

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

HOUSE BILL 1428

5 By: Representatives Lundstrum, Ballinger, Bentley, Cavanaugh, Coleman, Davis, Della Rosa, Dotson, C.  
6 Douglas, Farrer, Gates, Gonzales, Hollowell, Jett, Lowery, Lynch, McCollum, D. Meeks, Miller, Penzo,  
7 Payton, Pilkington, Richmond, Rye, B. Smith, Speaks, Warren, Watson, J. Williams  
8 By: Senators Flippo, Bledsoe, A. Clark, B. Johnson  
9

## For An Act To Be Entitled

11 AN ACT TO AMEND LAWS CONCERNING UNLAWFUL ABORTIONS;  
12 TO AMEND LAWS CONCERNING THE PROCEDURE OF DENIAL,  
13 SUSPENSION, OR REVOCATION OF A HEALTH FACILITIES  
14 SERVICE LICENSE; TO AMEND THE LAWS REGARDING ABORTION  
15 CLINICS; AND FOR OTHER PURPOSES.  
16  
17

## Subtitle

19 TO AMEND LAWS CONCERNING UNLAWFUL  
20 ABORTIONS; TO AMEND LAWS CONCERNING THE  
21 PROCEDURE OF DENIAL, SUSPENSION, OR  
22 REVOCATION OF A HEALTH FACILITIES SERVICE  
23 LICENSE; AND TO AMEND THE LAWS REGARDING  
24 ABORTION CLINICS.  
25  
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
28

29 SECTION 1. Arkansas Code § 5-61-101 is amended to read as follows:

30 5-61-101. Abortion only by licensed ~~medical practitioner~~ physician.

31 (a) It is unlawful for any person to induce another person to have an  
32 abortion or to ~~willfully~~ knowingly terminate the pregnancy of a woman known  
33 to be pregnant with the ~~intent~~ purpose to cause fetal death unless the person  
34 is a physician licensed to practice medicine in the State of Arkansas.

35 (b) ~~Violation~~ A violation of subsection (a) of this section is a Class  
36 D felony.



1 (c) ~~Nothing in this section shall be construed to~~ This section does  
 2 not allow the charging or conviction of a woman with any criminal offense in  
 3 the death of her own unborn child in utero.

4  
 5 SECTION 2. Arkansas Code § 20-9-215 is amended to read as follows:  
 6 20-9-215. License – Denial, suspension, and revocation.

7 (a) The State Board of Health ~~is empowered to~~ shall deny, suspend, or  
 8 revoke licenses on any of the following grounds:

9 (1) ~~Violation of~~ Violating any of the provisions of this  
 10 subchapter or the rules and regulations lawfully promulgated under this  
 11 subchapter; or

12 (2) Permitting, aiding, or abetting the commission of any  
 13 unlawful act in connection with the operation of the institutions.

14 (b)(1) If the Department of Health determines to deny, suspend, or  
 15 revoke a license, ~~it~~ the department shall send to the applicant or licensee,  
 16 by certified mail, a notice setting forth the particular reasons for the  
 17 determination.

18 (2) The denial, suspension, or revocation shall become final  
 19 thirty (30) days after the mailing of the notice unless the applicant or  
 20 licensee gives written notice within the thirty-day period of a desire for  
 21 hearing.

22 (3)(A) The department shall issue an immediate suspension of a  
 23 license if an investigation or survey determines that:

24 (i) The applicant or licensee is in violation of any  
 25 state law, rule, or regulation; and

26 (ii) The violation or violations pose an imminent  
 27 threat to the health, welfare, or safety of a patient.

28 (B)(i) The department shall give the applicant or licensee  
 29 written notice of the immediate suspension.

30 (ii) The suspension of the license is effective upon  
 31 the receipt of the written notice.

32 (4) The denial, suspension, or revocation order shall remain in  
 33 effect until all violations have been corrected.

34 (c) ~~Thereupon, the~~ The applicant or licensee shall:

35 (1) be Be given a fair hearing; and

36 (2) shall have Have the right to present ~~such~~ evidence as may be

1 proper.

2 (d)(1) On the basis of the evidence at the hearing, the determination  
3 involved shall be affirmed or set aside.

4 (2) A copy of the decision, setting forth the finding of facts  
5 and the particular grounds upon which it is based, shall be sent by certified  
6 mail to the applicant or licensee.

