

Amendment No. 1 to SB2281

Bell

Signature of Sponsor

AMEND Senate Bill No. 2281

House Bill No. 2416*

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 63-6-241, is amended by deleting the section.

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 6, is amended by adding the following as a new part:

63-6-1101. Short title.

This part is known and may be cited as the "Tennessee Abortion-Inducing Drug Risk Protocol Act."

63-6-1102. Part definitions.

As used in this part:

(1) "Abortion":

(A) Means the elective use or prescription of an instrument, medicine, drug, or other substance, or device, with the intent to terminate the clinically diagnosable pregnancy of a patient, with knowledge that the

termination by those means will, with reasonable likelihood, cause the death of the unborn child; and

(B) Does not mean an act to terminate a pregnancy 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;
- (iii) Remove an ectopic pregnancy; or
- (iv) Treat a maternal disease or illness for which the prescribed drug is indicated;

(2) "Abortion-inducing drug" or "chemical abortion":

(A) Means a medicine, drug, or other substance provided with the intent of terminating the clinically diagnosable pregnancy of a patient, with knowledge that the termination will, with reasonable likelihood, cause the death of the unborn child;

(B) Includes the off-label use of drugs known to have abortion-inducing properties that are prescribed specifically with the intent of causing an abortion, such as mifepristone, misoprostol, and methotrexate; and

(C) Does not include drugs that may be known to cause an abortion that are prescribed for other medical indications;

(3) "Adverse event" means an untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug related;

(4) "Associated physician" means an individual licensed, and in good standing, to practice medicine in this state pursuant to chapter 6 or 9 of this title and who has entered into an associated physician agreement pursuant to § 63-6-1104(b);

(5) "Complication" means an adverse physical or psychological condition arising from the performance of an abortion, including, but not limited to, uterine perforation; cervical perforation; infection; heavy or uncontrolled bleeding; hemorrhage; blood clots resulting in pulmonary embolism or deep vein thrombosis; failure to actually terminate the pregnancy; incomplete abortion; pelvic inflammatory disease; endometritis; missed ectopic pregnancy; cardiac arrest; respiratory arrest; renal failure; metabolic disorder; shock; embolism; coma; placenta previa in subsequent pregnancies; preterm delivery in subsequent pregnancies; free fluid in the abdomen; hemolytic reaction due to the administration of ABO-incompatible blood or blood products; adverse reactions to anesthesia and other drugs; subsequent development of breast cancer; death; psychological complications, such as depression, suicidal ideation, anxiety, and sleeping disorders; and other adverse events;

(6) "Department" means the department of health;

(7) "Facility" means a public or private hospital, clinic, center, medical school, medical training institution, healthcare business, physician's office, infirmary, dispensary, ambulatory surgical center, or other institution, location, or business where medical care or pharmaceuticals are provided to individuals;

(8) "Hospital" has the same meaning as defined by § 68-11-201;

(9) "Last menstrual period" means the time that has elapsed since the first day of the patient's last menstrual period;

(10) "Physician" means an individual licensed, and in good standing, to practice medicine in this state pursuant to chapter 6 or 9 of this title;

(11) "Pregnant" or "pregnancy" means the female reproductive condition of having an unborn child in the patient's uterus;

(12) "Provide" means an act of giving, selling, dispensing, administering, transferring possession to, or otherwise providing or prescribing, an abortion-inducing drug;

(13) "Qualified physician" means a physician who has the ability to:

(A) Identify and document a viable intrauterine pregnancy;

(B) Assess the gestational age of pregnancy and inform the patient of gestational age-specific risks;

(C) Diagnose ectopic pregnancy;

(D) Determine blood type and administer RhoGAM if a patient is Rh negative;

(E) Assess for signs of domestic abuse, reproductive control, human trafficking, and other signals of coerced abortion;

(F) Provide surgical intervention, or has entered into a contract with another qualified physician to provide surgical intervention; and

(G) Supervise and bear legal responsibility for an agent, employee, or contractor who is participating in any part of a procedure, including, but not limited to, preprocedure evaluation and care;

(14) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician knowledgeable about the patient's case and the treatment possibilities with respect to the medical conditions involved; and

(15) "Unborn child" means an individual organism of the species homo sapiens, beginning at fertilization, until the point of being born alive as defined in 1 U.S.C. § 8(b).

63-6-1103. In-person requirement.

