

1 State of Arkansas As Engrossed: S3/14/19 H3/27/19

2 92nd General Assembly

A Bill

3 Regular Session, 2019

SENATE BILL 278

4

5 By: Senators G. Stubblefield, B. Ballinger, Caldwell, L. Eads, J. English, Flipppo, T. Garner, Hickey, Rice

6 By: Representatives Hawks, Bentley, Brown, Cloud, Coleman, C. Cooper, M. Davis, Evans, Gates,

7 Payton, Penzo, Rye, B. Smith, Speaks, Sullivan

8

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For An Act To Be Entitled

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AN ACT TO AMEND LAWS CONCERNING ABORTION FACILITIES

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AND ABORTION REPORTING; TO AMEND THE BORN-ALIVE

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INFANT PROTECTION LAWS; TO REQUIRE AN ADDITIONAL

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ACKNOWLEDGMENT UNDER THE WOMAN'S RIGHT-TO-KNOW ACT;

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TO INCREASE PENALTIES AND CLARIFY PENALTIES RELATING

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TO ABORTION; AND FOR OTHER PURPOSES.

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Subtitle

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TO AMEND LAWS CONCERNING ABORTION

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FACILITIES AND ABORTION REPORTING; TO

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AMEND THE BORN-ALIVE INFANT PROTECTION

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LAWS; AND TO REQUIRE AN ADDITIONAL

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ACKNOWLEDGMENT UNDER THE WOMAN'S RIGHT-

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TO-KNOW 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 § 20-9-302(b)(1), concerning the requirements for abortion facilities, is amended to read as follows:

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(1) Adopt appropriate rules, regarding without limitation the

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facilities, equipment, procedures, techniques, medical records, informed

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consent signatures, parental consent signatures, and conditions of ~~clinics,~~

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~~health centers, and other facilities~~ a clinic, health center, or other

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facility subject to the provisions of this section to assure at a minimum

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that:



1 (A) The facilities, equipment, procedures, techniques, and
2 conditions of the clinic, health center, or other facility are aseptic and do
3 not constitute a health hazard; ~~and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) If an abortion performed in a healthcare facility other than
2 a hospital results in a live birth, the attending physician shall:

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

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

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

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

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

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

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

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

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

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

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

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

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30 SECTION 5. Arkansas Code § 20-16-811 is amended to read as follows:
31 20-16-811. Penalty.

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

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

1 utero.

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

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

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

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

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

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

14 20-16-1109. Penalties.

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

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

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

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

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

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

36 (B) Medically accurate information that a reasonable

1 patient would consider material to the decision concerning whether or not to
2 undergo the abortion, including:

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

- 7 (a) Cervical or uterine perforation;
8 (b) Danger to subsequent pregnancies;
9 (c) Hemorrhage; and
10 (d) Infection; and

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

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

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

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

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

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

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

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

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

1 for the abortion.

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

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

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

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

15 (4)(A) At least ~~forty-eight (48)~~ seventy-two (72) hours before
16 the abortion, the woman is given a copy of the printed materials and
17 permitted to view and given a copy of the informational DVD under § 20-16-
18 1704.

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

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

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

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

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

1 to feel pain;

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

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

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

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

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

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

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

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

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

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

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

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

36 (C) A detailed list of the risks and hazards related to

1 the surgical or medical procedures that are planned to be for the pregnant
2 woman, including without limitation the following risks and hazards that may
3 occur:

- 4 (i) Infection;
- 5 (ii) Blood clots;
- 6 (iii) Hemorrhage;
- 7 (iv) Allergic reactions;
- 8 (v) Uterine perforation, also known as a hole in the
9 uterus, or other damage to the uterus;
- 10 (vi) Sterility;
- 11 (vii) Injury to the bowel or bladder;
- 12 (viii) Possible hysterectomy as a result of
13 complication or injury during the procedure;
- 14 (ix) Failure to remove all products of conception;
- 15 (x) Possible continuation of pregnancy;
- 16 (xi) Cramping of the uterus or pelvic pain;
- 17 (xii) Cervical laceration;
- 18 (xiii) Incompetent cervix;
- 19 (xiv) Emergency treatment for any complications; and
- 20 (xv) Death;

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

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

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

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

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

1 20-16-1706. Medical emergencies.

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

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9 SECTION 13. DO NOT CODIFY. Savings clause.

10 (a) If a court order holds that any amendment to the Arkansas Code
11 made by this act is invalid or unenforceable, then the relevant portion of
12 the Arkansas Code in effect prior to the enactment of this act shall remain
13 in full force and effect from and after the effective date of this act,
14 notwithstanding the amendment made by this act.

15 (b) If a court order holding that an amendment to the Arkansas Code
16 made by this act or a provision of this act is invalid or unenforceable
17 expires or is reversed, vacated, or set aside, then the provision of the
18 Arkansas Code as amended by this act or any provision of this act shall be
19 effective immediately upon the expiration, reversal, vacatur, or setting
20 aside of the court order.

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23 /s/G. Stubblefield
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