**A** **BILL**

TO AMEND SECTION 44–41–10 OF THE 1976 CODE, RELATING TO ABORTIONS, TO PROVIDE DEFINITIONS PERTAINING TO ABORTION‑INDUCING DRUGS; AND TO AMEND CHAPTER 41, TITLE 44 OF THE 1976 CODE, RELATING TO ABORTIONS, BY ADDING SECTION 44–41–90, TO PROVIDE THAT IT SHALL BE UNLAWFUL TO KNOWINGLY PRESCRIBE ANY ABORTION‑INDUCING DRUG TO A PREGNANT WOMAN FOR THE PURPOSE OF INDUCING AN ABORTION, EXCEPT UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT ANY PHYSICIAN PROVIDING AN ABORTION‑INDUCING DRUG TO A PREGNANT WOMAN SHALL EXAMINE THE WOMAN FIRST AND PROVIDE HER WITH A COPY OF THE DRUG’S LABEL, TO PROVIDE THAT A PHYSICIAN PRESCRIBING THE DRUG MUST HAVE A SIGNED CONTRACT WITH A PHYSICIAN WHO AGREES TO TREAT ANY COMPLICATIONS THAT MAY ARISE, TO PROVIDE THAT THE PHYSICIAN PRESCRIBING THE DRUG SHALL SCHEDULE A FOLLOW‑UP VISIT WITH THE PREGNANT WOMAN WITHIN FOURTEEN DAYS, TO PROVIDE THAT THE PHYSICIAN PRESCRIBING THE DRUG MUST PROVIDE A WRITTEN REPORT WITHIN THREE DAYS IF AN ADVERSE EVENT OCCURS, AND TO PROVIDE FOR CRIMINAL AND CIVIL PENALTIES FOR VIOLATIONS OF THIS SECTION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 44–41–10 of the 1976 Code is amended by adding:

“(p) ‘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, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes off‑label use of drugs known to have abortion‑inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol (Cytotec), and methotrexate. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications, including, but not limited to, chemotherapeutic agents or diagnostic drugs. Use of such drugs to induce abortion is also known as ‘medical’, ‘drug‑induced’, and/or ‘chemical abortion’.

(q) ‘Final printed labeling (FPL)’ means the Food and Drug Association‑approved informational document for an abortion‑inducing drug which outlines the protocol authorized by the FDA and agreed upon by the drug company applying for Food and Drug Administration (FDA) authorization of that drug.

(r) ‘LMP’ or ‘gestational age’ means the time that has elapsed since the first day of the woman’s last menstrual period.

(s) ‘Mifeprex regimen’ means the abortion‑inducing drug regimen that involves administration of mifepristone (brand name ‘Mifeprex’) and misoprostol. It is the only abortion‑inducing drug regimen approved by the Food and Drug Administration. It is also known as the ‘RU‑486 regimen’ or simply ‘RU‑486’.

(t) ‘Mifepristone’ means the first drug used in the Mifeprex regimen.

(u) ‘Misoprostol’ means the second drug used in the Mifeprex regimen.

(v) ‘Provide or prescribe’ shall include give, sell, dispense, or administer.”

SECTION 2. Chapter 41, Title 44 of the 1976 Code is amended by adding:

“Section 44‑41‑90. (A) It shall be 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 or enabling another person to induce an abortion in a 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 protocol authorized by the United States Food and Drug Administration (FDA), as outlined in the final printed labeling (FPL) for the drug or drug regimen. In the case of the Mifeprex regimen, the Mifeprex label includes the FDA‑approved dosage and administration instructions for both mifepristone (Mifeprex) and misoprostol.

(B) Because the failure and complication rates from medical abortion increase with advancing 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 providing or prescribing the abortion‑inducing drug must first examine the woman and document, in the woman’s medical chart, gestational age and intrauterine location of the pregnancy prior to providing the abortion‑inducing drug.

(C) Every pregnant woman to whom a physician provides or prescribes any abortion‑inducing drug shall be provided with a copy of the drug’s label.

(D) The physician providing or prescribing the abortion‑inducing drug must have a signed contract with a physician who agrees to treat complications and must be able to produce that signed contract on demand by the patient or by the department. The physician who contracts to treat emergencies must have active admitting privileges and gynecological or surgical privileges at a hospital designated to treat any emergencies associated with the use or ingestion of the abortion‑inducing drug. Every pregnant woman to whom a physician provides or prescribes any abortion‑inducing drug shall receive the name and phone number of the contracted physician and the hospital at which that physician maintains admitting privileges can treat any emergencies.

(E) The physician 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 days after administration of the abortion‑inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding. The physician or agent of the physician shall make all reasonable efforts to ensure that the woman returns for the scheduled appointment. A brief description of the efforts made to comply with this subsection, including the date, time, and identification by name of the person making the efforts, shall be included in the woman’s medical record.

(F) If a physician provides or prescribes an abortion‑inducing drug to another for the purpose of inducing an abortion as authorized in section (A), and if the physician knows that the woman who uses the abortion‑inducing drug for the purpose of inducing an abortion experiences an adverse event during or after the drug’s use, the physician shall provide a written report of the adverse event within three days of the event to the FDA via the Medwatch Reporting System and to the State Medical Board. An ‘adverse event’ shall be defined for purposes of this section according to the FDA criteria given in the Medwatch Reporting System.

(G) A person who knowingly violates any provision of this section is guilty of a felony and, upon conviction, shall be punished by imprisonment for a term of not less than two nor more than five years or fined not more than five thousand dollars, or both. Provided, that the provisions of this item shall not apply to any woman upon whom an abortion has been attempted or performed.

(H) In addition to whatever remedies are available under the common or statutory law of this State, failure to comply with the requirements of this section shall:

(1) provide a basis for a civil malpractice action for actual and punitive damages;

(2) provide a basis for a professional disciplinary action; and

(3) provide a basis for recovery for the woman’s survivors for the wrongful death of the woman.

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

(J) When requested, the court 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.

(K) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for a reasonable attorney’s fee in favor of the plaintiff against the defendant. If 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 also render judgment for reasonable attorney’s fee in favor of the defendant against the plaintiff.”

SECTION 3. If any provision, word, phrase, or clause of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses, or applications of this act which can be given effect without the invalid provision, word, phrase, clause, or application, and, to this end, the provisions, words, phrases, and clauses of this act are declared to be severable.

SECTION 4. This act takes effect upon approval by the Governor.

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