

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Senators Jeffries, Boozman, and Brown

A Bill

SENATE BILL 507

For An Act To Be Entitled

"AN ACT REQUIRING PHYSICIANS TO COMMUNICATE SUFFICIENT
INFORMATION BEFORE TERMINATING PREGNANCIES SO THAT
PATIENTS CAN GIVE AN INFORMED CONSENT TO THE PROCEDURE;
AND FOR OTHER PURPOSES."

Subtitle

"REQUIRING PHYSICIANS TO COMMUNICATE
SUFFICIENT INFORMATION BEFORE
TERMINATING PREGNANCIES SO THAT PATIENTS
CAN GIVE AN INFORMED CONSENT TO THE
PROCEDURE."

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

SECTION 1. TITLE. This Act shall be known and may be cited as the
Arkansas Informed Consent Act of 1995.

SECTION 2. DEFINITIONS. As used in this Act unless the context other
wise requires:

(1) "Termination of pregnancy" means the use or prescription of any
instrument, medicine, drug, or any other substance or device intentionally to
terminate the pregnancy of a female known to be pregnant with an intention
other than to increase the probability of a live birth, to preserve the life
or health of the child after live birth, or to remove a dead *unborn child*;

(2) "Attempt to terminate a pregnancy" means an act, or an omission of
a statutorily required act, that, under the circumstances as the actor
believes them to be, constitutes a substantial step in a course of conduct
planned to culminate in the termination of a pregnancy in Arkansas in

1 violation of this act;

2 (3) "Department" means the Arkansas Department of Health;

3 (4) "Director" means the Director of the Arkansas Department of
4 Health;

5 (5) "Gestational age" means the age of the unborn child as calculated
6 from the first day of the last menstrual period of the pregnant female;

7 (6) "Medical emergency" means any condition which, on the basis of the
8 physician's good faith clinical judgment, so complicates the medical
9 condition of a pregnant female as to necessitate the immediate termination of
10 her pregnancy to avert her death or for which a delay will create serious
11 risk of substantial and irreversible impairment of a major bodily function;

12 (7) "Physician" means any person licensed to practice medicine in this
13 state; and

14 (8) "Probable gestational age of the unborn child" means what, in the
15 judgment of the physician, will with reasonable probability be the
16 gestational age of the unborn child at the time the termination of pregnancy
17 is planned to be performed.

18

19 SECTION 3. INFORMED CONSENT. No termination of pregnancy shall be
20 performed in this state except with the voluntary and informed consent of the
21 female upon whom the termination of pregnancy is to be performed. Except in
22 the case of a medical emergency, consent to a termination of pregnancy is
23 voluntary and informed if and only if:

24 (a) *On the day prior to, or earlier,* the termination of pregnancy, the
25 female is told the following, by telephone or in person, by the physician who
26 is to perform the termination of pregnancy or by a referring physician:

27 (1) The name of the physician who will perform the termination
28 of pregnancy;

29 (2) The particular medical risks associated with the particular
30 procedure for termination of pregnancy to be employed including, when
31 medically accurate, the risks of infection, hemorrhage, breast cancer, danger
32 to subsequent pregnancies, and infertility;

33 (3) The probable gestational age of the unborn child at the time
34 the termination of pregnancy is to be performed; and

35 (4) The medical risks associated with carrying the unborn child

1 to term.

2 The information required by this subsection may be provided by
3 telephone without conducting a physical examination or tests of the female,
4 in which case the information required to be provided may be based on facts
5 supplied the physician by the female and whatever other relevant information
6 is reasonably available to the physician. It may not be provided by a tape
7 recording, but must be provided during a consultation in which the physician
8 is able to ask questions of the female and the female is able to ask
9 questions of the physician. If a physical examination, tests, or the
10 availability of other information to the physician subsequently indicate, in
11 the medical judgment of the physician, a revision of the information
12 previously supplied to the female, that revised information may be
13 communicated to the female at any time prior to the performance of the
14 termination of pregnancy. Nothing in this section may be construed to
15 preclude provision of required information in a language understood by the
16 female through a translator.

17 (b) *On the day prior to, or earlier,* the termination of pregnancy, the
18 female is informed, by telephone or in person, by the physician who is to
19 perform the termination of pregnancy, by a referring physician, or by an
20 agent of either physician:

21 (1) That medical assistance benefits may be available for
22 prenatal care, childbirth, and neonatal care;

23 (2) That the father is liable to assist in the support of her
24 child, even in instances in which the father has offered to pay for the
25 termination of pregnancy, and

26 (3) That she has the right to review the printed materials
27 described in Section 4 of this Act. The physician or the physician's agent
28 shall orally inform the female about the materials that have been provided by
29 the State of Arkansas and that they describe the unborn child and list
30 agencies that offer alternatives to termination of pregnancy. If the female
31 chooses to view the materials, they shall either be given to her *on the day*
32 *prior to, or earlier,* the termination of pregnancy or mailed to her at least
33 seventy-two (72) hours before the procedure by certified mail, restricted
34 delivery to addressee, which means that a postal employee can only deliver
35 the mail to the addressee.

1 The information required by this subsection may be provided by a tape
2 recording if provision is made to record or otherwise register specifically
3 whether the female does or does not choose to review the printed materials.

4 (c) Prior to the termination of pregnancy, the female certifies in
5 writing that the information described in subsections (a) and (b) of this
6 section has been furnished her and that she has been informed of her
7 opportunity to review the information referred to in paragraph (3) of
8 subsection (b) of this section.

