MISSISSIPPI LEGISLATURE REGULAR SESSION 2013

By: Senator(s) Hill, Gandy, Hudson, Smith, McDaniel

To: Public Health and Welfare

SENATE BILL NO. 2795
(As Sent to Governor)

AN ACT TO CREATE THE WOMEN'S HEALTH DEFENSE ACT OF 2013; TO DECLARE CERTAIN FINDINGS OF THE LEGISLATURE; TO MAKE IT UNLAWFUL TO KNOWINGLY PROVIDE OR PRESCRIBE ANY ABORTION-INDUCING DRUG TO A PREGNANT WOMAN FOR THE PURPOSE OF INDUCING AN ABORTION IN THAT PREGNANT WOMAN UNLESS THE PERSON WHO PROVIDES OR PRESCRIBES THE ABORTION-INDUCING DRUG IS A PHYSICIAN, AND THE PROVISION OR PRESCRIPTION OF THE ABORTION-INDUCING DRUG SATISFIES THE STANDARD OF CARE; TO REQUIRE THE PHYSICIAN PROVIDING OR PRESCRIBING ANY ABORTION-INDUCING DRUG TO SCHEDULE A FOLLOW-UP VISIT FOR THE WOMAN AT APPROXIMATELY 14 DAYS AFTER ADMINISTRATION OF THE ABORTION-INDUCING DRUG TO PROVIDE TREATMENT THAT MEETS THE STANDARD OF CARE; TO REQUIRE PHYSICIANS WHO PROVIDE AN ABORTION-INDUCING DRUG TO ANOTHER FOR THE PURPOSE OF INDUCING AN ABORTION TO REPORT THOSE ACTIONS TO THE STATE DEPARTMENT OF HEALTH AND TO REPORT ADVERSE EVENTS FROM THE USE OF THE ABORTION-INDUCING DRUG TO THE FDA; TO PROVIDE THAT A PERSON WHO INTENTIONALLY, KNOWINGLY OR RECKLESSLY VIOLATES ANY PROVISION OF THIS ACT IS GUILTY OF A MISDEMEANOR; TO PROVIDE THAT ALL REMEDIES UNDER THE STATUTORY LAWS OF THIS STATE ARE AVAILABLE IF THERE IS FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. This act may be known and cited as the "Women's Health Defense Act of 2013."

SECTION 2. (1) The Legislature finds that:

(a) The use of abortion—inducing drugs presents significant medical risks to women, including, but not limited to,

abdominal pain, cramping, vomiting, headache, fatigue, uterine hemorrhage, viral infections, pelvic inflammatory disease, severe bacterial infection and death.

(b) Abortion-inducing drugs are associated with an increased risk of complications relative to surgical abortion. The risk of complications increases with increasing gestational age.

(c) In July 2011, the FDA reported two thousand two hundred seven (2,207) adverse events in the United States after women used abortion—inducing drugs for the termination of pregnancy. Among those were fourteen (14) deaths, six hundred twelve (612) hospitalizations, three hundred thirty—nine (339) blood transfusions, and two hundred fifty—six (256) infections (including forty—eight (48) "severe infections").

(d) Medical evidence demonstrates that women who use abortion-inducing drugs incur more complications than those who have surgical abortions.

(2) Based on the findings in subsection (1) of this section, it is the purpose of this act to:

(a) Protect women from the dangerous and potentially deadly use of abortion—inducing drugs when administration of the drugs does not meet the standard of care; and

(b) Ensure that physicians meet the standard of care when giving, selling, dispensing, administering or otherwise providing or prescribing abortion—inducing drugs.

SECTION 3. As used in this act, the following terms shall have the meanings ascribed in this section unless the context indicates otherwise:

(a) "Abortion—inducing drug" means a medicine, drug or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman to cause the death of the unborn child. This includes the use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion. Use of those drugs to induce abortion is also known as "medical abortion." This definition does not apply to drugs that may be known to cause an abortion but are prescribed for other medical indications (e.g., chemotherapeutic agents and diagnostic drugs).

