MISSISSIPPI LEGISLATURE REGULAR SESSION 2022

By: Representative Crawford

To: Public Health and Human Services

HOUSE BILL NO. 948

AN ACT TO PROHIBIT ABORTION-INDUCING DRUGS WITHOUT THE INFORMED CONSENT OF THE PREGNANT WOMAN TO WHOM THE ABORTION INDUCTION IS BEING PROVIDED; TO BRING FORWARD SECTION 41-41-33, MISSISSIPPI CODE OF 1972, WHICH REQUIRES INFORMED CONSENT BEFORE PERFORMANCE OF AN ABORTION, FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) As described in this section, no abortion-inducing drug shall be provided without the informed consent of the pregnant woman to whom the abortion-inducing drug is provided.

(2) A form created by the Department of Health shall be used by a licensed physician to obtain the consent required prior to providing an abortion-inducing drug. The form shall be accompanied by a "licensed physician declaration," that must be signed by the licensed physician, stating that the physician has explained the abortion-inducing drug or drugs to be used, has provided all of the information required in this section, and has answered all of the woman's questions.

(3) A consent form is not valid and consent is not sufficient, unless:

(a) The patient initials each entry, list, description, or declaration required to be on the consent form, as detailed in subsection (4)(e) of this section;

(b) The patient signs the "consent statement" described in subsection (f) of this section; and

(c) The licensed physician signs the "licensed physician declaration" described in subsection (4)(b) of this section.

(4) Informed consent to a drug-induced abortion must be obtained at least twenty-four (24) hours before the abortion-inducing drug is provided to the pregnant woman, except if in reasonable medical judgment, compliance with this subsection would pose a greater risk of:

(a) The death of the pregnant woman; or

(b) The substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the pregnant woman.

(5) The consent form shall include, but is not limited to, the following:

(a) The probable gestational age as determined by both patient history and by ultrasound results used to confirm gestational age, and expressed in one (1) of the following increments:

(i) Less than nine weeks;

(ii) Nine (9) to ten (10) weeks;

(iii) Eleven (11) to twelve (12) weeks;

(iv) Thirteen (13) to fifteen (15) weeks;

(v) Sixteen (16) to twenty (20) weeks;

(vi) Twenty-one (21) to twenty-four (24) weeks;

(vii) Twenty-five (25) to thirty (30) weeks;

(viii) Thirty-one (31) to thirty-six (36) weeks; or

(ix) Thirty-seven (37) weeks to term.

(b) A detailed description of the steps to complete the drug-induced abortion;

(c) A detailed list of the risks related to the specific abortion-inducing drug or drugs to be used including, but not limited to, hemorrhage (heavy bleeding); failure to remove all tissue of the unborn child which may require an additional procedure; sepsis; sterility; and possible continuation of pregnancy;

(d) Information about Rh incompatibility, including that if the woman has an Rh negative blood type, she should receive an injection of Rh immunoglobulin (brand name RhoGAM) at the time of the abortion to prevent Rh incompatibility in future pregnancies, which can lead to complications and miscarriage in future pregnancies;

(e) That the risks of complications from a nonsurgical (chemical) abortion, including incomplete abortion, increase with advancing gestational age;

(f) That it may be possible to reverse the effects of the nonsurgical abortion should the woman change her mind, but that time is of the essence;

(g) That the woman may see the remains of her unborn child in the process of completing the abortion;

(h) That initial studies suggest that children born after reversing the effects of RU 486/Mifeprex/mifepristone have no greater risk of birth defects than the general population;

(i) That initial studies suggest that there is no increased risk of maternal mortality after reversing the effects of RU 486/Mifeprex/mifepristone;

(j) That information on reversing the effects of abortion-inducing drugs is available from the State Department of Health;

(k) An "acknowledgment of risks and consent statement" must be signed by the patient. The statement must include, but is not limited to, the following declarations, which must be individually initialed by the patient:

(l) That the patient understands that the abortion-inducing drug regimen or procedure is intended to end her pregnancy and will result in the death of her unborn child;

(m) That the patient is not being forced to have an abortion, that she has the choice not to have the abortion, and that she may withdraw her consent to the abortion-inducing drug regimen even after she has begun the abortion-inducing drug regimen;

