

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

State of Arkansas  
95th General Assembly  
Regular Session, 2025

As Engrossed: H1/16/25

# A Bill

HOUSE BILL 1011

Representatives A. Collins, D. Garner, Springer

## For An Act To Be Entitled

AN ACT TO CREATE THE RESTORE ROE ACT; TO RESTORE A WOMAN'S ACCESS TO ABORTION SERVICES; TO PROTECT THE HEALTH AND SAFETY OF WOMEN AND BABIES BY AUTHORIZING ABORTION AND REPRODUCTIVE HEALTH CARE IN CERTAIN CIRCUMSTANCES; AND FOR OTHER PURPOSES.

## Subtitle

TO CREATE THE RESTORE ROE ACT; AND TO RESTORE A WOMAN'S ACCESS TO ABORTION SERVICES.

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

SECTION 1. DO NOT CODIFY. TITLE.

This act shall be known and may be cited as the "Restore Roe Act".

SECTION 2. DO NOT CODIFY. Legislative intent.

It is the intent of the General Assembly to protect a woman's right to obtain abortion services up to the point of fetal viability, as provided for in the United States Constitution, according to the United States Supreme Court in the 1973 decision Roe v. Wade, 410 U.S. 113, 162 (1973), with limited exceptions following fetal viability for the health or life of the mother or in case of rape or incest perpetrated on a minor.

SECTION 3. Arkansas Code Title 5, Chapter 61, Subchapter 3, is repealed.

~~Subchapter 3 — Arkansas Human Life Protection Act~~



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~~5-61-301.—Title.~~

~~This subchapter shall be known and may be cited as the “Arkansas Human Life Protection Act”.~~

~~5-61-302.—Legislative findings and intent.~~

~~(a) The General Assembly finds that:~~

~~(1) It is time for the United States Supreme Court to redress and correct the grave injustice and the crime against humanity which is being perpetuated by its decisions in Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey;~~

~~(2) The United States Supreme Court committed a grave injustice and a crime against humanity in the Dred Scott decision by denying personhood to a class of human beings, African Americans;~~

~~(3) The United States Supreme Court also committed a grave injustice and a crime against humanity by upholding the “separate but equal” doctrine in Plessy v. Ferguson which withdrew legal protection from a class of human beings who were persons under the United States Constitution, African Americans;~~

~~(4) A crime against humanity occurs when a government withdraws legal protection from a class of human beings resulting in severe deprivation of their rights, up to and including death;~~

~~(5) In Brown v. Board of Education, the United States Supreme Court corrected its own grave injustice and crime against humanity created in Plessy v. Ferguson by overruling and abolishing the fifty-eight-year-old “separate but equal” doctrine, thus giving equal legal rights to African-Americans;~~

~~(6) Under the doctrine of stare decisis, the three (3) abortion cases mentioned in subdivision (a)(1) of this section meet the test for when a case should be overturned by the United States Supreme Court because of significant changes in facts or laws, including without limitation the following:~~

~~(A) The cases have not been accepted by scholars, judges, and the American people, as witnessed to by the fact that these cases are still the most intensely controversial cases in American history and at the present time;~~

~~(B) New scientific advances have demonstrated since 1973 that life begins at the moment of conception and the child in a woman's womb is a human being;~~

~~(C) Scientific evidence and personal testimonies document the massive harm that abortion causes to women;~~

~~(D) The laws in all fifty (50) states have now changed through "Safe Haven" laws to eliminate all burden of child care from women who do not want to care for a child; and~~

~~(E) Public attitudes favoring adoption have created a culture of adoption in the United States with many families waiting long periods of time to adopt newborn infants;~~

~~(7) Before the United States Supreme Court decision of Roe v. Wade, Arkansas had already enacted prohibitions on abortions under § 5-61-101 et seq., and authorized the refusal to perform, participate, consent, or submit to an abortion under § 20-16-601;~~

~~(8) Arkansas Constitution, Amendment 68, states that the policy of Arkansas is to protect the life of every unborn child from conception until birth and that public funds shall not be used to pay for any abortion except to save the life of the mother;~~

~~(9) Arkansas passed the Arkansas Human Heartbeat Protection Act, § 20-16-1301 et seq., in 2013 which shows the will of the Arkansas people to save the lives of unborn children;~~

~~(10) Arkansas has continued to pass additional legislation in 2015 and 2017 that further shows the will of the Arkansas people to save the lives of unborn children;~~

