

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas

As Engrossed: H1/10/01 H1/17/01 S2/7/01

2 83rd General Assembly

A Bill

Act 353 of 2001

3 Regular Session, 2001

HOUSE BILL 1074

4

5 *By: Representatives Magnus, Adams, Agee, Bennett, Bledsoe, Borhauer, Cleveland, Files, Glover,*
6 *Gillespie, Green, Hausam, Holt, G. Jeffress, Lowery, Oglesby, Parks, Prater, Rankin, Rodgers, Willis,*
7 *Womack*

8 *By: Senators Wooldridge, Trusty, Wilkinson, Bisbee, Brown*

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For An Act To Be Entitled

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AN ACT TO ASSURE WOMEN OF THEIR RIGHT TO RECEIVE
13 ADEQUATE INFORMATION BEFORE TERMINATING A PREGNANCY;
14 AND FOR OTHER PURPOSES.

15

16

Subtitle

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AN ACT TO ASSURE WOMEN OF THEIR RIGHT TO
18 RECEIVE ADEQUATE INFORMATION BEFORE
19 TERMINATING A PREGNANCY.

20

21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23

24 SECTION 1. Title. This act shall be known and may be cited as the
25 "Woman's Right to Know Act of 2001".

26

27 SECTION 2. Definitions. As used in this act the term:

28 (1) "Abortion" means the use or prescription of any instrument,
29 medicine, drug, or any other substance or device intentionally to terminate
30 the pregnancy of a woman known to be pregnant for a purpose other than to
31 increase the probability of a live birth, to preserve the life or health of
32 the child after live birth, or to remove a dead fetus;

33 (2) "Attempt to perform an abortion" means an act, or an omission
34 of a statutorily required act, that, under the circumstances as the actor
35 believes them to be, constitutes a substantial step in a course of conduct
36 planned to culminate in the termination of a pregnancy in Arkansas.

- 1 (3) "Department" means the Department of Health;
- 2 (4) "Director" means the Director of the Department of Health;
- 3 (5) "Gestational age" means the age of the fetus as calculated
4 from the first day of the last menstrual period of the pregnant woman;
- 5 (6) "Medical emergency" means any condition which, on the basis
6 of the physician's good faith clinical judgment, so complicates the medical
7 condition of a pregnant woman as to necessitate the immediate termination of
8 her pregnancy to avert her death or for which a delay will create serious risk
9 of substantial and deemed to be irreversible impairment of a major bodily
10 function;
- 11 (7) "Physician" means any person licensed to practice medicine in
12 this state; and
- 13 (8) "Probable gestational age of the fetus means what, in the
14 judgment of the physician, will with reasonable probability be the gestational
15 age of the fetus at the time the abortion is planned to be performed.

17 SECTION 3. Informed Consent.

18 (a) No abortion shall be performed in this state except with the
19 voluntary and informed consent of the woman upon whom the abortion is to be
20 performed.

21 (b) Except in the case of a medical emergency, consent to an abortion
22 is voluntary and informed if and only if:

23 (1) Prior to and in no event on the same day as the abortion, the
24 woman is told the following, by telephone or in person, by the physician who
25 is to perform the abortion, by a referring physician or by an agent of either
26 physician:

27 (A) The name of the physician who will perform the
28 abortion;

29 (B) The medical risks associated with the particular
30 abortion procedure to be employed.

31 (C) The probable gestational age of the fetus at the time
32 the abortion is to be performed; and

33 (D) The medical risks associated with carrying the fetus to
34 term.

35 (2)(A)(i) The information required by subdivision (b) (1) may be
36 provided by telephone without conducting a physical examination or tests of

1 the woman.

2 (ii) If the information is supplied by telephone, the
3 information may be based both on facts supplied to the physician by the woman
4 and on whatever other relevant information is reasonably available to the
5 physician.

6 (B) The information required by subdivision (b)(1) may not
7 be provided by a tape recording, but shall be provided during a consultation
8 in which the physician is able to ask questions of the woman and the woman is
9 able to ask questions of the physician.

10 (C) If a physical examination, tests, or other new
11 information subsequently indicates, in the medical judgment of the physician,
12 the need for a revision of the information previously supplied to the woman,
13 that revised information may be communicated to the woman at any time prior to
14 the performance of the abortion.

