

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

SENATE BILL 278

5 By: Senator G. Stubblefield  
6 By: Representative Hawks  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND LAWS CONCERNING ABORTION FACILITIES  
10 AND ABORTION REPORTING; TO AMEND THE BORN-ALIVE  
11 INFANT PROTECTION LAWS; TO REQUIRE AN ADDITIONAL  
12 ACKNOWLEDGMENT UNDER THE WOMAN'S RIGHT-TO-KNOW ACT;  
13 TO INCREASE PENALTIES AND CLARIFY PENALTIES RELATING  
14 TO ABORTION; AND FOR OTHER PURPOSES.

## Subtitle

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18 TO AMEND LAWS CONCERNING ABORTION  
19 FACILITIES AND ABORTION REPORTING; TO  
20 AMEND THE BORN-ALIVE INFANT PROTECTION  
21 LAWS; AND TO REQUIRE AN ADDITIONAL  
22 ACKNOWLEDGMENT UNDER THE WOMAN'S RIGHT-  
23 TO-KNOW ACT.  
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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28 SECTION 1. Arkansas Code § 20-9-302(b)(1), concerning the requirements  
29 for abortion facilities, is amended to read as follows:

30 (1) Adopt appropriate rules, regarding without limitation the  
31 facilities, equipment, procedures, techniques, medical records, informed  
32 consent signatures, parental consent signatures, and conditions of ~~clinics,~~  
33 ~~health centers, and other facilities~~ a clinic, health center, or other  
34 facility subject to the provisions of this section to assure at a minimum  
35 that:

36 (A) The facilities, equipment, procedures, techniques, and



1 conditions of the clinic, health center, or other facility are aseptic and do  
2 not constitute a health hazard; ~~and~~

3 (B) The medical records, informed consent signatures, and  
4 parental consent signatures meet statutory requirements;

5 (C) The clinic, health center, or other facility provides  
6 to the patient on a twenty-four-hour basis telephone consultation with a  
7 registered nurse or physician associated with the clinic, health center, or  
8 other facility;

9 (D) The clinic, health center, or other facility has a  
10 written procedure for emergency transfer of a patient to an acute care  
11 facility, including a medical record form that contains information required  
12 for an emergency transfer to an acute care facility;

13 (E) The clinic, health center, or other facility is within  
14 thirty (30) miles of a hospital that provides gynecological or surgical  
15 services;

16 (F) The clinic, health center, or other facility has  
17 drugs, oxygen, intravenous fluids, and other emergency equipment on-site and  
18 readily available to stabilize a patient if necessary; and

19 (G) All staff at the clinic, health center, or other  
20 facility have documented current competency in cardiopulmonary resuscitation;  
21

22 SECTION 2. Arkansas Code § 20-16-604(e), concerning born-alive infant  
23 protection, is amended to read as follows:

24 (e)(1) A physician performing an abortion shall take all medically  
25 appropriate and reasonable steps to preserve the life and health of an infant  
26 who is born alive.

27 (2) If an abortion performed in a hospital results in a live  
28 birth, the attending physician shall:

29 (A) Provide immediate medical care to the infant;

30 (B) Inform the mother of the live birth; ~~and~~

31 (C) Request transfer of the infant to an on-duty resident  
32 or emergency care physician who shall provide medically appropriate and  
33 reasonable medical care and treatment to the infant; and

34 (D) Report the abortion resulting in a live birth to the  
35 Department of Health.

36 (3) If an abortion performed in a healthcare facility other than

1 a hospital results in a live birth, the attending physician shall:

2 (A) Provide immediate medical care to the infant; ~~and~~

3 (B) Call 911 for an emergency transfer of the infant to  
4 the hospital for medically appropriate and reasonable care and treatment for  
5 the infant; and

6 (C) Report the abortion resulting in a live birth to the  
7 department.

8 (4) The department shall report and publish the number of  
9 abortions resulting in a live birth annually.

