~~REGULATION~~RULE NO. 36: ~~REGULATIONS~~RULES GOVERNING PROCEDURES FOR ABORTIONS

A. A person authorized to perform abortions under Arkansas law shall not perform an abortion on a pregnant woman before the person tests the pregnant woman to determine whether the fetus that the pregnant woman is carrying possesses a detectible heartbeat.

B. A person authorized to perform abortions under Arkansas law shall perform an abdominal ultrasound test necessary to detect a heartbeat of an unborn human individual according to standard medical practice, including the use of medical devices as determined by standard medical practice.

C. Tests performed pursuant to Ark. Code Ann. § 20-16-1303(b)(1) shall be:

a. Based on standard medical practice for testing for the fetal heartbeat of an unborn human individual which testing includes an abdominal ultrasound test necessary to detect a heartbeat of an unborn human individual according to standard medical practice, including the use of medical devices as determined by standard medical practice;

b. A test for fetal heartbeat is not required in the case of a medical emergency; and

D. The physician shall obtain, based on available medical evidence, including testing and physical examination, the statistical probability of bringing an unborn human individual to term based on the gestational age of the unborn human individual possessing a detectible heartbeat.

E. If a heartbeat is detected during the test required pursuant to this Rule, the person performing the test shall inform the pregnant woman in writing:

a. That the unborn human individual that the pregnant woman is carrying possesses a heartbeat;

b. Of the statistical probability of bringing the unborn human individual to term based on the gestational age of the unborn human individual possessing a detectible heartbeat; and

c. If a heartbeat has been detected, the pregnant woman shall sign a form acknowledging that she has received the information required under Ark. Code Ann. § 20-16-1303(d).

F. DEFINITIONS: As used in this section:

1) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device or means with the intent to terminate the clinically diagnosable pregnancy of a woman known to be pregnant, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child, other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died in utero as the result of natural causes, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and that causes the premature termination of the pregnancy; An act under this section is not an abortion if the act is performed with the intent to:

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i. Save the life or preserve the health of the unborn child or the pregnant woman;

ii. Remove a dead unborn child caused by spontaneous abortion;

iii. Remove an ectopic pregnancy; or

iv. Treat a maternal disease or illness for which the prescribed drug is indicated;

2) "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child.

i. "Abortion-inducing drugs" includes off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol, Cytotec, and methotrexate.

ii. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indicts such as chemotherapeutic agents or diagnostic drugs.

iii. Use of drugs to induce abortion is also known as a medical, drug-induced, or chemical abortion.

3) "Attempt to perform or induce an abortion" means an act or an omission of a statutorily required act that, under the circumstances as the physician believes them to be, constitutes a substantial step toward the performance or induction of an abortion in violation of this section;

4) "Mifeprex regimen" means the abortion-inducing drug regimen that involves administration of mifepristone or the brand name "Mifeprex" and misoprostol which is the only abortion-inducing drug regimen approved by the United States Food and Drug Administration and is also known as the RU-486 regimen or simply RU-486.

5) "Mifepristone" means the specific abortion-inducing drug regimen known as RU-486 and the first drug used in the Mifeprex regimen;

6) "Mifepristol" means the second drug used in the Mifeprex regimen;

7) "Physician" means any person licensed to practice medicine in the State of Arkansas under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., including medical doctors and doctors of osteopathy;

8) "Adverse event" means an undesirable experience associated with the use of a medical

product in a patient, including without limitation an event that causes:

i. Death;

ii. Threat to life;

iii. Hospitalization;

iv. Disability or permanent damage;

v. Congenital anomaly or birth defect, or both;

vi. Required intervention to prevent permanent impairment or damage;

vii. Other serious important medical events, including without limitation:

1. Allergic bronchospasm requiring treatments in an emergency room;

2. Serious blood dyscrasias;

3. Seizures or convulsions that do not result in hospitalization; and

4. The development of drug dependence or drug abuse;

9) "Final printed labeling" means the United States Food and Drug Administration approved informational document for an abortion-inducing drug which outlines the protocol authorized by the United States Food and Drug Administration and agreed upon by the drug company applying for United States Food and Drug Administration authorization of that drug.

10) "Conception" means the fusion of a human spermatozoon with a human ovum;

11) "Emancipated minor" means a person under eighteen (18) years of age who is or has been married or who has been legally emancipated;

12) "Facility" means a public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location where medical care is provided to a person.

13) "First trimester" means the first twelve (12) weeks of gestation;

14) "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period or as stated in Act 171 of 2013, which prohibits abortions after 20 weeks, which also uses the term "post-fertilization" age;

15) "Hospital" means any institution licensed as a hospital pursuant to the laws of this state;

16) "Medical emergency" means that condition which, on the basis of the physician's good-faith clinical judgment, complicates the medical condition of a pregnant woman and necessitates the immediate termination of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;

17) "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the woman's uterus;

18) "Qualified person" means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse, physician assistant, or physician;

19) "Unborn child" means the offspring of human beings from conception until birth.

20) "Viability" means the state of fetal development when, in the judgment of the physician based on the particular facts of the case before him or here and in light of the most advanced medical technology and information available to him or her, there is a reasonable likelihood of sustained survival of the unborn child outside the body of his or her mother, with or without artificial support.

21) "Chemical abortion" means the use, provision, prescription, or dispensation of a medicine, drug, or any other substance used, provided, prescribed, or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child; includes the off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol and methotrexate; and does not apply to drugs that may be known to cause an abortion but which are prescribed for other medical indication.

G. 1. When mifepristone or another drug or chemical regimen is used to induce an abortion, the initial administration of the drug or chemical shall occur in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug or chemical to the patient.

2. The physician who induces the abortion, or a person acting on behalf of the physician who induces the abortion, shall make all reasonable efforts to ensure that the patient returns twelve (12) to eighteen (18) days after the administration or use of mifepristone or another drug or chemical for a follow-up visit so that the physician can confirm that the pregnancy has been terminated and can assess the patient's medical condition.

3. A brief description of the efforts made to comply with this section, including the date, time, and identification by name of the person making the efforts, shall be included in the

patient's medical record.

H. This section does not affect telemedicine practice that does not involve the use of mifepristone or another drug or chemical to induce an abortion.

I. 1. If the Arkansas State Medical Board finds that a physician licensed by the board has violated the rules of professional conduct by performing an abortion in violation of Act 139 of 2015, the board shall revoke the physician's license.

2. A penalty shall not be assessed against the woman upon whom the abortion is performed or attempted to be performed.

J. 1. (A) A woman who receives an abortion, the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the time the abortion was performed, or a maternal grandparent of the unborn child may maintain an action against the person who performed the abortion in violation of this section for actual and punitive damages.

(B) A woman who attempts to receive an abortion in violation of this section may maintain an action against the person who attempted to perform the abortion for actual and punitive damages.

2. (A) Upon petition by any citizen in the county in which an alleged violation of this section occurred or in which the Defendant resides, a court may enjoin a healthcare professional who has knowingly or recklessly violated this section.

(B) An injunction under subdivision J.2(A) of this section shall prevent the abortion provider from performing further abortions in violation of this section.

K. 1. If a judgment is rendered in favor of the Plaintiff who prevails in an action under subsection J of this section, the court shall award reasonable attorney's fees and costs in favor of the Plaintiff against the Defendant.

2. If a judgment is rendered in favor of the Defendant and the court finds that the Plaintiff's suit was frivolous and brought in bad faith, the court shall order the Plaintiff to pay reasonable attorney's fees to the Defendant.

L. A pregnant woman who obtains or possesses mifepristone or another drug or chemical used for the purpose of inducing an abortion to terminate her pregnancy shall not be subject to an action under subsection J of this section.