(n) That the patient understands that the chemical abortion regimen or procedure to be used has specific risks and may result in specific complications;

(o) That the patient has been given the opportunity to ask questions about her pregnancy, the development of her unborn child, alternatives to abortion, the abortion-inducing drug or drugs to be used, and the risks and complications inherent to the abortion-inducing drug or drugs to be used;

(p) That she was specifically told that: "Information on the potential ability of qualified medical professionals to reverse the effects of an abortion obtained through the use of abortion-inducing drugs is available at www.abortionpillreversal.com, or you can contact (877)-558-0333 for assistance in locating a medical professional that can aide in the reversal of an abortion.";

(q) That she has been provided access to state-prepared materials on informed consent for abortion;

(r) If applicable, that she has been given the name and phone number of the associated physician who has agreed to provide

medical care and treatment in the event of complications associated with the abortion-inducing drug regimen or procedure;

(s) That the licensed physician will schedule an in-person follow-up visit for the patient at approximately seven (7) to fourteen (14) days after providing the abortion-inducing drug or drugs to confirm that the pregnancy is completely terminated and to assess the degree of bleeding and other complications;

(t) That the patient has received or been given sufficient information to give her informed consent to the abortion-inducing drug regimen or procedure; and

(u) That the patient has a private right of action to sue the licensed physician under the laws of this state if she feels that she has been coerced or misled prior to obtaining an abortion, and how to access state resources regarding her legal right to obtain relief.

The State Department of Health shall take any and all enforcement and administrative steps appropriate to ensure compliance with this chapter and promulgate any necessary rules and regulations to implement this act.

(6) Forms filed with the Department of Health pursuant to this chapter shall not be deemed public records and shall remain confidential, except that disclosure may be made to law enforcement officials upon an order of a court after application

showing good cause. The court may condition disclosure of the information upon any appropriate safeguards it may impose.

(7) The department or an employee or contractor of the department shall not disclose to a person or entity outside the department in a manner or fashion to permit the person or entity to whom the information is disclosed to identify, in any way or under any circumstances, the identity of the woman who completed the consent form.

(8) Original copies of all consent forms filed under this subsection shall be available to the Mississippi State Board of Medical Licensure for use in the performance of its official duties.

(9) The department shall communicate this consent requirement to all medical professional organizations, licensed physicians, hospitals, emergency rooms, abortion facilities or clinics, rural health clinics and any other government-funded clinics, ambulatory surgical facilities, and other healthcare facilities operating in the state.

SECTION 2. The department shall create the forms required by this act within sixty (60) days after the effective date of this act. No provision of this act requiring the reporting of information on forms published by the department shall be applicable until ten (10) days after the requisite forms are first created or until the effective date of this act, whichever is later. The department shall update forms as needed.

SECTION 3. (1) Any person who willfully discloses confidential identifying information in violation of this chapter, other than disclosure authorized by this act or otherwise authorized by law, shall be guilty of a felony which, upon conviction, shall be punished by imprisonment in the State Penitentiary for not more than three (3) years, or a fine of not more than Five Thousand Dollars ($5,000.00), or both.

(2) Any person who willfully delivers or discloses to the department any record, consent form, or information required pursuant to this act and known by him to be false is guilty of a felony which, upon conviction, shall be punished by imprisonment in the State Penitentiary for not more than three (3) years, or a fine of not more than Five Thousand Dollars ($5,000.00), or both.

(3) Any person required under this act to file a record, consent form, or information required pursuant to this act who willfully fails to file such record, consent form, or information required pursuant to this act, keep such records, or supply such information or forms at the time or times required by law or regulation, is guilty of unprofessional conduct, and his or her professional license shall be subject to suspension or revocation in accordance with procedures provided under the laws of this state.

(4) In addition to the above penalties, any facility that willfully violates any of the requirements of this act shall upon conviction:

(a) Have its license suspended for a period of six (6) months for the first violation.

(b) Have its license suspended for a period of one (1) year for the second violation.

(c) Have its license revoked upon a third or subsequent violation.