9 (d) Prior to the termination of pregnancy, the physician who is to
10 perform the procedure or the physician's agent receives a copy of the written
11 certification prescribed by subsection (c) of this section.

12

13 SECTION 4. PRINTED INFORMATION. (a) Within ninety (90) days after
14 the effective date of this Act, the department shall cause to be published,
15 in English and in each language which is the primary language of two percent
16 (2%) or more of the state's population, and shall update on an annual basis,
17 the following printed materials in such a way as to ensure that the
18 information is easily comprehensible:

19 (1) Geographically indexed materials designed to inform the
20 female of public and private agencies and services available to assist a
21 female through pregnancy, upon childbirth, and while the child is dependent,
22 including adoption agencies, which shall include a comprehensive list of the
23 agencies available, a description of the services they offer, and a
24 description of the manner, including telephone numbers, in which they might
25 be contacted or, at the option of the department, printed materials including
26 a toll-free twenty-four (24) a day telephone number which may be called to
27 obtain, orally, such a list and description of agencies in the locality of
28 the caller and of the services they offer; and

29 (2) Materials designed to inform the female of the probable
30 anatomical and physiological characteristics of the unborn child at two-week
31 gestational increments from the time when a female can be known to be
32 pregnant to full term, including any relevant information on the possibility
33 of the unborn child's survival and pictures or drawings representing the
34 development of unborn children at two-week gestational increments, provided
35 that any such pictures or drawings must contain the dimensions of the fetus

1 and must be realistic and appropriate for the stage of pregnancy depicted.
2 The materials shall be objective, nonjudgmental, and designed to convey only
3 accurate scientific information about the unborn child at the various
4 gestational ages. The material shall also contain objective information
5 describing the methods of termination of pregnancy procedures commonly
6 employed, the medical risks commonly associated with each such procedure, the
7 possible detrimental psychological effects of termination of pregnancy, and
8 the medical risks commonly associated with carrying a child to term.

9 (b) The materials referred to in subsection (a) of this section shall
10 be printed in a typeface large enough to be clearly legible.

11 (c) The materials required under this section shall be available at no
12 cost from the department upon request and in appropriate number to any
13 person, facility, or hospital.

14

15 SECTION 5. PROCEDURE IN CASE OF MEDICAL EMERGENCY. When a medical
16 emergency compels the performance of performing the procedure, the physician
17 shall inform the female, prior to the termination of pregnancy if possible,
18 of the medical indications supporting the physician's judgment that a
19 termination of pregnancy is necessary to avert her death or that a
20 twenty-four (24) hour delay will create serious risk of substantial and
21 irreversible impairment of a major bodily function.

22

23

24 SECTION 6. CIVIL REMEDIES. (a) Any person upon whom a termination of
25 pregnancy has been performed without complying with this Act, the father of
26 the unborn child who was the subject of such a termination of pregnancy may
27 maintain an action against the person who performed the termination of
28 pregnancy in knowing or reckless violation of this Act for actual and
29 punitive damages. Any person upon whom a termination of pregnancy has been
30 attempted without complying with this Act may maintain an action against the
31 person who attempted to terminate a pregnancy in knowing or reckless
32 violation of this article for *actual damages and punitive damages; provided,*
33 *however, that any punitive damages awarded by the court shall not exceed*
34 *three (3) times actual damages.*

35 (b) If judgment is rendered in favor of the plaintiff in any action

1 described in this section, the court shall also render judgment for a
2 reasonable attorney's fee in favor of the plaintiff against the defendant.
3 If judgment is rendered in favor of the defendant and the court finds that
4 the plaintiff's suit was frivolous and brought in bad faith, the court shall
5 also render judgment for a reasonable attorney's fee in favor of the
6 defendant against the plaintiff.

7

8 SECTION 7. In every civil or criminal proceeding or action brought
9 under this Act, the court shall rule whether the anonymity of any female upon
10 whom a termination of pregnancy has been performed or attempted shall be
11 preserved from public disclosure if she does not give her consent to such
12 disclosure. The court, upon motion or sua sponte, shall make such a ruling
13 and, upon determining that her anonymity should be preserved, shall issue
14 orders to the parties, witnesses, and counsel and shall direct the sealing of
15 the record and exclusion of individuals from courtrooms or hearing rooms to
16 the extent necessary to safeguard her identity from public disclosure. Each
17 such order shall be accompanied by specific written findings explaining why
18 the anonymity of the female should be preserved from public disclosure, why
19 the order is essential to that end, how the order is narrowly tailored to
20 serve that interest, and why no reasonable less restrictive alternative
21 exists. In the absence of written consent of the female upon whom a
22 termination of pregnancy has been performed or attempted, anyone other than a
23 public official, who brings an action under subsection (a) of Section 8 shall
24 do so under a pseudonym. This section shall not be construed to conceal the
25 identity of the plaintiff or of witnesses from the defendant.

26

27 SECTION 8. All provisions of this act of a general and permanent
28 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
29 Code Revision Commission shall incorporate the same in the Code.

30

31 SECTION 9. If any provision of this act or the application thereof to
32 any person or circumstance is held invalid, such invalidity shall not affect
33 other provisions or applications of the act which can be given effect without
34 the invalid provision or application, and to this end the provisions of this
35 act are declared to be severable.

1

2 SECTION 10. All laws and parts of laws in conflict with this act are
3 hereby repealed.

4

/s/Jeffries

5

6

7