M. 1. In a civil proceeding or action brought under this section, the court shall determine if the anonymity of a woman who receives or attempts to receive an abortion shall be preserved from public disclosure without her consent.

2. (A) Upon determining that the woman's anonymity shall be preserved, the court shall

issue an order to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure.

2. (B) An order under subdivision M.2.A. of this section shall be accompanied by specific written findings explaining:

i.) Why the anonymity of the woman should be preserved from public disclosure;

ii.) Why the order is essential to that end;

iii) How the order is narrowly tailored to serve that interest; and

iv) Why no reasonable, less restrictive alternative exists.

(C) In the absence of written consent of the woman who receives or attempts to receive an abortion, anyone other than a public official who brings an action under subsection J of this section shall bring the action under a pseudonym.

(D) This subsection does not conceal the identity of the Plaintiff or of a witness from the Defendant.

N. This section does not create or recognize a right to abortion.

Unlawful distribution of abortion-inducing drug.

~~(a) (1) It shall be unlawful to knowingly give, sell, dispense, administer, or otherwise provide or prescribe an abortion-inducing drug to a pregnant woman to induce an abortion or enabling another person to induce an abortion, unless the person who gives, sells, dispenses, administers, or otherwise provides or prescribes the abortion-inducing drug is a physician and the provision of prescription of the abortion-inducing drug satisfies the protocol authorized by the USFDA as outlined in the final printed labeling for the drug or drug regimen.~~

~~(2) In the case of the Mifeprex regimen, the final printed labeling for Mifeprex includes the USFDA-approved dosage and administration instructions for both mifepristone and misoprostol.~~

~~(b) Because the failure and complication rates from medical abortion increase with advancing gestational age, because the physical symptoms of medical abortion can be identical to the symptoms of ectopic pregnancy, and because abortion-inducing drugs do not treat ectopic pregnancies but rather are contraindicated in ectopic pregnancies, the physician giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug shall first examine the woman and document in the woman's medical chart prior to giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug the following information without limitation:~~

~~(1) Gestational age; and~~

~~(2) Intrauterine location of the pregnancy.~~

~~(c) Every pregnant woman to whom a physician gives, sells, dispenses, administers, or otherwise provides or prescribes any abortion-inducing drug shall be provided with a copy of the drug's label.~~

~~(d) (1) The physician who gives, sells, dispenses administers, or otherwise provides or prescribes any abortion-inducing drug shall have a signed contract with a physician who agrees to handle complications and be able to produce that signed contract on demand by the patient or by the Department of Health.~~

~~(2) The physician who contracts to handle emergencies shall have active admitting privileges and gynecological/surgical privileges at a hospital designated to handle any emergencies associated with the use or ingestion of the abortion-inducing drug.~~

~~(3) Every pregnant woman to whom a physician gives, sells, dispenses, administers, or otherwise provides or prescribes any abortion-inducing drug shall receive the name and phone number of the contract physician and the hospital at which that physician maintains admitting privileges and which can handle any emergencies.~~

~~(e) (1) The physician who gives, sells, dispenses administers, or otherwise provides or prescribes any abortion-inducing drug, or an agent of the physician, shall schedule a follow-up visit for the woman for approximately fourteen (14) days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding.~~

~~(2) The physician or agent of physician shall make all reasonable efforts to ensure that the woman returns for the scheduled appointment.~~

~~(3) A brief description of the efforts made to comply with this subsection, including without limitation the date, time, and identification by name of the person making such efforts, shall be included in the woman's medical record.~~

(a) Abortion-inducing drugs shall only be prescribed, administered, dispensed, or otherwise provided by a physician following procedures set out below and in Ark. Code Ann. §20-16-1501 *et seq.*

(b) It is unlawful for any manufacturer, supplier, physician, or any other person to provide any abortion-inducing drug via courier, delivery, or mail service.

(c) Before providing an abortion-inducing drug, the physician prescribing, administering, dispensing, or otherwise providing the abortion-inducing drug shall:

(1) Examine the pregnant woman in person;

(2) Independently verify that an intrauterine pregnancy exists;

(3)(A) Determine the woman's blood type.
(B) If the pregnant woman is Rh negative, the physician shall be able to offer and administer RhoGAM at the time of the abortion; and
(4) Document in the pregnant woman's medical chart or record the gestational age and intrauterine location of the pregnancy and whether the pregnant woman received treatment for Rh negativity.

(d) A physician prescribing, administering, dispensing, or otherwise providing an abortion-inducing drug shall be credentialed and competent to handle abortion complication management, including emergency transfer, or have a signed agreement with an associated physician who is credentialed to handle abortion complications.

(e) When a signed agreement exists between an associated physician, every pregnant woman to whom a physician prescribes, administers, dispenses, or otherwise provides an abortion-inducing drug shall be given the name and telephone number of the associated physician.

(f) The physician prescribing, administering, dispensing, or otherwise providing an abortion-inducing drug or an agent of the physician shall schedule a follow-up visit for the woman at approximately seven (7) to fourteen (14) days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding.

(g) The physician or an agent of the physician shall make all reasonable efforts to ensure that the woman returns for the scheduled follow-up appointment.

(h) A brief description of all efforts made to comply with subsections (f) and (g) of this section, including the date, time, and identification by name of the person making such efforts, shall be included in the woman's medical chart or record.

Reporting

(a) If a physician provides an abortion -inducing drug to another for the purpose of inducing an abortion as authorized herein, and if the physician knows that the woman who uses the abortion-inducing drug for the purpose of inducing an abortion experiences an adverse event, the physician shall provide a written report of the adverse event within three (3) days of the event to the Arkansas State Medical Board

(b) The Board

a. Shall compile and retain all reports it receives under this section.

b. Shall not release to any person or entity the name or any other personal identifying information regarding a person who:

i. Uses an abortion-inducing drug to induce an abortion; and

ii. Is the subject of a report received by the board under this section.

Prior to Informed Consent

(a) An abortion provider who knowingly performs an abortion shall comply with the requirements of this section.

(b) Before a pregnant woman gives informed consent to an abortion or is administered any anesthesia or medication in preparation of an abortion, the physician or qualified technician shall:

a. Perform an obstetric ultrasound on the pregnant woman using a method that the physician and the pregnant woman agree is best under the circumstances;

b. i. provide a simultaneous verbal explanation of what the ultrasound is depicting that includes the presence and location of the unborn child within the uterus and the number of unborn children depicted.
ii. If the ultrasound image indicates that the unborn child has died, the physician or qualified technician shall inform the pregnant woman of that fact;

c. Display the ultrasound images so that the pregnant woman may view them and document in the pregnant woman's medical record that the ultrasound images were displayed to the pregnant woman;

d. Provide a medical description of the ultrasound images, including the dimensions of the unborn child and the presence of external members and internal organs if present and viewable; and

e. Retain the ultrasound image with the date that the ultrasound occurred in the pregnant woman's medical record.

Informed Consent Requirement

(a) A person shall not perform or induce an abortion or chemical abortion without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced.

