

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S3/18/13
A Bill

SENATE BILL 913

By: Senator Irvin
By: Representative Wren

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

(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 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;

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

(5) "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 a drug or chemical is used for the purpose of inducing an abortion, the drug or chemical shall be administered 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 any 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 a drug or chemical to induce an abortion.

(d)(1) If a licensing board finds that a person 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 person'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 upon whom an abortion has been performed, 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 upon whom an abortion has been attempted 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) A cause of action for injunctive relief against a person who has knowingly or recklessly violated this section may be maintained by the woman upon whom an abortion was performed or attempted to be performed in violation of this section by a prosecuting attorney.

(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 prevails in an action under subsection (e) of this section, the court shall award reasonable attorney fees 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 fee to the defendant.

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

(h)(1) In a civil or criminal proceeding or action brought under this section, the court shall determine if the anonymity of a woman upon whom an abortion has been performed or attempted 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 upon whom an abortion has been performed or attempted, 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 shall not be construed to conceal the identity of the plaintiff or of a witness from the defendant.

/s/Irvin