

By: Hegar, et al.

S.B. No. 5

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of abortion procedures, providers, and facilities; providing penalties.

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

SECTION 1. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.0031 to read as follows:

Sec. 171.0031. REQUIREMENTS OF PHYSICIAN; OFFENSE. (a) A physician performing or inducing an abortion:

(1) must, on the date the abortion is performed, have active admitting privileges at a hospital that:

(A) is located not further than 30 miles from the location at which the abortion is performed or induced; and

(B) provides obstetrical or gynecological health care services; and

(2) shall provide the pregnant woman with:

(A) a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the performance of the abortion or ask health-related questions regarding the abortion; and

(B) the name and telephone number of the nearest hospital to the home of the pregnant woman at which an emergency

1 arising from the abortion would be treated.

2 (b) A physician who violates Subsection (a) commits an
3 offense. An offense under this section is a Class A misdemeanor
4 punishable by a fine only, not to exceed \$4,000.

5 SECTION 2. Chapter 171, Health and Safety Code, is amended
6 by adding Subchapter C to read as follows:

7 SUBCHAPTER C. ABORTION-INDUCING DRUGS

8 Sec. 171.041. DEFINITIONS. In this subchapter:

9 (1) "Abortion-inducing drug" means a drug, a medicine,
10 or any other substance, including a regimen of two or more drugs,
11 medicines, or substances, prescribed, dispensed, or administered
12 with the intent of terminating a clinically diagnosable pregnancy
13 of a woman and with knowledge that the termination will, with
14 reasonable likelihood, cause the death of the woman's unborn child.
15 The term includes off-label use of drugs, medicines, or other
16 substances known to have abortion-inducing properties that are
17 prescribed, dispensed, or administered with the intent of causing
18 an abortion, including the Mifeprex regimen. The term does not
19 include a drug, medicine, or other substance that may be known to
20 cause an abortion but is prescribed, dispensed, or administered for
21 other medical reasons.

22 (2) "Final printed label" or "FPL" means the
23 informational document approved by the United States Food and Drug
24 Administration for an abortion-inducing drug that:

25 (A) outlines the protocol authorized by that
26 agency and agreed to by the drug company applying for authorization
27 of the drug by that agency; and

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

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

5 (4) "Medical abortion" means the administration or use
6 of an abortion-inducing drug to induce an abortion.

7 (5) "Mifeprex regimen," "RU-486 regimen," or "RU-486"
8 means the abortion-inducing drug regimen approved by the United
9 States Food and Drug Administration that consists of administering
10 mifepristone and misoprostal.

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

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

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

18 Sec. 171.0411. APPLICABILITY TO MEDICAL ABORTION. This
19 subchapter does not apply to an abortion with the intent to:

20 (1) save the life or preserve the health of an unborn
21 child;

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

24 (3) remove an ectopic pregnancy; or

25 (4) treat a maternal disease or illness for which a
26 prescribed drug, medicine, or other substance is indicated.

27 Sec. 171.042. ENFORCEMENT BY TEXAS MEDICAL BOARD.

1 Notwithstanding Section 171.005, the Texas Medical Board shall
2 enforce this subchapter.

3 Sec. 171.043. DISTRIBUTION OF ABORTION-INDUCING DRUG.

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

9 (1) the person who gives, sells, dispenses,
10 administers, provides, or prescribes the abortion-inducing drug is
11 a physician;

12 (2) the physician administering the abortion-inducing
13 drug administers the drug to the woman while both are present at an
14 abortion facility licensed under Chapter 245; and

15 (3) the provision, prescription, or administration of
16 the abortion-inducing drug, except as provided by Subsection (a-1),
17 satisfies the protocol tested and authorized by the United States
18 Food and Drug Administration as outlined in the final printed label
19 of the abortion-inducing drug.

20 (a-1) A person may provide, prescribe, or administer the
21 abortion-inducing drug in the dosage amount prescribed by the
22 clinical management guidelines defined by the American Congress of
23 Obstetricians and Gynecologists Practice Bulletin as those
24 guidelines existed on January 1, 2013.

25 (b) Before the physician gives, sells, dispenses,
26 administers, provides, or prescribes an abortion-inducing drug,
27 the physician must examine the pregnant woman and document, in the

1 woman's medical record, the gestational age and intrauterine
2 location of the pregnancy.

3 (c) The physician who gives, sells, dispenses, administers,
4 provides, or prescribes an abortion-inducing drug shall provide the
5 pregnant woman with:

6 (1) a copy of the final printed label of that
7 abortion-inducing drug; and

8 (2) a telephone number by which the pregnant woman may
9 reach the physician, or other health care personnel employed by the
10 physician or by the facility at which the abortion was performed
11 with access to the woman's relevant medical records, 24 hours a day
12 to request assistance for any complications that arise from the
13 administration or use of the drug or ask health-related questions
14 regarding the administration or use of the drug.

15 (d) The physician who gives, sells, dispenses, administers,
16 provides, or prescribes the abortion-inducing drug, or the
17 physician's agent, must schedule a follow-up visit for the woman to
18 occur not more than 14 days after the administration or use of the
19 drug. At the follow-up visit, the physician must:

20 (1) confirm that the pregnancy is completely
21 terminated; and

22 (2) assess the degree of bleeding.