(b) Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:

a. At least ~~forty-eight~~ seventy-two (4872) ~~house~~hours before the abortion, the physician who is to perform the abortion or chemical abortion or the referring physician has informed the woman, orally and in person, of the following:

i. The name of the physician who will perform the abortion;

ii. Medically accurate information that a reasonable patient would consider material to the decision concerning whether or not to undergo the abortion, including:
1. A description of the proposed abortion method;

2. The immediate and long-term medical risks associated with the proposed abortion method, including without limitation the risks of:

a. Cervical or uterine perforation;

b. Danger to subsequent pregnancies;

c. Hemorrhage; ~~and~~

d. Sepsis or other Infection; ~~and~~

e. Failure to remove all pregnancy tissue which may require additional procedure;

f. Sterility;

g. Possible continuation of pregnancy; and

h. Death;

3. Alternatives to the abortion; and

4. Risks of complications from a chemical abortion increase with advancing gestational age;

iii. The probable gestational age of the unborn child at the time the abortion is to be performed;

iv. The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed;

v. The medical risks associated with carrying the unborn child to term;

vi. Any need for anti-Rh immune globulin therapy if the woman is Rh negative, the likely consequences of refusing such therapy, and the cost of the therapy; ~~and~~

vii. Information on reversing the effects of abortion-inducing drugs;

viii. Information about post-abortion care, including how to handle and respond to and report complications from the chemical abortion; and

ix. Information on scheduling post-abortion medical visits to ensure completion of the abortion, assess the need for additional procedures or care, and assess bleeding or other potential complications;

b. At least ~~forty-eight~~ seventy-two (~~48~~72) hours before the abortion or chemical abortion, the physician who is to perform the abortion, the referring physician, or a qualified person

informs the woman, orally and in person, that;

i. Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials and informational DVD given to her under § 20-16-15~~7~~04;

ii. The printed materials and information DVD under § 20-16-15~~7~~04 describe the unborn child and list agencies that offer alternatives to abortion;

iii. The father of the unborn child is liable to assist in the support of the child, even in instances where he has offered to pay for the abortion. In a case of rape or incest, the information required under this subsection may be omitted.

iv. The woman is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she otherwise might be entitled; ~~and~~

v. The information contained in the printed materials and information DVD given to her under § 20-16-15~~7~~04, is also available on a state website; and

vii. Human trafficking literature, also known as "Laura's Card", as described in §16-90-1107;

c. (A) The information required under subdivisions b(a) and (b) of this section is provided to the woman individually and in a private room to protect her privacy to maintain the confidentiality of her decision, to ensure that the information focuses on her individual circumstances, and to ensure that she has an adequate opportunity to ask questions.

(B) Subdivision (c)c.(A) of this section does not preclude the provision of required information through a translator in a language understood by the woman;

d. (A) At least ~~forty-eight~~ seventy-two (48~~7~~2) hours before the abortion, the woman is given a copy of the printed materials and permitted to view and given a copy of the information DVD under § 20-16-15~~7~~04

(B) If the woman is unable to read the materials, the materials shall be read to her in a language she can understand.

(C) If the woman asks questions concerning any of the information or materials under this subdivision d, the person who provides or reads the information or materials shall answer her questions in a language she can understand.

e. (A) at least ~~forty-eight~~ seventy-two (48~~7~~2) hours before an abortion is performed or induced on a woman whose pregnancy has progressed to twenty (20) weeks gestation or more, the physician performing the abortion on the pregnant woman, the referring physician, or a qualified person assisting the physician shall, orally and in person, offer information on

fetal pain to the patient

(B) The information required under the previous section and counseling related to that information shall include without limitation the following:

i. that by twenty (20) weeks gestational age, the unborn child possesses all anatomical links in its nervous system, including spinal cord, nerve tracts, thalamus, and cortex, that are necessary in order to feel pain;

ii. That an unborn child at twenty (20) weeks gestation or more is fully capable of experiencing pain;.

iii. A description of the actual steps in the abortion procedure to be performed or induced and at which steps in the abortion procedure the unborn child is capable of feeling pain;

iv. That maternal anesthesia typically offers little pain prevention for the unborn child; and

v. That an anesthetic, analgesic, or both are available so that pain to the unborn child is minimized or alleviated.

f. (A) Before the abortion, the pregnant woman certifies in writing on a checklist form provided or approved by the Department of Health that the information required under this section has been provided.

(B) A physician who performs an abortion shall report monthly to the department the total number of certifications the physician has received.

(C) The department shall make available to the public annually the number of certifications received under this section.

(g) (A) Except in the case of a medical emergency, the physician who is to perform the abortion shall receive and sign a copy of the written certification required under this section before performing the abortion.

(B) The physician shall retain a copy of the checklist certification form in the pregnant woman's medical record; and

(h) At least ~~forty-eight~~ seventy-two (~~48~~72) hours before an abortion that is being performed or induced utilizing abortion-inducing drugs, the physician who is to perform the abortion, the referring physician, or a qualified person informs the pregnant woman, orally and in person, that:

(A) It may be possible to reverse the effects of the abortion if the pregnant woman changes her mind, but that time is of the essence; and

(B) Information on reversing the effects of abortion-inducing drugs is available in materials prepared by the department.

(c) (1) In the event of a medical emergency requiring an immediate termination of pregnancy, the physician who performed the abortion clearly certifies in writing the nature of the medical emergency and the circumstances that necessitated the waiving of the informed consent requirements under this subchapter.

(2) The certification required under this chapter shall be signed by the physician who performed the emergency abortion and shall be permanently filed in both the records of the physician performing the abortion and the records of the facility where the abortion took place.

(d) A physician, facility, employee or volunteer of a facility, or any other person or entity shall not require or obtain payment for a service provided in relation to abortion to a patient who has inquired about an abortion or scheduled an abortion until the expiration of the ~~forty-eight~~ seventy-two (~~48~~72) hour reflection period required under this section.

(e) All ultrasound images, test results, and forms signed by the patient or legal guardian shall be retained as a part of the patient's medical record and be made available for inspection by the department or other authorized agency.

(f) (1) After dispensing the first dose of abortion-inducing drugs to a woman, the physician who is to perform the abortion, the referring physician, or a qualified person shall provide a written notice to the patient that states:
"Notice to Patients Having Medication Abortions That Use Mifepristone: Mifepristone, also known as 'RU-486' or 'Mifeprex', alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can locate immediate help by searching the term 'abortion pill reversal' on the internet."

(2) The notice shall also include directions to access the department website that is required to be maintained under § 20-16-1704 and other appropriate telephone and internet resources.

(g) Except in the case of a medical emergency, consent to an abortion when the unborn child has been diagnosed with a lethal fetal anomaly is voluntary and informed only if at least seventy-two (72) hours before the abortion:

(1) The physician performing the abortion has verbally informed the pregnant woman that perinatal palliative care services are available and has offered perinatal palliative care services as an alternative to abortion; and

(2) The pregnant woman is given a list of perinatal palliative care services available both in the state and nationally that is prepared by the Department of Health and organized geographically by location.

MOCK-UP

State of Arkansas *As Engrossed: S2/1/21 S2/4/21*
93rd General Assembly
A Bill
Regular Session, 2021 SENATE BILL 85

By: Senator Bledsoe
By: Representative Cloud

For An Act To Be Entitled

AN ACT TO AMEND THE RIGHT TO VIEW ULTRASOUND IMAGES BEFORE AN ABORTION; TO CREATE THE RIGHT-TO-KNOW-AND-SEE ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE RIGHT TO VIEW ULTRASOUND IMAGES BEFORE AN ABORTION; AND TO CREATE THE RIGHT-TO-KNOW-AND-SEE ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 20-16-602 is amended to read as follows:

20-16-602. Right-to-Know-and-See Act — Right to view ultrasound image ~~prior to~~ before abortion — Definitions.

(a) This section shall be known and may be cited as the "Right-to-Know-and-See Act".

(b) As used in this section:

(1)(A) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of the unborn child.

