

1 INTERIM STUDY PROPOSAL 2013-060

2 State of Arkansas
3 89th General Assembly
4 Regular Session, 2013

As Engrossed: S3/18/13

A Bill

SENATE BILL 913

5
6 By: Senator Irvin
7 By: Representative Wren

8 Filed with: Interim Senate Committee on Public Health, Welfare and Labor
9 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

10
11 AN ACT TO REGULATE THE USE OF CERTAIN DRUGS USED TO
12 INDUCE AN ABORTION; TO DEFINE CERTAIN TERMS; TO
13 PROVIDE FOR DISCIPLINARY PROCEEDINGS FOR ABORTIONS
14 PERFORMED IN VIOLATION OF THIS ACT; TO PROVIDE A
15 CIVIL CAUSE OF ACTION FOR VIOLATIONS OF THIS ACT; TO
16 REQUIRE PHYSICIAN REPORTING; AND FOR OTHER PURPOSES.

Subtitle

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20 TO REGULATE THE USE OF CERTAIN DRUGS USED
21 TO INDUCE AN ABORTION; AND TO PROVIDE FOR
22 DISCIPLINARY PROCEEDINGS FOR ABORTIONS
23 PERFORMED IN VIOLATION OF THIS ACT.

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

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28 SECTION 1. Arkansas Code Title 20, Chapter 16, Subchapter 6, is
29 amended to add an additional section to read as follows:

30 20-16-603. Drug induced abortions – Procedures – Penalties – Causes of
31 action.

32 (a) As used in section:

33 (1) "Abortion" means the use or prescription of an instrument,
34 medicine, drug, or another substance or device to terminate the pregnancy of
35 a woman known to be pregnant with an intention other than to increase the
36 probability of a live birth, to preserve the life or health of the child

1 after live birth, or to remove a dead unborn child who died in utero as the
2 result of natural causes, accidental trauma, or a criminal assault on the
3 pregnant woman or her unborn child, and that causes the premature termination
4 of the pregnancy;

5 (2) "Adverse event" means the same as in MedWatch: The FDA
6 Safety and Information and Adverse Event Reporting Program;

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

12 (4) "Mifepristone" means the specific abortion-inducing drug
13 regimen known as RU-486; and

14 (5) "Physician" means a natural person licensed to practice
15 medicine in the State of Arkansas under the Arkansas Medical Practices Act, §
16 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

17 (b)(1) When mifepristone or a drug or chemical is used for the purpose
18 of inducing an abortion, the drug or chemical shall be administered in the
19 same room and in the physical presence of the physician who prescribed,
20 dispensed, or otherwise provided the drug or chemical to the patient.

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

27 (3) A brief description of the efforts made to comply with this
28 section, including the date, time, and identification by name of the person
29 making the efforts, shall be included in the patient's medical record.

30 (c) This section does not affect telemedicine practice that does not
31 involve the use of mifepristone or a drug or chemical to induce an abortion.

32 (d)(1) If a licensing board finds that a person licensed by the board
33 has violated the rules of professional conduct by performing an abortion in
34 violation of this subchapter, the board shall revoke the person's license.

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

1 (e)(1)(A) A woman upon whom an abortion has been performed, the father
2 of the unborn child who was the subject of the abortion if the father was
3 married to the woman who received the abortion at the time the abortion was
4 performed, or a maternal grandparent of the unborn child may maintain an
5 action against the person who performed the abortion in violation of this
6 section for actual and punitive damages.

7 (B) A woman upon whom an abortion has been attempted in
8 violation of this section may maintain an action against the person who
9 attempted to perform the abortion for actual and punitive damages.

10 (2)(A) A cause of action for injunctive relief against a person
11 who has knowingly or recklessly violated this section may be maintained by
12 the woman upon whom an abortion was performed or attempted to be performed in
13 violation of this section by a prosecuting attorney.

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

17 (f)(1) If a judgment is rendered in favor of the plaintiff prevails in
18 an action under subsection (e) of this section, the court shall award
19 reasonable attorney fees in favor of the plaintiff against the defendant.

20 (2) If a judgment is rendered in favor of the defendant and the
21 court finds that the plaintiff's suit was frivolous and brought in bad faith,
22 the court shall order the plaintiff to pay reasonable attorney's fee to the
23 defendant.

24 (g) A pregnant woman who obtains or possesses mifepristone or another
25 drug or chemical for the purpose of inducing an abortion to terminate her own
26 pregnancy shall not be subject to an action under subsection (e) of this
27 section.

28 (h)(1) In a civil or criminal proceeding or action brought under this
29 section, the court shall determine if the anonymity of a woman upon whom an
30 abortion has been performed or attempted shall be preserved from public
31 disclosure without her consent.

32 (2)(A) Upon determining that the woman's anonymity shall be
33 preserved, the court shall issue an order to the parties, witnesses, and
34 counsel and shall direct the sealing of the record and exclusion of
35 individuals from courtrooms or hearing rooms to the extent necessary to
36 safeguard the woman's identity from public disclosure.

