MISSISSIPPI LEGISLATURE REGULAR SESSION 2022

By: Representatives Gunn, Eubanks

To: Public Health and Human Services

HOUSE BILL NO. 1511

AN ACT TO BE KNOWN AS "THE ABORTION COMPLICATIONS ACT OF 2022"; TO MAKE CERTAIN FINDINGS AND DECLARATIONS OF THE LEGISLATURE REGARDING ABORTIONS AND ABORTION COMPLICATION REPORTING PROVISIONS; TO STATE THAT THE PURPOSE OF THIS ACT IS TO PROMOTE THE HEALTH AND SAFETY OF WOMEN, BY ADDING TO THE SUM OF MEDICAL AND PUBLIC HEALTH KNOWLEDGE THROUGH THE COMPILATION OF RELEVANT DATA ON ALL ABORTIONS PERFORMED OR TREATED IN THE STATE, AS WELL AS ON ALL MEDICAL COMPLICATIONS AND MATERNAL DEATHS RESULTING FROM THESE ABORTIONS; TO PROVIDE THAT REPORTS OF EACH ABORTION PERFORMED SHALL BE MADE TO THE DEPARTMENT OF HEALTH AND TO PRESCRIBE THE INFORMATION TO BE INCLUDED IN THE REPORTS; TO REQUIRE THAT CERTAIN ADDITIONAL INFORMATION SHALL BE INCLUDED IN REPORTS FOR NONSURGICAL ABORTIONS; TO PROVIDE THAT THOSE REPORTS SHALL NOT CONTAIN ANY INFORMATION OR IDENTIFIERS THAT WOULD MAKE IT POSSIBLE TO IDENTIFY A WOMAN WHO HAS OBTAINED OR SEEKS TO OBTAIN AN ABORTION; TO REQUIRE HEALTH CARE FACILITIES AND PHYSICIANS TO FILE REPORTS WITH THE DEPARTMENT REGARDING EACH WOMAN WHO COMES UNDER THE FACILITY OR PHYSICIAN'S CARE AND REPORTS ANY COMPLICATION, REQUIRES MEDICAL TREATMENT, OR SUFFERS DEATH THAT IS A PRIMARY, SECONDARY OR OTHERWISE RELATED RESULT OF AN ABORTION; TO PRESCRIBE THE CONTENTS OF THOSE ABORTION COMPLICATION REPORTS; TO PROVIDE THAT THOSE REPORTS SHALL NOT CONTAIN ANY INFORMATION OR IDENTIFIERS THAT WOULD MAKE IT POSSIBLE TO IDENTIFY A WOMAN WHO HAS OBTAINED AN ABORTION AND SUBSEQUENTLY SUFFERED AN ABORTION-RELATED COMPLICATION; TO PROVIDE THAT THE DEPARTMENT SHALL PREPARE A COMPREHENSIVE ANNUAL STATISTICAL REPORT FOR THE LEGISLATURE BASED UPON THE DATA GATHERED FROM THE REPORTS REQUIRED UNDER THIS ACT, AND SUMMARIZE AGGREGATE DATA FROM THE REPORTS AND SUBMIT THE DATA TO THE UNITED STATES CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC) FOR THE PURPOSE OF INCLUSION IN THE ANNUAL VITAL STATISTICS REPORT; TO PROVIDE THAT THE REPORTS REQUIRED UNDER THIS ACT SHALL NOT BE DEEMED PUBLIC RECORDS AND SHALL REMAIN CONFIDENTIAL EXCEPT AS AUTHORIZED UNDER THIS ACT; TO PROVIDE THAT THE DEPARTMENT SHALL CREATE THE FORMS TO BE USED FOR THE REPORTS