(a) An abortion-inducing drug may be provided only by a qualified physician following the procedures set forth in this part.

(b) A manufacturer, supplier, pharmacy, physician, qualified physician, or other person shall not provide an abortion-inducing drug to a patient via courier, delivery, or mail service.

63-6-1104. Distribution of abortion-inducing drugs.

(a) Because the failure and complication rates from a chemical abortion increase with advancing gestational age and because the physical symptoms of chemical abortion can be identical to the symptoms of ectopic pregnancy and abortion-inducing drugs do not treat ectopic pregnancies and are contraindicated in ectopic pregnancies, a qualified physician providing an abortion-inducing drug shall examine the patient in person and, prior to providing an abortion-inducing drug:

(1) Independently verify that a pregnancy exists;

(2) Determine the patient's blood type, and, if the patient is Rh negative, offer to administer RhoGAM at the time of the abortion;

(3) Inform the patient that the patient may see the remains of the unborn child in the process of completing the abortion; and

(4) Document, in the patient's medical chart, the gestational age and intrauterine location of the pregnancy, and whether the patient received treatment for Rh negativity, as diagnosed by the most accurate standard of medical care.

(b) A qualified physician providing an abortion-inducing drug must be credentialed and competent to handle complication management, including emergency transfer, or must have a signed agreement with an associated physician who is credentialed to handle complications and be able to produce the signed agreement on demand by the patient or the department. The qualified physician providing an abortion-inducing drug to a patient shall provide the patient with the name and phone number of the associated physician.

(c) A qualified physician providing an abortion-inducing drug, or an agent of the qualified physician, shall schedule a follow-up visit for the patient at approximately seven (7) to fourteen (14) days after administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding. The qualified physician shall make all reasonable efforts to ensure that the patient returns for the scheduled appointment. A brief description of the efforts made to comply with this subsection (c), including the date, time, and identification by name of the individual making the efforts, must be included in the patient's medical record.

63-6-1105. Prohibition on providing abortion-inducing drugs at elementary, secondary, and postsecondary schools.

An individual or entity shall not provide an abortion-inducing drug in an elementary, secondary, or postsecondary school facility or on school grounds.

63-6-1106. Criminal penalties.

(a) An individual who intentionally, knowingly, or recklessly violates this part commits a Class E felony and, upon conviction, may be fined not more than fifty thousand dollars (\$50,000). As used in this subsection (a), "intentional," "knowing," and "reckless" have the same meanings as provided in § 39-11-302.

(b) A criminal penalty shall not be assessed against a patient upon whom a chemical abortion is attempted or performed.

63-6-1107. Civil remedies and professional sanctions.

(a) In addition to all other remedies available under the laws of this state, failure to comply with this part:

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

(2) Provides a basis for professional disciplinary action under this title or title 68 for the suspension or revocation of the license of a healthcare provider or facility;

(3) Provides a basis for recovery for the patient's survivors for the wrongful death of the patient under a wrongful death action; and

(4) Provides a basis for a cause of action for injunctive relief against an individual who has provided an abortion-inducing drug in violation of this part to prevent the enjoined defendant from providing further abortion-inducing drugs in violation of this part. The action may be maintained by:

(A) A patient to whom the abortion-inducing drug was provided;

(B) An individual who is the spouse, parent, or guardian of, or a current or former licensed healthcare provider of, a patient to whom the abortion-inducing drug was provided; or

(C) A prosecuting attorney with appropriate jurisdiction.

(b) Civil liability shall not be imposed against a patient on whom a chemical abortion is attempted or performed.

(c) When requested, the court shall allow a patient to proceed using solely the patient's initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the patient on whom the chemical abortion was attempted or performed.

(d) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for reasonable attorney fees in favor of the plaintiff against the defendant.

(e) 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 may render judgment for reasonable attorney fees in favor of the defendant against the plaintiff.

63-6-1108. Construction.

This part does not:

(1) Create or recognize a right to abortion;

(2) Make lawful an abortion that is otherwise unlawful; or

(3) Repeal, replace, or otherwise invalidate existing federal laws, regulations, or policies.

63-6-1109. Right of intervention.

The attorney general and reporter may bring an action to enforce compliance with this part or intervene as a matter of right in a case in which the constitutionality of this part is challenged.

SECTION 3. If a provision of this act or its application to a person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 4. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 5. For rule promulgation purposes, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2023, the public welfare requiring it.