~~(11)(A) Since the decision of Roe v. Wade, approximately sixty million sixty nine thousand nine hundred seventy one (60,069,971) abortions have ended the lives of unborn children.~~

~~(B) In 2015, six hundred thirty eight thousand one hundred sixty nine (638,169) legal induced abortions were reported to the Centers for Disease Control and Prevention from forty nine (49) reporting areas in the United States.~~

~~(C) The Department of Health reports that three thousand two hundred forty nine (3,249) abortions took place in Arkansas during 2017, including abortions performed on out-of-state residents; and~~

~~(12) The State of Arkansas urgently pleads with the United States~~

~~Supreme Court to do the right thing, as it did in one of its greatest cases, Brown v. Board of Education, which overturned a fifty-eight year-old precedent of the United States, and reverse, cancel, overturn, and annul Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey.~~

~~(b) It is the intent of this subchapter to ensure that abortion in Arkansas is abolished and protect the lives of unborn children.~~

~~5-61-303. Definitions.~~

~~As used in this subchapter:~~

~~(1)(A) "Abortion" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the 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 (1)(A) of this section is not an abortion if the act is performed with the purpose 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) "Fertilization" means the fusion of a human spermatozoon with a human ovum;~~

~~(3) "Medical emergency" means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; and~~

~~(4) "Unborn child" means an individual organism of the species Homo sapiens from fertilization until live birth.~~

~~5-61-304. Prohibition.~~

~~(a) A person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency.~~

~~(b) Performing or attempting to perform an abortion is an unclassified felony with a fine not to exceed one hundred thousand dollars (\$100,000) or~~

~~imprisonment not to exceed ten (10) years, or both.~~

~~(c) This section does not:~~

~~(1) Authorize the charging or conviction of a woman with any criminal offense in the death of her own unborn child; or~~

~~(2) Prohibit the sale, use, prescription, or administration of a contraceptive measure, drug, or chemical if the contraceptive measure, drug, or chemical is administered before the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure, drug, or chemical is sold, used, prescribed, or administered in accordance with manufacturer instructions.~~

~~(d) It is an affirmative defense to prosecution under this section if a licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional injury or death to the unborn child.~~

SECTION 4. Arkansas Code Title 5, Chapter 61, Subchapter 4, is repealed.

~~Subchapter 4 — Arkansas Unborn Child Protection Act~~

~~5-61-401. Title.~~

~~This subchapter shall be known and may be cited as the “Arkansas Unborn Child Protection Act”.~~

~~5-61-402. Legislative findings and intent.~~

~~(a) The General Assembly finds that:~~

~~(1) It is time for the United States Supreme Court to redress and correct the grave injustice and the crime against humanity which is being perpetuated by its decisions in Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey;~~

~~(2) The United States Supreme Court committed a grave injustice and a crime against humanity in the Dred Scott decision by denying personhood to a class of human beings, African Americans;~~

~~(3) The United States Supreme Court also committed a grave injustice and a crime against humanity by upholding the “separate but equal” doctrine in Plessy v. Ferguson, which withdrew legal protection from a class of human beings who were persons under the United States Constitution,~~

~~African Americans;~~

~~(4) A crime against humanity occurs when a government withdraws legal protection from a class of human beings, resulting in severe deprivation of their rights, up to and including death;~~

~~(5) In Brown v. Board of Education, the United States Supreme Court corrected its own grave injustice and crime against humanity created in Plessy v. Ferguson by overruling and abolishing the fifty-eight year-old "separate but equal" doctrine, thus giving equal legal rights to African-Americans;~~

~~(6) Under the doctrine of stare decisis, the three (3) abortion cases mentioned in subdivision (a)(1) of this section meet the test for when a case should be overturned by the United States Supreme Court because of significant changes in facts or laws, including without limitation the following:~~

~~(A) The cases have not been accepted by scholars, judges, and the American people, as witnessed to by the fact that these cases are still the most intensely controversial cases in American history and at the present time;~~

~~(B) New scientific advances have demonstrated since 1973 that life begins at the moment of conception and that the child in a woman's womb is a human being;~~

~~(C) Scientific evidence and personal testimonies document the massive harm that abortion causes to women;~~

~~(D) The laws in all fifty (50) states have now changed through "Safe Haven" laws to eliminate all burden of child care from women who do not want to care for a child; and~~

~~(E) Public attitudes favoring adoption have created a culture of adoption in the United States, with many families waiting long periods of time to adopt newborn infants;~~