(B) An act under subdivision (b)(1)(A) of this section is not an abortion if the act is performed with the intent to:

(i) Save the life or preserve the health of the unborn child or the pregnant woman;

(ii) Remove a dead unborn child caused by spontaneous abortion; or

(iii) Remove an ectopic pregnancy;

(2) "Attempt to perform or induce an abortion" means an act or an omission of a statutorily required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of this section;

(3)(A) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the abortion of her pregnancy to avert:

(i) The death of the pregnant woman; or

(ii) Serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

(B) "Medical emergency" does not include a condition based on a claim or diagnosis that a pregnant woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function;

(4) "Qualified technician" means:

(A) A registered diagnostic medical sonographer who is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical Sonography; or

(B) A certified nurse midwife or advanced practice registered nurse with certification in obstetrical ultrasonography;

(5) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved; and

(6) "Unborn child" means the offspring of human beings from conception until birth.

(c)(1) ~~All physicians who use ultrasound equipment in the performance of an abortion shall inform the woman that she has the right to view the ultrasound image of her unborn child before an abortion is performed~~ An abortion provider who knowingly performs an abortion shall comply with the requirements of this section.

(2) Before a pregnant woman gives informed consent to an abortion or is administered any anesthesia or medication in preparation of an abortion, the physician or qualified technician shall:

(A) Perform an obstetric ultrasound on the pregnant woman using a method that the physician and the pregnant woman agree is best under the circumstances;

(B)(i) Provide a simultaneous verbal explanation of what the ultrasound is depicting that includes the presence and location of the unborn child within the uterus and the number of unborn children depicted.

(ii) If the ultrasound image indicates that the unborn child has died, the physician or qualified technician shall inform the pregnant woman of that fact;

(C) Display the ultrasound images so that the pregnant woman may view *them and document in the pregnant woman's medical record that the ultrasound images were displayed to the pregnant woman;*

(D) Provide a medical description of the ultrasound images, including the dimensions of the unborn child and the presence of external members and internal organs if present and viewable; and

(E) Retain the ultrasound image with the date that the ultrasound occurred in the pregnant woman's medical record.

~~(b)(1) The physician shall certify in writing that the woman was offered an opportunity to view the ultrasound image and shall obtain the woman's acceptance or rejection to view the image in writing.~~

~~(2) If the woman accepts the offer and requests to view the ultrasound image, she shall be allowed to view it.~~

~~(c) The physician's certification together with the woman's signed acceptance or rejection shall be placed in the woman's medical file in the physician's office and kept for three (3) years.~~

~~(d) Any physician who fails to inform the woman that she has the right to view the ultrasound image of her unborn child before an abortion is performed or fails to allow her to view the ultrasound image upon her request may be subject to disciplinary action by the Arkansas State Medical Board.~~

(d)(1) The Department of Health shall quarterly inspect the records to ensure compliance with this section.

(2) The department shall:

(A) Fine an abortion facility:

(i) One thousand five hundred dollars ($1,500) for the first violation in a thirty-six-month period;

(ii) Three thousand dollars ($3,000) for the second violation in a thirty-six-month period; and

(iii) Five thousand dollars ($5,000) for the third violation in a thirty-six-month period; and

(B) Suspend the license of an abortion facility for six (6) months for the fourth violation in a thirty-six-month period.

(3) Upon notification from the department of a violation by a physician, the Arkansas State Medical Board shall:

(A) Fine a physician:

(i) One thousand five hundred dollars ($1,500) for the first violation in a thirty-six-month period;

(ii) Three thousand dollars ($3,000) for the second violation in a thirty-six-month period; and

(iii) Five thousand dollars ($5,000) for the third violation in a thirty-six-month period; and

(B) Suspend the license of a physician for six (6) months for the fourth violation in a thirty-six-month period.

(e)(1) This section does not:

(A) Prevent a pregnant woman from averting her eyes or looking away from the ultrasound images required to be provided to and reviewed by the pregnant woman; or

(B)(i) Apply in the case of a medical emergency.

(ii) Upon a determination by the physician that a medical emergency exists with respect to the pregnant woman, the physician shall certify the specific medical conditions that constitute the medical emergency.

(iii) A physician or abortion provider that willfully falsifies a certification under subdivision *(e)(1)(B)(ii)* of this section is subject to penalties under this section.

(2) A physician or pregnant woman is not subject to a penalty if the pregnant woman declines to look at the presented ultrasound images.

SECTION 2. DO NOT CODIFY. SAVINGS CLAUSE.

If any section or part of a section of this act is determined by a court to be unconstitutional, § 20-16-602 shall be revived, and to prevent a hiatus in the law, the relevant section or part of a section of § 20-16-602 shall remain in full force and effect from and after the effective date of this act notwithstanding its repeal by this act.

/s/Bledsoe

APPROVED: 3/29/21

State of Arkansas *As Engrossed: H3/15/21*
93rd General Assembly **A Bill**
Regular Session, 2021 HOUSE BILL 1572

By: Representatives Lundstrum, Bentley, Cloud, Coleman, Crawford, Dotson, Ladyman, Lowery, Miller, Payton, Penzo, Pilkington, Speaks, Wardlaw
By: Senators Flippo, Bledsoe, Gilmore, D. Sullivan, D. Wallace

For An Act To Be Entitled

AN ACT TO CREATE THE INFORMED CONSENT FOR CHEMICAL ABORTION ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE INFORMED CONSENT FOR CHEMICAL ABORTION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 20, Chapter 16, is amended to add an additional subchapter to read as follows:

Subchapter 24 — Informed Consent for Chemical Abortion Act

20-16-2401. Title.

This subchapter shall be known and may be cited as the "Informed Consent for Chemical Abortion Act".

20-16-2402. Definitions.

As used in this subchapter:

(1)(A) "Chemical abortion" means the use, provision, prescription, or dispensation of a medicine, drug, or any other substance used, provided, prescribed, or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child.

(B) "Chemical abortion" includes the off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol and methotrexate.

(C) "Chemical abortion" does not apply to drugs that may be known to cause an abortion but which are prescribed for other medical indication; and

(2) “Medical emergency” means a condition that, on the basis of the physician’s good-faith clinical judgment, complicates the medical condition of a pregnant woman and necessitates the immediate termination of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

20-16-2403. Informed consent for chemical abortions.

(a) A chemical abortion shall not be performed or induced without the voluntary and informed consent of the pregnant woman upon whom the chemical abortion is to be performed or induced.

(b) Except in the case of a medical emergency, consent to a chemical abortion is voluntary and informational only if at least seventy-two (72) hours before the abortion, the healthcare provider who is to perform the chemical abortion or the referring healthcare provider has informed the pregnant woman, orally and in person, of the following:

(1) The probable gestational age of the unborn child as determined by patient history and ultrasound results used to confirm the gestational age;

(2) A detailed description of the chemical abortion regimen to be used;

(3) A detailed list of the risks and complications related to the specific chemical abortion regimen to be used, including without limitation hemorrhage, failure to remove all pregnancy tissue which may require an additional procedure, sepsis or other infections, sterility, possible continuation of pregnancy, and death;

(4) Information about Rh incompatibility, including that if the pregnant woman has an Rh negative blood type, she should receive an injection of Rh immunoglobulin at the time of the chemical abortion to prevent Rh incompatibility in future pregnancies, which can lead to complications and

miscarriage;

(5) The risks of complications from a chemical abortion increase with advancing gestational age;

(6) Information on reversing the effects of the chemical abortion if the pregnant woman changes her mind, but that time is of the essence;

(7) Human trafficking literature, also known as "Laura's Card", as described in § 16-90-1107;

(8) Information about post-abortion care, including how to handle and respond to and report complications from the chemical abortion; and

(9) Information on scheduling post-abortion medical visits to ensure completion of the abortion, assess the need for additional procedures or care, and assess bleeding or other potential complications.

