BILL ANALYSIS

Senate Research Center

S.B. 394
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current Texas law does little to regulate drugs used in drug-induced abortions. These drugs are in the special United States Food and Drug Administration's special program Risk Evaluation Mitigation Strategies due to their potential harmful impact. If this classification were to change, Texas would not be able to maintain these safety standards until the legislature convenes.

S.B. 394 creates a state standard for the use of these drugs, which closely matches those set forth by the current FDA. Also, by creating a state standard, the state will have a mechanism to track the health and safety impacts of these drugs with data reported to state agencies.

As proposed, S.B. 394 amends current law relating to the regulation of drug-induced abortion procedures, providers, and facilities and provides criminal penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Provides that the Legislature of the State of Texas finds that:

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

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

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

SECTION 2. Amends Section 171.061, Health and Safety Code, as follows:

Sec. 171.061. DEFINITIONS.

(1) Provides that "abortion" has the meaning assigned by Section 245.002 (Definitions).

(2) Provides that "abortion-inducing drug" 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 misoprostol (Cytotec) and methotrexate.

(3) Defines "adverse event" as meaning any adverse physical condition arising from the performance of an abortion, including the complications listed in Section

171.006 (Abortion Complication Reporting Requirements; Civil Penalty), Health and Safety Code.

(4) Makes no changes to the definition of "gestational age."

(5) Redefines "medical abortion" to provide that the use of abortion-inducing drugs to induce abortion is also known as "medical," "medication," "RU-486," "chemical," "Mifeprex regimen," or "drug-induced" abortion.

(6) Redesignates existing Subdivision (7) as Subdivision (6) and makes no changes to the definition of "physician."

(7) Redesignates existing Subdivision (8) as Subdivision (7) and makes no changes to the definition of "pregnant."

(8) Defines "provide" to mean, when used regarding abortion-inducing drugs, any act of giving, selling, dispensing, administering, transferring possession to or otherwise providing or prescribing an abortion-inducing drug.

(9) Makes no changes to the definition of "unborn child."

Deletes existing text defining "final printed label" or "PPL" and "Mifeprex regimen," "RU-486 regimen," or "RU-486." Makes nonsubstantive changes.

SECTION 3. Amends Section 171.063, Health and Safety Code, by amending Subsections (a), (b), and (c), as follows:

(a) Prohibits a person from knowingly giving, selling, dispensing, administering, providing, or prescribing 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 certain criteria apply, including that the provision, prescription, or administration of the abortion-inducing drug satisfies the protocol tested and authorized by the requirements and procedures laid out in Subchapter D (Abortion-Inducing Drugs). Deletes existing text referring to an exception as otherwise provided by Subsection (b), and requiring that the provision, prescription, or administration of an abortion-inducing drug satisfies the protocol tested and authorized by the United States Food and Drug Administration as outlined in the final printed label of the abortion-inducing drug.

(b) Requires that it be unlawful for any manufacturer, supplier, physician, or any other person to provide any abortion-inducing drug via courier, delivery, or mail service. Deletes existing text authorizing a person to provide, prescribe, or administer the abortion-inducing drug in the dosage amount prescribed by the clinical management guidelines defined by the American Congress of Obstetricians and Gynecologists Practice Bulletin as those guidelines existed on January 1, 2013.

(c) Requires a physician, before the physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug, to:

(1) examine the pregnant woman in-person;

(2) independently verify that a pregnancy exists;

(3) document, in the woman's medical record, the gestational age and intrauterine location of the pregnancy in order to rule out ectopic pregnancy;

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

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

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

Makes nonsubstantive changes.

SECTION 4. Amends Subchapter D, Chapter 171, Health and Safety Code, by adding Sections 171.0631, 171.0632, 171.065, and 171.066, as follows:

Sec. 171.0631. VOLUNTARY AND INFORMED CONSENT REQUIREMENTS FOR ABORTION-INDUCING DRUGS. Requires that no abortion-inducing drug be provided to a pregnant woman without satisfying the informed consent requirements of Sections 171.011 (Informed Consent Required) through 171.018 (Offense), Subchapter B (Informed Consent), Health and Safety Code, as applicable.

Sec. 171.0632. REPORTING ON ABORTION-INDUCING DRUGS AND DRUG-INDUCED ABORTIONS. Requires a physician who gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug to comply with the applicable Physician Reporting Requirements in Section 245.011 (Physician Reporting Requirements; Criminal Penalty), Health and Safety Code.

Sec. 171.065. CRIMINAL PENALTY. (a) Provides that, in addition to penalties permitted under Section 171.066, a person who intentionally, knowingly, or recklessly violates any provision of this Act is guilty of a state jail felony. Defines "intentionally," "knowingly," and "recklessly" for purposes of this section.

(b) Prohibits a criminal penalty from being assessed against the pregnant woman upon whom the drug-induced abortion is attempted, induced, or performed.

Sec. 171.066. CONSTRUCTION. Prohibits a state executive or administrative official from declining to enforce Subchapter D, or from adopting a construction of Subchapter D in a way that narrows its applicability, based on the official's own beliefs about what the Texas or federal constitution requires, unless the official is enjoined by a state or federal court from enforcing Subchapter D.

SECTION 5. CONSTRUCTION. (a) Requires that nothing in this Act be construed as creating or recognizing a right to abortion.

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

(c) Provides that nothing in this Act repeals, replaces, or otherwise invalidates existing Texas laws, regulations, or policies.

SECTION 6. SEVERABILITY. Severability clause.

SECTION 7. Effective date: upon passage or September 1, 2021.