

1 State of Arkansas
2 88th General Assembly
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4

As Engrossed: S3/15/11 S3/24/11

A Bill

SENATE BILL 845

5 By: Senator Rapert
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE ABORTION PATIENTS' ENHANCED
9 SAFETY ACT; TO DECLARE AN EMERGENCY; AND FOR OTHER
10 PURPOSES.
11

Subtitle

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14 AN ACT TO CREATE THE ABORTION PATIENTS'
15 ENHANCED SAFETY ACT AND TO DECLARE AN
16 EMERGENCY.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code Title 20, Chapter 9 is amended to add an
22 additional subchapter to read as follows:

23 Subchapter 13 – Abortion Patients' Enhanced Safety Act
24

25 20-9-1301. Title.

26 This subchapter shall be known and may be cited as the "Abortion
27 Patients' Enhanced Safety Act".
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29 20-9-1302. Legislative findings – Purposes.

30 (a) The General Assembly finds that:

31 (1)(A) Ninety-five percent (95%) of all abortions are performed
32 in clinics devoted solely to providing abortions and family planning
33 services.

34 (B) Most women who seek abortions at these facilities do
35 not have any relationship with the physician who performs the abortion either
36 before or after the procedure.



1 (C) In most instances, the woman's only actual contact
2 with the abortion provider occurs simultaneously with the abortion procedure
3 with little opportunity to ask questions about the procedure, potential
4 complications, and proper follow-up care;

5 (2) For most abortions, the woman arrives at the clinic on the
6 day of the procedure, has the procedure in a room within the clinic, and
7 recovers under the care of clinic staff, all without a hospital admission;

8 (3)(A) Abortion is an invasive, surgical procedure that can lead
9 to numerous and serious medical complications.

10 (B) Potential complications for first trimester abortions
11 include, among others, bleeding, hemorrhage, infection, uterine perforation,
12 blood clots, cervical tears, incomplete abortion, retained tissue, failure to
13 actually terminate the pregnancy, free fluid in the abdomen, acute abdomen,
14 missed ectopic pregnancies, cardiac arrest, sepsis, respiratory arrest,
15 reactions to anesthesia, fertility problems, emotional problems, and even
16 death;

17 (4)(A) The risks for second trimester abortions are greater than
18 for first trimester abortions.

19 (B) The risk of hemorrhage, in particular, is greater and
20 the resultant complications may require a hysterectomy, other reparative
21 surgery, or a blood transfusion;

22 (5) As stated in Williamson v. Lee Optical, 348 U.S. 483, 486
23 (1955), the State of Arkansas has a legitimate concern for the public's
24 health and safety;

25 (6)(A) As stated in Planned Parenthood of Southeastern
26 Pennsylvania v. Casey, 505 U.S. 833, 846 (1992), the State of Arkansas "has
27 legitimate interests from the outset of the pregnancy in protecting the
28 health of the woman".

29 (B) As stated in Akron v. Akron Ctr. for Reproductive
30 Health, Inc., 462 U.S. 416, 428 (1983), the State of Arkansas "has a
31 legitimate concern with the health of women who undergo abortions";

32 (7) Moreover, as stated in Roe v. Wade, 410 U.S. 113, 150
33 (1973), the State of Arkansas "has a legitimate interest in seeing to it that
34 abortion, like any other medical procedure, is performed under circumstances
35 that insure maximum safety for the patient";

36 (8) An ambulatory surgery center is a health care facility that

1 specializes in providing surgery services in an outpatient setting; and

2 (9) A patient who elects to have surgery in an ambulatory
3 surgery center arrives on the day of the procedure, has the surgery in an
4 operating room, and recovers under the care of the nursing staff, all without
5 a hospital admission.

6 (b) Based on the findings in subsection (a) of this section, it is the
7 purpose of this subchapter to:

8 (1) Regulate abortion clinics in a manner consistent with rules
9 applied to ambulatory surgery centers in this state;

10 (2) Promote and enforce the highest standard for care and safety
11 in facilities performing abortions in this state;

12 (3) Provide for the protection of public health through the
13 establishment and enforcement of rigorous and medically appropriate standards
14 of care and safety in abortion clinics; and

15 (4) Regulate the provision of abortion consistent with and to
16 the extent permitted by the decisions of the Supreme Court of the United
17 States.