10  
11 SECTION 3. Arkansas Code § 20-16-604(j), concerning born-alive infant  
12 protection, is amended to read as follows:

13 (j) Failure to comply with this section shall provide a basis for:

14 (1) A civil action for compensatory and punitive damages which  
15 may include a medical malpractice action under § 16-114-201 et seq.;

16 (2) Professional disciplinary action by the appropriate  
17 healthcare licensing board for the suspension or revocation of a license for  
18 a healthcare professional for at least one (1) year; ~~and~~

19 (3) Recovery for the parent of the infant or the parent or legal  
20 guardian of the pregnant woman, if the pregnant woman is a minor, for the  
21 wrongful death of the infant under § 16-62-102; and

22 (4) Injunction from future acts prohibited by this section.

23  
24 SECTION 4. Arkansas Code § 20-16-604, concerning born-alive infant  
25 protection, is amended to add an additional subsection to read as follows:

26 (1) A physician or other person who purposefully or recklessly  
27 violates this section is guilty of a Class A misdemeanor.

28  
29 SECTION 5. Arkansas Code § 20-16-811 is amended to read as follows:  
30 20-16-811. Penalty.

31 (a) The performance of an abortion in violation of this subchapter or  
32 failure to report under § 20-16-814 shall be a Class A misdemeanor and shall  
33 be grounds for a civil action by a person whose consent is required.

34 (b) This subchapter does not allow the charging or conviction of a  
35 woman with any criminal offense in the death of her own unborn child in  
36 utero.

1           (c) Failure to comply with this subchapter shall provide a basis for:

2                   (1) A civil action for compensatory and punitive damages which  
3 may include a medical malpractice action under § 16-114-201 et seq.;

4                   (2) Professional disciplinary action by the appropriate  
5 healthcare licensing board for the suspension or revocation of a license for  
6 a healthcare professional for at least one (1) year;

7                   (3) Recovery for the parent of the infant or the parent or legal  
8 guardian of the pregnant woman, if the pregnant woman is a minor, for the  
9 wrongful death of the infant under § 16-62-102; and

10                  (4) Injunction from future acts prohibited by this section.

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12           SECTION 6. Arkansas Code § 20-16-1109 is amended to read as follows:  
13           20-16-1109. Penalties.

14           (a) A person who knowingly or recklessly performs or attempts to  
15 perform a termination of a pregnancy in violation of this subchapter or  
16 failure to report under § 20-16-1108 shall be subject to disciplinary action  
17 by the Arkansas State Medical Board and is guilty upon conviction of a Class  
18 A misdemeanor.

19           (b) ~~No~~ A penalty ~~may be~~ shall not be assessed against the woman upon  
20 whom the abortion is performed or attempted to be performed.

21           (c) ~~No~~ A penalty or civil liability ~~may~~ shall not be assessed for  
22 failure to comply with any provision of this subchapter unless the Department  
23 of Health has made the printed materials available at the time that the  
24 physician or the physician's agent is required to inform the woman of her  
25 right to review them.

26  
27           SECTION 7. Arkansas Code § 20-16-1703(b)(1) and (2), concerning the  
28 informed consent requirement under the Woman's Right-to-Know Act, are amended  
29 to read as follows:

30           (1) At least ~~forty-eight (48)~~ seventy-two (72) hours before the  
31 abortion, the physician who is to perform the abortion or the referring  
32 physician has informed the woman, orally and in person, of the following:

33                   (A) The name of the physician who will perform the  
34 abortion;

35                   (B) Medically accurate information that a reasonable  
36 patient would consider material to the decision concerning whether or not to

1 undergo the abortion, including:

2 (i) A description of the proposed abortion method;

3 (ii) The immediate and long-term medical risks  
 4 associated with the proposed abortion method, including without limitation  
 5 the risks of:

6 (a) Cervical or uterine perforation;

7 (b) Danger to subsequent pregnancies;

