

Stricken language would be deleted from and underlined language would be added to present law.
Act 383 of the Regular Session

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H2/10/17
A Bill

HOUSE BILL 1428

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

For An Act To Be Entitled

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

Subtitle

TO AMEND LAWS CONCERNING UNLAWFUL
ABORTIONS; TO AMEND LAWS CONCERNING THE
PROCEDURE OF DENIAL, SUSPENSION, OR
REVOCATION OF A HEALTH FACILITIES SERVICE
LICENSE; AND TO AMEND THE LAWS REGARDING
ABORTION CLINICS.

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

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

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

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

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



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

SECTION 2. Arkansas Code § 20-9-302 is amended to read as follows:
20-9-302. Abortion clinics, health centers, etc.

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

~~(2)(A) The facilities, equipment, procedures, techniques, and conditions of those clinics or similar facilities shall be subject to periodic inspection by the department~~ The department shall inspect a clinic, health center, or other facility at least annually, and inspections shall include without limitation:

(i) The facilities, equipment, and conditions of a clinic, health center, or other facility; and

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

(B) An inspector shall arrive at the clinic, health center, or other facility unannounced and without prior notice.

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

(1) adopt Adopt appropriate rules ~~and regulations regarding,~~ including without limitation the facilities, equipment, procedures, techniques, medical records, informed consent signatures, parental consent signatures, and conditions of ~~clinics and other~~ clinics, health centers, and other facilities subject to the provisions of this section to assure at a minimum that:

(A) The ~~the~~ facilities, equipment, procedures, techniques, and conditions are aseptic and do not constitute a health hazard; and

(B) The medical records, informed consent signatures, and parental consent signatures meet statutory requirements;

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

(3)(A) Deny, suspend, or revoke licenses on any of the following grounds:

(i) The violation of any provision of law or rule;
or

(ii) The permitting, aiding, or abetting of the commission of any unlawful act in connection with the operation of the institutions.

(B)(i) If the department determines to deny, suspend, or revoke a license, the department shall send to the applicant or licensee, by certified mail, a notice setting forth the particular reasons for the determination.

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

(iii)(a) The department shall issue an immediate suspension of a license if an investigation or survey determines that:

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

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

(b)(1) The department shall give the applicant or licensee written notice of the immediate suspension.

(2) The suspension of the license is effective upon the receipt of the written notice.

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

(C) The applicant or licensee shall:

(i) Be given a fair hearing; and
(ii) Have the right to present evidence as may be proper.

(D)(i) On the basis of the evidence at the hearing, the determination involved shall be affirmed or set aside.

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

(iii) The decision shall become final fifteen (15) days after it is mailed unless the applicant or licensee, within the fifteen-day period, appeals the decision to the court.

(E) A full and complete record of all proceedings shall be kept and all testimony shall be reported, but it need not be transcribed unless the decision is appealed or a transcript is requested by an interested party who shall pay the cost of preparing the transcript.

(F) Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule.

(G) The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the department.

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

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

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

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

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

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

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

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

SECTION 3. Arkansas Code § 20-16-1703(d), concerning the informed

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

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

/s/Lundstrum

APPROVED: 03/06/2017