

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

A Bill

SENATE BILL 913

5 By: Senator Irvin
6 By: Representative Wren
7

For An Act To Be Entitled

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

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18 TO REGULATE THE USE OF CERTAIN DRUGS USED
19 TO INDUCE AN ABORTION; AND TO PROVIDE FOR
20 DISCIPLINARY PROCEEDINGS FOR ABORTIONS
21 PERFORMED IN VIOLATION OF THIS ACT.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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26 SECTION 1. Arkansas Code Title 20, Chapter 16, Subchapter 6, is
27 amended to add an additional section to read as follows:

28 20-16-603. Drug induced abortions – Procedures – Penalties – Causes of
29 action.

30 (a) As used in section:

31 (1) "Abortion" means the use or prescription of an instrument,
32 medicine, drug, or another substance or device to terminate the pregnancy of
33 a woman known to be pregnant with an intention other than to increase the
34 probability of a live birth, to preserve the life or health of the child
35 after live birth, or to remove a dead unborn child who died in utero as the
36 result of natural causes, accidental trauma, or a criminal assault on the



1 pregnant woman or her unborn child, and that causes the premature termination
 2 of the pregnancy;

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

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

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

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

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

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

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

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

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

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

35 (e)(1)(A) A woman upon whom an abortion has been performed, the father
 36 of the unborn child who was the subject of the abortion if the father was

1 married to the woman who received the abortion at the time the abortion was
 2 performed, or a maternal grandparent of the unborn child may maintain an
 3 action against the person who performed the abortion in violation of this
 4 section for actual and punitive damages.

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

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

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

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

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

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

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

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

36 (B) An order under subdivision (h)(2)(A) of this section

1 shall be accompanied by specific written findings explaining:

2 (i) Why the anonymity of the woman should be
3 preserved from public disclosure;

4 (ii) Why the order is essential to that end;

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

7 (iv) Why no reasonable less restrictive alternative
8 exists.

9 (C) In the absence of written consent of the woman upon
10 whom an abortion has been performed or attempted, anyone, other than a public
11 official who brings an action under subsection (e) of this section shall
12 bring the action under a pseudonym.

13 (D) This subsection shall not be construed to conceal the
14 identity of the plaintiff or of a witness from the defendant.

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