REQUIRED UNDER THIS ACT; TO PROVIDE THAT ABORTION-INDUCING DRUGS SHALL NOT BE PROVIDED WITHOUT THE INFORMED CONSENT OF THE WOMAN TO WHOM THE ABORTION-INDUCING DRUG IS PROVIDED AT LEAST 24 HOURS BEFORE THE ABORTION-INDUCING DRUG IS PROVIDED TO THE WOMAN; TO PROVIDE CRIMINAL PENALTIES FOR WILLFULLY DISCLOSING CONFIDENTIAL IDENTIFYING INFORMATION IN VIOLATION OF THIS ACT OR WILLFULLY DELIVERING OR DISCLOSING TO THE DEPARTMENT ANY REPORT, CONSENT FORM OR INFORMATION REQUIRED UNDER THIS ACT THAT IS KNOWN TO BE FALSE; TO AMEND SECTION 41-41-31, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF "ABORTION" FOR THE PURPOSE OF THE ABORTION CONSENT STATUTES; TO BRING FORWARD SECTIONS 41-41-77, 41-41-78, 41-41-107 AND 41-41-109, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR REPORTS RELATING TO ABORTION AND WHICH RELATE TO ABORTION-INDUCING DRUGS, FOR THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

SECTION 1. This act shall be known and may be cited as "The Abortion Complications Act of 2022."

SECTION 2. The Legislature finds and declares the following:

(a) The state "has legitimate interests from the outset of pregnancy in protecting the health of women." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 847 (1992).

(b) Specifically, the state "has a legitimate concern with the health of women who undergo abortions." *Akron v. Akron Ctr. for Reproductive Health, Inc.,* 462 U.S. 416, 428-29 (1983).

(c) In at least two (2) separate decisions, the United States Supreme Court has upheld the constitutionality of laws requiring reporting on abortions: In 1974 in *Planned Parenthood of Central Missouri v. Danforth* and in 1992 in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.

(d) Surgical and nonsurgical (chemical) abortion is an invasive procedure that can cause severe, short-term and long-term

physical and psychological complications for women, including, but not limited to: uterine perforation, cervical laceration, infection, bleeding, vaginal bleeding that qualifies as a Grade 2 or higher adverse event according to the Common Terminology Criteria for Adverse Events (CTCAE), pulmonary embolism, deep vein thrombosis, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, shock, amniotic fluid embolism, coma, placenta previa in subsequent pregnancies, preterm delivery in subsequent pregnancies, free fluid in the abdomen, allergic reaction to anesthesia or abortion-inducing drugs, an increased risk for developing breast cancer, psychological or emotional complications such as depression, suicidal ideation, anxiety, sleeping disorders, and death.

(e) In addition, the use of RU-486 (mifepristone) as part of a nonsurgical abortion can cause significant medical risks including, but not limited to, abdominal pain, cramping, vomiting, headache, fatigue, uterine hemorrhage, infections and pelvic inflammatory disease; and studies document that increased rates of complications, including incomplete abortion, occur even within the gestational limit approved by the United States Food and Drug Administration (FDA).

(f) To facilitate reliable scientific studies and research on the safety and efficacy of abortion, it is essential

that the medical and public health communities have access to accurate information both on abortion procedures and on complications resulting from each type of abortion.

(g) Abortion "record keeping and reporting provisions that are reasonably directed to the preservation of maternal health and that properly respect a patient's confidentiality and privacy are permissible." *Planned Parenthood v. Danforth,* 428 U.S. 80 at 52, 79-81 (1976).

(h) Abortion and complication reporting provisions do not impose an "undue burden" on a woman's right to choose whether to terminate a pregnancy. Specifically, "The collection of information with respect to actual patients is a vital element of medical research, and so it cannot be said that the requirements serve no purpose other than to make abortions more difficult." *Planned Parenthood v. Casey,* 505 U.S. 833 at 900-901 (1992).

