

HOUSE No. 3961

The Commonwealth of Massachusetts

PRESENTED BY:

Peter J. Durant

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act regulating the use of abortion-inducing drugs.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Peter J. Durant</i>	<i>6th Worcester</i>	<i>2/8/2021</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>	<i>3/10/2021</i>

HOUSE No. 3961

By Mr. Durant of Spencer, a petition (accompanied by bill, House, No. 3961) of Peter J. Durant and Joseph D. McKenna relative to regulating the use of abortion-inducing drugs. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act regulating the use of abortion-inducing drugs.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 112 of the General Laws is hereby amended by adding the
2 following 8 sections:-

3 Section 290. As used in sections 290 through 298, inclusive, the following words shall,
4 unless the context clearly requires otherwise, have the following meanings:-

5 “Abortion”, the act of using or prescribing any instrument, medicine, drug or any other
6 substance, device or means with the intent to terminate the clinically diagnosable pregnancy of a
7 woman, with knowledge that the termination by those means will with reasonable likelihood
8 cause the death of the unborn child. Such use, prescription or means is not an abortion if done
9 with the intent to:

- 10 (i) save the life or preserve the health of the unborn child;
- 11 (ii) remove a dead unborn child caused by spontaneous abortion;

- 12 (iii) remove an ectopic pregnancy; or
- 13 (iv) treat a maternal disease or illness for which the prescribed drug is indicated.

14 “Abortion-inducing drug”, a medicine, drug or any other substance prescribed or
15 dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with
16 knowledge that the termination will with reasonable likelihood cause the death of the unborn
17 child. This includes the off-label use of drugs known to have abortion-inducing properties, which
18 are prescribed specifically with the intent of causing an abortion, such as mifepristone, also
19 known as Mifeprex, misoprostol, also known as Cytotec, and methotrexate; provided, however,
20 that this shall not include drugs that may be known to cause an abortion, but which are
21 prescribed for other medical indications including, but not limited to chemotherapeutic agents
22 and diagnostic drugs.

23 The use of such drugs to induce abortion shall also be known as a medical, medication,
24 RU-486, chemical, Mifeprex regimen, or drug-induced abortion.

25 “Adverse event”, any untoward medical occurrence associated with the use of a drug in
26 humans, whether or not considered drug related, pursuant to 21 CFR 312.32. An adverse event
27 shall not include an adverse event or suspected adverse reaction that, had it occurred in a more
28 severe form, might have caused death.

29 “Associated physician”, a person licensed to practice medicine pursuant to this chapter,
30 including medical doctors and doctors of osteopathy, that has entered into an associated
31 physician agreement.

32 “Department”, the department of public health.

33 “Hospital”, an institution providing medical and surgical treatment and nursing care for
34 sick or injured people or institutions.

35 “LMP” or “gestational age”, the time that has elapsed since the first day of the woman’s
36 last menstrual period.

37 “Physician”, any person licensed to practice medicine pursuant to this chapter, including
38 medical doctors and doctors of osteopathy.

39 “Pregnant” or “pregnancy”, that female reproductive condition of having an unborn child
40 in the woman’s uterus.

41 “Provide”, any act of giving, selling, dispensing, administering, transferring possession to
42 or otherwise providing or prescribing an abortion-inducing drug.

43 “Qualified physician”, a physician who has the ability to:

44 (i) identify and document a viable intrauterine pregnancy;

45 (ii) assess the gestational age of pregnancy and inform the patient of gestational age-
46 specific risks;

47 (iii) diagnose ectopic pregnancy;

48 (iv) determine blood type and administer RhoGAM if a woman is Rh negative;

49 (v) assess for signs of domestic abuse, reproductive control, human trafficking and other
50 signals of coerced abortion;

51 (vi) provide surgical intervention or has entered into a contract with another qualified
52 physician to provide surgical intervention; and

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

56 “Unborn child”, an individual organism of the species homo sapiens, beginning at
57 fertilization, until the point of being born-alive as defined in section 1 USC §8.

58 Section 291. (a) Prior to providing an abortion-inducing drug, a licensed physician shall:

59 (i) independently verify that a pregnancy exists;

60 (ii) determine the woman’s blood type and, if she is Rh negative, be able to and offer to
61 administer RhoGAM at the time of the abortion;

62 (iii) document in the woman’s medical chart the gestational age and intrauterine location
63 of the pregnancy and whether she received treatment for Rh negativity as diagnosed by the most
64 accurate standard of medical care.

65 (b) Any qualified physician providing an abortion-inducing drug shall: (i) have a signed
66 contract with an associated physician, to be known as an associated physician agreement, who is
67 credentialed to handle complications and (ii) be able to produce that signed contract upon request
68 of the pregnant woman or by the department. Any pregnant woman to whom a qualified
69 physician provides any abortion-inducing drug shall be given the name and phone number of the
70 associated physician.

