Senate Bill 351

By: Senators Thompson of the 14th, Miller of the 49th, Mullis of the 53rd, Walker III of the 20th, Gooch of the 51st and others

A BILL TO BE ENTITLED

AN ACT

To amend Title 31 of the Official Code of Georgia Annotated, relating health, so as to extensively revise informed consent requirements under the "Woman's Right to Know Act"; to provide for an informed consent authorization form and its contents; to revise reporting requirements; to provide for civil penalties and a private right of action under the "Woman's Right to Know Act"; to provide extensive requirements relating to the use of abortion-inducing drugs; to provide for definitions; to provide extensive reporting requirements; to prohibit abortion-inducing drugs in school facilities or on state property; to provide for criminal penalties; to provide for civil remedies and professional sanctions; to provide for statutory construction; to provide for severability; to provide for related matters; to provide for a short title; to provide for legislative findings; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

This Act shall be known and may be cited as the "Women's Health and Safety Act."

SECTION 2.

(a) The General Assembly finds that:

(1) In September 2000, the federal Food and Drug Administration (FDA) approved the distribution and use of mifepristone (brand name Mifeprex), originally referred to as "RU-486," an abortion-inducing drug, under the authority of 21 C.F.R. § 314.520, also referred to as "Subpart H," which is the only FDA approval process that allows for post-marketing restrictions. Specifically, the Code of Federal Regulations (CFR) provides for accelerated approval of certain drugs that are shown to be effective but "can be safely used only if distribution or use is restricted";

(2) The FDA does not treat Subpart H drugs in the same manner as drugs which undergo the typical approval process, giving them heightened scrutiny after approval;

(3) In September 2000, the FDA prescribed a specific gestation (49 days LMP), dosage, and administration protocol for Mifeprex/mifepristone;

(4) The approved FDA protocol for Mifeprex/mifepristone was modified in March 2016; however, the new FDA guidelines maintain that certain distribution restrictions are still necessary because of the drug's potential for serious complications;

(5) As approved by the FDA, the new administration protocol consists of Mifeprex/mifepristone (one 200 mg tablet in a single oral dose), followed by misoprostol (four 200 mcg tablets) taken 24 to 48 hours later buccally (in the cheek pouch), through 70 days LMP. The patient is to return for a follow-up visit to confirm that a complete abortion has occurred (7 to 14 days after administration of the abortion-inducing drug);

(6) The new FDA protocol also requires that the distribution and use of Mifeprex/mifepristone be under the supervision of a qualified health care provider who has the ability to assess the duration of pregnancy, diagnose ectopic pregnancies, and provide surgical intervention (or has made plans to provide surgical intervention through another qualified physician);

(7) Court testimony by Planned Parenthood and other abortion providers has demonstrated that providers routinely and intentionally failed to follow the September 2000 FDA-approved protocol for Mifeprex/mifepristone. See, e.g., *Planned Parenthood Cincinnati Region v. Taft*, 459 F. Supp. 2d 626 (S.D. Oh. 2006);

(8) The use of Mifeprex/mifepristone presents significant medical risks including, but not limited to, uterine hemorrhage, infections, abdominal pain, cramping, vomiting, headache, fatigue, and pelvic inflammatory disease;

(9) If the woman is Rh negative and does not receive an injection of RH immunoglobulin at the time of the abortion, she may experience Rh incompatibility in future pregnancies, which can lead to complications and miscarriage. Therefore, it is critical for a qualified physician to determine blood type and administer Rh immunoglobulin if a woman is Rh negative;

(10) The risk of complications increases with advancing gestational age and with the failure to either complete the two-step dosage process for the Mifeprex/mifepristone regimen or to receive abortion pill reversal care from a qualified health care professional;

(11) Studies document that increased rates of complications (including incomplete abortion) occur even within the FDA-approved gestational limit;