(i) To promote its interest in maternal health and life, the State of Mississippi maintains an interest in:

(i) Collecting certain demographic information on all abortions performed, completed, or treated in the state;

(ii) Collecting information on all complications from all abortions performed, completed, or treated in the state;

(iii) Compiling statistical reports based on abortion complication information collected pursuant to this act for future scientific studies and public health research, and to assist women in the state to make informed decisions; and

(iv) Monitoring and protecting the health of Mississippi women and administering the expenditure of health care funds in a fiscally responsible way.

(j) Based on these findings, it is the purpose of this act to promote the health and safety of women, by adding to the sum of medical and public health knowledge through the compilation of relevant data on all abortions performed or treated in the state, as well as on all medical complications and maternal deaths resulting from these abortions.

SECTION 3. As used in this act, the following terms shall be defined as provided in this section:

(a) "Abortion" has the meaning as defined in Section 41-41-31.

(b) "Abortion complication" means the following physical or psychological conditions that, in the reasonable medical judgment of a licensed health care professional, arise as a primary, secondary or otherwise related result of an induced abortion: uterine perforation, cervical laceration, infection, sepsis, bleeding, hemorrhage, vaginal bleeding that qualifies as a Grade 2 or higher adverse event according to the Common Terminology Criteria for Adverse Events (CTCAE), pulmonary embolism, deep vein thrombosis, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, death, shock,

amniotic fluid embolism, coma, free fluid in the abdomen, allergic reactions to anesthesia and abortion-inducing—drugs, psychological complications as diagnosed that are listed in the current Diagnostic and Statistical Manual (DSM) and any related complication arising under the following International Classification of Diseases (ICD) 10 codes: O04.2, O04.5, O04.6, O04.7, O04.80, O04.81, O04.82, O04.84, O04.86, O04.87, O04.88, O07.0, O07.1, O07.2, O07.34, O07.38 and P04.88.

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

(d) "Facility" means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician's office, infirmary, dispensary, pharmacy, ambulatory surgical center, or other institution or location in which medical care is provided to any person.

(e) "Hospital" means any institution licensed as a hospital under the laws of this state.

(f) "Physician" means any person licensed to practice medicine in this state. The term includes medical doctors and doctors of osteopathy.

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

SECTION 4. (1) For the purpose of promoting maternal health and adding to the sum of medical and public health knowledge through the compilation of relevant data, a report of each

abortion performed shall be made to the department on forms prescribed by it. The reports shall be completed by the hospital or other facility in which the abortion occurred, or the abortion-inducing drug was prescribed and/or administered, signed by the physician who performed the abortion, and transmitted to the department within fifteen (15) days after each reporting month.

(2) Each report shall include, at minimum, the following information:

(a) Identification of the physician, by name, license number and medical specialty, who performed the abortion, the facility where the abortion was performed, and the referring physician, agency, or service, if any;

(b) The county and state in which the woman resides;

(c) The woman's age, race and marital status;

(d) The number of the woman's previous pregnancies, number of live births, and number of previous induced abortions;

(e) The date of the first day of the woman's last menstrual period that occurred before the date of the abortion and the probable gestational age of the unborn child expressed in one (1) of the following increments: (i) less than nine (9) 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;

(f) The specific reason for the abortion, including, but not limited to, the following: (i) the pregnancy was a result of rape; (ii) the pregnancy was a result of incest; (iii) economic reasons; (iv) the woman does not want children at this time; (v) the woman's spouse, partner or other family member does not want children at this time; (vi) the woman's emotional health is at stake; (vii) the woman's physical health is at stake; (viii) the woman will suffer substantial and irreversible impairment of a major bodily function if the pregnancy continues; (ix) the pregnancy resulted in fetal anomalies; or (x) unknown or the woman refused to answer;

(g) The amount billed to cover the abortion and whether the abortion was paid for by: (i) private coverage; (ii) Medicaid; (iii) other public assistance health coverage; or (iii) self-pay; and whether coverage was under a fee-for-service plan, a capitated private plan or other plan;

(h) The type of procedure performed or prescribed;

(i) The methods used to dispose of the fetal tissue and remains;

(j) The date of the abortion;

(k) Preexisting medical condition(s) of the woman that would complicate her pregnancy, if any; and

(l) Whether any post-abortion follow-up visit was scheduled or required and, if so, whether the woman refused or failed to attend such follow-up visit.

