

1-1 By: Lucio, et al. S.B. No. 4
 1-2 (In the Senate - Filed July 8, 2021; July 8, 2021, read
 1-3 first time and referred to Committee on Health & Human Services;
 1-4 July 15, 2021, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 5, Nays 0; July 15, 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. 4 By: Perry

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 in protecting the
 1-27 health and welfare of every woman considering a drug-induced
 1-28 abortion;

1-29 (2) the use of Mifeprex or mifepristone presents
 1-30 significant medical complications including, but not limited to,
 1-31 uterine hemorrhage, viral infections, abdominal pain, cramping,
 1-32 vomiting, headache, fatigue, and pelvic inflammatory disease; and

1-33 (3) the failure rate and risk of complications
 1-34 increases with advancing gestational age.

1-35 SECTION 2. Sections 171.006(a) and (b), Health and Safety
 1-36 Code, as added by Chapter 4 (H.B. 13), Acts of the 85th Legislature,
 1-37 1st Called Session, 2017, are amended to read as follows:

1-38 (a) In this section, "abortion complication" or "adverse
 1-39 event" means any harmful event or adverse outcome with respect to a
 1-40 patient related to an abortion that is performed or induced on the
 1-41 patient and that is diagnosed or treated by a health care
 1-42 practitioner or at a health care facility and includes:

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

2-1 (18) respiratory arrest;
 2-2 (19) renal failure;
 2-3 (20) metabolic disorder;
 2-4 (21) embolism;
 2-5 (22) coma;
 2-6 (23) placenta previa in subsequent pregnancies;
 2-7 (24) preterm delivery in subsequent pregnancies;
 2-8 (25) fluid accumulation in the abdomen;
 2-9 (26) hemolytic reaction resulting from the
 2-10 administration of ABO-incompatible blood or blood products;
 2-11 (27) adverse reactions to anesthesia or other drugs;
 2-12 or
 2-13 (28) any other adverse event as defined by the United
 2-14 States Food and Drug Administration's criteria provided by the
 2-15 MedWatch Reporting System.

2-16 (b) The reporting requirements of this section apply only
 2-17 to:

2-18 (1) a physician who:
 2-19 (A) performs or induces at an abortion facility
 2-20 an abortion that results in an abortion complication diagnosed or
 2-21 treated by that physician; or
 2-22 (B) diagnoses or treats [~~at an abortion facility~~]
 2-23 an abortion complication that is the result of an abortion
 2-24 performed or induced by another physician [~~at the facility~~]; or
 2-25 (2) a health care facility that is a hospital,
 2-26 abortion facility, freestanding emergency medical care facility,
 2-27 or health care facility that provides emergency medical care, as
 2-28 defined by Section 773.003.

2-29 SECTION 3. Section 171.061, Health and Safety Code, is
 2-30 amended by amending Subdivisions (2) and (5) and adding
 2-31 Subdivisions (2-a) and (8-a) to read as follows:

2-32 (2) "Abortion-inducing drug" means a drug, a medicine,
 2-33 or any other substance, including a regimen of two or more drugs,
 2-34 medicines, or substances, prescribed, dispensed, or administered
 2-35 with the intent of terminating a clinically diagnosable pregnancy
 2-36 of a woman and with knowledge that the termination will, with
 2-37 reasonable likelihood, cause the death of the woman's unborn child.
 2-38 The term includes off-label use of drugs, medicines, or other
 2-39 substances known to have abortion-inducing properties that are
 2-40 prescribed, dispensed, or administered with the intent of causing
 2-41 an abortion, including the Mifeprex regimen, misoprostol
 2-42 (Cytotec), and methotrexate. The term does not include a drug,
 2-43 medicine, or other substance that may be known to cause an abortion
 2-44 but is prescribed, dispensed, or administered for other medical
 2-45 reasons.

2-46 (2-a) "Adverse event" or "abortion complication"
 2-47 means any harmful event or adverse outcome with respect to a patient
 2-48 related to an abortion, including the abortion complications listed
 2-49 in Section 171.006, as added by Chapter 4 (H.B. 13), Acts of the
 2-50 85th Legislature, 1st Called Session, 2017.

2-51 (5) "Medical abortion" means the administration or use
 2-52 of an abortion-inducing drug to induce an abortion, and may also be
 2-53 referred to as a "medication abortion," a "chemical abortion," a
 2-54 "drug-induced abortion," "RU-486," or the "Mifeprex regimen".

2-55 (8-a) "Provide" means, as used with regard to
 2-56 abortion-inducing drugs, any act of giving, selling, dispensing,
 2-57 administering, transferring possession, or otherwise providing or
 2-58 prescribing an abortion-inducing drug.

2-59 SECTION 4. Section 171.063, Health and Safety Code, is
 2-60 amended by amending Subsections (a), (c), and (e) and adding
 2-61 Subsection (b-1) to read as follows:

2-62 (a) A person may not knowingly [~~give, sell, dispense,~~
 2-63 ~~administer,~~] provide[~~, or prescribe~~] an abortion-inducing drug to a
 2-64 pregnant woman for the purpose of inducing an abortion in the
 2-65 pregnant woman or enabling another person to induce an abortion in
 2-66 the pregnant woman unless:

2-67 (1) the person who [~~gives, sells, dispenses,~~
 2-68 ~~administers,~~] provides[~~, or prescribes~~] the abortion-inducing drug
 2-69 is a physician; and

3-1 (2) [~~except as otherwise provided by Subsection (b),~~
 3-2 the provision[~~, prescription, or administration~~] of the
 3-3 abortion-inducing drug satisfies the protocol [~~tested and~~
 3-4 authorized by this subchapter [~~the United States Food and Drug~~
 3-5 ~~Administration as outlined in the final printed label of the~~
 3-6 ~~abortion-inducing drug~~].

