

ENROLLED SENATE
BILL NO. 1902

By: Jolley, Lamb and Marlatt of
the Senate

and

McNiel, Reynolds, Cooksey,
Derby, Faught, Wesselhoft,
Kern, Wright (John), Billy
and Tibbs of the House

An Act relating to public health and safety; defining certain terms; prohibiting the provision of RU-486 under certain circumstances; requiring certain physicians to perform certain actions in specified circumstances; requiring the administration of a certain drug to be performed under specified conditions; requiring certain follow-up; requiring certain information to be contained in a patient's medical records; requiring certain written report under specified circumstances; requiring copy of certain report to be sent to specified entities; mandating certain reports be compiled and maintained; making certain information public record; prohibiting the release of certain information in specified circumstances; providing for certain penalties; permitting certain persons to maintain an action; authorizing the provision of attorney fees in certain circumstances; prohibiting certain persons to be the subject of specified actions; repealing Section 7, Chapter 36, O.S.L. 2008 (63 O.S. Supp. 2009, Section 1-729), which relates to regulation of RU-846; providing for codification; and declaring an emergency.

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 1-729a of Title 63, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Federal law" means any law, rule, or regulation of the United States or any drug approval letter of the U.S. Food and Drug Administration that governs or regulates the use of RU-486 (mifepristone) for the purpose of inducing abortions;

2. "Personal identifying information" means any information designed to identify a person and any information commonly used or capable of being used alone or in conjunction with any other information to identify a person; and

3. "Physician" means a doctor of medicine or osteopathy legally authorized to practice medicine in the state.

B. No person shall knowingly or recklessly give, sell, dispense, administer, prescribe, or otherwise provide RU-486, also known as mifepristone, for the purpose of inducing an abortion in a pregnant female, unless the person who gives, sells, dispenses, administers, prescribes, or otherwise provides the RU-486 (mifepristone) is a physician who:

1. Has the ability to assess the duration of the pregnancy accurately;

2. Has the ability to diagnose ectopic pregnancies;

3. Has the ability to provide surgical intervention in cases of incomplete abortion or severe bleeding, or has made and documented in the patient's medical record plans to provide such care through other qualified physicians;

4. Is able to assure patient access to medical facilities equipped to provide blood transfusions and resuscitation, if necessary; and

5. Has read and understood the prescribing information for the use of RU-486 (mifepristone) as provided by the drug manufacturer in accordance with the requirements of the U.S. Food and Drug Administration.

C. No physician who provides RU-486 (mifepristone) for the purpose of inducing an abortion shall knowingly or recklessly fail to:

1. Provide each patient with a copy of the drug manufacturer's medication guide for RU-486 (mifepristone);

2. Fully explain the procedure to the patient, including, but not limited to, explaining whether the physician is using the drug in accordance with the U.S. Food and Drug Administration regimen or an evidence-based regimen, and, if using an evidence-based regimen, specifying that the regimen differs from the U.S. Food and Drug Administration regimen and providing detailed information on the evidence-based regimen being used;

3. Provide the female with a copy of the drug manufacturer's patient agreement and obtain the patient's signature on the patient agreement;

4. Sign the patient agreement; and

5. Record the drug manufacturer's package serial number in the patient's medical record.

D. When RU-486 (mifepristone) is used for the purpose of inducing an abortion, the drug must be administered by or in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug to the patient. The physician inducing the abortion, or a person acting on behalf of the physician inducing the abortion, shall make all reasonable efforts to ensure that the patient returns twelve (12) to eighteen (18) days after the administration or use of RU-486 (mifepristone) for a follow-up visit so that the physician can confirm that the pregnancy has been terminated and assess the patient's medical condition. 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 patient's medical record.

E. 1. If a physician provides RU-486 (mifepristone) for the purpose of inducing an abortion and if the physician knows that the female who uses the RU-486 (mifepristone) for the purpose of inducing an abortion experiences within one (1) year after the use of RU-486 (mifepristone) an incomplete abortion, severe bleeding, or an adverse reaction to the RU-486 (mifepristone) or is hospitalized, receives a transfusion, or experiences any other serious event, the physician shall, as soon as is practicable, but in no case more than sixty (60) days after the physician learns of the adverse reaction or serious event, provide a written report of the incomplete abortion, severe bleeding, adverse reaction, hospitalization, transfusion, or serious event to the drug manufacturer. If the physician is a doctor of medicine, the physician shall simultaneously provide a copy of the report to the State Board of Medical Licensure and Supervision. If the physician is a doctor of osteopathy, the physician shall simultaneously provide a copy of the report to the State Board of Osteopathic Examiners. The relevant Board shall compile and retain all reports it receives pursuant to this subsection. All reports the relevant Board receives under this subsection are public records open to inspection pursuant to the Oklahoma Open Records Act; however, absent an order by a court of competent jurisdiction, neither the drug manufacturer nor the relevant Board shall release the name or any other personal identifying information regarding a person who uses or provides RU-486 (mifepristone) for the purpose of inducing an abortion and who is the subject of a report the drug manufacturer or the relevant Board receives under this subsection.

2. No physician who provides RU-486 (mifepristone) to a pregnant female for the purpose of inducing an abortion shall knowingly or recklessly fail to file a report required under paragraph 1 of this subsection. Knowing or reckless failure to comply with this subsection shall subject the physician to sanctioning by the licensing board having administrative authority over such physician.

F. Any female upon whom an abortion has been performed, the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the

time the abortion was performed, or a maternal grandparent of the unborn child, may maintain an action against the person who performed the abortion in knowing or reckless violation of this section for actual and punitive damages. Any female upon whom an abortion has been attempted in knowing or reckless violation of this section may maintain an action against the person who attempted to perform the abortion for actual and punitive damages.

G. If a judgment is rendered in favor of the plaintiff in any action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant. If a 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 fee in favor of the defendant against the plaintiff.

H. No pregnant female who obtains or possesses RU-486 (mifepristone) for the purpose of inducing an abortion to terminate her own pregnancy shall be subject to any action brought under subsection F of this section.

SECTION 2. REPEALER Section 7, Chapter 36, O.S.L. 2008 (63 O.S. Supp. 2009, Section 1-729), is hereby repealed.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 10th day of March, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 29th day of March, 2010.

Presiding Officer of the House
of Representatives