(3) A report for a nonsurgical abortion shall also include the following information:

(a) The abortion-inducing drug or drugs used and the date each was provided to the pregnant woman;

(b) The serial or lot number and expiration date for each abortion-inducing drug prescribed or administered;

(c) Identification of the provider or source who gave, sold, dispensed, administered, or otherwise provided or prescribed the abortion-inducing drug;

(d) Whether the nonsurgical abortion was completed at the hospital or facility in which the abortion-inducing drug was provided, or at an alternative location;

(e) The probable gestational age of the unborn child as determined by both patient history and by ultrasound results used to confirm the gestational age, and the date of the ultrasound and gestational age determined on that date;

(f) Whether the woman returned for a follow-up examination to determine completion of the abortion procedure and to assess bleeding and the date and results of any such follow-up examination, and what reasonable efforts were made by the physician to encourage that she return for a follow-up examination if she did not; and

(g) Whether the woman suffered any abortion complications and the specific abortion complication(s).

(4) Reports required under section shall not contain:

(a) The name of the woman;

(b) Common identifiers such as the woman's social security number or motor vehicle operator's license number; or

(c) Other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who has obtained or seeks to obtain an abortion.

(5) Every hospital or other facility in which an abortion is performed or completed within this state during any quarter year shall file with the department a report showing the total number of abortions performed within the hospital or other facility during that quarter year. This report shall also show the total number of abortions performed expressed in one (1) of the following increments: (i) less than nine (9) 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. These reports shall be submitted on a form prescribed by the department that will enable a hospital or other facility to indicate whether it is receiving any state-appropriated funds. The reports shall be available for public inspection and copying

only if the hospital or other facility receives state-appropriated funds within the twelve (12) calendar-month period immediately preceding the filing of the report. If the hospital or other facility indicates on the form that it is not receiving state-appropriated funds, the department shall regard that hospital or other facility's report as confidential unless it receives other evidence that causes it to conclude that the hospital or facility receives state-appropriated funds.

(6) The department shall prepare a comprehensive annual statistical report for the Legislature based upon the data gathered from reports under this section. The statistical report shall not lead to the disclosure of the identity of any physician or person filing a report under this section nor of any woman who is the subject of the report. The aggregated data shall also be made independently available to the public by the department in a downloadable format, accessible on the department's website, by July 1 each year.

(7) The department shall summarize aggregate data from the reports required under this act and submit the data to the United States Centers for Disease Control and Prevention (CDC) for the purpose of inclusion in the annual Vital Statistics Report. The aggregated data shall also be made independently available to the public by the department in a downloadable format.

(8) Absent a valid court order or judicial subpoena, the department, any other state department, agency or office, or any

employees thereof shall not compare data concerning abortions or abortion complications maintained in an electronic or other information system file with data in any other electronic or other information system, the comparison of which could result in identifying, in any manner or under any circumstances, a woman obtaining or seeking to obtain an abortion.

(9) Statistical information that may reveal the identity of a woman obtaining or seeking to obtain an abortion shall not be maintained by the department, any other state department, agency, office, or any employee or contractor thereof.

(10) The department or an employee or contractor of the department shall not disclose to a person or entity outside the department the reports or the contents of the reports required under this section, in a manner or fashion to permit the person or entity to whom the report is disclosed to identify, in any way or under any circumstances, the woman who is the subject of the report.

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

(12) The department shall communicate the reporting requirements in this section 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 health care facilities operating in the state.

