

## Model Legislation

### Anti-Chemical Abortion Pill Trafficking Act

HOUSE/SENATE BILL NO. \_\_\_\_\_

SECTION \_\_\_\_\_ is amended to read as follows:

- A. Definitions. The definitions set forth in this section are controlling for purposes of this section and of this code/statute, irrespective of terms used in medical coding, notations, or billing documents. As used in this section, the term:

“Abortifacient” means any medicine, drug or any other substance, or any combination of drugs, medicines, or substances; including but not limited to RU-486, mifepristone, Mifeprex, Mifegyne; or any substantially similar generic or non-generic drug or chemical dispensed for purposes of causing an abortion, or any future drug developed, marketed, sold, or distributed for the purpose of causing an abortion.

“Abortion” means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of the preborn child.

A physician’s performance of a medical procedure or treatment designed or intended to prevent the death of a pregnant woman and not designed or intended to kill the unborn child is not an abortion under this section.

An act under this section is not an abortion if the act is done with the purpose to:

- i. produce a live birth and save the life or preserve the health of the preborn child;
- ii. remove a dead preborn child and remaining tissue; or
- iii. remove a verified ectopic pregnancy.

"Attempt to commit or induce an abortion" means an act or the omission of an act that, under the circumstances as the person so acting or omitting to act believes

them to be, constitutes a substantial step in a course of conduct intended to culminate in an abortion.

“Chemical Abortion” refers to the use of an abortifacient to:

- i. intentionally kill the preborn child of a woman known to be pregnant; or
- ii. intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than to:
  - a. produce a live birth and save the life or preserve the health of the preborn child;
  - b. remove a dead preborn child and remaining tissue; or
  - c. remove a verified ectopic pregnancy.

"Ectopic pregnancy" means a pregnancy in which the fertilized human ovum or blastocyst implants and grows outside of the uterus.

"Fertilization" means the fusion of a human spermatozoon with a human ovum.

The "first offense" means the initial violation committed by the defendant against the specific claimant bringing the action, regardless of whether the defendant has committed prior violations against other persons.

"Physician" means an individual licensed under § \_\_\_\_\_ et seq., or § \_\_\_\_\_ et seq., of this code/statute, to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

"Pregnancy" means the period of time from fertilization until birth and is calculated from the first day of the pregnant woman's last menstrual period.

“Preborn child” means an individual organism of the species Homo sapiens from fertilization until live birth.

"Sender" means a person or an entity that:

- i. Mails or sends by common carrier an abortifacient to an address in this state or to a person in this state; or
- ii. Intentionally places an abortifacient into the stream of commerce when the person or entity knows that the abortifacient is substantially likely to be used in this state or mailed or sent by common carrier to an address in this state or to a person in this state; or

- iii. Knowingly prescribes an abortifacient to a person in this state, regardless of whether the prescriber was in this state or knew the recipient was in this state.

A "subsequent offense" means any additional violation committed by the defendant against the same claimant after the first offense.

## B. Abortifacients.

- A. Notwithstanding any other provision to the contrary, in an instance when an abortion is committed subject to provisions of §\_\_\_\_\_ of this code/statute, the following conditions apply:
  1. A sender knowingly mailing or sending by common carrier an abortifacient to an address in this state or to a person in this state.
  2. A person or an entity knowingly disseminating an abortifacient in this state without a valid prescription.
  3. A person or an entity intentionally placing an abortifacient into the stream of commerce when the person or entity knows that the abortifacient is substantially likely to be used in this state or mailed or sent by common carrier to an address in this state.
  4. It is not a defense that a sender did not know or intend that an abortion would result from their mailing, sending, disseminating, or delivering an abortifacient.
- B. Committing or attempting to commit an abortion with an abortifacient is a felony, punishable by a mandatory term of imprisonment not to exceed 10 years or with a fine not to exceed \$100,000, or both.
  1. This section does not authorize a woman to be charged with or convicted of a criminal offense in the death of her own preborn child.
  2. The following are affirmative defenses to any criminal or other liabilities under this section:
    - a. A physician licensed in this state provides a medical procedure or service for a legitimate medical reason to a pregnant woman that results in the accidental or unintentional physical injury to or death of the preborn child;
    - b. A pharmacy fills a valid prescription issued by a physician licensed in this state;

- c. A motor carrier or freight forwarder as defined in 49 U.S.C. § 13102;
  - d. An air carrier as defined in 49 U.S.C. § 40102; or
  - e. A third-party logistics provider as defined in 21 U.S.C. § 360eee.
3. In addition to the remedies available under the laws of this state,
  - a. a woman who was pregnant at the time she obtained or received an abortifacient that was manufactured, distributed, mailed, transported, delivered, prescribed, provided, or possessed in violation of this act, or
  - b. the father, sibling, or grandparent of the preborn child with which the woman described by subparagraph (1) of this paragraph [which immediately precedes this one] was pregnant at the time she obtained or received the abortifacient,

may bring a civil action against another person or entity, including a sender, whether in state or out of state, that knowingly or intentionally commits or attempts to commit an abortion in violation of this section.
4. If a claimant prevails in an action brought under this section, the court shall award:
  - a. Injunctive relief that requires the defendant to comply with this section;
  - b. Damages of \$10,000 if the court determines that the violation is the first offense committed by the defendant against the claimant;
  - c. Damages of \$1 for each subsequent offense committed by the defendant against the claimant; and
  - d. Attorney's fees and court costs.
5. A person may bring an action under this section up to three years after the date the cause of action accrues or up to one year after the lifting or expiration of any stay, injunction, or temporary restraining order, which was put in place less than three years after the date the cause of action accrued, whichever is later.
6. An action may not be brought under this section by any person who:
  - a. impregnated a woman through conduct constituting sexual assault under Section \_\_\_\_\_, Penal Code, or aggravated sexual assault under Section \_\_\_\_\_, Penal Code;
  - b. committed an offense for which an affirmative finding of family violence was made under Article \_\_\_\_\_, Code of [Criminal Procedure];

- c. provided an abortifacient to a pregnant woman for the purpose of performing, inducing, or attempting an abortion without the woman's consent or knowledge;
  - d. has been convicted of an offense under Section \_\_\_\_\_, Penal Code [list section of law that describes the crime of stalking];
  - e. has been charged or convicted of a crime in relation to the abortion;
  - f. has been charged or convicted of a crime against the woman during the prior ten (10) years;
  - g. anyone against whom the woman had a restraining order or protective order at any point five years prior to the pregnancy or thereafter; or
  - h. acts in concert or participation with a person described by this subdivision.
7. Notwithstanding any other law to the contrary, a court may not award attorney's fees or costs to a defendant in a civil action brought under this section.
8. A civil action brought under this section is in addition to and does not impair the rights or remedies of the plaintiff in other causes of action in law or equity.
- C. If any provision of this section or its application to any particular person, entity or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this section.