

An Act

ENROLLED SENATE
BILL NO. 614

By: Daniels of the Senate

and

Lepak and Sanders of the
House

An Act relating to abortion; defining terms; requiring certain signage; requiring certain informed consent; providing procedure in case of emergency; requiring State Board of Medical Licensure and Supervision to maintain certain website; providing criminal and administrative penalties; providing civil remedies; requiring certain protection of privacy in court hearings; providing severability; providing for codification; and providing an effective date.

SUBJECT: Medication abortion

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device:

(a) to intentionally kill the unborn child of a woman known to be pregnant; or

- (b) to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than to remove a dead unborn child or, after viability, to produce a live birth and preserve the life and health of the child born alive;

2. "Medical emergency" means a condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function; and

3. "Medication abortion" means the use or prescription of an abortion-inducing drug or drugs dispensed with the intent to cause the death of the unborn child.

B. 1. Any private office, freestanding outpatient clinic, hospital or other facility or clinic in which medication abortions that use mifepristone are provided shall conspicuously post a sign in a location defined in paragraph 3 of this subsection so as to be clearly visible to patients, which reads:

"NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS WHICH USE MIFEPRISTONE: Mifepristone, also known as RU-486 or Mifeprex, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by calling the Abortion Pill Reversal 24-hour Hotline at 877-558-0333 or going to website <https://www.abortionpillreversal.com/>. Additional information is available on the State Board of Medical Licensure and Supervision's website, www.awomansright.org, which provides informed consent materials under the Woman's Right-to-Know Act, including information about the development of the unborn child and video of ultrasound images of the unborn child at various stages of development."

2. The sign required pursuant to paragraph 1 of this subsection shall be printed with lettering that is legible and shall be at least three-fourths (3/4) of an inch boldfaced type.

3. A facility in which medication abortions that use mifepristone are provided that is a private office or a freestanding outpatient clinic shall post the required sign in each patient waiting room and patient consultation room used by patients to whom such medication abortions are provided. A hospital or any other facility in which medication abortions are performed that is not a private office or freestanding outpatient clinic shall post the required sign in each patient admission area used by patients on whom abortions are performed.

C. 1. Except in the case of a medical emergency, a medication abortion that uses mifepristone shall not be provided or induced or attempted to be provided or induced without informing the female, by telephone or in person, by the physician who is to dispense or provide the abortion drug or drugs, by a referring physician or by an agent of either physician at least seventy-two (72) hours before the abortion:

- a. that it may be possible to reverse the intended effects of a medication abortion that uses mifepristone if the woman changes her mind but that time is of the essence, and
- b. of information on reversing the effects of a medication abortion that uses mifepristone, which is available on the website of the State Board of Medical Licensure and Supervision, and included in such information is the Abortion Pill Reversal 24-hour Hotline number: 877-558-0333 and website address: <https://www.abortionpillreversal.com>.

2. After the first drug, mifepristone, is dispensed or provided to the patient, the physician or an agent of the physician shall provide written instructions to the pregnant woman which shall include the statement:

"NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS WHICH USE MIFEPRISTONE: Mifepristone, also known as RU-486 or Mifeprex, alone

is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by calling the Abortion Pill Reversal 24-hour Hotline at 877-558-0333 or going to Abortion Pill Reversal website, <https://www.abortionpillreversal.com/>. Additional information is available on the State Board of Medical Licensure and Supervision's website, www.awomansright.org, which provides informed consent materials under the Woman's Right-to-Know Act, including information about the development of the unborn child and video of ultrasound images of the unborn child at various stages of development."

D. When a medical emergency compels the performance of an abortion, the physician shall inform the female, prior to the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a seventy-two-hour delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

E. Within ninety (90) days after this act is enacted, the State Board of Medical Licensure and Supervision shall cause to be published, in English and in each language which is the primary language of two percent (2%) or more of the state's population, in print and on the website required to be developed and maintained under Section 1-738.11 of Title 63 of the Oklahoma Statutes, comprehensible materials designed to inform the female of the possibility of reversing the effects of a medication abortion that uses mifepristone, also known as RU-486 or Mifeprex, and information on resources that may be available to help her reverse its effects. The website shall include the Abortion Pill Reversal 24-hour Hotline number 877-558-0333 and the Abortion Pill Reversal website address <https://www.abortionpillreversal.com>.

F. Any person who knowingly or recklessly provides or induces or attempts to provide or induce an abortion in violation of this section shall be guilty of a felony. No penalty may be assessed against the female to whom the medication abortion is provided or induced or attempted to be provided or induced. No penalty or civil liability may be assessed for failure to comply with subsection C of this section unless the State Board of Medical Licensure and

Supervision has made the information available on the website at the time the physician or the physician's agent is required to inform the female.

G. Any private office, freestanding outpatient clinic or other facility or clinic that fails to post a sign required in subsection B of this section in knowing, reckless or negligent violation of this act shall be assessed a fine of Ten Thousand Dollars (\$10,000.00) by the State Board of Medical Licensure and Supervision. Each day on which a medication abortion that uses mifepristone, other than a medication abortion that is necessary to prevent the death of the pregnant female, is provided in any private office, freestanding outpatient clinic or other facility or clinic during which the required sign is not posted during a portion of business hours when patients or perspective patients are present is a separate violation.

H. 1. Any person upon whom an abortion has been performed without this section having been complied with, the father of the unborn child who was the subject of such an abortion, or, if the female had not attained the age of eighteen (18) years at the time of the medication abortion or has died as a result of the medication abortion, the grandparent of such an unborn child may maintain an action against the person who provided the medication abortion in knowing or reckless violation of this section for actual and punitive damages. Any person upon whom an abortion has been attempted without this section having been complied with may maintain an action against the person who attempted to provide the abortion in knowing or reckless violation of this section for actual and punitive damages. No damages may be awarded a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

2. If judgment is rendered in favor of the plaintiff in any action described in this subsection, 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 a reasonable attorney's fee in favor of the defendant against the plaintiff.

I. In every civil or criminal proceeding or action brought under this section, the court shall rule whether the anonymity of any female to whom a medication abortion has been provided or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest and why no reasonable less restrictive alternative exists. In the absence of written consent of the female to whom an abortion drug or drugs has been provided or attempted to be provided, anyone, other than a public official, who brings an action under subsection D of this section shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

J. If any one or more provision, section, subsection, sentence, clause, phrase or word of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.

SECTION 2. This act shall become effective November 1, 2019.

Passed the Senate the 5th day of March, 2019.

Presiding Officer of the Senate

Passed the House of Representatives the 16th day of April, 2019.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____