SECTION 5. (1) A hospital, health care facility, or individual physician shall file a written report with the department regarding each woman who comes under the hospital, health care facility, or physician's care and reports any complication, requires medical treatment, or suffers death that the attending physician, hospital staff, or facility staff has reason to believe is a primary, secondary or otherwise related result of an abortion. The reports shall be completed by the hospital, health care facility, or attending physician who treated the woman, signed by the attending physician, and transmitted to the department within thirty (30) days of the discharge or death of the woman treated for the complication.

(2) Each report of a complication, medical treatment, or death following abortion required under this section shall contain, at minimum, the following information:

(a) The date the woman presented for treatment;

(b) The age, race, marital status, and education of the woman;

(c) The county and state in which the woman resides;

(d) The number of previous pregnancies, number of live births, number of living children, and number of previous induced abortions of the woman;

(e) The date the abortion was performed and the type or method of abortion;

(f) The date of the first day of the woman's last menstrual period that occurred before the date of the abortion and the probable gestational age of the unborn child expressed in one (1) of the following increments: (i) less than nine (9) 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;

(g) Identification of the physician who performed the abortion, the facility where the abortion was performed, and the referring physician, agency, or service, if any;

(h) Whether the physician filing the report performed or induced the abortion;

(i) The specific complication(s) that led to the treatment, including the following physical or psychological conditions which, in the reasonable medical judgment of a licensed healthcare professional, arise as a primary, secondary or otherwise related result of an induced abortion: uterine perforation, cervical laceration, infection, sepsis, bleeding, hemorrhage, vaginal bleeding that qualifies as a Grade 2 or higher adverse event according to the Common Terminology Criteria for

Adverse Events (CTCAE), pulmonary embolism, deep vein thrombosis, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, death, shock, amniotic fluid embolism, coma, free fluid in the abdomen, allergic reactions to anesthesia and abortion-inducing—drugs, psychological complications as diagnosed that are listed in the current Diagnostic and Statistical Manual (DSM) and any related complication arising under the following ICD 10 codes: O04.2, O04.5, O04.6, O04.7, O04.80, O04.81, O04.82, O04.84, O04.86, O04.87, O04.88, O07.0, O07.1, O07.2, O07.34, O07.38 and P04.88;

(j) The amount billed to cover the treatment of for specific complications, including whether the treatment was paid for by (i) private coverage; (ii) Medicaid; (iii) other public assistance health coverage; or (iii) self-pay. This should include ICD-10 diagnosis code(s) reported, any other treatment or procedure codes reported, charges for any physician, hospital, emergency room, prescription or other drugs, laboratory tests, and any other costs for treatment rendered;

(k) Whether the patient obtained abortion-inducing drugs via mail order or Internet website, and, if so, information identifying the name of the source, URL address, or provider;

(l) Whether any post-abortion follow-up visit was scheduled or required and, if so, whether the woman refused or failed to attend such follow-up visit;

(m) The type of follow-up care, if any, provided or anticipated by the hospital, healthcare facility, or individual physician filing the report;

(n) Whether the woman was referred to a hospital, emergency department, or urgent care clinic or department for treatment for any abortion complication; and

(o) Whether the woman received treatment from any other medical practitioner for the specific complication and, if so, when such previous treatment occurred, and the medical practitioner or practitioners who provided the treatment.

(3) Reports required under this section shall not contain:

(a) The name of the woman;

(b) Common identifiers such as her social security number or motor vehicle operator's license number; or

(c) Other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who has obtained an abortion and subsequently suffered an abortion-related complication.

(4) The department shall prepare a comprehensive annual statistical report for the Legislature based upon the data gathered from reports under this subsection. The statistical report shall not lead to the disclosure of the identity of any

physician or person filing a report under this subsection nor of a woman about whom a report is filed. The aggregated data shall also be made independently available to the public by the department in a downloadable format.

(5) The department shall summarize aggregate data from the reports required under this act and submit the data to the United States Centers for Disease Control and Prevention (CDC) for the purpose of inclusion in the annual Vital Statistics Report. The aggregated data shall also be made independently available to the public by the department in a downloadable format.

