

Stricken language would be deleted from and underlined language would be added to present law.  
Act 801 of the Regular Session

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

As Engrossed: S3/14/19 H3/27/19  
**A Bill**

SENATE BILL 278

By: Senators G. Stubblefield, *B. Ballinger, Caldwell, L. Eads, J. English, Flippo, T. Garner, Hickey, Rice*  
By: Representatives *Hawks, Bentley, Brown, Cloud, Coleman, C. Cooper, M. Davis, Evans, Gates, Payton, Penzo, Rye, B. Smith, Speaks, Sullivan*

**For An Act To Be Entitled**

AN ACT TO AMEND LAWS CONCERNING ABORTION FACILITIES AND ABORTION REPORTING; TO AMEND THE BORN-ALIVE INFANT PROTECTION LAWS; TO REQUIRE AN ADDITIONAL ACKNOWLEDGMENT UNDER THE WOMAN'S RIGHT-TO-KNOW ACT; TO INCREASE PENALTIES AND CLARIFY PENALTIES RELATING TO ABORTION; AND FOR OTHER PURPOSES.

**Subtitle**

TO AMEND LAWS CONCERNING ABORTION FACILITIES AND ABORTION REPORTING; TO AMEND THE BORN-ALIVE INFANT PROTECTION LAWS; AND TO REQUIRE AN ADDITIONAL ACKNOWLEDGMENT UNDER THE WOMAN'S RIGHT-TO-KNOW ACT.

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

SECTION 1. Arkansas Code § 20-9-302(b)(1), concerning the requirements for abortion facilities, is amended to read as follows:

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



(A) The facilities, equipment, procedures, techniques, and conditions of the clinic, health center, or other facility are aseptic and do not constitute a health hazard; ~~and~~

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

(C) The clinic, health center, or other facility provides to the patient on a twenty-four-hour basis telephone consultation with a registered nurse or physician associated with the clinic, health center, or other facility;

(D) The clinic, health center, or other facility has a written procedure for emergency transfer of a patient to an acute care facility, including a medical record form that contains information required for an emergency transfer to an acute care facility;

(E) The clinic, health center, or other facility is within thirty (30) miles of a hospital that provides gynecological or surgical services;

(F) The clinic, health center, or other facility has drugs, oxygen, intravenous fluids, and other emergency equipment on-site and readily available to stabilize a patient if necessary; and

(G) All staff at the clinic, health center, or other facility have documented current competency in cardiopulmonary resuscitation;

SECTION 2. Arkansas Code § 20-16-604(e), concerning born-alive infant protection, is amended to read as follows:

(e)(1) A physician performing an abortion shall take all medically appropriate and reasonable steps to preserve the life and health of an infant who is born alive.

(2) If an abortion performed in a hospital results in a live birth, the attending physician shall:

(A) Provide immediate medical care to the infant;

(B) Inform the mother of the live birth; ~~and~~

(C) Request transfer of the infant to an on-duty resident or emergency care physician who shall provide medically appropriate and reasonable medical care and treatment to the infant; and

(D) Report the abortion resulting in a live birth to the Department of Health.

(3) If an abortion performed in a healthcare facility other than a hospital results in a live birth, the attending physician shall:

(A) Provide immediate medical care to the infant; ~~and~~

(B) Call 911 for an emergency transfer of the infant to the hospital for medically appropriate and reasonable care and treatment for the infant; and

(C) Report the abortion resulting in a live birth to the department.

(4) The department shall report and publish the number of abortions resulting in a live birth annually.

SECTION 3. Arkansas Code § 20-16-604(j), concerning born-alive infant protection, is amended to read as follows:

(j) Failure to comply with this section shall provide a basis for:

(1) A civil action for compensatory and punitive damages which may include a medical malpractice action under § 16-114-201 et seq.;

(2) Professional disciplinary action by the appropriate healthcare licensing board for the suspension or revocation of a license for a healthcare professional for at least one (1) year; ~~and~~

(3) Recovery for the parent of the infant or the parent or legal guardian of the pregnant woman, if the pregnant woman is a minor, for the wrongful death of the infant under § 16-62-102; and

(4) Injunction from future acts prohibited by this section.

SECTION 4. Arkansas Code § 20-16-604, concerning born-alive infant protection, is amended to add an additional subsection to read as follows:

(1) A physician or other person who purposefully or recklessly violates this section is guilty of a Class A misdemeanor.