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19 20-9-1303. Definitions.

20 As used in this subchapter:

21 (1)(A) "Abortion" means the intent to surgically terminate the
22 clinically diagnosable pregnancy of a woman with knowledge that the
23 termination by those means will with reasonable likelihood cause the death of
24 the unborn child.

25 (B) The use, prescription, or means is not an abortion if
26 done with the intent to:

27 (i) Save the life or preserve the health of the
28 unborn child;

29 (ii) Remove a dead unborn child caused by
30 spontaneous abortion; or

31 (iii) Remove an ectopic pregnancy; and

32 (2) "Abortion clinic" means a facility, other than an accredited
33 hospital, in which five (5) or more first trimester abortions in any month or
34 any second or third trimester abortions are performed; and

35 (3) "Ambulatory surgery center" means a facility in which
36 surgical services other than minor dental surgery are offered that require

1 the use of general or intravenous anesthetics and in which, in the opinion of
2 the attending physician, hospitalization, as defined in the present licensure
3 law, is not necessary.

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5 20-9-1304. Licensing and regulatory standards.

6 *A surgical abortion clinic shall meet the licensing and regulatory*
7 *standards prescribed for ambulatory surgical centers.*

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9 20-9-1305. Criminal penalties.

10 *A violation of this subchapter is a Class A misdemeanor.*

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12 20-9-1306. Fines.

13 (a) The Department of Health may impose a fine of not more than one
14 thousand dollars (\$1,000) for a violation of this subchapter.

15 (b) Each day during which a violation occurs is a separate offense for
16 purposes of assessing a fine.

17 (c) Both the office of the Attorney General and the office of the
18 prosecuting attorney for the county in which the violation occurred may bring
19 an action to enforce collection of a fine under this section.

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21 20-9-1307. Injunctive relief.

22 (a) In addition to any other penalty provided by law, whenever in the
23 judgment of the Director of the Department of Health, a person has engaged or
24 is about to engage in an act or practice that constitutes a violation of this
25 subchapter, the director shall make application to a court of competent
26 jurisdiction for an order enjoining the act or practice.

27 (b) Upon a showing by the director that the person has engaged or is
28 about to engage in an act or practice that constitutes a violation of this
29 subchapter, the court shall issue an injunction, a restraining order, or
30 another appropriate order.

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32 20-9-1308. Inspection of abortion facilities.

33 (a)(1) The Department of Health shall establish policies and
34 procedures for conducting annual inspections of abortion clinics regulated
35 under this subchapter.

36 (2) The department shall adopt rules for the conduct of on-site

1 inspections to ensure compliance with the requirements of this subchapter.

2 (b)(1) The department also shall establish policies and procedures for
3 conducting inspections and investigations pursuant to complaints received by
4 the department for alleged violations of the requirements of this
5 subchapter.

6 (2) The department shall receive, record, and dispose of
7 complaints under the policies and procedures established in this section.

8 (c) In promulgating rules under subsections (a) and (b) of this
9 section, the department shall specifically include rules protecting the
10 confidentiality of all patient records and patient-identifying information
11 reviewed or accessed during the inspections required under this subchapter.

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13 20-9-1309. Construction – Intent.

14 (a) This subchapter does not create or recognize a right to an
15 abortion.

16 (b) This subchapter is not intended to make lawful an abortion that is
17 currently unlawful.

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19 SECTION 2. Emergency Clause. It is found and determined by the
20 General Assembly of the State of Arkansas that an individual's health is of
21 the highest priority where medical procedures are concerned; that abortions
22 are currently being performed by medical facilities that do not meet the
23 appropriate level of standards for surgical procedures; that the failure of
24 these clinics to meet the appropriate level of standards for surgical
25 procedures represents a major health risk to any woman seeking an abortion;
26 and that this subchapter is immediately necessary because it will raise the
27 standards for abortion clinics and promote and protect women's health in
28 Arkansas. Therefore, an emergency is declared to exist and this subchapter
29 being immediately necessary for the preservation of the public peace, health,
30 and safety shall become effective on July 1, 2011.

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32 /s/Rapert
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