(c)(1) Except in the case of a medical emergency, before a chemical abortion, a pregnant woman shall certify on a written checklist form provided or approved by the Department of Health that the information described in subsection (b) of this section has been provided.

(2)(A) The healthcare provider who is to perform the chemical abortion shall receive, sign, and date a copy of the written certification described in subdivision (c)(1) of this section before performing a chemical abortion.

(B) The healthcare provider shall retain a copy of the written certification form in the pregnant woman's medical record.

20-16-2404. Individual reporting — Aggregate reporting.

(a)(1) A healthcare provider or healthcare facility shall submit an individual reporting form to the Department of Health within fifteen (15) days after each month's end.

(2) The healthcare provider shall sign each individual reporting form.

(b)(1) A report submitted as described in subsection (a) of this section is not a public record and shall remain confidential except that a disclosure may be made to law enforcement officials upon an order of a court after an application showing good cause.

(2) The court may condition disclosure of information upon any

appropriate safeguards the court may impose.

(c) The department shall prepare an individual reporting form, which shall include the following information:

(1) The date of the chemical abortion;

(2) The specific chemical abortion regimen used;

(3) The probable gestational age of the unborn child;

(4) The age of the pregnant woman at the time the chemical abortion was performed or induced;

(5) The pregnant woman's state and county of residence;

(6) Whether, before seeking a chemical abortion, the pregnant woman received any other verbal or written counseling related to potential risks or complications and alternatives to a chemical abortion;

(7) The specific reason for the chemical abortion, including without limitation:

(A) The pregnancy is the result of rape or incest;

(B) Economic reasons;

(C) The pregnant woman does not want a pregnancy or child at this time;

(D) The pregnant woman's physical health is endangered, specifically identifying the reason her physical health is endangered, including any preexisting condition;

(E) The pregnant woman's psychological, mental, or emotional health is endangered, specifically identifying the reason her psychological, mental, or emotional health is endangered, including any preexisting condition;

(F) The pregnant woman will suffer substantial and irreversible impairment of a major bodily function if the pregnancy continues, specifically identifying the potential impairment;

(G) The diagnosis, presence, or presumed presence of a genetic anomaly, specifically identifying the anomaly; or

(I) Refusal of the pregnant woman to answer;

(8) The number of prior pregnancies, live births, induced abortions, and spontaneous abortions of the pregnant woman;

(9) Whether the chemical abortion was paid for by:

(A) Private health coverage;

(B) Public assistance health coverage; or

(C) Self-pay; and

(10) Complications, if any and whenever known, from the chemical abortion.

(d)(1) A healthcare facility in which a chemical abortion is performed during any quarter year shall file with the Department of Health a report showing the total number of chemical abortions performed in the facility during that quarter year.

(2) The aggregate report shall include the total number of chemical abortions performed in each trimester of pregnancy.

(3) The department shall prepare an aggregate reporting form.

(e) The reporting forms under this section shall not contain:

(A) The name of the pregnant woman;

(B) Common identifiers of the pregnant woman, including her Social Security number or her driver's license number; or

(C) Any other information that would make it possible to identify the pregnant woman.

(f)(1) The department shall report comprehensive annual statistical data based upon data gathered from the reports under this section to the General Assembly.

(2) The annual report shall not disclose or lead to the disclosure of the identity of any healthcare provider or person filing a report under this section or of any woman who is the subject of a report.

(3) The annual report shall be made available to the public in a downloadable format on the department's website.

(g)(1) The department shall summarize the data collected from the reports required by this section and submit the summary to the Centers for Medicare and Medicaid Services.

(2) The summary shall be made available to the public in a downloadable format on the department's website.

(h) This section does not preclude the voluntary or required submission of other reports or forms regarding chemical abortion.

20-16-2405. Collection and reporting of information.

(a) The *Department of Health* shall ensure that all information collected by the *department* regarding chemical abortions performed in this state shall be available to the public in printed form and on a twenty-four-

hour basis on the *department's website.*

(b) In no case shall the privacy of a patient or doctor be compromised.

(c) The information collected by the *department* regarding abortions performed in this state shall be continually updated.

(d)(1)(A) By June 3 of each year, the department shall issue a public report providing statistics on the number of women who were provided information and materials pursuant to this subchapter during the previous calendar year.

(B) Each report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information received after the deadline.

(2) The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual who received information or materials in accordance with § 20-16-1703.

20-16-2406. Rules.

(a)(1) The *State Board of Health* shall adopt rules to implement this subchapter.

(2) The *State Board of Health* may add by rule additional examples of complications to supplement those in § 20-16-1703.

(b) The Arkansas State Medical Board shall promulgate rules to ensure that physicians who perform abortions, referring physicians, or agents of either physician comply with all the requirements of this subchapter.

20-16-2407. Criminal penalty.

A person who *purposely, knowingly, recklessly, or negligently violates* this subchapter commits a Class A misdemeanor.

20-16-2408. Civil penalties.

(a) In addition to any remedies available under the common law or statutory law of this state, failure to comply with the requirements of this subchapter shall provide a basis for a:

(1) Civil malpractice action for actual and punitive damages; and

(2) Professional disciplinary action under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(b) A *civil penalty* shall not be assessed against the woman upon whom the abortion is performed.

(c) When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close the proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed or attempted.

(d) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

(e) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

20-16-2409. Construction.

(a) This subchapter does not create or recognize a right to abortion.

(b) This subchapter is not intended to make lawful an abortion that is currently unlawful.

/s/Lundstrum

APPROVED: 4/5/21

State of Arkansas *As Engrossed: H3/8/21 H3/15/21*
93rd General Assembly **A Bill**
Regular Session, 2021 HOUSE BILL 1402

By: Representatives Barker, *Cloud*
By: Senator B. Johnson

For An Act To Be Entitled

AN ACT TO AMEND THE ABORTION-INDUCING DRUGS SAFETY ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ABORTION-INDUCING DRUGS SAFETY ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code §§ 20-16-1502 — 20-16-1504 are amended to read as follows:

20-16-1502. Legislative findings and purpose.

(a) The General Assembly finds that:

~~(1) The United States Food and Drug Administration approved the drug mifepristone, a first-generation progesterone receptor modulator, as an abortion-inducing drug with a specific gestation, dosage, and administration protocol;~~

~~(2) The United States Food and Drug Administration approved mifepristone under the rubric of 21 C.F.R. § 314.520, also referred to as "Subpart H", which is the only United States Food and Drug Administration approval process that allows for postmarketing restrictions and provides for accelerated approval of certain drugs that are shown to be effective but "can be safely used only if distribution or use is restricted";~~

~~(3) The United States Food and Drug Administration does not treat Subpart H drugs in the same manner as drugs that undergo the typical approval process;~~

~~(4) As approved by the United States Food and Drug Administration and as outlined in the final printed labeling of mifepristone, an abortion by mifepristone consists of three (3) two-hundred-milligram tablets of mifepristone taken orally, followed by two (2) two-hundred-microgram tablets of misoprostol taken orally, through forty-nine (49) days from the first day of the woman's last menstrual period;~~

~~(5) The patient is to return for a follow-up visit in order to confirm that a complete termination of pregnancy has occurred;~~

~~(6) This United States Food and Drug Administration-approved protocol is referred to as the "Mifeprex regimen";~~

~~(7) This treatment requires three (3) office visits by the patient, and the dosages may only be administered in a clinic, medical office, or hospital and under supervision of a physician;~~

~~(8) The final printed labeling of Mifeprex outlines the United States Food and Drug Administration-approved dosage and administration of both drugs in the Mifeprex regimen, namely mifepristone and misoprostol;~~