(12) As of March 2020, the FDA reported 4,480 adverse events after women used Mifeprex/mifepristone for abortions (Mifeprex/mifepristone–outcome: abortion/abortion induced). Among these events were 24 deaths, 1,183 hospitalizations, 339 blood transfusions, and 256 infections (including 48 "severe infections");

(13) The Adverse Event Reports (AER) systems relied upon by the FDA have limitations and typically detect only a small proportion of events that actually occur;

(14) To date (2000–March 31, 2020), 27 women have reportedly died after administration of Mifeprex/mifepristone, with six deaths attributed to severe bacterial infections. Eight of the 27 women who died were administered the Mifeprex/mifepristone regimen in an "off-label" manner then advocated by abortion

providers (four of the "off-label use" deaths were not linked to the bacterial infection deaths). The FDA has not been able to determine whether this off-label use led to the deaths;

(15) Medical evidence shows that women who use abortion-inducing drugs have quadruple the risks for complications as compared with those who undergo surgical abortions. At least 3 to 8 percent of medical abortions fail to evacuate the pregnancy tissue and, thus, require surgical completion. One percent will fail to kill the fetus. If surgical completion is required after a failed medical abortion, the risk of premature delivery in a subsequent pregnancy is more than three times higher. Failure rates increase as gestational age increases. The gestational age range of 63-70 days LMP has been inadequately studied. The 2016 FDA gestational age extension was based on only one study worldwide of just over 300 women;

(16) A woman's ability to provide informed consent depends on the extent to which the woman receives information sufficient to make an informed choice;

(17) The decision to abort "is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences." *Planned Parenthood v. Danforth*, 428 U.S. 52, 67 (1976);

(18) Some women come to regret their decision to abort shortly after ingesting Mifeprex/mifepristone, the first drug in the chemical abortion regimen;

(19) In recent years, physicians have developed a method to potentially reverse the effects of Mifeprex/mifepristone. This abortion pill reversal (or "rescue") process, which has been discussed in a peer-reviewed study, is based on decades of the safe use of progesterone to stabilize and continue pregnancies;

(20) Understanding the science behind the mechanism of action of Mifeprex/mifepristone has allowed physicians to design a specific "rescue" for a woman who has used Mifeprex/mifepristone to induce an abortion, but has not yet ingested the second drug in the chemical abortion regimen. Since physicians know exactly how

Mifeprex/mifepristone works (i.e., by blocking progesterone), physicians know that treating a woman with progesterone can "kick off" the Mifeprex/mifepristone (i.e., displace Mifeprex/mifepristone from the progesterone receptors). This allows the woman's body to respond naturally to the progesterone and to effectively fight the effects of the Mifeprex/mifepristone-induced blockage;

(21) It has long been known that mifepristone acts to reverse the effects of progesterone at the molecular level of receptor binding. Progesterone and mifepristone compete for the binding site of the receptor, making the antiprogesterone activity of mifepristone reversible;

(22) In short, Mifeprex/mifepristone floods the progesterone receptors (thus, blocking progesterone). To block or "reverse" the effects of the Mifeprex/mifepristone, a pregnant woman is prescribed progesterone to overpower the effects of the mifepristone and restore adequate progesterone in her body to sustain the pregnancy;

(23) Progesterone itself has been used safely in pregnancies for decades. It is used in vitro fertilization, infertility treatments, and high-risk pregnancies (such as those experiencing preterm labor). Using progesterone to reverse the effects of Mifeprex/mifepristone is a targeted response that is safe for the woman;

(24) Statistics show that, as of March, 2020, more than 1,000 lives have been saved following this reversal process and that babies born following this reversal process have a rate of birth defects no higher than the general population;

(25) Studies show that following this reversal process or otherwise treating a woman with progesterone during pregnancy does not lead to increased mortality rates;

(26) Information on potential and safe reversibility of mifepristone is not readily available to women undergoing chemical abortion. This effectively prevents informed decision making by women undergoing chemical abortion. Furthermore, not having this information readily accessible to women undergoing chemical abortion impedes access

to time-sensitive medication for women who may experience regret after ingesting mifepristone;