8 (c) Hemorrhage; and

9 (d) Infection; and

10 (iii) Alternatives to the abortion;

11 (C) The probable gestational age of the unborn child at  
 12 the time the abortion is to be performed;

13 (D) The probable anatomical and physiological  
 14 characteristics of the unborn child at the time the abortion is to be  
 15 performed;

16 (E) The medical risks associated with carrying the unborn  
 17 child to term;

18 (F) Any need for anti-Rh immune globulin therapy if the  
 19 woman is Rh negative, the likely consequences of refusing such therapy, and  
 20 the cost of the therapy; and

21 (G) Information on reversing the effects of abortion-  
 22 inducing drugs;

23 (2) At least ~~forty-eight (48)~~ seventy-two (72) hours before the  
 24 abortion, the physician who is to perform the abortion, the referring  
 25 physician, or a qualified person informs the woman, orally and in person,  
 26 that:

27 (A) Medical assistance benefits may be available for  
 28 prenatal care, childbirth, and neonatal care and that more detailed  
 29 information on the availability of such assistance is contained in the  
 30 printed materials and informational DVD given to her under § 20-16-1704;

31 (B) The printed materials and informational DVD under §  
 32 20-16-1704 describe the unborn child and list agencies that offer  
 33 alternatives to abortion;

34 (C)(i) The father of the unborn child is liable to assist  
 35 in the support of the child, even in instances in which he has offered to pay  
 36 for the abortion.

1 (ii) In a case of rape or incest, the information  
 2 required under subdivision (b)(2)(C)(i) of this section may be omitted;

3 (D) The woman is free to withhold or withdraw her consent  
 4 to the abortion at any time without affecting her right to future care or  
 5 treatment and without the loss of any state or federally funded benefits to  
 6 which she otherwise might be entitled; and

7 (E) The information contained in the printed materials and  
 8 informational DVD given to her under § 20-16-1704 is also available on a  
 9 state website;

10  
 11 SECTION 8. Arkansas Code § 20-16-1703(b)(4) and (5), concerning the  
 12 informed consent requirement under the Woman’s Right-to-Know Act, are amended  
 13 to read as follows:

14 (4)(A) At least ~~forty-eight (48)~~ seventy-two (72) hours before  
 15 the abortion, the woman is given a copy of the printed materials and  
 16 permitted to view and given a copy of the informational DVD under § 20-16-  
 17 1704.

18 (B) If the woman is unable to read the materials, the  
 19 materials shall be read to her in a language she can understand.

20 (C) If the woman asks questions concerning any of the  
 21 information or materials under this subdivision (b)(4), the person who  
 22 provides or reads the information or materials shall answer her questions in  
 23 a language she can understand;

24 (5)(A) At least ~~forty-eight (48)~~ seventy-two (72) hours before  
 25 an abortion is performed or induced on a woman whose pregnancy has progressed  
 26 to twenty (20) weeks gestation or more, the physician performing the abortion  
 27 on the pregnant woman, the referring physician, or a qualified person  
 28 assisting the physician, orally and in person, offers information on fetal  
 29 pain to the patient.

30 (B) The information required under subdivision (b)(5)(A)  
 31 of this section and counseling related to that information shall include  
 32 without limitation the following:

33 (i) That by twenty (20) weeks gestational age, the  
 34 unborn child possesses all anatomical links in its nervous system, including  
 35 spinal cord, nerve tracts, thalamus, and cortex, that are necessary in order  
 36 to feel pain;

1 (ii) That an unborn child at twenty (20) weeks  
2 gestation or more is fully capable of experiencing pain;

3 (iii) A description of the actual steps in the  
4 abortion procedure to be performed or induced and at which steps in the  
5 abortion procedure the unborn child is capable of feeling pain;

6 (iv) That maternal anesthesia typically offers  
7 little pain prevention for the unborn child; and