~~(9) When the United States Food and Drug Administration approved the Mifeprex regimen under Subpart H, it did so with certain restrictions such as the requirement that the distribution and use of the Mifeprex regimen must be under the supervision of a physician who has the ability to assess the duration of pregnancy, diagnose ectopic pregnancies, and provide surgical intervention or has made plans to provide surgical intervention through other qualified physicians;~~

~~(10) One (1) of the restrictions imposed by the United States Food and Drug Administration as part of its Subpart H approval is a written agreement that must be signed by both the physician and patient;~~

~~(11) In that agreement, the woman, along with the physician, attests to the following, among other statements:~~

~~(A) "I believe I am no more than 49 days (7 weeks) pregnant";~~

~~(B) "I understand that I will take misoprostol in my provider's office two days after I take Mifeprex (Day 3)"; and~~

~~(C) "I will do the following: return to my provider's office in 2 days (Day 3) to check if my pregnancy has ended. My provider will give me misoprostol if I am still pregnant";~~

~~(12) The United States Food and Drug Administration concluded~~

~~that available medical data did not support the safety of home use of misoprostol, and it specifically rejected information in the Mifeprex final printed labeling on self-administering misoprostol at home;~~

~~(13) Court testimony in Planned Parenthood Cincinnati Region v. Taft, 459 F. Supp. 2d 626 (S.D. Oh. 2006), by Planned Parenthood and other abortion providers demonstrates that providers routinely fail to follow the United States Food and Drug Administration-approved protocol for the Mifeprex regimen as it is outlined in the Mifeprex final printed labeling and that providers are administering a single oral dose of two hundred milligrams (200 mg) of mifepristone, followed by a single vaginal or buccal dose of eight-tenths of one milligram (.8 mg) of misoprostol, through sixty-three (63) days of the woman's last menstrual period, without medical supervision and without follow-up care;~~

~~(14) The use of mifepristone presents significant medical risks to women, including without limitation abdominal pain, cramping, vomiting, headache, fatigue, uterine hemorrhage, viral infections, and pelvic inflammatory disease;~~

~~(15) Abortion-inducing drugs are associated with an increased risk of complications relative to surgical abortion, and the risk of complications increases with advancing gestational age and, in the instance of the Mifeprex regimen, with failure to complete the two-step dosage process;~~

~~(16)(A) In July 2011, the United States Food and Drug Administration reported two thousand two hundred seven (2,207) adverse events in the United States after women used the Mifeprex regimen for the termination of pregnancy.~~

~~(B) Among those were fourteen (14) deaths, six hundred twelve (612) hospitalizations, three hundred thirty-nine (339) blood transfusions, and two hundred fifty-six (256) infections, including forty-eight (48) severe infections;~~

~~(17)(A) Off-label or so-called evidence-based use of the Mifeprex regimen may be deadly.~~

~~(B) To date, fourteen (14) women have reportedly died after administration of the Mifeprex regimen, with eight (8) deaths attributed to severe bacterial infection.~~

~~(C) All eight (8) of those women administered the regimen~~

~~in an off-label or evidence-based manner advocated by abortion providers.~~

~~(D) The United States Food and Drug Administration has not been able to conclude whether off-label use led to the eight (8) deaths; and~~

~~(18) Medical evidence demonstrates that women who use abortion-inducing drugs incur more complications than those who have surgical abortions.~~

(1) The use of abortion-inducing drugs, including the Mifeprex regimen, also known as "RU-486" or "mifepristone", presents significant medical risks, including without limitation incomplete abortion, sepsis or other infections, uterine hemorrhage, blood clots, abdominal pain, fever, vomiting, headache, fatigue, pelvic inflammatory disease, and death;

(2) Medical evidence demonstrates that women who use abortion-inducing drugs risk significantly more complications than those who undergo surgical abortions;

(3) The risk of complications, as well as the failure rate for drug-induced abortions, increases with advancing gestational age;

(4) A woman's ability to provide informed consent depends on the extent to which the woman receives information sufficient to make an informed choice;

(5) The decision to abort "is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and *consequences", as stated in Planned Parenthood v. Danforth, 428 U.S. 52, 67 (1976);*

(6) To facilitate reliable scientific studies and research on the safety and efficacy of abortion-inducing drugs, it is essential that the medical and public health communities have access to accurate information on the efficacy of abortion-inducing drugs and resulting complications;

(7) Abortion "recordkeeping and reporting *requirements* that are reasonably directed to the preservation of maternal health and that properly respect a patient's confidentiality and privacy are *permissible", as stated in Planned Parenthood v. Danforth, 428 U.S. 52, 80 (1976);* and

(8) "The collection of information with respect to actual patients is a vital element of medical research, and so it cannot be said that the [abortion reporting] requirements serve no purpose other than to make abortions more *difficult", as stated in Planned Parenthood v. Casey, 505 U.S. 833, 900-901 (1992).*

(b) Based on the findings in subsection (a) of this section, it is the purpose of this subchapter to:

~~(1) Protect women from the dangerous and potentially deadly off-label use of abortion-inducing drugs such as, but not limited to, the Mifeprex regimen; and~~

~~(2) Ensure that physicians abide by the protocol tested and approved by the United States Food and Drug Administration for such abortion-inducing drugs, as outlined in the drug labels.~~

(1) Protect the health and welfare of every woman considering a drug-induced abortion;

(2) Ensure that:

(A) A physician examines a woman before prescribing, administering, or dispensing an abortion-inducing drug; and

(B) A woman considering a drug-induced abortion receives comprehensive information on abortion-inducing drugs;

(3) Reduce "the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully *informed", as stated in Planned Parenthood v. Casey, 505 U.S. 833, 882 (1992); and*

(4) Add to the sum of medical and public health knowledge through the compilation of relevant data on drug-induced abortions performed in the state, as well as on all medical complications and maternal deaths resulting from these abortions.

20-16-1503. Definitions.

As used in this subchapter:

(1)(A) “Abortion” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child.

(B) An act under subdivision (1)(A) of this section is not an abortion if the act is performed with the intent to:

(i) Save the life or preserve the health of the unborn child;

(ii) Remove a dead unborn child caused by

spontaneous abortion;

(iii) Remove an ectopic pregnancy; or

(iv) Treat a maternal disease or illness for which the prescribed drug is indicated;

(2)(A) "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child.

(B) "Abortion-inducing drugs" includes off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol, Cytotec, and methotrexate.

(C) This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications such as chemotherapeutic agents or diagnostic drugs.

(D) Use of drugs to induce abortion is also known as a medical, drug-induced, or chemical abortion;

(3) "Adverse event" means an undesirable experience associated with the use of a medical product in a patient, including without limitation an event that causes:

(A) Death;

(B) Threat to life;

(C) Hospitalization;

(D) Disability or permanent damage;

(E) Congenital anomaly or birth defect, or both;

(F) Required intervention to prevent permanent impairment or damage; or

(G) Other serious important medical events, including without limitation:

(i) Allergic bronchospasm requiring treatment in an emergency room;

(ii) Serious blood dyscrasias;

(iii) Seizures or convulsions that do not result in hospitalization; and

(iv) The development of drug dependence or drug

abuse;

~~(4) "Final printed labeling" means the United States Food and Drug Administration-approved informational document for an abortion-inducing drug that outlines the protocol authorized by the United States Food and Drug Administration and agreed upon by the drug company applying for United States Food and Drug Administration authorization of that drug;~~

~~(5)~~(4) "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period;

~~(6) "Mifeprex regimen" means the abortion-inducing drug regimen that involves administration of mifepristone or the brand name "Mifeprex" and misoprostol, which is the only abortion-inducing drug regimen approved by the United States Food and Drug Administration and is also known as the RU-486 regimen or simply RU-486;~~

~~(7) "Mifepristone" means the first drug used in the Mifeprex regimen;~~

~~(8) "Misoprostol" means the second drug used in the Mifeprex regimen;~~

~~(9)~~(5) "Physician" means any person licensed to practice medicine in this state, including medical doctors and doctors of osteopathy; and

~~(10)~~(6) "Unborn child" means the offspring of human beings from conception until birth.