(27) To facilitate reliable scientific studies and research on the safety and efficacy of abortion-inducing drugs, it is essential that the medical and public health communities have access to accurate information both on the efficacy and use of abortion-inducing drugs, as well as on resulting complications;

(28) 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);

(29) Abortion and complication reporting provisions do not impose an "undue burden" on a woman's right to choose whether or not to terminate a pregnancy. Specifically, "[t]he 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); and

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

(A) Collecting certain demographic information on all drug-induced abortions performed in the State;

(B) Collecting information on all complications from all drug-induced abortions performed in the State; and

(C) Compiling statistical reports based on abortion complication information collected pursuant to this Act for future scientific studies and public health research.

(b) Based on such findings, it is the purpose of this Act to:

(1) Protect the health and welfare of every woman considering a drug-induced abortion;

(2) Ensure that a physician examines a woman and performs an ultrasound prior to dispensing an abortion-inducing drug in order to confirm the gestational age and the intrauterine location of the unborn child and to confirm that the unborn child is still alive because routine administration of Mifeprex/mifepristone following a spontaneous miscarriage would be unnecessary and would expose the woman to unnecessary risks associated with both Mifeprex/mifepristone and misoprostol;

(3) Ensure that a physician does not prescribe or dispense an abortion-inducing drug beyond 70 days' gestation;

(4) Reduce "the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed." *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992);

(5) Ensure that a woman considering a drug-induced abortion receives comprehensive information on abortion-inducing drugs, including the potential to reverse the effects of Mifeprex/mifepristone should she change her mind, and that a woman submitting to an abortion does so only after giving her voluntary and fully informed consent to the procedure; and

(6) 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 drug-induced abortions performed in the State, as well as on all medical complications and maternal deaths resulting from these abortions.

SECTION 3.

Title 31 of the Official Code of Georgia Annotated, relating health, is amended by repealing Code Section 31-9A-3, relating to voluntary and informed consent to abortion and availability of ultrasound, in its entirety and inserting in lieu thereof the following:

″31-9A-3.

(a) A physician who intends to perform or attempt to perform an abortion or provide abortion-inducing drugs may not perform any part of the abortion procedure without first obtaining a signed informed consent authorization form in person and 24 hours prior to any attempted abortion procedure in accordance with this Code section, except if in reasonable medical judgment, compliance with this Code section would pose a greater risk of:

(1) The death of the pregnant woman; or

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

(b) The informed consent authorization form shall be created by the department, shall be used by a qualified physician to obtain consent from the patient 24 hours prior to performing the abortion, and shall consist of:

(1) A statement by the abortion provider indicating the probable gestational age, in completed days, of the child;

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

(3) The major developmental characteristics of unborn children at such gestational age, including the presence of a heartbeat, the ability to react to painful stimuli, and the development of organs, appendages and facial features;

(4) A detailed description of the steps to complete the abortion procedure;

(5) A statement that in any case in which an abortion procedure results in a child born alive, federal law requires that child to be given every form of medical assistance that is provided to children spontaneously born prematurely, including transportation and admittance to a hospital;

(6) Information about Rh incompatibility, including that if the mother 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;

(7) A statement that these requirements in the informed consent authorization form are binding upon the abortion provider and all other medical personnel who are subject to criminal and civil penalties and that a woman on whom an abortion has been performed may take civil action if these requirements are not followed;

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

(9) That she may see the remains or her unborn child in the process of completing the abortion;

(10) That initial studies suggest that children born after the effects of Mifeprex/mifepristone are reversed have no greater risk of birth defects than the general population;

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

(12) That information on and assistance with reversing the effects of abortion-inducing drugs are available in the state prepared materials;

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

(14) That the father will be liable to assist in the support of her child;

(15) How to obtain a list of health care providers, facilities, and clinics that offer to perform ultrasounds free of charge; such list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each listed entity; and

(16) An 'acknowledgment of risks and consent statement' which 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 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 abortion 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 provided the following statement: '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 who can aid in the reversal of an abortion.' and that such statement was provided in print form as well as in digital form either via text or email.

