

1 State of Arkansas *As Engrossed: H1/26/15 H1/27/15 S2/12/15*

2 90th General Assembly

# A Bill

3 Regular Session, 2015

HOUSE BILL 1076

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5 *By: Representatives J. Mayberry, Hammer, Bentley, Sullivan, Wardlaw, Henderson, Baltz, Cozart,*

6 *Lowery, D. Meeks, Lundstrum, Sorvillo, Gates, Richmond, House, Womack, Branscum, Boyd, Lemons,*

7 *Bragg, Drown, Beck, Hickerson, Collins, Payton, Brown, Copeland, Tosh, Wallace, Ladyman, Rushing,*

8 *Ballinger, C. Douglas, Gonzales, K. Hendren, S. Meeks, Dotson, C. Fite, Eaves, Farrer, Miller, Vaught*

9 *By: Senators Irvin, Bledsoe, Caldwell, Collins-Smith, J. Cooper, J. Dismang, J. English, Flipppo, J.*

10 *Hendren, Hester, Hickey, J. Hutchinson, B. Johnson, Rapert, Rice, G. Stubblefield, E. Williams, B. King,*

11 *D. Sanders, J. Woods*

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## For An Act To Be Entitled

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AN ACT TO REGULATE THE USE OF CERTAIN DRUGS USED TO

15

INDUCE AN ABORTION; TO DEFINE CERTAIN TERMS; TO

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PROVIDE FOR DISCIPLINARY PROCEEDINGS FOR ABORTIONS

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PERFORMED IN VIOLATION OF THIS ACT; TO PROVIDE A

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CIVIL CAUSE OF ACTION FOR VIOLATIONS OF THIS ACT; TO

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REQUIRE PHYSICIAN REPORTING; AND FOR OTHER PURPOSES.

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## Subtitle

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TO REGULATE THE USE OF CERTAIN DRUGS USED

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TO INDUCE AN ABORTION; AND TO PROVIDE FOR

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DISCIPLINARY PROCEEDINGS FOR ABORTIONS

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PERFORMED IN VIOLATION OF THIS ACT.

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

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SECTION 1. Arkansas Code Title 20, Chapter 16, Subchapter 6, is

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amended to add an additional section to read as follows:

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20-16-603. Drug-induced abortions – Procedures – Penalties – Causes of

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action.

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(a) As used in this section:

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(1) "Abortion" means the use or prescription of an instrument,



1 medicine, drug, or another substance or device to terminate the pregnancy of  
2 a woman known to be pregnant with an intention other than to increase the  
3 probability of a live birth, to preserve the life or health of the child  
4 after live birth, or to remove a dead unborn child who died in utero as the  
5 result of natural causes, accidental trauma, or a criminal assault on the  
6 pregnant woman or her unborn child, and that causes the premature termination  
7 of the pregnancy;

8 (2) "Attempt to perform or induce an abortion" means an act or  
9 an omission of a statutorily required act that, under the circumstances as  
10 the physician believes them to be, constitutes a substantial step toward the  
11 performance or induction of an abortion in violation of this section;

12 (3) "Mifepristone" means the specific abortion-inducing drug  
13 regimen known as RU-486; and

14 (4) "Physician" means a natural person licensed to practice  
15 medicine in the State of Arkansas under the Arkansas Medical Practices Act, §  
16 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

17 (b)(1) When mifepristone or another drug or chemical regimen is used  
18 to induce an abortion, the initial administration of the drug or chemical  
19 shall occur in the same room and in the physical presence of the physician  
20 who prescribed, dispensed, or otherwise provided the drug or chemical to the  
21 patient.

22 (2) The physician who induces the abortion, or a person acting  
23 on behalf of the physician who induces the abortion, shall make all  
24 reasonable efforts to ensure that the patient returns twelve (12) to eighteen  
25 (18) days after the administration or use of mifepristone or another drug or  
26 chemical for a follow-up visit so that the physician can confirm that the  
27 pregnancy has been terminated and can assess the patient's medical condition.

28 (3) A brief description of the efforts made to comply with this  
29 section, including the date, time, and identification by name of the person  
30 making the efforts, shall be included in the patient's medical record.

31 (c) This section does not affect telemedicine practice that does not  
32 involve the use of mifepristone or another drug or chemical to induce an  
33 abortion.

34 (d)(1) If the Arkansas State Medical Board finds that a physician  
35 licensed by the board has violated the rules of professional conduct by  
36 performing an abortion in violation of this subchapter, the board shall

1 revoke the physician's license.

2 (2) A penalty shall not be assessed against the woman upon whom  
3 the abortion is performed or attempted to be performed.

4 (e)(1)(A) A woman who receives an abortion, the father of the unborn  
5 child who was the subject of the abortion if the father was married to the  
6 woman who received the abortion at the time the abortion was performed, or a  
7 maternal grandparent of the unborn child may maintain an action against the  
8 person who performed the abortion in violation of this section for actual and  
9 punitive damages.

10 (B) A woman who attempts to receive an abortion in  
11 violation of this section may maintain an action against the person who  
12 attempted to perform the abortion for actual and punitive damages.

13 (2)(A) Upon petition by any citizen in the county in which an  
14 alleged violation of this section occurred or in which the defendant resides,  
15 a court may enjoin a healthcare professional who has knowingly or recklessly  
16 violated this section.

17 (B) An injunction under subdivision (e)(2)(A) of this  
18 section shall prevent the abortion provider from performing further abortions  
19 in violation of this section.

20 (f)(1) If a judgment is rendered in favor of the plaintiff who  
21 prevails in an action under subsection (e) of this section, the court shall  
22 award reasonable attorney's fees and costs in favor of the plaintiff against  
23 the defendant.

24 (2) If a judgment is rendered in favor of the defendant and the  
25 court finds that the plaintiff's suit was frivolous and brought in bad faith,  
26 the court shall order the plaintiff to pay reasonable attorney's fees to the  
27 defendant.

28 (g) A pregnant woman who obtains or possesses mifepristone or another  
29 drug or chemical used for the purpose of inducing an abortion to terminate  
30 her pregnancy shall not be subject to an action under subsection (e) of this  
31 section.

32 (h)(1) In a civil proceeding or action brought under this section, the  
33 court shall determine if the anonymity of a woman who receives or attempts to  
34 receive an abortion shall be preserved from public disclosure without her  
35 consent.

36 (2)(A) Upon determining that the woman's anonymity shall be

1 preserved, the court shall issue an order to the parties, witnesses, and  
2 counsel and shall direct the sealing of the record and exclusion of  
3 individuals from courtrooms or hearing rooms to the extent necessary to  
4 safeguard the woman's identity from public disclosure.

5 (B) An order under subdivision (h)(2)(A) of this section  
6 shall be accompanied by specific written findings explaining:

7 (i) Why the anonymity of the woman should be  
8 preserved from public disclosure;

9 (ii) Why the order is essential to that end;

10 (iii) How the order is narrowly tailored to serve  
11 that interest; and

12 (iv) Why no reasonable, less restrictive alternative  
13 exists.

14 (C) In the absence of written consent of the woman who  
15 receives or attempts to receive an abortion, anyone other than a public  
16 official who brings an action under subsection (e) of this section shall  
17 bring the action under a pseudonym.

18 (D) This subsection does not conceal the identity of the  
19 plaintiff or of a witness from the defendant.

20 (i) This section does not create or recognize a right to abortion.

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22 */s/J. Mayberry*

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25 **APPROVED: 04/02/2015**