15 (D) Nothing in this section may be construed to preclude
16 provision of required information through a translator in a language
17 understood by the woman.

18 (3) Prior to and in no event on the same day as the abortion, the
19 woman is informed, by telephone or in person, by the physician who is to
20 perform the abortion, by a referring physician or by an agent of either
21 physician:

22 (A) That medical assistance benefits may be available for
23 prenatal care, childbirth, and neonatal care;

24 (B) That the father is liable to assist in the support of
25 her child, even in instances in which the father has offered to pay for the
26 abortion;

27 (C)(i) That she has the option to review the printed or
28 electronic materials described in Section 4 of this act;

29 (ii) That those materials have been provided by the
30 State of Arkansas; and

31 (iii) That they describe the fetus and list agencies
32 that offer alternatives to abortion;

33 (D)(i) That if the woman chooses to exercise her option to
34 view the materials in a printed form, they shall be mailed to her, by a method
35 chosen by the woman; or

36 (ii) That if the woman chooses to exercise her option

1 to view the materials via the internet, the woman shall be informed prior to
 2 and in no event on the same day as the abortion of the specific address of the
 3 internet website where

4 (4) The information required by this subdivision (b)(3) may be
 5 provided by a tape recording if provision is made to record or otherwise
 6 register specifically whether the woman does or does not choose to review the
 7 printed materials.

8 (5) Prior to the termination of the pregnancy, the woman
 9 certifies in writing that the information described in subdivision (1) and her
 10 options described in subdivision (3) of this subsection (b) have been
 11 furnished her and that she has been informed of her option to review the
 12 information referred to in subdivision (3)(C) of this subsection (b).

13 (6) Prior to the abortion, the physician who is to perform the
 14 procedure or the physician's agent receives a copy of the written
 15 certification prescribed by subdivision (5) of this subsection (b).

16 (c) The Arkansas State Medical Board shall promulgate regulations to
 17 ensure that physicians who perform abortions, referring physicians or agents
 18 of either physician comply with all the requirements of this section (3).

19 (E) Before the abortion procedure is performed the physician shall
 20 confirm with the patient that she has received information regarding:

21 (i) The medical risks associated with the particular
 22 abortion procedure to be employed;

23 (ii) The probable gestational age of the unborn child
 24 at the time the abortion is to be performed; and

25 (iii) The medical risks associated with carrying the
 26 fetus to term.

27
 28 SECTION 4. Printed Materials.

29 (a) Within sixty (60) days after the effective date of this act, the
 30 department shall cause to be published, in English and in each language which
 31 is the primary language of two percent (2%) or more of the state's population,
 32 and shall update on an annual basis, the following printed materials in such a
 33 way as to ensure that the information is easily comprehensible:

34 (1)(A) Geographically indexed materials designed to inform the
 35 woman of public and private agencies, including adoption agencies, and
 36 services available to assist a woman through pregnancy, upon childbirth, and

1 while the child is dependent, including:

2 (i) A comprehensive list of the agencies available;

3 (ii) A description of the services they offer; and

4 (iii) A description of the manner, including
5 telephone numbers, in which they might be contacted; or

6 (B) At the option of the department, printed materials
7 including a toll-free twenty-four (24) hour a day telephone number which may
8 be called to obtain, orally, a list and description of agencies in the
9 locality of the caller and of the services they offer; and

10 (2)(A) Materials designed to inform the woman of the probable
11 *anatomical and physiological characteristics of the fetus at two-week*
12 *gestational increments from the time when a woman can be known to be pregnant*
13 *to full term, including:*

14 (i) Any relevant information on the possibility of
15 *the fetus' survival; and*

16 (ii) Pictures or drawings representing the
17 *development of fetuses at two-week gestational increments, provided that the*
18 *pictures or drawings shall describe the dimensions of the fetus and shall be*
19 *realistic and appropriate for the stage of pregnancy depicted.*

20 (B) The materials shall be objective, nonjudgmental, and
21 *designed to convey only accurate scientific information about the fetus at the*
22 *various gestational ages; and*

23 (C) The material shall also contain objective information
24 describing:

25 (i) The methods of termination of pregnancy
26 procedures commonly employed;

27 (ii) The medical risks commonly associated with each
28 of those procedures;

29 (iii) The possible detrimental psychological effects
30 of termination of pregnancy; and

31 (iv) The medical risks commonly associated with
32 carrying a child to term.

