

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: S2/1/21 S2/4/21
A Bill

SENATE BILL 85

By: Senator Bledsoe
By: Representative Cloud

For An Act To Be Entitled

AN ACT TO AMEND THE RIGHT TO VIEW ULTRASOUND IMAGES BEFORE AN ABORTION; TO CREATE THE RIGHT-TO-KNOW-AND-SEE ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE RIGHT TO VIEW ULTRASOUND IMAGES BEFORE AN ABORTION; AND TO CREATE THE RIGHT-TO-KNOW-AND-SEE ACT.

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

SECTION 1. Arkansas Code § 20-16-602 is amended to read as follows:

20-16-602. Right-to-Know-and-See Act – Right to view ultrasound image prior to before abortion – Definitions.

(a) This section shall be known and may be cited as the "Right-to-Know-and-See Act".

(b) As used in this section:

(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 any of those means will with reasonable likelihood cause the death of the unborn child.

(B) An act under subdivision (b)(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 or the pregnant woman;



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

(iii) Remove an ectopic pregnancy;

(2) "Attempt to perform or induce an abortion" means an act or an omission of a statutorily required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of this section;

(3)(A) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the abortion of her pregnancy to avert:

(i) The death of the pregnant woman; or

(ii) Serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

(B) "Medical emergency" does not include a condition based on a claim or diagnosis that a pregnant woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function;

(4) "Qualified technician" means:

(A) A registered diagnostic medical sonographer who is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical Sonography; or

(B) A certified nurse midwife or advanced practice registered nurse with certification in obstetrical ultrasonography;

(5) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved; and

(6) "Unborn child" means the offspring of human beings from conception until birth.

(c)(1) All physicians who use ultrasound equipment in the performance of an abortion shall inform the woman that she has the right to view the ultrasound image of her unborn child before an abortion is performed. An abortion provider who knowingly performs an abortion shall comply with the requirements of this section.

(2) Before a pregnant woman gives informed consent to an abortion or is administered any anesthesia or medication in preparation of an abortion, the physician or qualified technician shall:

(A) Perform an obstetric ultrasound on the pregnant woman using a method that the physician and the pregnant woman agree is best under the circumstances;

(B)(i) Provide a simultaneous verbal explanation of what the ultrasound is depicting that includes the presence and location of the unborn child within the uterus and the number of unborn children depicted.

(ii) If the ultrasound image indicates that the unborn child has died, the physician or qualified technician shall inform the pregnant woman of that fact;

(C) Display the ultrasound images so that the pregnant woman may view them and document in the pregnant woman's medical record that the ultrasound images were displayed to the pregnant woman;

(D) Provide a medical description of the ultrasound images, including the dimensions of the unborn child and the presence of external members and internal organs if present and viewable; and

(E) Retain the ultrasound image with the date that the ultrasound occurred in the pregnant woman's medical record.

~~(b)(1) The physician shall certify in writing that the woman was offered an opportunity to view the ultrasound image and shall obtain the woman's acceptance or rejection to view the image in writing.~~

~~(2) If the woman accepts the offer and requests to view the ultrasound image, she shall be allowed to view it.~~

~~(c) The physician's certification together with the woman's signed acceptance or rejection shall be placed in the woman's medical file in the physician's office and kept for three (3) years.~~

~~(d) Any physician who fails to inform the woman that she has the right to view the ultrasound image of her unborn child before an abortion is performed or fails to allow her to view the ultrasound image upon her request may be subject to disciplinary action by the Arkansas State Medical Board.~~

(d)(1) The Department of Health shall quarterly inspect the records to ensure compliance with this section.

(2) The department shall:

(A) Fine an abortion facility:

(i) One thousand five hundred dollars (\$1,500) for the first violation in a thirty-six-month period;

(ii) Three thousand dollars (\$3,000) for the second violation in a thirty-six-month period; and

(iii) Five thousand dollars (\$5,000) for the third violation in a thirty-six-month period; and

(B) Suspend the license of an abortion facility for six (6) months for the fourth violation in a thirty-six-month period.

(3) Upon notification from the department of a violation by a physician, the Arkansas State Medical Board shall:

(A) Fine a physician:

(i) One thousand five hundred dollars (\$1,500) for the first violation in a thirty-six-month period;

(ii) Three thousand dollars (\$3,000) for the second violation in a thirty-six-month period; and

(iii) Five thousand dollars (\$5,000) for the third violation in a thirty-six-month period; and

(B) Suspend the license of a physician for six (6) months for the fourth violation in a thirty-six-month period.

(e)(1) This section does not:

(A) Prevent a pregnant woman from averting her eyes or looking away from the ultrasound images required to be provided to and reviewed by the pregnant woman; or

(B)(i) Apply in the case of a medical emergency.

(ii) Upon a determination by the physician that a medical emergency exists with respect to the pregnant woman, the physician shall certify the specific medical conditions that constitute the medical emergency.

(iii) A physician or abortion provider that willfully falsifies a certification under subdivision (e)(1)(B)(ii) of this section is subject to penalties under this section.

(2) A physician or pregnant woman is not subject to a penalty if the pregnant woman declines to look at the presented ultrasound images.

SECTION 2. DO NOT CODIFY. SAVINGS CLAUSE.

If any section or part of a section of this act is determined by a court to be unconstitutional, § 20-16-602 shall be revived, and to prevent a hiatus in the law, the relevant section or part of a section of § 20-16-602 shall remain in full force and effect from and after the effective date of this act notwithstanding its repeal by this act.

/s/Bledsoe