion-inducing drug by courier, delivery, or mail service. The bill requires a physician, before providing an abortion-inducing drug, to do the following:

- independently verify that a pregnancy exists;
- 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 is performed or induced to prevent Rh incompatibility, complications, or miscarriage in future pregnancies;
- document whether the pregnant woman received treatment for Rh negativity, as diagnosed by the most accurate standard of medical care; and

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

The bill requires the physician's examination of the pregnant woman to be done in person and clarifies that the requirement for the physician to document the gestational age and intrauterine location of the pregnancy is for the purpose of determining if an ectopic pregnancy exists. The bill clarifies that the woman's required follow-up visit must occur not later than the 14th day after the earliest date on which the abortion is performed or induced or the drug is administered or used and that the physician must assess any continued blood loss at that visit.

C.S.H.B. 2337 establishes that nothing in the bill's provisions shall be construed as creating or recognizing a right to abortion, that it is not the intent of the bill to make lawful an abortion that is otherwise unlawful, and that nothing in the bill's provisions repeals, replaces, or otherwise invalidates existing Texas laws, regulations, or policies. The bill sets out certain legislative findings and provides for the severability of its provisions.

C.S.H.B. 2337 repeals the following provisions of the Health and Safety Code:

- Sections 171.061(3) and (6); and
- Section 171.063(b).

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2337 differs from the original in minor or nonsubstantive ways to conform to certain bill drafting conventions, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions not in the original that extend abortion complication reporting requirements to apply to complications resulting from induced abortions, revise the physicians who are subject to those requirements, and expand the events and outcomes that are expressly included in the definition of "abortion complication."

The substitute includes clarifying changes not in the original relating to the follow-up visit that must occur for a woman provided an abortion-inducing drug.

The substitute includes a provision not in the original establishing that conduct constituting the criminal offense created by the bill may also be the basis for a certain administrative violation.

The substitute repeals the following provisions of the Health and Safety Code that were not repealed by the original:

- Sections 171.061(3) and (6); and
- Section 171.063(b), authorizing the provision, prescription, or administration of an abortion-inducing drug in the dosage amount prescribed by certain clinical management guidelines defined by the American Congress of Obstetricians and Gynecologists Practice Bulletin.

The substitute includes provisions not in the original clarifying the bill's prospective applicability, including a provision specifying that the bill's provisions relating to the criminal offense apply only to an abortion performed or induced on or after September 1, 2021.