SECTION 4. Nothing in this section shall be construed as creating or recognizing a right to abortion or as altering generally accepted medical standards. It is not the intention of this section to make lawful an abortion that is otherwise unlawful. An abortion that complies with this section, but violates any other state law, is unlawful. An abortion that complies with another state law, but violates this section is unlawful.

SECTION 5. (1) It is the intent of the Legislature that every provision of this section shall operate with equal force and shall be severable one from the other and that, in the event that any provision of this section shall be held invalid or unenforceable by a court of competent jurisdiction, said provision shall be deemed severable and the remaining provisions of this act deemed fully enforceable.

(2) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), regarding the context of determining the severability of a state section of law regulating abortion, the United States Supreme Court held that an explicit statement of legislative intent is

controlling. Accordingly, it is the intent of the Legislature that every provision, section, subsection, paragraph, sentence, clause, phrase or word in this section and every application of the provisions in this section is severable from each other. If any application of any provision in this section to any person, group of persons, or circumstances is found by a competent court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this section shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the Legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this statute to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not represent an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the Legislature had enacted a section limited to the persons, group of persons, or circumstances for which the section's application does not present an undue burden. The Legislature further declares that it would have passed this section and each provision, section, subsection, paragraph, sentence, clause, phrase or word, and all constitutional applications of this section, without regard to the fact that any provision, section, subsection, paragraph, sentence, clause, phrase or word, or

applications of this section, were to be declared unconstitutional or to represent an undue burden.

(3) If this section is found by any competent court to be invalid or to impose an undue burden as applied to any person, group of persons, or circumstances, the prohibition shall apply to that person or group of persons or circumstances on the earliest date on which this section can be constitutionally applied.

(4) If any provisions of this section are found by a competent court to be unconstitutionally vague, then the applications of the provision that do not present constitutional vagueness problems shall be severed and remain in force.

SECTION 6. The Legislature, through one or more sponsors of this act duly appointed by resolution of their respective chamber, may intervene as a matter of right in any case in which the constitutionality of this section is challenged. The Governor may also intervene as a matter of right in any case in which the constitutionality of this section is challenged.

SECTION 7. Section 41-41-33, Mississippi Code of 1972, is brought forward as follows:

41-41-33. (1) No abortion shall be performed or induced except with the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(a) The woman is told the following by the physician who is to perform or induce the abortion or by the referring physician, orally and in person, at least twenty four (24) hours before the abortion:

(i) The name of the physician who will perform or induce the abortion;

(ii) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage and breast cancer, and the danger to subsequent pregnancies and infertility;

(iii) The probable gestational age of the unborn child at the time the abortion is to be performed or induced; and

(iv) The medical risks associated with carrying her child to term.

(b) The woman is informed, by the physician or his agent, orally and in person, at least twenty four (24) hours before the abortion:

(i) That medical assistance benefits may be available for prenatal care, childbirth and neonatal care;

(ii) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion;

(iii) That there are available services provided by public and private agencies which provide pregnancy prevention

counseling and medical referrals for obtaining pregnancy prevention medications or devices; and

(iv) That she has the right to review the printed materials described in Section 41-41-35(1)(a), (b) and (c). The physician or his agent shall orally inform the woman that those materials have been provided by the State of Mississippi and that they describe the unborn child and list agencies that offer alternatives to abortion. If the woman chooses to view those materials, copies of them shall be furnished to her. The physician or his agent may disassociate himself or themselves from those materials, and may comment or refrain from comment on them as he chooses. The physician or his agent shall provide the woman with the printed materials described in Section 41-41-35(1)(d).

(c) The woman certifies in writing before the abortion that the information described in paragraphs (a) and (b) of this section has been furnished to her, and that she has been informed of her opportunity to review the information referred to in subparagraph (iv) of paragraph (b) of this section.

(d) Before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the written certification prescribed by this section.

(2) The State Department of Health shall enforce the provisions of Sections 41-41-31 through 41-41-39 at abortion facilities, as defined in Section 41-75-1.

SECTION 8. This act shall take effect and be in force from and after July 1, 2022.

ST: Abortion-inducing pill; regulate with required consent.