(6) Reports filed under this section 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) Absent a valid court order or judicial subpoena, the department, any other state department, agency or office, or any employees or contractors thereof shall not compare data concerning abortions or abortion complications maintained in an electronic or other information system file with data in any other electronic or other information system, a comparison of which could result in identifying, in any manner or under any circumstances, a woman obtaining or seeking to obtain an abortion, unless the abortion is

on a minor girl who the physician or health care professional has cause to believe has been abused.

(8) Statistical information that may reveal the identity of a woman obtaining or seeking to obtain an abortion shall not be maintained by the department, any other state department, agency, office, or any employee or contractor thereof.

(9) The department or an employee or contractor of the department shall not disclose to a person or entity outside the department the reports or the contents of the reports required under this subsection in a manner or fashion to permit the person or entity to whom the report is disclosed to identify, in any way or under any circumstances, the person filing the complication report or the woman who is the subject of the report.

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

(11) The department shall communicate this reporting 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 health care facilities operating in the state.

SECTION 6. 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 to reflect changes to diagnostic and reimbursement coding classifications.

SECTION 7. (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 shall be used by a licensed physician to obtain the consent required before 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 (5) of this section;

(b) The patient signs the "consent statement" described in subsection (6) of this section; and

(c) The licensed physician signs the "licensed physician declaration" described in subsection (2) 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 (9) 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; and

(j) That information on reversing the effects of abortion-inducing drugs is available from the department.

(6) 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:

(a) 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;

(b) 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;

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

(d) 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;

(e) 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.";

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

(g) 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;

(h) 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;

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

(j) 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 before obtaining an

abortion, and how to access state resources regarding her legal right to obtain relief.

(7) The department shall take any and all enforcement and administrative steps appropriate to ensure compliance with this section and promulgate any necessary rules and regulations to implement this act.

SECTION 8. (1) Any person who willfully discloses confidential identifying information in violation of this act, other than disclosure authorized by this act or otherwise authorized by law, is guilty of a felony which, upon conviction, shall be punished by commitment to the Department of Corrections 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 report, record, consent form, or information required under this act and known by him or her to be false is guilty of a felony which, upon conviction, shall be punished by commitment to the Department of Corrections 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 report, keep any records, or supply any information or forms who willfully fails to file such report, 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 Section 73-25-29 or other applicable provision of law.

(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 9. Section 41-41-31, Mississippi Code of 1972, is amended as follows:

41-41-31. The following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance *** * ***, device *** * *** or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription or means is not an abortion if done with the intent to:

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

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

(iii) Remove an ectopic pregnancy.

(b) "Medical emergency" means that condition which, on the basis of the physician's best clinical judgment, so complicates a pregnancy as to necessitate an immediate abortion to avert the death of the mother or for which a twenty-four-hour delay will create grave peril of immediate and irreversible loss of major bodily function.

(c) "Probable gestational age of the unborn child" means what, in the judgment of the attending physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.

SECTION 10. Section 41-41-77, Mississippi Code of 1972, is brought forward as follows:

41-41-77. (1) A physician shall file a written report with the State Department of Health regarding each patient who comes under the physician's professional care and requires medical treatment or suffers death that the attending physician has a reasonable basis to believe is a primary, secondary, or tertiary result of an induced abortion.

(2) These reports shall be submitted within thirty (30) days of the discharge or death of the patient treated for the complication.

(3) The department shall summarize aggregate data from the reports required under this section for purposes of inclusion into the annual Vital Statistics Report.

(4) The department shall develop and distribute or make available online in a downloadable format a standardized form for the report required under this section.

(5) The department shall communicate this reporting requirement to all medical professional organizations, licensed physicians, hospitals, emergency rooms, abortion facilities, Department of Health clinics and ambulatory surgical facilities operating in the state.

(6) The department shall destroy each individual report required by this section and each copy of the report after retaining the report for five (5) years after the date the report is received.