(F) That she has been provided access to state prepared, printed materials on informed consent for abortion and the state prepared and maintained website 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 qualified physician will schedule an in-person follow-up visit for the patient at approximately seven to 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 qualified physician under the laws of Georgia 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.

(c) The informed consent authorization form is not valid unless:

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

(2) The patient signs the consent statement described in paragraph (16) of subsection (b) of this Code section; and

(3) The qualified physician signs the qualified physician declaration described in subsection (d) of this Code section.

(d) A qualified physician declaration must be signed by the qualified physician, stating that he or she has explained the abortion-inducing drug or drugs to be used, has provided all of the information required in this subsection, and has answered all of the woman's questions.

(e) Nothing in this Code section shall be construed to preclude provision of required information in a language understood by the patient through a translator.

(f) The department shall cause to be published in the state prepared, printed materials on informed consent for abortion and the state prepared and maintained website on informed consent for abortion the following statement:

'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 who can aid in the reversal of an abortion.'

(g) On an annual basis, the department shall review and update, if necessary, the statement required in subsection (f) of this Code section.

(h) For all abortion procedures, an ultrasound shall be performed prior to attempting an abortion procedure:

(1) The woman shall at the conclusion of the ultrasound be offered the opportunity to view the fetal image and hear the fetal heartbeat. The active ultrasound image shall be of a quality consistent with standard medical practice in the community, contain the dimensions of the unborn child, and accurately portray the presence of external members and internal organs, including but not limited to the heartbeat, if present or viewable, of the unborn child. The auscultation of the fetal heart tone shall be of a quality consistent with standard medical practice in the community; and

(2) At the conclusion of these actions and prior to the abortion, the female certifies in writing:

(A) That she was provided the opportunity described in this paragraph;

(B) Whether or not she elected to view the sonogram; and

(C) Whether or not she elected to listen to the fetal heartbeat, if present.

(i) The physician performing or attempting to perform an abortion must retain the signed informed consent authorization form in the patient's medical file.″

SECTION 4.

Said title is further amended by revising Code Section 31-9A-6, relating to reporting requirements under the "Woman's Right to Know Act," as follows:

″31-9A-6.

(a) The Department of ~~Public~~ Community Health shall prepare a reporting form for ~~physicians performing abortions in a health facility licensed as an abortion facility by the~~

~~Department of Community Health~~ any physician who performs an abortion containing a reprint of this chapter and listing:

(1) The number of females ~~to~~ for whom the physician ~~provided the information~~ obtained a signed informed consent authorization form described in ~~paragraph (1)~~ subsection (a) of Code Section 31-9A-3~~; of that number, the number to whom the information was provided by telephone and the number to whom the information was provided in person; and of each of those numbers, the number to whom the information was provided by a referring physician and the number to whom the information was provided by a physician who is to perform the abortion~~; and

~~(2) The number of females to whom the physician or a qualified agent of the physician provided the information described in paragraph (2) of Code Section 31-9A-3; of that number, the number to whom the information was provided by telephone and the number to whom the information was provided in person; of each of those numbers, the number to whom the information was provided by a referring physician and the number to whom the information was provided by a physician who is to perform the abortion; and of each of those numbers, the number to whom the information was provided by the physician and the number to whom the information was provided by a qualified agent of the physician;~~

~~(3) The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Code Section 31-9A-4, other than on the website, and the number who did not; and of each of those numbers, the number who, to the best of the reporting physician's information and belief, went on to obtain the abortion; and~~

~~(4)~~(2) The number of females who were provided the opportunity to view the fetal image and hear the fetal heartbeat; of that number, the number who elected to view the sonogram and the number who elected to listen to the fetal heartbeat, if present.

