

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

HOUSE BILL 1421

By: Representatives Bentley, Ballinger, Baltz, Bragg, Brown, Copeland, Cozart, C. Fite, Gates, Gonzales, M. Gray, Harris, Henderson, G. Hodges, Lemons, Lundstrum, D. Meeks, Miller, Payton, Petty, Rushing, B. Smith, Speaks, Sullivan, Vaught, Womack
By: Senators Bledsoe, Files, J. Hendren, Hester, Irvin, B. Johnson, Rapert

For An Act To Be Entitled

AN ACT TO ESTABLISH THE ABORTION PROVIDERS' ADMITTING PRIVILEGES ACT; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE ABORTION PROVIDERS' ADMITTING PRIVILEGES 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 15 – Abortion Providers' Admitting Privileges Act

20-16-1501. Title.

This subchapter shall be known and may be cited as the "Abortion Providers' Admitting Privileges Act".

20-16-1502. Legislative findings and purpose.

(a) The General Assembly finds that:

(1) The majority of all abortions in this state are performed in clinics devoted primarily to providing abortions and family planning services;

(2) In some cases, abortion providers travel into Arkansas from other states to perform abortions at abortion clinics in this state and



typically do not live in or remain in this state when not providing abortions or abortion-related services;

(3) In H.L. v. Matheson, 450 U.S. 398, 411 (1981), the court stated that "[t]he medical, emotional, and psychological consequences of an abortion are serious and can be lasting ...";

(4) Abortion is an invasive, surgical procedure that can lead to numerous and serious medical complications, including without limitation:

- (A) Bleeding;
- (B) Hemorrhage;
- (C) Infection;
- (D) Uterine perforation;
- (E) Uterine scarring;
- (F) Blood clots;
- (G) Cervical tears;
- (H) Incomplete abortion or retained tissue;
- (I) Failure to actually terminate the pregnancy;
- (J) Free fluid in the abdomen;
- (K) Acute abdomen;
- (L) Organ damage;
- (M) Missed ectopic pregnancies;
- (N) Cardiac arrest;
- (O) Sepsis;
- (P) Respiratory arrest;
- (Q) Reactions to anesthesia; and
- (R) Death;

(5) In addition, the risks for second-trimester abortions are greater than for first-trimester abortions with the risk of hemorrhage being greater and the possible complications requiring a hysterectomy, reparative surgery, or a blood transfusion;

(6) The State of Arkansas has a legitimate concern for the public's health and safety as established by Williamson v. Lee Optical, 348 U.S. 483, 486 (1955);

(7) The State of Arkansas has legitimate interests from the outset of pregnancy in protecting the health of women as established by Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 847 (1992);

(8) Specifically, the State of Arkansas has a legitimate concern for the health of women who undergo abortions as established by Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416, 428-29 (1983);

(9) The United States Supreme Court in Roe v. Wade, 410 U.S. 113 (1973), has specifically acknowledged that a state has "a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that ensure maximum safety for the patient. This interest obviously extends at least to the performing physician and his staff, to the facilities involved, to the availability of aftercare, and to adequate provision for any complication or emergency that might arise"; and

(10) Among the benefits supporting an admitting privileges requirement for abortion providers are that it:

(A) Provides a more thorough evaluation mechanism of physician competency that better protects patient safety;

(B) Acknowledges and enables the importance of continuity of care;

(C) Enhances interphysician communication and optimizes patient information transfer and complication management; and

(D) Supports the ethical duty of care for the operating physician to prevent patient abandonment.

(b) Based on the findings in subsection (a) of this section, it is the purpose of this subchapter to provide for the protection of public health generally and of women's health and safety specifically through the establishment and enforcement of an admitting privileges requirement for physicians providing abortions in abortion clinics in this state.

20-16-1503. Definitions.

As used in this subchapter:

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

(B) An act under subdivision (1)(A) of this section is not an abortion if the act is performed with the intent to:

(i) Save the life or preserve the health of the

unborn child;

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

(iii) Remove an ectopic pregnancy;

(2) "Abortion clinic" means a healthcare facility, other than a licensed hospital, in which:

(A) Five (5) or more first-trimester abortions in any month are performed;

(B) Any second-trimester abortion is performed; or

(C) Any third-trimester abortion is performed;

(3) "Admitting privileges" means the right of a physician, by virtue of membership with a hospital's medical staff, to admit patients to a particular hospital;

(4) "Born alive" means the complete expulsion or extraction of an infant from his or her mother, regardless of the state of gestational development that, after expulsion or extraction, whether the umbilical cord has been cut or the placenta is attached and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion, shows any evidence of life, including without limitation one (1) or more of the following:

(A) Breathing;

(B) A heartbeat;

(C) Umbilical cord pulsation; or

(D) Definite movement of voluntary muscles; and

(5) "Physician" means a person licensed to practice medicine in this state, including medical doctors and doctors of osteopathy.

20-16-1504. Admitting privileges requirement.

On a day when an abortion is performed in an abortion clinic, a physician with admitting privileges at a licensed hospital in this state and within thirty (30) miles of the abortion clinic must remain on the premises of the abortion clinic to facilitate the transfer of emergency cases:

(1) If hospitalization of an abortion patient or a child born alive is necessary; and

(2) Until an abortion patient is stable and ready to leave the recovery room.

20-16-1505. Criminal and civil penalties.

(a) A person who intentionally, knowingly, or recklessly violates this subchapter shall be guilty of a Class A misdemeanor.

(b) In addition to remedies available under common law or statute of this state, failure to comply with the requirements of this subchapter shall cause a person to be subject to:

- (1) Civil malpractice action for actual or 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.

20-16-1506. Injunctive remedies.

(a) In addition to any other penalty provided by law, when in the judgment of the Director of the Department of Health, a person has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of this subchapter, the director shall make application to any court of competent jurisdiction for an order enjoining the acts and practices.

(b) Upon a showing by the director that the person has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of this subchapter, an injunction, a restraining order, or other order as appropriate shall be granted by the court without bond.

20-16-1507. Construction.

(a) This subchapter does not:

- (1) Create or recognize a right to abortion; or
- (2)(A) Require a licensed hospital to take the following actions:

(i) Ask a physician applying for admitting privileges whether the physician performs abortions;

(ii) Grant or refuse to grant privileges to, or otherwise credential, any healthcare professional; or

(iii) Authorize or refuse to authorize the performance of any procedure at the hospital.

(B) A licensed hospital is immune from civil liability for

taking actions described by subdivision (a)(2)(A).

(b) It is not the intention of this subchapter to make lawful an abortion that is currently unlawful.

20-16-1508. Right of intervention.

The General Assembly by joint resolution may appoint one (1) or more of its members, who sponsored or cosponsored this subchapter in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

20-16-1509. Effective date.

This subchapter takes effect on January 1, 2016.