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

79 Section 292. Abortion-inducing drugs shall only be provided by a qualified physician in
80 person following procedures laid out in this chapter. It shall be unlawful for any manufacturer,
81 supplier, physician, qualified physician or any other person to provide any abortion-inducing
82 drug via courier, delivery or mail service.

83 Section 293. Notwithstanding any general or special law to the contrary, abortion-
84 inducing drugs shall not be provided in any school facility or on state grounds including, but not
85 limited to, elementary, secondary and institutions of higher education.

86 Section 294. (a) No abortion-inducing drug shall be provided without the informed
87 consent, as described in this section, of the pregnant woman to whom the abortion-inducing drug
88 is provided.

89 (b) Informed consent to a chemical abortion must be obtained at least 24 hours before the
90 abortion-inducing drug is provided to the pregnant woman; provided, however, that informed
91 consent may be obtained less than 24 hours before the abortion-inducing drug is provided to the
92 pregnant woman if, in the physician's reasonable medical judgment, compliance with this

93 subsection would pose a greater risk of: (1) the death of the pregnant woman; or (2) the
94 substantial and irreversible physical impairment of a major bodily function, not including
95 psychological or emotional conditions, of the pregnant woman.

96 (c) The department shall create a form be used by a qualified physician to obtain the
97 consent required pursuant to subsection (b) prior to providing an abortion-inducing drug.

98 (d) A consent form is not valid and consent is not sufficient, unless:

99 (1) the patient initials each entry, list, description or declaration required to be on the
100 consent form, as detailed in clauses (1) through (6), inclusive, of subsection (e);

101 (2) the patient signs the consent statement described in clause (6) of subsection (e);
102 and

103 (3) The qualified physician signs the qualified physician declaration described in
104 clause (7) of subsection (e).

105 (e) The consent form shall include, but shall not be limited to, the following statements:

106 (1) the probable gestational age of the unborn child as determined by both patient
107 history and by ultrasound results used to confirm the gestational age;

108 (2) a detailed description of the steps to complete the chemical abortion;

109 (3) a detailed list of the risks related to the specific abortion-inducing drug or drugs to
110 be used including, but not limited to hemorrhage; failure to remove all tissue of the unborn child
111 which may require an additional procedure; sepsis; sterility and possible continuation of
112 pregnancy;

113 (4) information about Rh incompatibility, including that if the pregnant woman has
114 an Rh negative blood type, the pregnant woman should receive an injection of Rh
115 immunoglobulin, also known as RhoGAM, at the time of the abortion to prevent Rh
116 incompatibility in future pregnancies, which can lead to complications and miscarriage;

117 (5) that the risks of complications from a chemical abortion may include incomplete
118 abortion which may increase with advancing gestational age;

119 (6) that it may be possible to reverse the effects of the chemical abortion should the
120 pregnant woman change her mind, but that time is of the essence;

121 (7) that information on and assistance with reversing the effects of abortion-inducing
122 drugs are available in the state-prepared materials; and

123 (8) a consent statement which must be signed by the patient. The consent statement
124 shall include, but shall not be limited to the following declarations, which must be individually
125 initialed by the patient:

126 (i) that the patient understands that the abortion-inducing drug regimen or procedure
127 is intended to end her pregnancy and will result in the death of her unborn child;

128 (ii) that the patient is not being forced to have an abortion, that she has the choice not
129 to have the abortion and that she may withdraw her consent to the abortion-inducing drug
130 regimen or procedure;

131 (iii) that the patient understands that the chemical abortion regimen or procedure to be
132 used has specific risks and may result in specific complications;

133 (iv) that the patient has been given the opportunity to ask questions about her
134 pregnancy, the development of her unborn child, alternatives to abortion, the abortion-inducing
135 drug or drugs to be used and the risks and complications inherent to the abortion-inducing drug
136 or drugs to be used;

137 (v) that she was specifically given information on the potential ability of qualified
138 medical professionals to reverse the effects of an abortion obtained through the use of abortion-
139 inducing drugs, including information directing women to obtain further information at
140 <http://www.abortionpillreversal.com/> and by contacting (877) 558-0333 for assistance in locating
141 a medical professional that can aide in the reversal of an abortion;

142 (vi) that she has been provided access to state-prepared, printed materials on informed
143 consent for abortion and the state-prepared and maintained website on informed consent for
144 abortion and, if applicable, that she has been given the name and phone number of the associated
145 physician who has agreed to provide medical care and treatment in the event of complications
146 associated with the abortion-inducing drug regimen or procedure;

147 (vii) that the qualified physician will schedule an in-person follow-up visit for the
148 patient at approximately 7 to 14 days after providing the abortion-inducing drug or drugs to
149 confirm that the pregnancy is completely terminated and to assess the degree of bleeding and
150 other complications pursuant to subsection (c) of section 291;

151 (viii) that the patient has received or been given sufficient information to give her
152 informed consent to the abortion-inducing drug regimen or procedure; and

153 (ix) that the patient has a private right of action to sue the qualified physician if she
154 feels that she has been coerced or misled prior to obtaining an abortion, and how to access state
155 resources regarding her legal right to obtain relief.

