

Stricken language would be deleted from and underlined language would be added to present law.
Act 139 of the Regular Session

State of Arkansas *As Engrossed: S1/22/15 S1/27/15 S1/29/15 S2/5/15 S2/10/15*

90th General Assembly

A Bill

Regular Session, 2015

SENATE BILL 53

By: Senators Irvin, Bledsoe, Caldwell, Collins-Smith, J. Cooper, J. Dismang, J. English, Flippo, J. Hendren, Hester, Hickey, J. Hutchinson, B. Johnson, Rapert, Rice, G. Stubblefield, E. Williams, B. King, D. Sanders, J. Woods

By: Representatives J. Mayberry, Hammer, Bentley, Sullivan, Wardlaw, Henderson, Baltz, Cozart, Lowery, D. Meeks, Lundstrum, Sorvillo, Gates, Richmond, House, Womack, Branscum, Boyd, Lemons, Bragg, Drown, Beck, Hickerson, Collins, Payton, Brown, Copeland, Tosh, Wallace, Ladyman, Rushing, Ballinger, C. Douglas, Gonzales, K. Hendren, S. Meeks, Dotson, C. Fite, *Eaves, Farrer, Miller, Vaught*

For An Act To Be Entitled

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

Subtitle

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

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

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

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

(a) As used in this section:

(1) "Abortion" means the use or prescription of an instrument,



medicine, drug, or another substance or device to terminate the pregnancy of a woman known to be pregnant with an intention 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;

(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 physician believes them to be, constitutes a substantial step toward the performance or induction of an abortion in violation of this section;

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

(4) "Physician" means a natural 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.

(b)(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.

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

(d)(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 this subchapter, 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.

(e)(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 (e)(2)(A) of this section shall prevent the abortion provider from performing further abortions in violation of this section.

(f)(1) If a judgment is rendered in favor of the plaintiff who prevails in an action under subsection (e) 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.

(g) 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 (e) of this section.

(h)(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.

(B) An order under subdivision (h)(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 (e) 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.

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

/s/Irvin

APPROVED: 02/23/2015