(b) "Abortion" means the act of using or prescribing any instrument, medicine, drug or any other substance, device or means with the intent to terminate the clinically diagnosable pregnancy of a woman to cause the death of the unborn child. That use, prescription or means is not an abortion if done with the intent to:

(i) Save the life of the mother;

(ii) Save the life or preserve the health of the unborn child;

(iii) Remove a dead unborn child caused by spontaneous abortion;

(iv) Remove an ectopic pregnancy;

(v) Prevent hemorrhaging by the pregnant woman; or

(vi) Treat a maternal disease or illness other than pregnancy for which the prescribed drug is indicated.

(c) "Department" means the State Department of Health.

(d) "LMP" or "gestational age" means the time that has elapsed since the first day of the woman's last menstrual period.

(e) "Physician" means any medical doctor (M.D.) or osteopathic doctor (D.O.) licensed to practice medicine in this state.

(f) "Pregnant" or "pregnancy" means the female reproductive condition of having an unborn child in the woman's uterus.

(g) "Unborn child" means the offspring of human beings from conception until birth.

SECTION 4. (1) It shall be unlawful to knowingly give, sell, dispense, administer or otherwise provide or prescribe any abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in that pregnant woman, or enabling another person to induce an abortion in a pregnant woman, unless the person who gives, sells, dispenses, administers or otherwise provides or prescribes the abortion—inducing drug is a physician, and the provision or prescription of the abortion inducing drug satisfies the standard of care.

(2) Because the failure and complications from medical abortion increase with increasing gestational age, because the

physical symptoms of medical abortion can be identical to the symptoms of ectopic pregnancy, and because abortion-inducing drugs do not treat ectopic pregnancies but rather are contraindicated in ectopic pregnancies, the physician giving, selling, dispensing, administering or otherwise providing or prescribing the abortion-inducing drug must first physically examine the woman and document in the woman's medical chart the gestational age and intrauterine location of the pregnancy before giving, selling, dispensing, administering or otherwise providing or prescribing the abortion-inducing drug.

(3) When any drug or chemical is used for the purpose of inducing an abortion, the drug or chemical must be administered in the same room and in the physical presence of the physician who gave, sold, dispensed or otherwise provided or prescribed the drug or chemical to the patient.

(4) Every pregnant woman to whom a physician gives, sells, dispenses, administers or otherwise provides or prescribes any abortion-inducing drug shall be provided with a copy of the drug's final printed label or FPL.

(5) If the physician giving, selling, dispensing, administering or otherwise providing or prescribing any abortion-inducing drug is unable to provide follow—up care, the physician must have a signed contract with a physician who agrees to provide follow-up care and produce that signed contract if requested by the patient or by the department. The contract shall

include the name and contact information of the follow-up physician. The contract follow-up physician must have active hospital admitting privileges and gynecological/surgical privileges.

(6) The physician giving, selling, dispensing, administering or otherwise providing or prescribing any abortion—inducing drug, or an agent of the physician, must schedule a follow—up visit for the woman at approximately fourteen (14) days after administration of the abortion—inducing drug to provide treatment that meets the standard of care.

SECTION 5. (1) If a physician provides an abortion-inducing drug to another for the purpose of inducing an abortion as authorized in Section 4 of this act:

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

(b) If the physician knows that the woman who uses the abortion-inducing drug for the purpose of inducing an abortion experiences, during or after the use, an adverse event, the physician shall provide a written report of the serious event to the FDA via the Medwatch Reporting System.

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

SECTION 6. (1) A person who intentionally, knowingly or recklessly violates any provision of this act is guilty of a misdemeanor.

(2) No criminal penalty may be assessed against the pregnant woman upon whom the drug—induced abortion is performed.

SECTION 7. (1) All remedies under the statutory laws of this state are available if there is failure to comply with the requirements of this act.

(2) No civil liability may be assessed against the pregnant woman upon whom the drug—induced abortion is performed.

(3) In any legal action for failure to comply with the requirements of this act, the court, when requested, shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the drug-induced abortion was performed.

SECTION 8. (1) Nothing in this act shall be construed as creating or recognizing a right to abortion.

(2) It is not the intention of this act to make lawful an abortion that is currently unlawful.

SECTION 9. Any provision of this act that is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless the holding is one of utter invalidity or unenforceability, in which event the provision shall

be deemed severable from this act and shall not affect the remainder of the act or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

SECTION 10. This act shall take effect and be in force from and after July 1, 2013.