(b) The Department of ~~Public~~ Community Health shall ensure that copies of the reporting forms described in subsection (a) of this Code section are provided:

(1) Not later than ~~September 7, 2005,~~ August 1, 2022, to all health facilities ~~licensed as an abortion facility by the Department of Community Health~~ in which abortions are performed;

(2) To each physician licensed or who subsequently becomes licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

(3) By December 1 of each year, other than the calendar year in which forms are distributed in accordance with paragraph (1) of this subsection, to all health facilities ~~licensed as an abortion facility by the Department of Community Health~~ in which abortions are performed.

(c) By February 28 of each year following a calendar year in any part of which this chapter was in effect, each physician who ~~provided~~ obtained, or whose qualified agent provided, ~~information to~~ a signed informed consent authorization form from one or more females in accordance with Code Section 31-9A-3 during the previous calendar year shall submit to the Department of ~~Public~~ Community Health a copy of the reporting form described in subsection (a) of this Code section with the requested data entered accurately and completely.

(d) Nothing in this Code section shall be construed to preclude the voluntary or required submission of other reports or forms regarding abortions.

(e) Reports that are not submitted within a grace period of 30 days following the due date shall be subject to a late fee of $500.00 for that period and the same fee for each additional 30 day period or portion of a 30 day period the reports are overdue. Any physician required to submit a report in accordance with this Code section who submits an incomplete report or fails to submit a report for more than one year following the due date may, in an action brought by the Department of ~~Public~~ Community Health, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or may be subject to sanctions for civil contempt.

(f) By June 30 of each year, the Department of ~~Public~~ Community Health shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this Code section for each of the items listed in subsection (a) of this Code section. Each report shall also provide the statistics for all previous calendar years adjusted to reflect any additional information from late or corrected reports. The Department of ~~Public~~ Community Health shall ensure that none of the information included in the public reports could reasonably lead to the identification of any individual who provided information in accordance with Code Section 31-9A-3 or 31-9A-4.

(g) The Department of ~~Public~~ Community Health may, by regulation, alter the dates established by subsection (c) or (e) of this Code section or paragraph (3) of subsection (b) of this Code section or may consolidate the forms or reports described in this Code section with other forms or reports for reasons including, but not limited to, achieving administrative convenience or fiscal savings or reducing the burden of reporting requirements, so long as reporting forms are sent to all facilities licensed as an abortion facility by the Department of ~~Public~~ Community Health at least once every year and the report described in subsection (f) of this Code section is issued at least once every year.

(h) The Department of ~~Public~~ Community Health shall ensure that the names and identities of the physicians filing reports under this chapter shall remain confidential. The names and identities of such physicians shall not be subject to Article 4 of Chapter 18 of Title 50."

SECTION 5.

Said title is further amended by revising Code Section 31-9A-8, relating to severability, as follows:

″31-9A-8.

(a)(1) The Attorney General shall commence a civil action in a court of appropriate jurisdiction under this subsection against any abortion provider who knowingly commits a violation of this chapter.

(2) In a civil action under paragraph (a) of this subsection, the court may, in order to vindicate the public interest, assess a civil penalty against the provider in an amount:

(A) No less than $100,000.00 but not to exceed $150,000.00 for each such violation that is adjudicated in the first proceeding against such provider under this subsection; or

(B) No less than $150,001.00 but not to exceed $250,000.00 for each such violation that is adjudicated in a subsequent proceeding against such provider under this subsection.

(3) Upon the assessment of a civil penalty under paragraph (2) of this subsection, the Attorney General shall notify the Georgia Composite Medical Board.

(4) No pregnant woman shall be subject to any penalty under this section.

(b)(1) A woman or a parent of a minor who has not been provided sufficient informed consent in violation of this section may commence a civil action against the abortion provider for actual and punitive damages. For purposes of the preceding sentence, actual damages are objectively verifiable money damages for all injuries.

(2) Appropriate relief in a civil action under this subsection includes:

(A) Objectively verifiable money damages for all injuries, psychological and physical, occasioned by the violation;

(B) Statutory damages equal to three times the cost of the abortion; and

(C) Punitive damages.

