

1-1 By: Lucio, et al. S.B. No. 394  
 1-2 (In the Senate - Filed January 22, 2021; March 9, 2021, read  
 1-3 first time and referred to Committee on State Affairs;  
 1-4 March 22, 2021, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 7, Nays 2; March 22, 2021,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15		X		
1-16	X			
1-17		X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 394 By: Campbell

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to abortion complication reporting and the regulation of  
 1-22 drug-induced abortion procedures, providers, and facilities;  
 1-23 creating a criminal offense.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. The legislature finds that:

1-26 (1) this state has an interest to protect the health  
 1-27 and welfare of every woman considering a drug-induced abortion;

1-28 (2) the use of Mifeprex or mifepristone presents  
 1-29 significant medical complications including, but not limited to,  
 1-30 uterine hemorrhage, viral infections, abdominal pain, cramping,  
 1-31 vomiting, headache, fatigue, and pelvic inflammatory disease; and

1-32 (3) the risk of failure rate and complications  
 1-33 increases with advancing gestational age.

1-34 SECTION 2. Sections 171.006(a) and (b), Health and Safety  
 1-35 Code, as added by Chapter 4 (H.B. 13), Acts of the 85th Legislature,  
 1-36 1st Called Session, 2017, are amended to read as follows:

1-37 (a) In this section, "abortion complication" or "adverse  
 1-38 event" means any harmful event or adverse outcome with respect to a  
 1-39 patient related to an abortion that is performed or induced on the  
 1-40 patient and that is diagnosed or treated by a health care  
 1-41 practitioner or at a health care facility and includes:

- 1-42 (1) shock;
- 1-43 (2) uterine perforation;
- 1-44 (3) cervical laceration;
- 1-45 (4) hemorrhage;
- 1-46 (5) aspiration or allergic response;
- 1-47 (6) infection;
- 1-48 (7) sepsis;
- 1-49 (8) death of the patient;
- 1-50 (9) incomplete abortion;
- 1-51 (10) damage to the uterus; ~~or~~
- 1-52 (11) an infant born alive after the abortion;
- 1-53 (12) blood clots resulting in pulmonary embolism or  
 1-54 deep vein thrombosis;
- 1-55 (13) failure to actually terminate the pregnancy;
- 1-56 (14) pelvic inflammatory disease;
- 1-57 (15) endometritis;
- 1-58 (16) missed ectopic pregnancy;
- 1-59 (17) cardiac arrest;
- 1-60 (18) respiratory arrest;

2-1                   (19) renal failure;  
 2-2                   (20) metabolic disorder;  
 2-3                   (21) embolism;  
 2-4                   (22) coma;  
 2-5                   (23) placenta previa in subsequent pregnancies;  
 2-6                   (24) preterm delivery in subsequent pregnancies;  
 2-7                   (25) fluid accumulation in the abdomen;  
 2-8                   (26) hemolytic reaction resulting from the  
 2-9 administration of ABO-incompatible blood or blood products;  
 2-10                   (27) adverse reactions to anesthesia or other drugs;  
 2-11 or  
 2-12                   (28) any other adverse event as defined by the United  
 2-13 States Food and Drug Administration's criteria provided by the  
 2-14 MedWatch Reporting System.

2-15                   (b) The reporting requirements of this section apply only  
 2-16 to:

2-17                   (1) a physician who:  
 2-18                   (A) performs or induces at an abortion facility  
 2-19 an abortion that results in an abortion complication diagnosed or  
 2-20 treated by that physician; or

2-21                   (B) diagnoses or treats [~~at an abortion facility~~]  
 2-22 an abortion complication that is the result of an abortion  
 2-23 performed or induced by another physician [~~at the facility~~]; or

2-24                   (2) a health care facility that is a hospital,  
 2-25 abortion facility, freestanding emergency medical care facility,  
 2-26 or health care facility that provides emergency medical care, as  
 2-27 defined by Section 773.003.

