

Stricken language would be deleted from and underlined language would be added to present law.
Act 560 of the Regular Session

State of Arkansas
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As Engrossed: H3/15/21

A Bill

HOUSE BILL 1572

By: Representatives Lundstrum, Bentley, Cloud, Coleman, Crawford, Dotson, Ladyman, Lowery, Miller,
Payton, Penzo, Pilkington, Speaks, Wardlaw

By: Senators Flippo, Bledsoe, Gilmore, D. Sullivan, D. Wallace

For An Act To Be Entitled

AN ACT TO CREATE THE INFORMED CONSENT FOR CHEMICAL
ABORTION ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE INFORMED CONSENT FOR
CHEMICAL ABORTION ACT.

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

SECTION 1. Arkansas Code Title 20, Chapter 16, is amended to add an
additional subchapter to read as follows:

Subchapter 24 – Informed Consent for Chemical Abortion Act

20-16-2401. Title.

This subchapter shall be known and may be cited as the "Informed
Consent for Chemical Abortion Act".

20-16-2402. Definitions.

As used in this subchapter:

(1)(A) "Chemical abortion" means the use, provision,
prescription, or dispensation of a medicine, drug, or any other substance
used, provided, prescribed, or dispensed with the intent of terminating the
clinically diagnosable pregnancy of a woman, with knowledge that the
termination will with reasonable likelihood cause the death of the unborn
child.



(B) "Chemical abortion" includes the off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol and methotrexate.

(C) "Chemical abortion" does not apply to drugs that may be known to cause an abortion but which are prescribed for other medical indication; and

(2) "Medical emergency" means a condition that, on the basis of the physician's good-faith clinical judgment, complicates the medical condition of a pregnant woman and necessitates the immediate termination of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

20-16-2403. Informed consent for chemical abortions.

(a) A chemical abortion shall not be performed or induced without the voluntary and informed consent of the pregnant woman upon whom the chemical abortion is to be performed or induced.

(b) Except in the case of a medical emergency, consent to a chemical abortion is voluntary and informational only if at least seventy-two (72) hours before the abortion, the healthcare provider who is to perform the chemical abortion or the referring healthcare provider has informed the pregnant woman, orally and in person, of the following:

(1) The probable gestational age of the unborn child as determined by patient history and ultrasound results used to confirm the gestational age;

(2) A detailed description of the chemical abortion regimen to be used;

(3) A detailed list of the risks and complications related to the specific chemical abortion regimen to be used, including without limitation hemorrhage, failure to remove all pregnancy tissue which may require an additional procedure, sepsis or other infections, sterility, possible continuation of pregnancy, and death;

(4) Information about Rh incompatibility, including that if the pregnant woman has an Rh negative blood type, she should receive an injection of Rh immunoglobulin at the time of the chemical abortion to prevent Rh incompatibility in future pregnancies, which can lead to complications and

miscarriage;

(5) The risks of complications from a chemical abortion increase with advancing gestational age;

(6) Information on reversing the effects of the chemical abortion if the pregnant woman changes her mind, but that time is of the essence;

(7) Human trafficking literature, also known as "Laura's Card", as described in § 16-90-1107;

(8) Information about post-abortion care, including how to handle and respond to and report complications from the chemical abortion; and

(9) Information on scheduling post-abortion medical visits to ensure completion of the abortion, assess the need for additional procedures or care, and assess bleeding or other potential complications.

(c)(1) Except in the case of a medical emergency, before a chemical abortion, a pregnant woman shall certify on a written checklist form provided or approved by the Department of Health that the information described in subsection (b) of this section has been provided.

(2)(A) The healthcare provider who is to perform the chemical abortion shall receive, sign, and date a copy of the written certification described in subdivision (c)(1) of this section before performing a chemical abortion.

(B) The healthcare provider shall retain a copy of the written certification form in the pregnant woman's medical record.

20-16-2404. Individual reporting – Aggregate reporting.

(a)(1) A healthcare provider or healthcare facility shall submit an individual reporting form to the Department of Health within fifteen (15) days after each month's end.

(2) The healthcare provider shall sign each individual reporting form.

(b)(1) A report submitted as described in subsection (a) of this section is not a public record and shall remain confidential except that a disclosure may be made to law enforcement officials upon an order of a court after an application showing good cause.

(2) The court may condition disclosure of information upon any

appropriate safeguards the court may impose.

