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# Chemical Abortion Accountability Act

*Model Legislation & Policy Guide*



*Advancing the Human Right to Life  
in Culture, Law, and Policy*

## Section 1. Definitions

- (a) **“Interested Party”** means
1. a woman upon whom a chemical abortion is performed or attempted;
  2. the father of the unborn child who was or was attempted to be aborted by chemical abortion, except where the father aided or abetted the chemical abortion;
  3. any person who is a grandparent, parent, sibling, child, legal guardian, or conservator of the woman upon whom a chemical abortion is performed or attempted, except any individual who aided or abetted the chemical abortion; or
  4. any other person [or entity] that has been injured by the chemical abortion of the unborn child, except any person [or entity] who aided or abetted the chemical abortion.
- (b) **“Chemical Abortion”** means the act of using or prescribing any abortion-inducing drug with the intent to terminate a clinically diagnosable pregnancy, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not a chemical abortion if done with the intent to:
1. Save the life or preserve the health of the unborn child;
  2. Remove a dead unborn child caused by spontaneous abortion;
  3. Remove an ectopic pregnancy; or
  4. Treat a maternal disease or illness for which the prescribed drug is medically indicated.
- (c) **“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. This includes the off-label use of drugs known to have abortion-inducing properties, which are prescribed or dispensed specifically with the intent of causing an abortion, such as mifepristone (Mifeprex), misoprostol (Cytotec), and methotrexate. This definition includes the off-label use of drugs known to have abortion-inducing properties, which are prescribed without a diagnosed pregnancy (sometimes called “pre-prescribing” or “advanced prescribing”) for the purpose of causing an abortion at some future date rather than contemporaneously with a clinically diagnosed pregnancy. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications (e.g., chemotherapeutic agents, diagnostic drugs, etc.), so long as medical indication is clearly indicated on the prescription.

[The use of such drugs to induce abortion is also known as “medical,” “medication,” “RU-486,” “chemical,” “Mifeprex regimen,” “Plan C,” or “drug-induced” abortion.]

## Section 2. Civil Liability for Violation or Aiding or Abetting

- (a) Any interested party may bring a civil action against any person who:

(1) prescribes, dispenses, distributes, or sells any drug for the purposes of procuring or performing an abortion on any person [in violation of state law];

(2) knowingly engages in conduct that aids or abets the prescription, dispensation, distribution, or sale of any drug for the purposes of procuring or performing an abortion on any person [in violation of state law], including paying for or reimbursing the costs of attaining such drug through insurance or otherwise or shipping or transporting such drugs, [if the drug is used in violation of state law, regardless of whether the person knew or should have known that the drug would be provided in violation of state law]; or

[(3) intends to engage in the conduct described by Subdivision (1) or (2).]

(b) If a claimant prevails in an action brought under this section, the court shall award:

(1) injunctive relief sufficient to prevent the defendant from violating this subchapter or engaging in acts that aid or abet violations of this subchapter;

(2) statutory damages in an amount of [not less than \$10,000] for each abortion that the defendant performed or induced in violation of this subchapter, and for each abortion performed or induced in violation of this subchapter that the defendant aided or abetted; and

(3) costs and attorney's fees.

(c) Notwithstanding Subsection (b), a court may not award relief under this section in response to a violation of Subsection (a)(1) or (2) if the defendant demonstrates that the defendant previously paid the full amount of statutory damages under Subsection (b)(2) in a previous action for that particular chemical abortion performed or induced in violation of [state law], or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.

(d) Notwithstanding [State Statute of limitations], or any other law, a person may bring an action under this section not later than three years after the date the cause of action accrues.

(e) Notwithstanding any other law, the following are not a defense to an action brought under this section:

(1) ignorance or mistake of law;

[(2) a defendant's belief that the requirements of this subchapter are unconstitutional or were unconstitutional;]

(3) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(4) non-mutual issue preclusion or non-mutual claim preclusion;

(5) the consent of the unborn child's mother to the abortion; or

(6) any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by [state statute].

(f) It is an affirmative defense if:

(1) a person sued under Subsection (a)(2) reasonably believed, after conducting a reasonable investigation, that the drug was intended for a lawful use under [State statute];  
or

(2) a person sued under Subsection (a)(3) reasonably believed, after conducting a reasonable investigation, that the drug was intended for a lawful use under [State statute].

(g) The defendant has the burden of proving an affirmative defense under Subsection (f)(1) or (2) by a preponderance of the evidence.

(h) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by [State Constitution].

(i) Notwithstanding any other law, a court may not award costs or attorney's fees under [State statute] to a defendant in an action brought under this section.

(j) Notwithstanding any other law, a civil action under this section may not be brought by a person who impregnated the abortion patient through an act of rape, sexual assault, incest, or any other act prohibited by [State statute].

### **Section 3. No Civil Liability for Woman Upon Whom a Chemical Abortion is Performed**

A woman upon whom a chemical abortion is performed or attempted shall not be civilly liable pursuant to Section 1 of this Act.

### **Section 4. Jurisdiction**

Notwithstanding any other law, the courts of [State] shall have jurisdiction under [state long-arm statute].

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