(3) The court shall award a reasonable attorney's fee as part of the costs to a prevailing plaintiff in a civil action under this subsection.

(4) If a defendant in a civil action under this subsection prevails and the court finds that the plaintiff's suit was frivolous, the court shall award a reasonable attorney's fee in favor of the defendant against the plaintiff.

(5) Except under paragraph (4) of this subsection, in a civil action under this subsection, no damages, attorney's fee, or other monetary relief may be assessed against the woman upon whom the abortion was performed or attempted.

31-9A-9.

If any one or more provisions, Code sections, subsections, sentences, clauses, phrases, or words of this chapter or the application thereof to any person or circumstance is found to be unconstitutional, the same is declared to be severable, and the balance of this chapter shall remain effective notwithstanding such unconstitutionality. The General Assembly declares that it would have enacted this chapter and each Code section, subsection, sentence, clause, phrase, or word thereof irrespective of the fact that any one or more provisions, Code sections, subsections, sentences, clauses, phrases, or words would be declared unconstitutional.″

SECTION 6.

Said title is further amended by adding a new chapter to read as follows:

″CHAPTER 9C

31-9C-1.

As used in this chapter, the term:

(1) 'Abortion' means the act of using, prescribing, or administering any instrument, substance, device, or other means with the purpose of terminating a pregnancy with knowledge that termination will, with reasonable likelihood, cause the death of an unborn

child; provided, however, that any such act shall not be considered an abortion if the act is performed with the purpose of:

(A) Removing a dead unborn child whose death was caused by spontaneous abortion; or

(B) Removing an ectopic pregnancy.

(2) '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. Such term includes the off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as mifepristone (Mifeprex), misoprostol (Cytotec), and methotrexate. Such term does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications, such as chemotherapeutic agents or diagnostic drugs. The use of such drugs to induce abortion is also known as 'medical,' 'medication,' 'RU-486,' 'chemical,' 'Mifeprex regimen,' or 'drug-induced' abortion.

(3) 'Adverse event' means any untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug related. Such term does not include an adverse event or suspected adverse reaction that, had it occurred in a more severe form, might have caused death.

(4) 'Associated physician' means a person licensed to practice medicine in the state, including medical doctors and doctors of osteopathy, who has entered into an Associated Physician Agreement.

(5) 'Complication' means any adverse physical or psychological condition arising from the performance of an abortion, which includes but is 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 (retained tissue); 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; psychological complications such as depression, suicidal ideation, anxiety, and sleeping disorders; death; and any other 'adverse event' as defined by the federal Food and Drug Administration criteria provided in the Medwatch Reporting System as it existed on July 1, 2022.

(6) 'Department' means the Department of Public Health.

(7) 'Hospital' means an institution licensed by the Department of Community Health as such.

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

(9) 'Physician' means any person licensed to practice medicine in this state. Such term includes medical doctors and doctors of osteopathy.

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

(11) 'Provide' means, when used regarding abortion-inducing drugs, any act of giving, selling, dispensing, administering, transferring possession to or otherwise providing or prescribing an abortion-inducing drug.

(12) 'Qualified physician' means a physician licensed in this state who has the ability to:

(A) Identify and document a viable intrauterine pregnancy;

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

(C) Diagnose ectopic pregnancy;

(D) Determine blood type and administer RhoGAM if a woman 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 enter into a contract with another qualified physician to provide surgical intervention; and

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

(13) 'Unborn child' means a member of the species homo sapiens at any stage of development who is carried in the womb until the point of being born-alive as defined in Section 8(b) of Title 1, U.S. Code, as it existed on July 1, 2022.

31-9C-2.

Abortion-inducing drugs shall only be provided by a qualified physician following procedures contained in this chapter. It shall be unlawful for any manufacturer, supplier, physician, qualified physician, or any other person to provide any abortion-inducing drug via courier, delivery, telemedicine, or mail service.

