

By: Representatives Monsour (By Request),
Bain, Martinson, Brown (20th), Bennett, Eure,
Dixon

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 790

1 AN ACT TO REGULATE THE USE OF CERTAIN DRUGS USED TO INDUCE AN
2 ABORTION; TO DEFINE CERTAIN TERMS; TO PROVIDE CRIMINAL PENALTIES
3 FOR ABORTIONS PERFORMED IN VIOLATION OF THIS ACT; TO PROVIDE A
4 CIVIL CAUSE OF ACTION FOR VIOLATIONS OF THIS ACT; TO REQUIRE
5 PHYSICIAN REPORTING; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** As used in this act, the term:

8 (a) "Abortion" means the use or prescription of any
9 instrument, medicine, drug, or any other substance or device to
10 terminate the pregnancy of a woman known to be pregnant with an
11 intention other than to increase the probability of a live birth,
12 to preserve the life or health of the child after live birth, or
13 to remove a dead unborn child who died as the result of natural
14 causes in utero, accidental trauma, or a criminal assault on the
15 pregnant woman or her unborn child, and which causes the premature
16 termination of the pregnancy.

17 (b) "Attempt to perform or induce an abortion" means an
18 act, or an omission of a statutorily required act, that, under the
19 circumstances as the actor believes them to be, constitutes a
20 substantial step in a course of conduct planned to culminate in
21 the performance or induction of an abortion in this state in
22 violation of this act.

23 (c) "Physician" means a doctor of medicine or
24 osteopathy legally authorized to practice medicine in the state.

25 **SECTION 2.** When RU-486 (mifepristone) or any drug or
26 chemical is used for the purpose of inducing an abortion, the drug
27 or chemical must be administered by or in the same room and in the
28 physical presence of the physician who prescribed, dispensed, or



29 otherwise provided the drug or chemical to the patient. The
30 physician inducing the abortion, or a person acting on behalf of
31 the physician inducing the abortion, shall make all reasonable
32 efforts to ensure that the patient returns twelve (12) to eighteen
33 (18) days after the administration or use of RU-486 (mifepristone)
34 or any drug or chemical for a follow-up visit so that the
35 physician can confirm that the pregnancy has been terminated and
36 assess the patient's medical condition. A brief description of
37 the efforts made to comply with this subsection, including the
38 date, time, and identification by name of the person making such
39 efforts, shall be included in the patient's medical record.

40 **SECTION 3.** Any person who knowingly or recklessly performs
41 or attempts to perform an abortion in violation of this act shall
42 be guilty of a felony punishable by a fine of up to Five Thousand
43 Dollars (\$5,000.00) or imprisonment in the custody of the
44 Department of Corrections for up to five (5) years, or both. No
45 penalty may be assessed against the female upon whom the abortion
46 is performed or attempted to be performed.

47 **SECTION 4.** A cause of action for injunctive relief against
48 any person who has knowingly or recklessly violated this act may
49 be maintained by the woman upon whom an abortion was performed or
50 attempted to be performed in violation of this act by a county
51 attorney with appropriate jurisdiction or by the Attorney General.
52 The injunction shall prevent the abortion provider from performing
53 further abortions in violation of this act in this state.

54 **SECTION 5.** If a judgment is rendered in favor of the
55 plaintiff in any action described in Section 4 of this act, the
56 court shall also render judgment for a reasonable attorney fee in
57 favor of the plaintiff against the defendant. If a judgment is
58 rendered in favor of the defendant and the court finds that the
59 plaintiffs suit was frivolous and brought in bad faith, the court
60 shall also render judgment for a reasonable attorney fee in favor
61 of the defendant against the plaintiff.



62 **SECTION 6.** No pregnant female who obtains or possesses
63 RU-486 (mifepristone) or any drug or chemical for the purpose of
64 inducing an abortion to terminate her own pregnancy shall be
65 subject to any action brought under Section 4 of this act.

66 **SECTION 7.** In every civil or criminal proceeding or action
67 brought under this act, the court shall rule whether the anonymity
68 of any female upon whom an abortion has been performed or
69 attempted shall be preserved from public disclosure if she does
70 not give her consent to such disclosure. The court, upon motion
71 or sua sponte, shall make such a ruling and, upon determining that
72 her anonymity should be preserved, shall issue orders to the
73 parties, witnesses, and counsel and shall direct the sealing of
74 the record and exclusion of individuals from courtrooms or hearing
75 rooms to the extent necessary to safeguard her identity from
76 public disclosure. Each such order shall be accompanied by
77 specific written findings explaining why the anonymity of the
78 female should be preserved from public disclosure, why the order
79 is essential to that end, how the order is narrowly tailored to
80 serve that interest, and why no reasonable less restrictive
81 alternative exists. In the absence of written consent of the
82 female upon whom an abortion has been performed or attempted,
83 anyone, other than a public official, who brings an action under
84 Section 4 of this act shall do so under a pseudonym. This section
85 may not be construed to conceal the identity of the plaintiff or
86 of witnesses from the defendant.

87 **SECTION 8.** If any one or more provision, section,
88 subsection, sentence, clause, phrase or word of this act or the
89 application thereof to any person or circumstance is found to be
90 unconstitutional, the same is hereby declared to be severable and
91 the balance of this act shall remain effective notwithstanding
92 such unconstitutionality. The Legislature hereby declares that it
93 would have passed this act, and each provision, section,
94 subsection, sentence, clause, phrase or word thereof, irrespective



95 of the fact that any one or more provision, section, subsection,
96 sentence, clause, phrase, or word be declared unconstitutional.

97 **SECTION 9.** (1) If a physician provides an abortion-inducing
98 drug to another for the purpose of inducing an abortion as
99 authorized in Section 4 of this act:

100 (a) The physician shall report that action to the
101 department; and

102 (b) If the physician knows that the woman who uses the
103 abortion-inducing drug for the purpose of inducing an abortion
104 experiences, during or after the use, an adverse event, the
105 physician shall provide a written report of the serious event
106 within three (3) days of the event to the FDA via the Medwatch
107 Reporting System and to the State Board of Medical Licensure,
108 which shall compile and retain all reports it receives under this
109 section.

110 (2) For the purposes of this section, "adverse event" shall
111 be defined according to the FDA criteria given in the Medwatch
112 Reporting System.

113 **SECTION 10.** This act shall take effect and be in force from
114 and after July 1, 2012.