SECTION 5. Arkansas Code § 20-16-811 is amended to read as follows:  
20-16-811. Penalty.

(a) The performance of an abortion in violation of this subchapter or failure to report under § 20-16-814 shall be a Class A misdemeanor and shall be grounds for a civil action by a person whose consent is required.

(b) This subchapter does not allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in

utero.

- (c) Failure to comply with this subchapter shall provide a basis for:
- (1) A civil action for compensatory and punitive damages which may include a medical malpractice action under § 16-114-201 et seq.;
  - (2) Professional disciplinary action by the appropriate healthcare licensing board for the suspension or revocation of a license for a healthcare professional for at least one (1) year;
  - (3) Recovery for the parent of the infant or the parent or legal guardian of the pregnant woman, if the pregnant woman is a minor, for the wrongful death of the infant under § 16-62-102; and
  - (4) Injunction from future acts prohibited by this section.

SECTION 6. Arkansas Code § 20-16-1109 is amended to read as follows:  
20-16-1109. Penalties.

(a) A person who knowingly or recklessly performs or attempts to perform a termination of a pregnancy in violation of this subchapter or failure to report under § 20-16-1108 shall be subject to disciplinary action by the Arkansas State Medical Board and is guilty upon conviction of a Class A misdemeanor.

(b) ~~No~~ A penalty ~~may be~~ shall not be assessed against the woman upon whom the abortion is performed or attempted to be performed.

(c) ~~No~~ A penalty or civil liability ~~may~~ shall not be assessed for failure to comply with any provision of this subchapter unless the Department of Health has made the printed materials available at the time that the physician or the physician's agent is required to inform the woman of her right to review them.

SECTION 7. Arkansas Code § 20-16-1703(b)(1) and (2), concerning the informed consent requirement under the Woman's Right-to-Know Act, are amended to read as follows:

(1) At least ~~forty-eight (48)~~ seventy-two (72) hours before the abortion, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, of the following:

- (A) The name of the physician who will perform the abortion;
- (B) Medically accurate information that a reasonable

patient would consider material to the decision concerning whether or not to undergo the abortion, including:

- (i) A description of the proposed abortion method;
- (ii) The immediate and long-term medical risks associated with the proposed abortion method, including without limitation the risks of:
  - (a) Cervical or uterine perforation;
  - (b) Danger to subsequent pregnancies;
  - (c) Hemorrhage; and
  - (d) Infection; and
- (iii) Alternatives to the abortion;
- (C) The probable gestational age of the unborn child at the time the abortion is to be performed;
- (D) The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed;
- (E) The medical risks associated with carrying the unborn child to term;
- (F) Any need for anti-Rh immune globulin therapy if the woman is Rh negative, the likely consequences of refusing such therapy, and the cost of the therapy; and
- (G) Information on reversing the effects of abortion-inducing drugs;
- (2) At least ~~forty-eight (48)~~ seventy-two (72) hours before the abortion, the physician who is to perform the abortion, the referring physician, or a qualified person informs the woman, orally and in person, that:
  - (A) Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of such assistance is contained in the printed materials and informational DVD given to her under § 20-16-1704;
  - (B) The printed materials and informational DVD under § 20-16-1704 describe the unborn child and list agencies that offer alternatives to abortion;
  - (C)(i) The father of the unborn child is liable to assist in the support of the child, even in instances in which he has offered to pay

for the abortion.

(ii) In a case of rape or incest, the information required under subdivision (b)(2)(C)(i) of this section may be omitted;

(D) The woman is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she otherwise might be entitled; and

(E) The information contained in the printed materials and informational DVD given to her under § 20-16-1704 is also available on a state website;

SECTION 8. Arkansas Code § 20-16-1703(b)(4) and (5), concerning the informed consent requirement under the Woman's Right-to-Know Act, are amended to read as follows:

(4)(A) At least ~~forty-eight (48)~~ seventy-two (72) hours before the abortion, the woman is given a copy of the printed materials and permitted to view and given a copy of the informational DVD under § 20-16-1704.

(B) If the woman is unable to read the materials, the materials shall be read to her in a language she can understand.

(C) If the woman asks questions concerning any of the information or materials under this subdivision (b)(4), the person who provides or reads the information or materials shall answer her questions in a language she can understand;

(5)(A) At least ~~forty-eight (48)~~ seventy-two (72) hours before an abortion is performed or induced on a woman whose pregnancy has progressed to twenty (20) weeks gestation or more, the physician performing the abortion on the pregnant woman, the referring physician, or a qualified person assisting the physician, orally and in person, offers information on fetal pain to the patient.