23 (e) The physician who gives, sells, dispenses, administers,
24 provides, or prescribes the abortion-inducing drug, or the
25 physician's agent, shall make a reasonable effort to ensure that
26 the woman returns for the scheduled follow-up visit under
27 Subsection (d). The physician or the physician's agent shall

1 document a brief description of any effort made to comply with this
2 subsection, including the date, time, and name of the person making
3 the effort, in the woman's medical record.

4 (f) If a physician gives, sells, dispenses, administers,
5 provides, or prescribes an abortion-inducing drug to a pregnant
6 woman for the purpose of inducing an abortion as authorized by this
7 section and the physician knows that the woman experiences a
8 serious adverse event, as defined by the MedWatch Reporting System,
9 during or after the administration or use of the drug, the physician
10 shall report the event to the United States Food and Drug
11 Administration through the MedWatch Reporting System not later than
12 the third day after the date the physician learns that the event
13 occurred.

14 Sec. 171.044. ADMINISTRATIVE PENALTY. (a) The Texas
15 Medical Board may take disciplinary action under Chapter 164,
16 Occupations Code, or assess an administrative penalty under
17 Subchapter A, Chapter 165, Occupations Code, against a person who
18 violates Section 171.043.

19 (b) A penalty may not be assessed under this section against
20 a pregnant woman who receives a medical abortion.

21 SECTION 3. Subsection (a), Section 245.010, Health and
22 Safety Code, is amended to read as follows:

23 (a) The rules must contain minimum standards to protect the
24 health and safety of a patient of an abortion facility and must
25 contain provisions requiring compliance with the requirements of
26 Subchapter B, Chapter 171. On and after September 1, 2014, the
27 minimum standards for an abortion facility must be equivalent to

1 the minimum standards adopted under Section 243.010 for ambulatory
2 surgical centers.

3 SECTION 4. Effective September 1, 2014, Subsection (c),
4 Section 245.010, Health and Safety Code, is repealed.

5 SECTION 5. This Act may not be construed to repeal, by
6 implication or otherwise, Subdivision (18), Subsection (a),
7 Section 164.052, Occupations Code, Section 170.002, Health and
8 Safety Code, or any other provision of Texas law regulating or
9 restricting abortion not specifically addressed by this Act. An
10 abortion that complies with this Act but violates any other law is
11 unlawful. An abortion that complies with another state law but
12 violates this Act is unlawful as provided in this Act.

13 SECTION 6. (a) If some or all of the provisions of this Act
14 are ever temporarily or permanently restrained or enjoined by
15 judicial order, all other provisions of Texas law regulating or
16 restricting abortion shall be enforced as though the restrained or
17 enjoined provisions had not been adopted; provided, however, that
18 whenever the temporary or permanent restraining order or injunction
19 is stayed or dissolved, or otherwise ceases to have effect, the
20 provisions shall have full force and effect.

21 (b) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in
22 which in the context of determining the severability of a state
23 statute regulating abortion the United States Supreme Court held
24 that an explicit statement of legislative intent is controlling, it
25 is the intent of the legislature that every provision, section,
26 subsection, sentence, clause, phrase, or word in this Act, and
27 every application of the provisions in this Act, are severable from

1 each other. If any application of any provision in this Act to any
2 person, group of persons, or circumstances is found by a court to be
3 invalid, the remaining applications of that provision to all other
4 persons and circumstances shall be severed and may not be affected.
5 All constitutionally valid applications of this Act shall be
6 severed from any applications that a court finds to be invalid,
7 leaving the valid applications in force, because it is the
8 legislature's intent and priority that the valid applications be
9 allowed to stand alone. Even if a reviewing court finds a provision
10 of this Act to impose an undue burden in a large or substantial
11 fraction of relevant cases, the applications that do not present an
12 undue burden shall be severed from the remaining provisions and
13 shall remain in force, and shall be treated as if the legislature
14 had enacted a statute limited to the persons, group of persons, or
15 circumstances for which the statute's application does not present
16 an undue burden. The legislature further declares that it would
17 have passed this Act, and each provision, section, subsection,
18 sentence, clause, phrase, or word, and all constitutional
19 applications of this Act, irrespective of the fact that any
20 provision, section, subsection, sentence, clause, phrase, or word,
21 or applications of this Act, were to be declared unconstitutional
22 or to represent an undue burden.

23 (c) If any provision of this Act is found by any court to be
24 unconstitutionally vague, then the applications of that provision
25 that do not present constitutional vagueness problems shall be
26 severed and remain in force.

27 SECTION 7. (a) The executive commissioner of the Health

1 and Human Services Commission shall adopt the standards required by
2 Section 245.010, Health and Safety Code, as amended by this Act, not
3 later than January 1, 2014.

4 (b) A facility licensed under Chapter 245, Health and Safety
5 Code, is not required to comply with the standards adopted under
6 Section 245.010, Health and Safety Code, as amended by this Act,
7 before September 1, 2014.

8 SECTION 8. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect on the 91st day after the last day of the
13 legislative session.