~~(7) Before the United States Supreme Court decision of Roe v. Wade, Arkansas had already enacted prohibitions on abortions under § 5-61-101 et seq., and authorized the refusal to perform, participate, consent, or submit to an abortion under § 20-16-601;~~

~~(8) Arkansas Constitution, Amendment 68, states that the policy of Arkansas is to protect the life of every unborn child from conception until birth and that public funds shall not be used to pay for any abortion,~~

~~except to save the life of the mother;~~

~~(9) Arkansas passed the Arkansas Human Heartbeat Protection Act, § 20-16-1301 et seq., in 2013, which shows the will of the Arkansas people to save the lives of unborn children;~~

~~(10) Arkansas has continued to pass additional legislation in 2015, 2017, and 2019 that further shows the will of the Arkansas people to save the lives of unborn children;~~

~~(11)(A) Since the decision of Roe v. Wade, approximately sixty million sixty nine thousand nine hundred seventy one (60,069,971) abortions have ended the lives of unborn children.~~

~~(B) In 2015, six hundred thirty eight thousand one hundred sixty nine (638,169) legal induced abortions were reported to the Centers for Disease Control and Prevention from forty nine (49) reporting areas in the United States.~~

~~(C) The Department of Health reports that two thousand nine hundred sixty three (2,963) abortions took place in Arkansas during 2019, including abortions performed on out-of-state residents; and~~

~~(12) The State of Arkansas urgently pleads with the United States Supreme Court to do the right thing, as they did in one of their greatest cases, Brown v. Board of Education, which overturned a fifty-eight-year-old precedent of the United States, and reverse, cancel, overturn, and annul Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey.~~

~~(b) It is the intent of this subchapter to ensure that abortion in Arkansas is abolished and to protect the lives of unborn children.~~

#### ~~5-61-403. Definitions.~~

~~As used in this subchapter:~~

~~(1)(A) "Abortion" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the 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 (1)(A) of this section is not an abortion if the act is performed with the purpose 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) "Fertilization" means the fusion of a human spermatozoon with a human ovum;~~

~~(3) "Medical emergency" means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; and~~

~~(4) "Unborn child" means an individual organism of the species Homo sapiens from fertilization until live birth.~~

~~5-61-404. Prohibition.~~

~~(a) A person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency.~~

~~(b) Performing or attempting to perform an abortion is an unclassified felony with a fine not to exceed one hundred thousand dollars (\$100,000) or imprisonment not to exceed ten (10) years, or both.~~

~~(c) This section does not:~~

~~(1) Authorize the charging or conviction of a woman with any criminal offense in the death of her own unborn child; or~~

~~(2) Prohibit the sale, use, prescription, or administration of a contraceptive measure, drug, or chemical if the contraceptive measure, drug, or chemical is administered before the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure, drug, or chemical is sold, used, prescribed, or administered in accordance with manufacturer instructions.~~

~~(d) It is an affirmative defense to prosecution under this section if a licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional physical injury or death to the unborn child.~~

SECTION 5. Arkansas Code § 12-12-315(a)(1)(O), concerning notification of certain types of deaths, is amended to read as follows:

(O) The death is due to a ~~criminal~~ an illegal abortion;

SECTION 6. Arkansas Code § 12-18-210 is repealed.

~~12-18-210. Prohibition on intentionally causing, aiding, abetting, or assisting a child to obtain an abortion without parental consent.~~

~~(a)(1) A person shall not intentionally cause, aid, or assist a child to obtain an abortion without the consent or notification regarding judicial bypass of the requirement for consent under §§ 20-16-801, 20-16-804, and 20-16-805.~~

~~(2) Subdivision (a)(1) of this section does not affect § 20-16-808.~~

~~(b)(1) A person who violates subsection (a) of this section shall be civilly liable to the child and to the person or persons required to give the consent under § 20-16-801.~~

~~(2) A court may award:~~

~~(A) Damages to the person or persons adversely affected by a violation of subsection (a) of this section, including compensation for emotional injury without the need for personal presence at the act or event; and~~

~~(B) Attorney's fees, litigation costs, and punitive damages.~~

~~(3) An adult who engages in or consents to another person's engaging in a sexual act with a child in violation of the Arkansas Criminal Code, § 5-1-101 et seq., that results in the child's pregnancy shall not be awarded damages under this section.~~

~~(c) An unemancipated child does not have capacity to consent to any action in violation of this section.~~

~~(d) Upon a petition by any person adversely affected or who reasonably may be adversely affected by the conduct, a court of competent jurisdiction may enjoin conduct that would violate this section upon a showing that the conduct:~~

~~(1) Is reasonably anticipated to occur in the future; or~~

~~(2) Has occurred in the past, whether with the same child or others, and that it is not unreasonable to expect that the conduct will be repeated.~~

SECTION 7. Arkansas Code § 16-93-1802(2)(B)(lv) is repealed.

