

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021

# A Bill

SENATE BILL 85

4  
5 By: Senator Bledsoe  
6 By: Representative Cloud

## For An Act To Be Entitled

9 AN ACT TO AMEND THE RIGHT TO VIEW ULTRASOUND IMAGES  
10 BEFORE AN ABORTION; TO CREATE THE RIGHT-TO-KNOW-AND-  
11 SEE ACT; AND FOR OTHER PURPOSES.

## Subtitle

12  
13  
14 TO AMEND THE RIGHT TO VIEW ULTRASOUND  
15 IMAGES BEFORE AN ABORTION; AND TO CREATE  
16 THE RIGHT-TO-KNOW-AND-SEE ACT.  
17  
18  
19

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

21  
22 SECTION 1. Arkansas Code § 20-16-602 is amended to read as follows:

23 20-16-602. Right-to-Know-and-See Act – Right to view ultrasound image  
24 prior to before abortion – Definitions.

25 (a) This section shall be known and may be cited as the "Right-to-  
26 Know-and-See Act".

27 (b) As used in this section:

28 (1)(A) "Abortion" means the act of using or prescribing any  
29 instrument, medicine, drug, or any other substance, device, or means with the  
30 intent to terminate the clinically diagnosable pregnancy of a woman, with  
31 knowledge that the termination by any of those means will with reasonable  
32 likelihood cause the death of the unborn child.

33 (B) An act under subdivision (b)(1)(A) of this section is  
34 not an abortion if the act is performed with the intent to:

35 (i) Save the life or preserve the health of the  
36 unborn child or the pregnant woman;



1                   (ii) Remove a dead unborn child caused by  
2 spontaneous abortion; or

3                   (iii) Remove an ectopic pregnancy;

4           (2) "Attempt to perform or induce an abortion" means an act or  
5 an omission of a statutorily required act that, under the circumstances as  
6 the actor believes them to be, constitutes a substantial step in a course of  
7 conduct planned to culminate in the performance or induction of an abortion  
8 in this state in violation of this section;

9           (3)(A) "Medical emergency" means a condition that, in reasonable  
10 medical judgment, so complicates the medical condition of the pregnant woman  
11 that it necessitates the abortion of her pregnancy to avert:

12                   (i) The death of the pregnant woman; or

13                   (ii) Serious risk of substantial and irreversible  
14 physical impairment of a major bodily function, not including psychological  
15 or emotional conditions.

16           (B) "Medical emergency" does not include a condition based  
17 on a claim or diagnosis that a pregnant woman will engage in conduct that she  
18 intends to result in her death or in substantial and irreversible physical  
19 impairment of a major bodily function;

20           (4) "Qualified technician" means:

21                   (A) A registered diagnostic medical sonographer who is  
22 certified in obstetrics and gynecology by the American Registry for  
23 Diagnostic Medical Sonography; or

24                   (B) A certified nurse midwife or advanced practice  
25 registered nurse with certification in obstetrical ultrasonography;

26           (5) "Reasonable medical judgment" means a medical judgment that  
27 would be made by a reasonably prudent physician knowledgeable about the case  
28 and the treatment possibilities with respect to the medical conditions  
29 involved; and

30           (6) "Unborn child" means the offspring of human beings from  
31 conception until birth.

32           ~~(c)(1) All physicians who use ultrasound equipment in the performance~~  
33 ~~of an abortion shall inform the woman that she has the right to view the~~  
34 ~~ultrasound image of her unborn child before an abortion is performed~~ An  
35 abortion provider who knowingly performs an abortion shall comply with the  
36 requirements of this section.

1           (2) Before a pregnant woman gives informed consent to an  
2 abortion or is administered any anesthesia or medication in preparation of an  
3 abortion, the physician or qualified technician shall:

4           (A) Perform an obstetric ultrasound on the pregnant woman  
5 using a method that the physician and the pregnant woman agree is best under  
6 the circumstances;

7           (B)(i) Provide a simultaneous verbal explanation of what  
8 the ultrasound is depicting that includes the presence and location of the  
9 unborn child within the uterus and the number of unborn children depicted.

10           (ii) If the ultrasound image indicates that the  
11 unborn child has died, the physician or qualified technician shall inform the  
12 pregnant woman of that fact;

13           (C) Display the ultrasound images so that the pregnant  
14 woman may view them;

15           (D) Provide a medical description of the ultrasound  
16 images, including the dimensions of the unborn child and the presence of  
17 external members and internal organs if present and viewable; and

18           (E) Retain the ultrasound image with the date that the  
19 ultrasound occurred in the pregnant woman's medical record.

20           ~~(b)(1) The physician shall certify in writing that the woman was~~  
21 ~~offered an opportunity to view the ultrasound image and shall obtain the~~  
22 ~~woman's acceptance or rejection to view the image in writing.~~

23           ~~(2) If the woman accepts the offer and requests to view the~~  
24 ~~ultrasound image, she shall be allowed to view it.~~

25           ~~(c) The physician's certification together with the woman's signed~~  
26 ~~acceptance or rejection shall be placed in the woman's medical file in the~~  
27 ~~physician's office and kept for three (3) years.~~

28           ~~(d) Any physician who fails to inform the woman that she has the right~~  
29 ~~to view the ultrasound image of her unborn child before an abortion is~~  
30 ~~performed or fails to allow her to view the ultrasound image upon her request~~  
31 ~~may be subject to disciplinary action by the Arkansas State Medical Board.~~

32           (d)(1)(A) A person who knowingly or recklessly performs or induces or  
33 attempts to perform or induce an abortion in violation of this section is  
34 guilty of a Class A misdemeanor.