156 (9) A qualified physician declaration, which shall be signed by the qualified
157 physician, affirming that the qualified physician has explained the abortion-inducing drug or
158 drugs to be used, has provided all of the information required pursuant to clauses (1) through (6),
159 inclusive, of subsection (e) and has answered all of the pregnant woman’s questions.

160 Section 295. (a) The department shall cause to be published on informed consent forms
161 pursuant to subsection (c) of section 294 and on a website maintained by the department on
162 informed consent for abortion required under the following statement:

163 “Information on the potential ability of qualified medical professionals to reverse the
164 effects of an abortion obtained through the use of abortion-inducing drugs, including information
165 directing women to obtain further information at <http://www.abortionpillreversal.com/> and by
166 contacting (877) 558-0333 for assistance in locating a medical professional that can aide in the
167 reversal of an abortion.”

168 (b) On an annual basis, the department shall review and update, if necessary, the
169 statement required in subsection (a).

170 (c) As part of the informed consent counseling required pursuant to section 294, the
171 qualified physician shall inform the pregnant woman about abortion pill reversal and provide her
172 with the state-prepared materials and website link as proscribed by subsection (a).

173 Section 296. (a) For the purpose of promoting maternal health and adding to the sum of
174 medical and public health knowledge through the compilation of relevant data, each hospital or
175 other licensed facility which provides abortion-inducing drugs pursuant to this chapter shall
176 prepare and deliver within 15 days after the end of each month to the department a monthly
177 report which details each drug-induced abortion performed at the hospital or other licensed
178 facility. The report shall be signed by each qualified physician who gave, sold, dispensed,
179 administered or otherwise provided the abortion-inducing drug.

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

181 (1) Identification of the qualified physician or physicians who provided the abortion-
182 inducing drug;

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

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

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

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

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

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

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

195 (9) Preexisting medical condition or conditions of the pregnant woman which may
196 complicate her pregnancy, if any;

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

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

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

207 (c) Reports required under this subsection shall not contain:

208 (1) The name of the pregnant woman;

209 (2) Common identifiers such as her social security number or motor vehicle
210 operator's license number; or

211 (3) Other information or identifiers that would make it possible to identify, in any
212 manner or under any circumstances, a woman who has obtained or seeks to obtain a chemical
213 abortion.

214 (d) If a qualified physician provides an abortion-inducing drug to a pregnant woman
215 for the purpose of inducing an abortion pursuant to sections 291 or 292, and if the qualified
216 physician knows that the woman who uses the abortion-inducing drug for the purpose of
217 inducing an abortion experiences, during or after the use of the abortion-inducing drug, an
218 adverse event, the qualified physician shall provide a written report of the adverse event within 3
219 days of the event to the Federal Drug Administration via the Medwatch Reporting System and to
220 the department and to the board of registration in medicine.

221 (e) Any physician, qualified physician, associated physician or other healthcare
222 provider who treats a woman, either contemporaneously to or at any time after the procedure, for
223 an adverse event related to a chemical abortion shall make a report of the adverse event to the
224 department on forms prescribed by it. The reports shall be: (i) completed by the hospital or other
225 facility in which the adverse event treatment was provided; (ii) signed by the physician, qualified
226 physician, or other healthcare provider who treated the adverse event; and (iii) transmitted to the
227 department within 15 days after each reporting month.