33 (b) The materials referred to in subsection (a) of this section shall
34 be printed in a typeface large enough to be clearly legible.

35 (c) The materials required under this section shall be available at no
36 cost from the department and shall be distributed upon request in appropriate

1 numbers to any person, facility, or hospital.

2 (d)(1) The department shall develop and maintain a secure internet
3 website to provide the information described under subsection (a) of Section 4
4 of this act.

5 (2) The website shall be maintained at a minimum resolution of 72
6 PPI.

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8 SECTION 5. Procedure in Case of Medical Emergency.

9 When a medical emergency compels the performance of an abortion, the
10 physician shall inform the woman, prior to the abortion if possible, of the
11 medical indications supporting the physician's judgment that:

12 (1) An abortion is necessary to avert her death; or

13 (2) That a delay will create a serious risk of substantial and
14 deemed to be irreversible impairment of a major bodily function.

15
16 SECTION 6. (a) The Department of Health shall develop and promulgate
17 regulations regarding reporting requirements.

18 (b) The Center for Health Statistics of the Department of Health shall
19 ensure that all information collected by the center regarding abortions
20 performed in this state shall be available to the public in printed form and
21 on a twenty-four (24) hour basis on the center's website, provided that in no
22 case shall the privacy of a patient or doctor be compromised.

23 (c) The information collected by the center regarding abortions
24 performed in this state shall be continually updated.

25 (d)(1) By June 3 of each year, the department shall issue a public
26 report providing statistics on the number of women provided information and
27 materials pursuant to this act during the previous calendar year;

28 (2) Each report shall also provide the statistics for all previous
29 calendar years, adjusted to reflect any additional information received after
30 the deadline; and

31 (3) The department shall take care to ensure that none of the
32 information included in the public reports could reasonably lead to the
33 identification of any individual who received information in accordance with
34 subsections (1) or (3) of Section 3 of this act.

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36 SECTION 7. Penalties.

1 (a)(1) A person who knowingly or recklessly performs or attempts to
2 perform a termination of a pregnancy in violation of this act shall be subject
3 to disciplinary action by the Arkansas State Medical Board.

4 (b) No penalty may be assessed against the woman upon whom the abortion
5 is performed or attempted to be performed.

6 (c) No penalty or civil liability may be assessed for failure to comply
7 with any provision of Section 3 of this act unless the department has made the
8 printed materials available at the time the physician or the physician's agent
9 is required to inform the woman of her right to review them.

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11 SECTION 8. (a) In every civil or criminal proceeding or action
12 brought under this act, the court shall rule, upon motion or sua sponte,
13 whether the identity of any woman upon whom a termination of pregnancy has
14 been performed or attempted shall be preserved from public disclosure if she
15 does not give her consent to disclosure.

16 (b) If the court rules that the woman's anonymity should be preserved,
17 the court shall order the parties, witnesses, and counsel to preserve her
18 anonymity and shall direct the sealing of the record and the exclusion of
19 individuals from courtrooms or hearing rooms to the extent necessary to
20 safeguard her identity from public disclosure.

21 (c) Each order to preserve the woman's anonymity shall be accompanied
22 by specific written findings explaining:

23 (1) Why the anonymity of the woman should be preserved from
24 public disclosure;

25 (2) Why the order is essential to that end;

26 (3) How the order is narrowly tailored to serve that interest;
27 and

28 (4) Why no reasonable less restrictive alternative exists.

29 (d) In the absence of written consent of the woman upon whom a
30 termination of pregnancy has been performed or attempted, anyone other than a
31 public official, who brings an action under subsection (a) of Section 8 shall
32 do so under a pseudonym.

33 (e) This section shall not be construed to conceal the identity of the
34 plaintiff or of witnesses from the defendant.

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36 SECTION 9. EMERGENCY CLAUSE.

1 It is hereby found and determined by the Eighty-third General Assembly
2 that the health of the women of Arkansas is in immediate jeopardy and that
3 fetuses in Arkansas who might have been saved will be unnecessarily lost
4 during any time the informational programs required under this act remain
5 inoperative. Therefore, an emergency is declared to exist and this act being
6 immediately necessary for the preservation of the public peace, health and
7 safety shall become effective on May 1, 2001.

8 */s/ Magnus*

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11 APPROVED: 2/21/2001
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