20-16-1504. Unlawful distribution of abortion-inducing drug.

~~(a)(1) It shall be unlawful to knowingly give, sell, dispense, administer, or otherwise provide or prescribe an abortion-inducing drug to a pregnant woman to induce an abortion or enable another person to induce an abortion unless the person who gives, sells, dispenses, administers, or otherwise provides or prescribes the abortion-inducing drug is a physician and the provision or prescription of the abortion-inducing drug satisfies the protocol authorized by the United States Food and Drug Administration, as outlined in the final printed labeling for the drug or drug regimen.~~

~~(2) In the case of the Mifeprex regimen, the final printed labeling for Mifeprex includes the United States Food and Drug Administration-approved dosage and administration instructions for both mifepristone and misoprostol.~~

~~(b) Because the failure and complication rates from medical abortion increase with advancing gestational age, because the physical symptoms of medical abortion can be identical to the symptoms of ectopic pregnancy, and because abortion-inducing drugs do not treat ectopic pregnancies but rather are contraindicated in ectopic pregnancies, the physician giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug shall first examine the woman and document in the woman's medical chart prior to giving, selling, dispensing, administering, or otherwise providing or prescribing the abortion-inducing drug the following information without limitation:~~

~~(1) Gestational age; and~~

~~(2) Intrauterine location of the pregnancy.~~

~~(c) Every pregnant woman to whom a physician gives, sells, dispenses, administers, or otherwise provides or prescribes any abortion-inducing drug shall be provided with a copy of the drug's label.~~

~~(d)(1) The physician who gives, sells, dispenses, administers, or otherwise provides or prescribes the abortion-inducing drug shall have a signed contract with a physician who agrees to handle complications and be able to produce that signed contract on demand by the patient or by the Department of Health.~~

~~(2) The physician who contracts to handle emergencies shall have active admitting privileges and gynecological/surgical privileges at a hospital designated to handle any emergencies associated with the use or ingestion of the abortion-inducing drug.~~

~~(3) Every pregnant woman to whom a physician gives, sells, dispenses, administers, or otherwise provides or prescribes any abortion-inducing drug shall receive the name and phone number of the contracted physician and the hospital at which that physician maintains admitting privileges and which can handle any emergencies.~~

~~(e)(1) The physician who gives, sells, dispenses, administers, or otherwise provides or prescribes any abortion-inducing drug, or an agent of the physician, shall schedule a follow-up visit for the woman for approximately fourteen (14) days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding.~~

~~(2) The physician or agent of the physician shall make all~~

~~reasonable efforts to ensure that the woman returns for the scheduled appointment.~~

~~(3) A brief description of the efforts made to comply with this subsection, including without limitation the date, time, and identification by name of the person making such efforts, shall be included in the woman's medical record.~~

(a) Abortion-inducing drugs shall only be prescribed, administered, dispensed, or otherwise provided by a physician following procedures set out in this subchapter.

(b) It is unlawful for any manufacturer, supplier, physician, or any other person to provide any abortion-inducing drug via courier, delivery, or mail service.

(c) Before providing an abortion-inducing drug, the physician prescribing, administering, dispensing, or otherwise providing the abortion-inducing drug shall:

(1) Examine the pregnant woman in person;

(2) Independently verify that an intrauterine pregnancy exists;

(3)(A) Determine the woman's blood type.

(B) If the pregnant woman is Rh negative, the physician shall be able to and offer to administer RhoGAM at the time of the abortion; and

(4) Document in the pregnant woman's medical chart or record the gestational age and intrauterine location of the pregnancy and whether the pregnant woman received treatment for Rh negativity.

(d) A physician prescribing, administering, dispensing, or otherwise providing an abortion-inducing drug shall be credentialed and competent to handle abortion complication management, including emergency transfer, or have a signed agreement with an associated physician who is credentialed to handle abortion complications.

(e) When a signed agreement exists between an associated physician, every pregnant woman to whom a physician prescribes, administers, dispenses, or otherwise provides an abortion-inducing drug shall be given the name and telephone number of the associated physician.

(f) The physician prescribing, administering, dispensing, or otherwise providing an abortion-inducing drug or an agent of the physician shall schedule a follow-up visit for the woman at approximately seven (7) to

fourteen (14) days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding.

(g) The physician or an agent of the physician shall make all reasonable efforts to ensure that the woman returns for the scheduled follow-up appointment.

(h) A brief description of all efforts made to comply with subsections (f) and (g) of this section, including the date, time, and identification by name of the person making such efforts, shall be included in the woman's medical chart or record.

SECTION 2. DO NOT CODIFY. SAVINGS CLAUSE. If any section or part of a section of this act is determined by a court to be unconstitutional, the Abortion-Inducing Drugs Safety Act, § 20-16-1501 et seq., shall be revived, and to prevent a hiatus in the law, the relevant section or part of a section of the Abortion-Inducing Drugs Safety Act shall remain in full force and effect from and after the effective date of this act notwithstanding its repeal by this act.

/s/Barker

APPROVED: 4/5/21

State of Arkansas *As Engrossed: S3/30/21*
93rd General Assembly **A Bill**
Regular Session, 2021 SENATE BILL 527

By: Senators Gilmore, *Beckham, Bledsoe, Flippo, K. Hammer, Hester, B. Johnson, Rapert, D. Wallace*
By: Representatives Bentley, *Beaty Jr., Brown, Cloud, Dotson, Furman, Ladyman, Penzo*

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS CONCERNING ABORTION FACILITIES; TO REQUIRE ABORTION FACILITIES TO POST INFORMATION REGARDING HUMAN TRAFFICKING AND TO PROVIDE LAURA'S CARD TO PATIENTS; TO AMEND THE DEFINITION OF "ABORTION" WITHIN THE CHERISH ACT; TO REQUIRE WRITTEN AGREEMENTS BETWEEN AN ABORTION FACILITY AND A HOSPITAL; TO REQUIRE WRITTEN AGREEMENTS BETWEEN AN ABORTION FACILITY AND AN AMBULANCE SERVICE; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAWS CONCERNING ABORTION FACILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 12-19-102(a), concerning the posting of information about the National Human Trafficking Hotline, is amended to read as follows:

(a) The following establishments shall post in a conspicuous place near the entrance of the establishment, or where posters and notices of this type customarily are posted, a poster described in subsection (b) of this section measuring at least eight and one-half inches by eleven inches (8½" x 11") in size:

(1) A hotel, motel, or other establishment that has been cited as a public nuisance for prostitution under § 20-27-401;

(2) A strip club or other sexually oriented business;

(3) A private club that has a liquor permit for on-premises consumption and does not hold itself out to be a food service establishment;

(4) An airport;

(5) A train station that serves passengers;

(6) A bus station; ~~and~~

(7) A privately owned and operated facility that provides food, fuel, shower or other sanitary facilities, and overnight parking; and

(8) An abortion facility.

SECTION 2. Arkansas Code Title 20, Chapter 9, Subchapter 3, is amended to add an additional section to read as follows:

20-9-312. Written agreements of abortion facility.