31-9C-3.

(a) Because the failure and complication rates from a chemical abortion increase with advancing gestational age; because the physical symptoms of chemical 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 qualified physician providing an abortion-inducing drug must examine the woman in person and perform an ultrasound, and, at least 24 hours prior to providing an abortion-inducing drug, must:

(1) Independently verify that a pregnancy exists;

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

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

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

(5) Obtain a signature of receipt from the patient that such patient has received the informed consent authorization form required pursuant to Code Section 31-9A-3.

(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 contract with an associated physician who is credentialed to handle complications and be able to produce that signed contract on demand by the pregnant woman or by the department. Every pregnant woman to whom a qualified physician provides any abortion-inducing drug shall be given the name and phone number of the associated physician.

(c) The qualified physician providing any abortion-inducing drug or an agent of the qualified physician shall schedule a follow-up visit for the woman at approximately seven to 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 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 such efforts, shall be included in the woman's medical record.

31-9C-4.

Notwithstanding any other provision of this chapter or the laws of this state, abortion-inducing drugs shall not be provided in any school facility or on state grounds, including but not limited to, elementary schools, secondary schools, and institutions of higher education in this state.

31-9C-5.

(a) 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 medical or drug-induced 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-inducing drug was given, sold, dispensed, administered, or otherwise provided or prescribed; signed by the qualified physician who gave, sold, dispensed, administered, or otherwise provided or prescribed the abortion-inducing drug; and transmitted to the department within 15 days after each reporting month.

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

(1) Identification of the qualified physician who provided the abortion-inducing drug;

(2) Whether the chemical abortion was completed at the hospital or other facility in which the abortion-inducing drug was provided or at an alternative location;

(3) The referring physician, agency, or service, if any;

(4) The pregnant woman's county, state, and country of residence;

(5) The pregnant woman's age and race;

(6) The number of previous pregnancies, number of live births, and number of previous abortions of the pregnant woman;

(7) The probable gestational age of the unborn child as determined by both patient history and by ultrasound results used to confirm the gestational age. The report will include the date of the ultrasound and gestational age determined on that date;

(8) The abortion-inducing drug or drugs used, the date each was provided to the pregnant woman, and the reason for the abortion, if known;

(9) Preexisting medical conditions of the pregnant woman which would complicate her pregnancy, if any;

(10) 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 qualified physician to encourage that she return for a follow-up examination if she did not;

(11) Whether the woman suffered any complications, and what specific complications arose and any follow-up treatment needed; and

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

(c) Reports required under this Code section shall not contain:

(1) The name of the pregnant woman;

(2) Common identifiers such as a social security number or driver's license number; or

(3) Any 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 a chemical abortion.

(d) If a qualified physician provides an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion and if the qualified 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 use of the abortion-inducing drug, the qualified physician shall provide a written report of the adverse event within three days of the event

to the federal Food and Drug Administration via the Medwatch Reporting System, to the department, and to the Georgia Composite Medical Board.

(e) Any physician, qualified physician, associated physician, or other health care provider who treats a woman for an adverse event or complication related to a chemical abortion, either contemporaneously or at any time after the procedure, shall make a report of the adverse event to the department on forms prescribed by it. The reports shall be completed by the hospital or other facility in which the adverse event treatment was provided; signed by the physician, qualified physician, or other health care provider who treated the adverse event; and transmitted to the department within 15 days after each reporting month. Each report shall include, at minimum, the following information:

(1) What specific complications arose; what, if any, emergency transfer was required; and any follow-up treatment was needed, including whether they provided additional drugs or medications in order to complete the abortion;

(2) Identification of the qualified physician who provided the abortion-inducing drug or drugs;

(3) Whether the chemical abortion was completed at the hospital or other facility in which the abortion-inducing drug was provided or at an alternative location;

(4) The referring physician, agency, or service, if any;

(5) The pregnant woman's county, state, and country of residence;

