

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011

A Bill

SENATE BILL 845

4
5 By: Senator Rapert

For An Act To Be Entitled

6
7
8 AN ACT TO CREATE THE ABORTION PATIENTS' ENHANCED
9 SAFETY ACT; TO DECLARE AN EMERGENCY; AND FOR OTHER
10 PURPOSES.

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:

20
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".

28
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) The women do not return to the facility for post-
2 surgical care.

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

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

10 (3) As stated in H.L. v. Matheson, 450 U.S. 398, 411 (1981),
11 "The medical, emotional, and psychological consequences of an abortion are
12 serious and can be lasting";

13 (4)(A) Abortion is an invasive, surgical procedure that can lead
14 to numerous and serious medical complications.

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

22 (5)(A) The risks for second trimester abortions are greater than
23 for first trimester abortions.

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

27 (6) As stated in Williamson v. Lee Optical, 348 U.S. 483, 486
28 (1955), the State of Arkansas has a legitimate concern for the public's
29 health and safety;

30 (7)(A) As stated in Planned Parenthood of Southeastern
31 Pennsylvania v. Casey, 505 U.S. 833, 846 (1992), the State of Arkansas "has
32 legitimate interests from the outset of the pregnancy in protecting the
33 health of the woman".

34 (B) More specifically, as stated in Akron v. Akron Ctr.
35 for Reproductive Health, Inc., 462 U.S. 416, 428 (1983), the State of
36 Arkansas "has a legitimate concern with the health of women who undergo

1 abortions”;

2 (8) Moreover, as stated in Roe v. Wade, 410 U.S. 113, 150
3 (1973), the State of Arkansas “has a legitimate interest in seeing to it that
4 abortion, like any other medical procedure, is performed under circumstances
5 that insure maximum safety for the patient”;

6 (9) Since the Supreme Court’s decision in Roe v. Wade, courts
7 have repeatedly recognized that for the purposes of regulation, abortion
8 services are rationally distinct from other routine medical services due to,
9 as stated in Greenville Women’s Clinic v. Bryant, 222 F.3d 157, 173 (4th Cir.
10 2000), cert. denied, 531 U.S. 1191 (2001), the “particular gravitas of the
11 moral, psychological, and familial aspects of the abortion decision”;

12 (10) In adopting an array of rules that treat abortion more
13 seriously than other medical procedures, the State of Arkansas recognizes the
14 importance of the abortion practice while yet permitting it to continue, as
15 protected by the Supreme Court’s cases on the subject;

16 (11)(A) An ambulatory surgery center is a health care facility
17 that specializes in providing surgery services in an outpatient setting.

18 (B) An ambulatory surgery center generally provides a
19 cost-effective and convenient environment that may be less stressful than the
20 environment hospitals offer.

21 (C) A particular ambulatory surgery center may perform
22 surgeries in a variety of specialties or dedicate their services to one (1)
23 specialty; and

24 (12) A patient who elects to have surgery in an ambulatory
25 surgery center arrives on the day of the procedure, has the surgery in an
26 operating room, and recovers under the care of the nursing staff, all without
27 a hospital admission.

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

30 (1) Define certain abortion clinics as ambulatory surgery
31 centers under the laws of this state and to subject them to licensing and
32 regulation as ambulatory surgery centers;

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

35 (3) Provide for the protection of public health through the
36 establishment and enforcement of rigorous and medically appropriate standards

1 of care and safety in abortion clinics; and

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

5
6 20-9-1303. Definitions.

7 As used in this subchapter:

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

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

15 (i) Save the life or preserve the health of the
16 unborn child;

17 (ii) Remove a dead unborn child caused by
18 spontaneous abortion; or

19 (iii) Remove an ectopic pregnancy; and

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

23 (3) "Ambulatory surgery center" means a facility in which
24 surgical services other than minor dental surgery are offered that require
25 the use of general or intravenous anesthetics and in which, in the opinion of
26 the attending physician, hospitalization, as defined in the present licensure
27 law, is not necessary.

28
29 20-9-1304. Licensing and regulatory standards.

30 An abortion clinic shall meet the licensing and regulatory standards
31 prescribed for ambulatory surgical centers.

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33 20-9-1305. Criminal penalties.

34 A person who operates an abortion clinic without a valid ambulatory
35 surgery center license issued by the Department of Health is guilty of a
36 Class A misdemeanor.

1
2 20-9-1306. Fines.

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

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

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

10
11 20-9-1307. Injunctive relief.

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

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

21
22 20-9-1308, Inspection of abortion facilities.

23 (a) The Department of Health shall inspect at least one (1) time each
24 six (6) months any place at which non-surgical or chemical abortions are
25 performed.

26 (b) The purpose of inspections under this section is for the
27 enforcement of all state rules and laws pertaining to abortion clinics and
28 may be conducted as often as necessary to enforce all state rules and laws.

29 (c) The department shall keep on file a written report of each
30 inspection under this section.

31 (d) A report under this section is a public documents and shall be
32 made available for disclosure to a person who requests to see any report.

33 (e) Patient records shall not be released as any part of a disclosure
34 under subsection (d) of this section.

35 (f) An employee's personal information, including without limitation,
36 the employee's name, address or phone number, shall not be released as a part

1 of a report under subdivision (c) of this section.

2
3 20-9-1309. Construction – Intent.

4 (a) This subchapter does not create or recognize a right to an
5 abortion.

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

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