3-7 (b-1) A manufacturer, supplier, physician, or any other
 3-8 person may not provide to a patient any abortion-inducing drug by
 3-9 courier, delivery, or mail service.

3-10 (c) Before the physician [~~gives, sells, dispenses,~~
 3-11 ~~administers,~~] provides[~~, or prescribes~~] an abortion-inducing drug,
 3-12 the physician must:

3-13 (1) examine the pregnant woman in person;

3-14 (2) independently verify that a pregnancy exists;

3-15 (3) [~~and~~] document, in the woman's medical record, the
 3-16 gestational age and intrauterine location of the pregnancy to
 3-17 determine whether an ectopic pregnancy exists;

3-18 (4) determine the pregnant woman's blood type, and for
 3-19 a woman who is Rh negative, offer to administer Rh immunoglobulin
 3-20 (RhoGAM) at the time the abortion-inducing drug is administered or
 3-21 the abortion is performed or induced to prevent Rh incompatibility,
 3-22 complications, or miscarriage in future pregnancies;

3-23 (5) document whether the pregnant woman received
 3-24 treatment for Rh negativity, as diagnosed by the most accurate
 3-25 standard of medical care; and

3-26 (6) ensure the physician does not provide an
 3-27 abortion-inducing drug for a pregnant woman whose pregnancy is more
 3-28 than 49 days of gestational age.

3-29 (e) A [~~The~~] physician who [~~gives, sells, dispenses,~~
 3-30 ~~administers,~~] provides[~~, or prescribes~~] the abortion-inducing
 3-31 drug, or the physician's agent, must schedule a follow-up visit for
 3-32 the woman to occur not later [~~more~~] than the 14th day [~~14 days~~]
 3-33 after the earliest date on which the abortion-inducing drug is
 3-34 administered [~~administration~~] or used or the abortion is performed
 3-35 or induced [~~use of the drug~~]. At the follow-up visit, the physician
 3-36 must:

3-37 (1) confirm that the woman's pregnancy is completely
 3-38 terminated; and

3-39 (2) assess any continued blood loss [~~the degree of~~
 3-40 ~~bleeding~~].

3-41 SECTION 5. Subchapter D, Chapter 171, Health and Safety
 3-42 Code, is amended by adding Sections 171.0631, 171.0632, 171.065,
 3-43 and 171.066 to read as follows:

3-44 Sec. 171.0631. VOLUNTARY AND INFORMED CONSENT REQUIRED. A
 3-45 person may not provide an abortion-inducing drug to a pregnant
 3-46 woman without satisfying the applicable informed consent
 3-47 requirements of Subchapter B.

3-48 Sec. 171.0632. REPORTING REQUIREMENTS. A physician who
 3-49 provides an abortion-inducing drug must comply with the applicable
 3-50 physician reporting requirements under Section 245.011.

3-51 Sec. 171.065. CRIMINAL OFFENSE. (a) A person who
 3-52 intentionally, knowingly, or recklessly violates this subchapter
 3-53 commits an offense. An offense under this subsection is a state
 3-54 jail felony.

3-55 (b) A pregnant woman on whom a drug-induced abortion is
 3-56 attempted, induced, or performed in violation of this subchapter is
 3-57 not criminally liable for the violation.

3-58 (c) Conduct constituting an offense under this section may
 3-59 also be the basis for an administrative violation under Section
 3-60 171.064.

3-61 Sec. 171.066. ENFORCEMENT OF SUBCHAPTER. A state executive
 3-62 or administrative official may not decline to enforce this
 3-63 subchapter, or adopt a construction of this subchapter in a way that
 3-64 narrows its applicability, based on the official's own beliefs on
 3-65 the requirements of the state or federal constitution, unless the
 3-66 official is enjoined by a state or federal court from enforcing this
 3-67 subchapter.

3-68 SECTION 6. The following provisions of the Health and
 3-69 Safety Code are repealed:

4-1 (1) Sections 171.061(3) and (6); and
4-2 (2) Section 171.063(b).

4-3 SECTION 7. (a) Nothing in this Act shall be construed as
4-4 creating or recognizing a right to abortion.

4-5 (b) It is not the intention of this Act to make lawful an
4-6 abortion that is otherwise unlawful.

4-7 (c) Except as specifically provided by Section 6 of this
4-8 Act, nothing in this Act repeals, replaces, or otherwise
4-9 invalidates existing Texas laws, regulations, or policies.

4-10 SECTION 8. Any provision of this Act held to be invalid or
4-11 unenforceable by its terms or as applied to any person or
4-12 circumstance shall be construed to give the provision the maximum
4-13 effect permitted by law, unless such holding is one of utter
4-14 invalidity or unenforceability, in which event the provision shall
4-15 be considered severable from the other provisions of this Act and
4-16 shall not affect the remainder or the application of the provisions
4-17 to other persons not similarly situated or to other, dissimilar
4-18 circumstances.

4-19 SECTION 9. (a) Except as provided by Subsection (b) of this
4-20 section, the changes in law made by this Act apply only to an
4-21 abortion performed or induced on or after the effective date of this
4-22 Act.

4-23 (b) Section 171.065, Health and Safety Code, as added by
4-24 this Act, applies only to an abortion performed or induced on or
4-25 after December 1, 2021.

4-26 SECTION 10. This Act takes effect immediately if it
4-27 receives a vote of two-thirds of all the members elected to each
4-28 house, as provided by Section 39, Article III, Texas Constitution.
4-29 If this Act does not receive the vote necessary for immediate
4-30 effect, this Act takes effect on the 91st day after the last day of
4-31 the legislative session.

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