(B) The information required under subdivision (b)(5)(A) of this section and counseling related to that information shall include without limitation the following:

(i) That by twenty (20) weeks gestational age, the unborn child possesses all anatomical links in its nervous system, including spinal cord, nerve tracts, thalamus, and cortex, that are necessary in order

to feel pain;

(ii) That an unborn child at twenty (20) weeks gestation or more is fully capable of experiencing pain;

(iii) A description of the actual steps in the abortion procedure to be performed or induced and at which steps in the abortion procedure the unborn child is capable of feeling pain;

(iv) That maternal anesthesia typically offers little pain prevention for the unborn child; and

(v) That an anesthetic or analgesic, or both, are available so that pain to the fetus is minimized or alleviated;

SECTION 9. Arkansas Code § 20-16-1703(b)(8), concerning the informed consent requirement under the Woman's Right-to-Know Act, is amended to read as follows:

(8) At least ~~forty-eight (48)~~ seventy-two (72) hours before an abortion that is being performed or induced utilizing abortion-inducing drugs, the physician who is to perform the abortion, the referring physician, or a qualified person informs the pregnant woman, orally and in person, that:

(A) It may be possible to reverse the effects of the abortion if the pregnant woman changes her mind, but that time is of the essence; and

(B) Information on reversing the effects of abortion-inducing drugs is available in materials prepared by the department.

SECTION 10. Arkansas Code § 20-16-1703(b), concerning the informed consent requirement under the Woman's Right-to-Know Act, is amended to add an additional subdivision to read as follows:

(9) Except in the case of a medical emergency, at least seventy-two (72) hours before the abortion, the pregnant woman signs a form that includes without limitation the following information:

(A) A description of the pregnant woman's rights, including the right to informed consent as granted by this subchapter;

(B) A detailed description of the surgical procedures or medical procedures, or both, that are planned to be performed on the pregnant woman;

(C) A detailed list of the risks and hazards related to

the surgical or medical procedures that are planned to be for the pregnant woman, including without limitation the following risks and hazards that may occur:

- (i) Infection;
- (ii) Blood clots;
- (iii) Hemorrhage;
- (iv) Allergic reactions;
- (v) Uterine perforation, also known as a hole in the uterus, or other damage to the uterus;
- (vi) Sterility;
- (vii) Injury to the bowel or bladder;
- (viii) Possible hysterectomy as a result of complication or injury during the procedure;
- (ix) Failure to remove all products of conception;
- (x) Possible continuation of pregnancy;
- (xi) Cramping of the uterus or pelvic pain;
- (xii) Cervical laceration;
- (xiii) Incompetent cervix;
- (xiv) Emergency treatment for any complications; and
- (xv) Death;

(D) A description of additional information that shall be provided by the physician to the pregnant woman under state law; and

(E) Any additional information that may be provided to a woman under the laws of this state in order for a physician to obtain her informed consent before performing an abortion.

SECTION 11. Arkansas Code § 20-16-1703(d), concerning the informed consent requirement under 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~~ seventy-two-hour reflection period required in this section.

SECTION 12. Arkansas Code § 20-16-1706 is amended to read as follows:

20-16-1706. Medical emergencies.

When a medical emergency compels the performance of an abortion, the physician shall inform the woman before the abortion, if possible, of the medical indications supporting the physician's judgment that an immediate abortion is necessary to avert her death or that a ~~forty-eight-hour~~ seventy-two-hour delay will cause substantial and irreversible impairment of a major bodily function.

*SECTION 13. DO NOT CODIFY. Savings clause.*

*(a) If a court order holds that any amendment to the Arkansas Code made by this act is invalid or unenforceable, then the relevant portion of the Arkansas Code in effect prior to the enactment of this act shall remain in full force and effect from and after the effective date of this act, notwithstanding the amendment made by this act.*

*(b) If a court order holding that an amendment to the Arkansas Code made by this act or a provision of this act is invalid or unenforceable expires or is reversed, vacated, or set aside, then the provision of the Arkansas Code as amended by this act or any provision of this act shall be effective immediately upon the expiration, reversal, vacatur, or setting aside of the court order.*

*/s/G. Stubblefield*

**APPROVED: 4/9/19**