2-28                   SECTION 3. Section 171.061, Health and Safety Code, is  
 2-29 amended by amending Subdivisions (2) and (5) and adding  
 2-30 Subdivisions (2-a) and (8-a) to read as follows:

2-31                   (2) "Abortion-inducing drug" means a drug, a medicine,  
 2-32 or any other substance, including a regimen of two or more drugs,  
 2-33 medicines, or substances, prescribed, dispensed, or administered  
 2-34 with the intent of terminating a clinically diagnosable pregnancy  
 2-35 of a woman and with knowledge that the termination will, with  
 2-36 reasonable likelihood, cause the death of the woman's unborn child.  
 2-37 The term includes off-label use of drugs, medicines, or other  
 2-38 substances known to have abortion-inducing properties that are  
 2-39 prescribed, dispensed, or administered with the intent of causing  
 2-40 an abortion, including the Mifeprex regimen, misoprostol  
 2-41 (Cytotec), and methotrexate. The term does not include a drug,  
 2-42 medicine, or other substance that may be known to cause an abortion  
 2-43 but is prescribed, dispensed, or administered for other medical  
 2-44 reasons.

2-45                   (2-a) "Adverse event" or "abortion complication"  
 2-46 means any harmful event or adverse outcome with respect to a patient  
 2-47 related to an abortion, including the abortion complications listed  
 2-48 in Section 171.006, as added by Chapter 4 (H.B. 13), Acts of the  
 2-49 85th Legislature, 1st Called Session, 2017.

2-50                   (5) "Medical abortion" means the administration or use  
 2-51 of an abortion-inducing drug to induce an abortion, and may also be  
 2-52 referred to as a "medication abortion," a "chemical abortion," a  
 2-53 "drug-induced abortion," "RU-486," or the "Mifeprex regimen".

2-54                   (8-a) "Provide" means, when used regarding  
 2-55 abortion-inducing drugs, any act of giving, selling, dispensing,  
 2-56 administering, transferring possession, or otherwise providing or  
 2-57 prescribing an abortion-inducing drug.

2-58                   SECTION 4. Section 171.063, Health and Safety Code, is  
 2-59 amended by amending Subsections (a), (c), and (e) and adding  
 2-60 Subsection (b-1) to read as follows:

2-61                   (a) A person may not knowingly [~~give, sell, dispense,~~  
 2-62 ~~administer,~~] provide[~~, or prescribe~~] an abortion-inducing drug to a  
 2-63 pregnant woman for the purpose of inducing an abortion in the  
 2-64 pregnant woman or enabling another person to induce an abortion in  
 2-65 the pregnant woman unless:

2-66                   (1) the person who [~~gives, sells, dispenses,~~  
 2-67 ~~administers,~~] provides[~~, or prescribes~~] the abortion-inducing drug  
 2-68 is a physician; and

2-69                   (2) [~~except as otherwise provided by Subsection (b),~~]

3-1 the provision~~[, prescription, or administration]~~ of the  
 3-2 abortion-inducing drug satisfies the protocol ~~[tested and]~~  
 3-3 authorized by this subchapter ~~[the United States Food and Drug~~  
 3-4 ~~Administration as outlined in the final printed label of the~~  
 3-5 ~~abortion-inducing drug]~~.

3-6 (b-1) A manufacturer, supplier, physician, or any other  
 3-7 person may not provide any abortion-inducing drug by courier,  
 3-8 delivery, or mail service.

3-9 (c) Before the physician ~~[gives, sells, dispenses,~~  
 3-10 ~~administers,]~~ provides ~~[, or prescribes]~~ an abortion-inducing drug,  
 3-11 the physician must:

3-12 (1) examine the pregnant woman in person;

3-13 (2) independently verify that a pregnancy exists;

3-14 (3) [and] document, in the woman's medical record, the  
 3-15 gestational age and intrauterine location of the pregnancy to  
 3-16 determine if an ectopic pregnancy exists;

3-17 (4) determine the pregnant woman's blood type, and for  
 3-18 a woman who is Rh negative, offer to administer Rh immunoglobulin  
 3-19 (RhoGAM) at the time the abortion is performed or induced to prevent  
 3-20 Rh incompatibility, complications, or miscarriage in future  
 3-21 pregnancies;

3-22 (5) document whether the pregnant woman received  
 3-23 treatment for Rh negativity, as diagnosed by the most accurate  
 3-24 standard of medical care; and

3-25 (6) ensure the physician does not provide an  
 3-26 abortion-inducing drug for a pregnant woman whose pregnancy is more  
 3-27 than 49 days of gestational age.