(a)(1) An abortion facility shall enter into a written agreement with a licensed acute care hospital that is capable of treating patients with unforeseen complications related to procedures performed at an abortion facility.

(2) Under the written agreement described in subdivision (a)(1) of this section, the licensed acute care hospital shall agree to accept and treat patients with unforeseen complications related to procedures performed at an abortion facility.

(3) The written agreement described in subdivision (a)(1) of this section shall:

(A) Be with a licensed acute care hospital located:

(i) In the same county as the abortion facility; or

(ii) No further than thirty (30) miles from the abortion facility;

(B) Be a legally binding contractual document;

(C) Be signed by the individuals who:

(i) Are authorized to execute the written agreement on behalf of the abortion facility and the licensed acute care hospital; and

(ii) Certify that they have the authority described in subdivision (a)(3)(C)(i) of this section;

(D) Require transfer of a patient if deemed medically necessary by the attending physician;

(E) Identify responsibilities of the abortion facility in

which the abortion facility shall at a minimum:

(i) At the time of transfer, provide the licensed acute care hospital with complete and accurate information regarding the patient being transferred to the licensed acute care hospital;

(ii) Notify the licensed acute care hospital of the impending transfer of a patient and receive confirmation of the availability of appropriate facilities, services, and staff necessary for the care of the patient;

(iii) At the time of the transfer, provide the licensed acute care hospital with copies of relevant portions of the patient's clinical record;

(iv) Transfer the patient, the patient's medical records, demographic information, insurance information, and other information deemed necessary or otherwise required by law to facilitate the provision of medical care when the patient arrives at the licensed acute care hospital; and

(v) Arrange for the immediate transfer of the patient's personal effects, including a document listing the effects; and

(F) Identify responsibilities of the licensed acute care hospital in which the licensed acute care hospital shall at a minimum:

(i) Provide prompt and appropriate evaluation and treatment of a patient transferred to the licensed acute care hospital under the written agreement;

(ii) Accept responsibility for the patient's care when the patient is received by the licensed acute care hospital;

(iii) Direct charges performed by the licensed acute care hospital to the patient or the patient's third-party payer; and

(iv) Acknowledge receipt of the patient's personal effects in writing signed by an authorized representative of the licensed acute care hospital and deliver the receipt to the abortion facility.

(b) If an unforeseen complication arises before or during a procedure performed at an abortion facility, the patient shall be transferred to:

(1) The licensed acute care hospital with which the abortion facility has a written agreement as described in subsection (a) of this section; or

(2) A hospital selected by the patient.

(c)(1) An abortion facility shall enter into a written agreement with a licensed local ambulance service for the transport of any emergency patient within the scope of subsection (a) of this section to the licensed acute care hospital.

(2) The written agreement described in subdivision (c)(1) of this section shall:

(A) Be with a licensed local ambulance service located:

(i) In the same county as the abortion facility; or

(ii) No further than five (5) miles or ten (10) minutes normal driving time from the abortion facility;

(B) Be signed by the individuals who:

(i) Are authorized to execute the written agreement on behalf of the abortion facility and the licensed local ambulance service; and

(ii) Certify that they have the authority described in subdivision (c)(2)(B)(i) of this section; and

(C) Identify responsibilities of the licensed local ambulance service in which the licensed local ambulance service shall at a minimum:

(i) Provide services in accordance with all federal and state laws, federal regulations, and state rules applicable to emergency service entities;

(ii) Employ sufficient staff, including paramedics and emergency medical technicians, to provide patient care and operate vehicles and equipment in accordance with industry standards and applicable federal and state laws, federal regulations, and state rules;

(iii) Require all responding medical personnel to familiarize themselves with the floor plan of the abortion facility to minimize the time required to locate the patient in the facility and exit the facility with the patient as expeditiously as possible;

(iv) Acknowledge the existence of and the licensed local ambulance service's familiarity with the terms of the written agreement between the abortion facility and the licensed acute care hospital; and

(v) Transport the patient to the licensed acute care hospital that is party to the written agreement unless otherwise directed by the patient.

(d) Within ten (10) days of finalization of the written agreements described in subsections (a) and (c) of this section, the abortion facility shall file the written agreements described in subsections (a) and (c) of this section with the Department of Health.

(e) An abortion facility shall have ninety (90) days after the effective date of this section to come into compliance with this section.

(f)(1) An abortion facility applying for a renewal license or an applicant for a provisional license may submit a request in writing for extensions of time to comply with the written agreement requirements described in subsections (a) and (c) of this section to the Secretary of the Department of Health in accordance with the provisions of this subsection.

(2) Any request shall:

(A) Be in writing;

(B) Contain a certification under oath that the abortion facility seeking the extension of time has exhausted all reasonable efforts to obtain a written agreement described in subsections (a) and (c) of this section for a continuous ninety (90) calendar day period before the request; and

(C) Contain a detailed description of the efforts taken to secure the written agreements described in subsections (a) and (c) of this section.

(3) In deciding to grant or deny the request for an extension of time, the secretary shall consider all factors the secretary deems relevant under the circumstances, but at least the following factors:

(A) Whether the abortion facility or applicant made, and continues to make, a good faith effort to obtain a written agreement described in subsections (a) and (c) of this section;

(B) Whether the abortion facility or applicant can provide the same level of patient care and safety via alternative health services during any extension period; and

(C) Regulatory compliance history at the abortion facility and at any other healthcare facility owned, in whole or in part, by the applicant or any other individual or entity having an ownership interest with the abortion facility.

(4) If the request is granted, the extension of time shall be effective for a time period of ninety (90) calendar days from the date of

issuance.

(5) The secretary may rescind a previously granted extension of time at any time upon determining that the abortion facility or applicant has not met, or is not meeting, the conditions of subdivision (d)(3) of this section.

(6) If the request is for a written agreement described in subsection (a) of this section, the written agreement described in subsection (c) of this section does not have to comply with subdivision (c)(2)(C)(iv) and (v) for the duration of the extension of time.

(7)(A) If a request for an extension is denied, an abortion facility or applicant shall have ten (10) calendar days to submit a written request for reconsideration to the secretary, whose decision shall be final.

(B) The abortion facility or applicant for provisional license may appeal a denial in accordance with the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(g)(1) This section does not create or recognize a right to abortion.

(2) This section is not intended to make lawful an abortion that is currently unlawful.

SECTION 3. Arkansas Code § 20-16-1703(b)(2), concerning the informed consent requirements under the Woman's Right-to-Know Act, is amended to add an additional subdivision to read as follows:

(F) Human trafficking literature, also known as "Laura's Card", as described in § 16-90-1107;

SECTION 4. Arkansas Code § 20-16-2003(1), concerning the definition of "abortion" within the Cherish Act, is amended to read as follows:

(1)(A) "Abortion" means the ~~use or prescription of any instrument, medicine, drug, or any other substance or device:~~

~~(A) To terminate the pregnancy of a woman known to be pregnant with an intention other than to:~~

~~(i) Increase the probability of a live birth;~~

~~(ii) Preserve the life or health of the unborn child;~~

~~(iii) Terminate an ectopic pregnancy; or~~

~~(iv) Remove a dead unborn child who died in utero as~~

~~the result of natural causes, accidental trauma, or a criminal assault on the pregnant woman or her unborn child; and~~

~~(B) That causes the premature termination of the pregnancy;~~ act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of the unborn child.

(B) An act under subdivision (1)(A) of this section is not an abortion if the act is performed with the intent to:

(i) Save the life or preserve the health of the unborn child;

(ii) Remove a dead unborn child caused by spontaneous abortion; or

(iii) Remove an ectopic pregnancy;

/s/Gilmore

APPROVED: 4/19/21