35           (B) A penalty shall not be assessed against the pregnant  
36 woman upon whom the abortion is performed or induced or attempted to be

1 performed or induced.

2 (2)(A) A woman upon whom an abortion has been performed in  
3 violation of this section or the father or grandparent of the unborn child  
4 who was the subject of an abortion in violation of this section may bring an  
5 action against the person who knowingly or recklessly performed or induced  
6 the abortion in violation of this section for actual and punitive damages.

7 (B)(i) A pregnant woman upon whom an abortion has been  
8 attempted in violation of this section may bring an action against the person  
9 who attempted knowingly or recklessly to perform or induce the abortion in  
10 violation of this section for actual and punitive damages.

11 (ii) Damages shall not be awarded to a plaintiff if  
12 the pregnancy resulted from the plaintiff's criminal conduct.

13 (C)(i) A cause of action for injunctive relief against a  
14 person who has intentionally violated this section may be maintained by:

15 (a) The woman upon whom an abortion was  
16 performed or induced or attempted to be performed or induced in violation of  
17 this section;

18 (b) A person who is the spouse, parent,  
19 sibling, or guardian of or a current or former licensed healthcare provider  
20 of the woman upon whom an abortion has been performed or induced or attempted  
21 to be performed or induced in violation of this section;

22 (c) A prosecuting attorney with appropriate  
23 jurisdiction; or

24 (d) The Attorney General.

25 (ii) The injunction shall prevent the abortion  
26 provider from performing or inducing and from attempting to perform or induce  
27 further abortions in violation of this section.

28 (iii) A cause of action shall not be maintained by a  
29 plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

30 (D) If judgment is rendered in favor of the plaintiff in  
31 an action described in this section, the court shall also render judgment for  
32 a reasonable attorney's fee in favor of the plaintiff against the defendant.

33 (E) If judgment is rendered in favor of the defendant and  
34 the court finds that the plaintiff's suit was frivolous and brought in bad  
35 faith, the court shall render judgment for a reasonable attorney's fee in  
36 favor of the defendant against the plaintiff.

1           (e)(1) In a civil or criminal proceeding or action brought under this  
2 subchapter, the court shall rule whether the anonymity of a woman upon whom  
3 an abortion has been performed or induced or attempted to be performed or  
4 induced shall be preserved from public disclosure if she does not give her  
5 consent to the disclosure.

6           (2) The court, upon motion or sua sponte, shall make a ruling  
7 under subdivision (e)(1) of this section and, upon determining that the  
8 woman's anonymity should be preserved, shall issue orders to the parties,  
9 witnesses, and counsel and shall direct the sealing of the record and  
10 exclusion of individuals from courtrooms or hearing rooms to the extent  
11 necessary to safeguard the woman's identity from public disclosure.

12           (3) Each order under subdivision (e)(2) of this section shall be  
13 accompanied by specific written findings explaining:

14                   (A) Why the anonymity of the woman should be preserved  
15 from public disclosure;

16                   (B) Why the order is essential to that end;

17                   (C) How the order is narrowly tailored to serve that  
18 interest; and

19                   (D) Why no reasonable less restrictive alternative could  
20 be fashioned.

21           (4) In the absence of written consent of the woman upon whom an  
22 abortion has been performed or induced or attempted to be performed or  
23 induced, anyone other than a public official who brings an action under  
24 subdivision (d)(2) of this section shall do so under a pseudonym.

25           (5) This subsection is not intended to conceal the identity of  
26 the plaintiff or of witnesses from the defendant or from attorneys for the  
27 defendant.

28           (f)(1) This section does not:

29                   (A) Prevent a pregnant woman from averting her eyes or  
30 looking away from the ultrasound images required to be provided to and  
31 reviewed by the pregnant woman; or

32                   (B)(i) Apply in the case of a medical emergency.

33                           (ii) Upon a determination by the physician that a  
34 medical emergency exists with respect to the pregnant woman, the physician  
35 shall certify the specific medical conditions that constitute the medical  
36 emergency.

1                   (iii) A physician or abortion provider that  
2 willfully falsifies a certification under subdivision (f)(1)(B)(ii) of this  
3 section is subject to penalties under this section.

4                   (2) A physician or pregnant woman is not subject to a penalty if  
5 the pregnant woman declines to look at the presented ultrasound images.

6  
7                   SECTION 2. DO NOT CODIFY. SAVINGS CLAUSE.

8                   If any section or part of a section of this act is determined by a  
9 court to be unconstitutional, § 20-16-602 shall be revived, and to prevent a  
10 hiatus in the law, the relevant section or part of a section of § 20-16-602  
11 shall remain in full force and effect from and after the effective date of  
12 this act notwithstanding its repeal by this act.