(7) The report required under this section shall not contain the name of the woman, common identifiers such as her social security number or motor vehicle operator's license number or other information or identifiers that would make it possible to identify in any manner or under any circumstances an individual who has obtained or seeks to obtain an abortion. A state agency shall not compare data in an electronic or other information

system file with data in another electronic or other information system that would result in identifying in any manner or under any circumstances an individual obtaining or seeking to obtain an abortion. Statistical information that may reveal the identity of a woman obtaining or seeking to obtain an abortion shall not be maintained.

(8) The department or an employee of the department shall not disclose to a person or entity outside the department the reports or the contents of the reports required under this section in a manner or fashion as to permit the person or entity to whom the report is disclosed to identify in any way the person who is the subject of the report.

(9) Disclosure of confidential identifying information in violation of this section shall constitute 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.

SECTION 11. Section 41-41-78, Mississippi Code of 1972, is brought forward as follows:

41-41-78. (1) Each report of medical treatment following abortion required under Section 41-41-77 shall contain the following information:

(a) The age and race of the patient;

(b) The characteristics of the patient, including residency status, county of residence, marital status, education,

number of previous pregnancies, number of stillbirths, number of living children and number of previous abortions;

(c) The date the abortion was performed and the method used if known;

(d) The type of facility where the abortion was performed;

(e) The condition of the patient that led to treatment, including, but not limited to, pelvic infection, hemorrhage, damage to pelvic organs, renal failure, metabolic disorder, shock, embolism, coma or death.

(f) The amount billed to cover the treatment of the complication, including whether the treatment was billed to Medicaid, insurance, private pay or other method. This should include charges for physician, hospital, emergency room, prescription or other drugs, laboratory tests and any other costs for the treatment rendered.

(g) The charges are to be coded with IDC-9 classification numbers in such a way as to distinguish treatment following induced abortions from treatments following ectopic or molar pregnancies.

(2) Nothing in Sections 41-41-75 through 41-41-80 shall be construed as an instruction to discontinue collecting data currently being collected.

SECTION 12. Section 41-41-107, Mississippi Code of 1972, is brought forward as follows:

41-41-107. (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 13. Section 41-41-109, Mississippi Code of 1972, is brought forward as follows:

41-41-109. (1) If a physician provides an abortion-inducing drug to another for the purpose of inducing an abortion as authorized in Section 41-41-107:

(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 14. Nothing in this act shall be construed as an instruction to discontinue collecting data currently being collected or to preclude voluntary or required submission of other reports or forms regarding abortion complications.

SECTION 15. The Attorney General shall have authority to bring an action in law or equity to enforce the provisions of this act on behalf of the department or the State Board of Medical Licensure. The State Board of Medical Licensure shall also have authority to bring such action on its own behalf.

SECTION 16. Nothing in this act 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 act to make lawful an abortion that is otherwise unlawful. An abortion that complies with this act, but violates any other state law, is unlawful. An abortion that complies with another state law, but violates this section is unlawful.

SECTION 17. (1) It is the intent of the Legislature that every provision of this act shall operate with equal force and shall be severable one from the other and that, if any provision of this act is held invalid or unenforceable by a court of competent jurisdiction, that 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 act and every application of the provisions in this act is severable from each other. If any application of any provision in this act 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 act 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 act 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 act and each provision, section, subsection, paragraph, sentence, clause, phrase or word, and all constitutional applications of this act, without regard to the fact that any provision, section, subsection, paragraph, sentence, clause, phrase or word, or applications of this act, were to be declared unconstitutional or to represent an undue burden.

(3) If this act 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 act can be constitutionally applied.

(4) If any provisions of this act 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 18. The Legislature, through one (1) 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 act is challenged. The Governor may also intervene as a matter of right in any case in which the constitutionality of this act is challenged.

SECTION 19. This act shall take effect and be in force from and after July 1, 2022.