7 (3) The decision shall become final fifteen (15) days after it  
8 is mailed unless the applicant or licensee, within the fifteen-day period,  
9 appeals the decision to the court under § 20-9-216.

10 (e) A full and complete record of all proceedings shall be kept and  
11 all testimony shall be reported, but it need not be transcribed unless the  
12 decision is appealed pursuant to § 20-9-216 or a transcript is requested by  
13 an interested party who shall pay the cost of preparing the transcript.

14 (f) Witnesses may be subpoenaed by either party and shall be allowed  
15 fees at a rate prescribed by regulations.

16 (g) The procedure governing hearings authorized by this section shall  
17 be in accordance with regulations promulgated by the department.

18  
19 SECTION 3. Arkansas Code § 20-9-302 is amended to read as follows:  
20 20-9-302. Abortion clinics, health centers, etc.

21 (a)(1) A clinic, health center, or other facility in which the  
22 pregnancies of ten (10) or more women known to be pregnant are willfully  
23 terminated or aborted ~~each~~ in any month, including nonsurgical abortions,  
24 shall be licensed by the Department of Health.

25 (2)(A) ~~The facilities, equipment, procedures, techniques, and~~  
26 ~~conditions of those clinics or similar facilities shall be subject to~~  
27 ~~periodic inspection by the department~~ The department shall inspect at least  
28 annually, and inspections shall include without limitation:

29 (i) The facilities, equipment, and conditions of a clinic  
30 or similar facility; and

31 (ii) A representative sample of procedures, techniques,  
32 medical records, informed consent signatures, and parental consent  
33 signatures.

34 (B) An inspector shall arrive at the facility unannounced  
35 and without prior notice.

36 (b) The department ~~may~~ shall:

1           ~~(1) adopt~~ Adopt appropriate rules and regulations ~~regarding~~  
 2 including without limitation the facilities, equipment, procedures,  
 3 techniques, medical records, informed consent signatures, parental consent  
 4 signatures, and conditions of clinics and other facilities subject to the  
 5 provisions of this section to assure at a minimum that the facilities,  
 6 equipment, procedures, techniques, medical records, informed consent  
 7 signatures, parental consent signatures, and conditions are aseptic and do  
 8 not constitute a health hazard; and

9           (2) Levy and collect an annual fee of five hundred dollars  
 10 (\$500) per facility for issuance of a permanent license to an abortion  
 11 facility.

12           ~~(c) The department may levy and collect an annual fee of five hundred~~  
 13 ~~dollars (\$500) per facility for issuance of a permanent license to an~~  
 14 ~~abortion facility.~~

15           ~~(d)~~(c)(1) Applicants for a license shall file applications upon such  
 16 forms as are prescribed by the department.

17           (2) A license shall be issued only for the premises and persons  
 18 in the application and shall not be transferable.

19           ~~(e)~~(d)(1) A license shall be effective on a calendar-year basis and  
 20 shall expire on December 31 of each calendar year.

21           (2) Applications for annual license renewal shall be postmarked  
 22 no later than January 2 of the succeeding calendar year.

23           (3) License applications for existing institutions received  
 24 after that date shall be subject to a penalty of two dollars (\$2.00) per day  
 25 for each day after January 2.

26           ~~(f)~~(e) Subject to such rules and regulations as may be implemented by  
 27 the Chief Fiscal Officer of the State, the disbursing officer for the  
 28 department may transfer all unexpended funds relative to the abortion clinics  
 29 that pertain to fees collected, as certified by the Chief Fiscal Officer of  
 30 the State, to be carried forward and made available for expenditures for the  
 31 same purpose for any following fiscal year.

32           ~~(g)~~(f) All fees levied and collected under this section are special  
 33 revenues and shall be deposited into the State Treasury, ~~there~~ to be credited  
 34 to the Public Health Fund.

35  
 36           SECTION 4. Arkansas Code § 20-16-1703(d), concerning the informed

1 consent requirement within the Woman's Right-to-Know Act, is amended to read  
2 as follows:

3 (d) A physician, facility, employee or volunteer of a facility, or any  
4 other person or entity shall not require or obtain payment for a service  
5 provided in relation to abortion to a patient who has inquired about an  
6 abortion or scheduled an abortion until the expiration of the forty-eight-  
7 hour reflection period required in this section.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36