

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S2/1/21 S2/4/21

A Bill

SENATE BILL 85

5 By: Senator Bledsoe
6 By: Representative Cloud
7

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.
12
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Subtitle

15 TO AMEND THE RIGHT TO VIEW ULTRASOUND
16 IMAGES BEFORE AN ABORTION; AND TO CREATE
17 THE RIGHT-TO-KNOW-AND-SEE ACT.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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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 and document in the pregnant woman's medical record that
15 the ultrasound images were displayed to the pregnant woman;

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

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

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

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

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

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

33 (d)(1) The Department of Health shall quarterly inspect the records to
34 ensure compliance with this section.

35 (2) The department shall:

36 (A) Fine an abortion facility:

1 (i) One thousand five hundred dollars (\$1,500) for
2 the first violation in a thirty-six-month period;

3 (ii) Three thousand dollars (\$3,000) for the second
4 violation in a thirty-six-month period; and

5 (iii) Five thousand dollars (\$5,000) for the third
6 violation in a thirty-six-month period; and

7 (B) Suspend the license of an abortion facility for six
8 (6) months for the fourth violation in a thirty-six-month period.

9 (3) Upon notification from the department of a violation by a
10 physician, the Arkansas State Medical Board shall:

11 (A) Fine a physician:

12 (i) One thousand five hundred dollars (\$1,500) for
13 the first violation in a thirty-six-month period;

14 (ii) Three thousand dollars (\$3,000) for the second
15 violation in a thirty-six-month period; and

16 (iii) Five thousand dollars (\$5,000) for the third
17 violation in a thirty-six-month period; and

18 (B) Suspend the license of a physician for six (6) months
19 for the fourth violation in a thirty-six-month period.

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21 (e)(1) This section does not:

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

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

26 (ii) Upon a determination by the physician that a
27 medical emergency exists with respect to the pregnant woman, the physician
28 shall certify the specific medical conditions that constitute the medical
29 emergency.

30 (iii) A physician or abortion provider that
31 willfully falsifies a certification under subdivision (e)(1)(B)(ii) of this
32 section is subject to penalties under this section.

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

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36 SECTION 2. DO NOT CODIFY. SAVINGS CLAUSE.

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

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