3-28 (e) A ~~[The]~~ physician who ~~[gives, sells, dispenses,~~  
 3-29 ~~administers,]~~ provides ~~[, or prescribes]~~ the abortion-inducing  
 3-30 drug, or the physician's agent, must schedule a follow-up visit for  
 3-31 the woman to occur not later ~~[more]~~ than the 14th day ~~[14 days]~~  
 3-32 after the earliest date on which the abortion is performed or  
 3-33 induced or the drug is administered ~~[administration]~~ or used ~~[use~~  
 3-34 ~~of the drug]~~. At the follow-up visit, the physician must:

3-35 (1) confirm that the woman's pregnancy is completely  
 3-36 terminated; and

3-37 (2) assess any continued blood loss ~~[the degree of~~  
 3-38 ~~bleeding]~~.

3-39 SECTION 5. Subchapter D, Chapter 171, Health and Safety  
 3-40 Code, is amended by adding Sections 171.0631, 171.0632, 171.065,  
 3-41 and 171.066 to read as follows:

3-42 Sec. 171.0631. VOLUNTARY AND INFORMED CONSENT REQUIRED. A  
 3-43 person may not provide an abortion-inducing drug to a pregnant  
 3-44 woman without satisfying the applicable informed consent  
 3-45 requirements of Subchapter B.

3-46 Sec. 171.0632. REPORTING REQUIREMENTS. A physician who  
 3-47 provides an abortion-inducing drug must comply with the applicable  
 3-48 physician reporting requirements under Section 245.011.

3-49 Sec. 171.065. CRIMINAL OFFENSE. (a) A person who  
 3-50 intentionally, knowingly, or recklessly violates this subchapter  
 3-51 commits an offense. An offense under this subsection is a state  
 3-52 jail felony.

3-53 (b) A pregnant woman on whom a drug-induced abortion is  
 3-54 attempted, induced, or performed in violation of this subchapter is  
 3-55 not criminally liable for the violation.

3-56 (c) Conduct constituting an offense under this section may  
 3-57 also be the basis for an administrative violation under Section  
 3-58 171.064.

3-59 Sec. 171.066. ENFORCEMENT OF SUBCHAPTER. A state executive  
 3-60 or administrative official may not decline to enforce this  
 3-61 subchapter, or adopt a construction of this subchapter in a way that  
 3-62 narrows its applicability, based on the official's own beliefs on  
 3-63 the requirements of the state or federal constitution, unless the  
 3-64 official is enjoined by a state or federal court from enforcing this  
 3-65 subchapter.

3-66 SECTION 6. The following provisions of the Health and  
 3-67 Safety Code are repealed:

3-68 (1) Sections 171.061(3) and (6); and

3-69 (2) Section 171.063(b).

4-1 SECTION 7. (a) Nothing in this Act shall be construed as  
4-2 creating or recognizing a right to abortion.

4-3 (b) It is not the intention of this Act to make lawful an  
4-4 abortion that is otherwise unlawful.

4-5 (c) Nothing in this Act repeals, replaces, or otherwise  
4-6 invalidates existing Texas laws, regulations, or policies.

4-7 SECTION 8. Any provision of this Act held to be invalid or  
4-8 unenforceable by its terms or as applied to any person or  
4-9 circumstance shall be construed so as to give the provision the  
4-10 maximum effect permitted by law, unless such holding is one of utter  
4-11 invalidity or unenforceability, in which event the provision shall  
4-12 be considered severable from the other provisions of this Act and  
4-13 shall not affect the remainder or the application of the provisions  
4-14 to other persons not similarly situated or to other, dissimilar  
4-15 circumstances.

4-16 SECTION 9. (a) Except as provided by Subsection (b) of this  
4-17 section, the changes in law made by this Act apply only to an  
4-18 abortion performed or induced on or after the effective date of this  
4-19 Act.

4-20 (b) Section 171.065, Health and Safety Code, as added by  
4-21 this Act, applies only to an abortion performed or induced on or  
4-22 after September 1, 2021.

4-23 SECTION 10. This Act takes effect immediately if it  
4-24 receives a vote of two-thirds of all the members elected to each  
4-25 house, as provided by Section 39, Article III, Texas Constitution.  
4-26 If this Act does not receive the vote necessary for immediate  
4-27 effect, this Act takes effect September 1, 2021.

4-28

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