(c) The department shall prepare an individual reporting form, which shall include the following information:

- (1) The date of the chemical abortion;
- (2) The specific chemical abortion regimen used;
- (3) The probable gestational age of the unborn child;
- (4) The age of the pregnant woman at the time the chemical abortion was performed or induced;
- (5) The pregnant woman's state and county of residence;
- (6) Whether, before seeking a chemical abortion, the pregnant woman received any other verbal or written counseling related to potential risks or complications and alternatives to a chemical abortion;
- (7) The specific reason for the chemical abortion, including without limitation:
 - (A) The pregnancy is the result of rape or incest;
 - (B) Economic reasons;
 - (C) The pregnant woman does not want a pregnancy or child at this time;
 - (D) The pregnant woman's physical health is endangered, specifically identifying the reason her physical health is endangered, including any preexisting condition;
 - (E) The pregnant woman's psychological, mental, or emotional health is endangered, specifically identifying the reason her psychological, mental, or emotional health is endangered, including any preexisting condition;
 - (F) The pregnant woman will suffer substantial and irreversible impairment of a major bodily function if the pregnancy continues, specifically identifying the potential impairment;
 - (G) The diagnosis, presence, or presumed presence of a genetic anomaly, specifically identifying the anomaly; or
 - (I) Refusal of the pregnant woman to answer;
- (8) The number of prior pregnancies, live births, induced abortions, and spontaneous abortions of the pregnant woman;
- (9) Whether the chemical abortion was paid for by:
 - (A) Private health coverage;
 - (B) Public assistance health coverage; or

(C) Self-pay; and

(10) Complications, if any and whenever known, from the chemical abortion.

(d)(1) A healthcare facility in which a chemical abortion is performed during any quarter year shall file with the Department of Health a report showing the total number of chemical abortions performed in the facility during that quarter year.

(2) The aggregate report shall include the total number of chemical abortions performed in each trimester of pregnancy.

(3) The department shall prepare an aggregate reporting form.

(e) The reporting forms under this section shall not contain:

(A) The name of the pregnant woman;

(B) Common identifiers of the pregnant woman, including her Social Security number or her driver's license number; or

(C) Any other information that would make it possible to identify the pregnant woman.

(f)(1) The department shall report comprehensive annual statistical data based upon data gathered from the reports under this section to the General Assembly.

(2) The annual report shall not disclose or lead to the disclosure of the identity of any healthcare provider or person filing a report under this section or of any woman who is the subject of a report.

(3) The annual report shall be made available to the public in a downloadable format on the department's website.

(g)(1) The department shall summarize the data collected from the reports required by this section and submit the summary to the Centers for Medicare and Medicaid Services.

(2) The summary shall be made available to the public in a downloadable format on the department's website.

(h) This section does not preclude the voluntary or required submission of other reports or forms regarding chemical abortion.

20-16-2405. Collection and reporting of information.

(a) The Department of Health shall ensure that all information collected by the department regarding chemical abortions performed in this state shall be available to the public in printed form and on a twenty-four-

hour basis on the department's website.

(b) In no case shall the privacy of a patient or doctor be compromised.

(c) The information collected by the department regarding abortions performed in this state shall be continually updated.

(d)(1)(A) By June 3 of each year, the department shall issue a public report providing statistics on the number of women who were provided information and materials pursuant to this subchapter during the previous calendar year.

(B) Each report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information received after the deadline.

(2) The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual who received information or materials in accordance with § 20-16-1703.

20-16-2406. Rules.

(a)(1) The State Board of Health shall adopt rules to implement this subchapter.

(2) The State Board of Health may add by rule additional examples of complications to supplement those in § 20-16-1703.

(b) The Arkansas State Medical Board shall promulgate rules to ensure that physicians who perform abortions, referring physicians, or agents of either physician comply with all the requirements of this subchapter.

20-16-2407. Criminal penalty.

A person who purposely, knowingly, recklessly, or negligently violates this subchapter commits a Class A misdemeanor.

20-16-2408. Civil penalties.

(a) In addition to any remedies available under the common law or statutory law of this state, failure to comply with the requirements of this subchapter shall provide a basis for a:

(1) Civil malpractice action for actual and punitive damages;
and

(2) Professional disciplinary action under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(b) A civil penalty shall not be assessed against the woman upon whom the abortion is performed.

(c) When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close the proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed or attempted.

(d) If judgment is rendered in favor of the plaintiff, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

(e) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

20-16-2409. Construction.

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

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

/s/Lundstrum

APPROVED: 4/5/21