(6) The pregnant woman's age and race;

(7) The number of previous pregnancies, number of live births, and number of previous abortions of the pregnant woman;

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

(9) The abortion-inducing drug or drugs used, the date each was provided to the pregnant woman, and the reason for the abortion, if known;

(10) Preexisting medical conditions of the pregnant woman which would complicate her pregnancy, if any;

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

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

(f) The department shall prepare a comprehensive annual statistical report for the House Committee on Health and Human Services and the Senate Health and Human Services Committee based upon the data gathered from reports under this Code section. The aggregated data shall also be made available to the public by the department in a downloadable format.

(g) The department shall summarize aggregate data from the reports required under this Act and submit the data to the federal Centers for Disease Control and Prevention for the purpose of inclusion in the annual Vital Statistics Report.

(h) Reports filed pursuant to this Code section shall be deemed public records and shall be subject to open records laws. Original copies of all reports filed under this Code section shall be available to the department, Georgia Composite Medical Board, State Board of Pharmacy, state law enforcement offices, and child protective services for use in the performance of their official duties.

(i) Absent a valid court order or judicial subpoena, neither the department, any other state department, agency, or office nor any employees thereof shall 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 a drug-induced abortion.

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

(k) Original copies of all reports filed under this Code section shall be available to the department and Georgia Composite Medical Board for use in the performance of its official duties.

(l) The department shall communicate the reporting requirements in this Code section to all medical professional organizations, licensed physicians, hospitals, emergency rooms, abortion facilities, clinics, ambulatory surgical facilities, and other health care facilities operating in this state.

(m)(1) Any physician, including emergency medical personnel, who treats a woman for complications or adverse events arising from an abortion shall file a written report with the department as required by subsection (e) of this Code section.

(2) A physician filing a written report with the department after treating a woman for complications or otherwise in an emergency capacity shall make reasonable efforts to include all of the required information that may be obtained without violating the privacy of the woman.

(n) The department shall create and distribute the forms required by this Code section no later than September 1, 2022. No provision of this Code section requiring the reporting of information on forms published by the department shall be applicable until September 15, 2022.

31-9C-6.

(a) In addition to any criminal or civil penalties provided by law, failure by any physician to conform to any requirement of this chapter or Chapter 9A of this title shall constitute unprofessional conduct for purposes of paragraph (7) of subsection (a) of Code Section 43-34-8 relating to medical licensing sanctions.

(b) In addition to any criminal or civil penalties provided by law, any person who intentionally, knowingly, or recklessly violates any provision of this chapter or Chapter 9A of this title by fraudulent use of an abortion-inducing drug, with or without the knowledge of the pregnant woman, is guilty of a criminal abortion in accordance with Code Section 16-12-140.

(c) No criminal penalty may be assessed against the pregnant woman upon whom the drug-induced abortion is attempted, induced, or performed.

31-9C-7.

(a) In addition to whatever remedies are available under the common or statutory laws of this state, failure to comply with the requirements of this chapter or Chapter 9A of this title shall:

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

(2) Provide a basis for a professional disciplinary action by the Georgia Composite Medical Board and State Board of Pharmacy; and

(3) Provide a basis for recovery for the woman's survivors for the wrongful death of the woman under the federal Unborn Victims of Violence Act.

(b) No civil liability may be assessed against the pregnant woman upon whom the drug-induced abortion is attempted, induced, or performed.

(c) 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 attempted, induced, or performed.

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

31-9C-8.

Any provision of this chapter held to be invalid or unenforceable by its terms or as applied to any person or circumstance shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances."

SECTION 7.

(a) Nothing in this Act shall be construed as creating or recognizing a right to abortion.

(b) It is not the intention of this Act to make lawful an abortion that is otherwise unlawful.

(c) Nothing in this Act repeals, replaces, or otherwise invalidates existing federal or State laws, regulations, or policies.

SECTION 8.

All laws and parts of laws in conflict with this Act are repealed.