8 (v) That an anesthetic or analgesic, or both, are  
9 available so that pain to the fetus is minimized or alleviated;

10  
11 SECTION 9. Arkansas Code § 20-16-1703(b)(8), concerning the informed  
12 consent requirement under the Woman’s Right-to-Know Act, is amended to read  
13 as follows:

14 (8) At least ~~forty-eight (48)~~ seventy-two (72) hours before an  
15 abortion that is being performed or induced utilizing abortion-inducing  
16 drugs, the physician who is to perform the abortion, the referring physician,  
17 or a qualified person informs the pregnant woman, orally and in person, that:

18 (A) It may be possible to reverse the effects of the  
19 abortion if the pregnant woman changes her mind, but that time is of the  
20 essence; and

21 (B) Information on reversing the effects of abortion-  
22 inducing drugs is available in materials prepared by the department.

23  
24 SECTION 10. Arkansas Code § 20-16-1703(b), concerning the informed  
25 consent requirement under the Woman’s Right-to-Know Act, is amended to add an  
26 additional subdivision to read as follows:

27 (9) Except in the case of a medical emergency, at least seventy-  
28 two (72) hours before the abortion, the pregnant woman signs a form that  
29 includes without limitation the following information:

30 (A) A description of the pregnant woman’s rights,  
31 including the right to informed consent as granted by this subchapter;

32 (B) A detailed description of the surgical procedures or  
33 medical procedures, or both, that are planned to be performed on the pregnant  
34 woman;

35 (C) A detailed list of the risks and hazards related to  
36 the surgical or medical procedures that are planned to be for the pregnant

1 woman, including without limitation the following risks and hazards that may  
2 occur:

3 (i) Infection;

4 (ii) Blood clots;

5 (iii) Hemorrhage;

6 (iv) Allergic reactions;

7 (v) Uterine perforation, also known as a hole in the  
8 uterus, or other damage to the uterus;

9 (vi) Sterility;

10 (vii) Injury to the bowel or bladder;

11 (viii) Possible hysterectomy as a result of  
12 complication or injury during the procedure;

13 (ix) Failure to remove all products of conception;

14 (x) Possible continuation of pregnancy;

15 (xi) Cramping of the uterus or pelvic pain;

16 (xii) Cervical laceration;

17 (xiii) Incompetent cervix;

18 (xiv) Emergency treatment for any complications; and

19 (xv) Death;

20 (D) A description of additional information that shall be  
21 provided by the physician to the pregnant woman under state law; and

22 (E) Any additional information that may be provided to a  
23 woman under the laws of this state in order for a physician to obtain her  
24 informed consent before performing an abortion.

25  
26 SECTION 11. Arkansas Code § 20-16-1703(d), concerning the informed  
27 consent requirement under the Woman’s Right-to-Know Act, is amended to read  
28 as follows:

29 (d) A physician, facility, employee or volunteer of a facility, or any  
30 other person or entity shall not require or obtain payment for a service  
31 provided in relation to abortion to a patient who has inquired about an  
32 abortion or scheduled an abortion until the expiration of the ~~forty-eight-~~  
33 ~~hour~~ seventy-two-hour reflection period required in this section.

34  
35 SECTION 12. Arkansas Code § 20-16-1706 is amended to read as follows:  
36 20-16-1706. Medical emergencies.



1           When a medical emergency compels the performance of an abortion, the  
2 physician shall inform the woman before the abortion, if possible, of the  
3 medical indications supporting the physician's judgment that an immediate  
4 abortion is necessary to avert her death or that a ~~forty-eight-hour~~ seventy-  
5 two-hour delay will cause substantial and irreversible impairment of a major  
6 bodily function.

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8           SECTION 13. Arkansas Code § 20-16-1709 is amended to read as follows:  
9           20-16-1709. Criminal penalty.

10           A person who intentionally, knowingly, or recklessly violates this  
11 subchapter commits a ~~Class A misdemeanor~~ Class D felony.