228 Each report shall include, at minimum, the following information:

229 (1) What specific complications arose, what, if any, emergency transfer was required
230 and any follow-up treatment needed;

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

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

- 235 (4) The referring physician, agency or service, if any;
- 236 (5) The pregnant woman's county, state and country of residence;
- 237 (6) The pregnant woman's age and race;
- 238 (7) The number of previous pregnancies, number of live births and number of
239 previous abortions of the pregnant woman;
- 240 (8) The probable gestational age of the unborn child as determined by both patient
241 history and by ultrasound results used to confirm the gestational age. The report will include the
242 date of the ultrasound and gestational age determined on that date;
- 243 (9) The abortion-inducing drug or drugs used, the date each was provided to the
244 pregnant woman and the reason for the abortion, if known;
- 245 (10) Preexisting medical condition or conditions of the pregnant woman which would
246 complicate her pregnancy, if any;
- 247 (11) Whether the woman returned for a follow-up examination to determine
248 completion of the abortion procedure and to assess bleeding and the date and results of any such
249 follow-up examination and what reasonable efforts were made by the qualified physician to
250 encourage that she return for a follow-up examination if she did not; and
- 251 (12) The amount billed to cover the treatment for specific complications, including
252 whether the treatment was billed to Medicaid, private insurance, private pay or other method.
253 This should include charges for any physician, hospital, emergency room, prescription or other
254 drugs, laboratory tests and any other costs for treatment rendered.

255 (f) The department shall prepare a comprehensive annual statistical report based
256 upon the data gathered from reports under this section. Annually, not later than January 30, the
257 department shall file comprehensive annual statistical report with the clerks of the house of
258 representatives and the senate. The comprehensive annual statistical report shall also be made
259 available to the public by the department in a downloadable format.

260 (g) The department shall summarize aggregate data from the reports required
261 pursuant to this section and submit the data to the Centers for Disease Control and Prevention for
262 the purpose of inclusion in the annual vital statistics report.

263 (h) Reports filed pursuant to this section shall be deemed public records and shall be
264 available to the public in accordance with applicable confidentiality and public records reporting
265 laws. Original copies of all reports filed under this subsection shall be available to the board of
266 registration in medicine, board of registration in pharmacy, state law enforcement offices and
267 child protective services for use in the performance of their official duties.

268 (i) Absent a valid court order or judicial subpoena, neither the department, any other
269 state department, agency or office nor any employees thereof shall compare data concerning
270 abortions or abortion complications maintained in an electronic or other information system file
271 with data in any other electronic or other information system, the comparison of which could
272 result in identifying, in any manner or under any circumstances, a woman obtaining or seeking to
273 obtain a drug-induced abortion.

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

277 (k) Original copies of all reports filed pursuant to this section shall be available to the
278 department and the board of registration in medicine for use in the performance of its official
279 duties.

280 (l) The department shall communicate the reporting requirements pursuant to this
281 section to all medical professional organizations, licensed physicians, hospitals, emergency
282 rooms, abortion facilities, department clinics, ambulatory surgical facilities and other healthcare
283 facilities.

284 (i) Any physician, including emergency medical personnel, who treats a woman for
285 complications or adverse event arising from an abortion, shall file a written report with the
286 department pursuant to this section.

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

290 Section 297. (a) Any person who intentionally, knowingly, or recklessly violates sections
291 290 through 296, inclusive, shall be punished by imprisonment in a jail or house of correction for
292 not more than 1 year and by a fine of \$5,000.

293 (b) Any person who intentionally, knowingly or recklessly violates sections 290 through
294 296, inclusive, by fraudulent use of an abortion-inducing drug, with or without the knowledge of
295 the pregnant woman, shall be punished by imprisonment in the state prison for not more than 5
296 years and by a fine of \$10,000.

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

299 Section 298. (a) In addition to whatever remedies are available, failure to comply with the
300 requirements of sections 290 through 296, inclusive, shall:

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

302 (2) provide a basis for a professional disciplinary action under section 60B of chapter
303 231; and

304 (3) provide a basis for recovery for the woman's survivors for the wrongful death of
305 the woman.

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

308 (c) When requested, the court shall allow a woman to proceed using solely her initials or
309 a pseudonym and may close any proceedings in the case and enter other protective orders to
310 preserve the privacy of the woman upon whom the drug-induced abortion was attempted,
311 induced or performed.

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

314 (e) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's
315 suit was frivolous and brought in bad faith, the court may render judgment for reasonable
316 attorney's fees in favor of the defendant against the plaintiff.

317 SECTION 2. (a) Nothing in this act shall be construed as creating or recognizing a right
318 to abortion.

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

320 (c) Nothing in this act repeals, replaces or otherwise invalidates existing federal laws or
321 general or special laws, regulations or policies.

322 SECTION 3. The department shall create and distribute the forms required by this act
323 within 60 days after the effective date of this act. No provision of this act requiring the reporting
324 of information on forms published by the department shall be applicable until 10 days after the
325 requisite forms are first created and distributed or until the effective date of this act, whichever is
326 later.

327 SECTION 4. The general court, by joint resolution, may appoint 1 or more of its
328 members, who sponsored or cosponsored this act in their official capacity, to intervene as a
329 matter of right in any case in which the constitutionality of this act is challenged.

330 SECTION 5. Section 1 shall take effect on January 21, 2023.