~~(lv) Performing an abortion in violation of the Arkansas Unborn Child Protection from Dismemberment Abortion Act, § 20-16-1801 et seq.~~

SECTION 8. Arkansas Code § 17-95-409(a)(2)(D), concerning the grounds for denial, suspension, or revocation of a physician's license, is amended to read as follows:

(D) Procuring or aiding or abetting in procuring a wrongful and ~~eriminal~~ illegal abortion;

SECTION 9. Arkansas Code § 19-6-301, concerning the enumeration of special revenues, is amended to add an additional subdivision to read as follows:

(276) Abortion clinic license fees, § 20-9-302;

SECTION 10. Arkansas Code § 20-9-302 is amended to read as follows:

20-9-302. Abortion clinics, health centers, etc. —Definitions.

~~(a)(1)(A)(i) A hospital shall not perform an abortion unless the abortion is to save the life of the pregnant woman in a medical emergency under § 5-61-304 or § 5-61-404.~~

~~(ii) An abortion permitted under § 5-61-304 or § 5-61-404 shall not be performed or attempted unless the abortion takes place in a hospital or an emergency room.~~

~~(B) As used in subdivision (a)(1)(A) of this section:~~

~~(i)(a) "Abortion" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the 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 (a)(1)(B)(i)(a) of this section is not an abortion if the act is performed with the purpose to:~~

~~(1) Save the life or preserve the health of the unborn child;~~

~~(2) Remove a dead unborn child caused by~~

~~spontaneous abortion; or~~

~~(3) Remove an ectopic pregnancy; and~~

~~(ii) "Medical emergency" means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy.~~

~~(2)(A) The Department of Health 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 shall:~~

~~(1) Adopt appropriate rules, regarding without limitation the facilities, equipment, procedures, techniques, medical records, informed consent signatures, parental consent signatures, and conditions of 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;~~

~~(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;~~

~~(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 or rule; 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.~~

(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 month, including nonsurgical abortions, shall be licensed by the Department of Health.

(2) The facilities, equipment, procedures, techniques, and conditions of the clinic, health center, or other facility are subject to periodic inspection by the department.

(b) The department may adopt appropriate rules, regarding the facilities, equipment, procedures, techniques, and conditions of a clinic, health center, or other facility licensed under this section to ensure that the facilities, equipment, procedures, techniques, and conditions of the clinic, health center, or other facility are aseptic and do not constitute a health hazard.

(c) 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.

~~(e)(1)(d)(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.

~~(d)(1)(e)(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.

~~(e)(f)~~ Subject to such rules 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.

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

~~(g) The department shall:~~

~~(1) Send all abortion data collected under state law to the Centers for Disease Control and Prevention;~~

~~(2) Record and report to the Centers for Disease Control and Prevention all instances of a suspension of a physician's license related to abortions or abortion facilities; and~~

~~(3) Make available to the public via the Division of Vital Records the following information:~~

~~(A) All abortion data collected under state law; and~~

~~(B) All instances of a suspension of a physician's license related to abortions or abortion facilities.~~

~~(h)(1) A person who notifies an abortion facility that the department may or will conduct its inspection on a specific date or time shall be guilty~~

~~upon conviction of a Class A misdemeanor.~~

~~(2) A person who knowingly conceals or removes information that is relevant to an inspection of an abortion facility shall be guilty upon conviction of a Class A misdemeanor.~~

~~(i) All inspections of abortion facilities shall be conducted by at least two (2) persons at the same time.~~

SECTION 11. Arkansas Code § 20-9-312 is repealed.

~~20-9-312. Written agreements of abortion facility.~~

~~(a)(1) An abortion facility shall enter into a written agreement with a licensed acute care hospital that is capable of treating patients with unforeseen complications related to procedures performed at an abortion facility.~~

~~(2) Under the written agreement described in subdivision (a)(1) of this section, the licensed acute care hospital shall agree to accept and treat patients with unforeseen complications related to procedures performed at an abortion facility.~~

~~(3) The written agreement described in subdivision (a)(1) of this section shall:~~

~~(A) Be with a licensed acute care hospital located:~~

~~(i) In the same county as the abortion facility; or~~

~~(ii) No further than thirty (30) miles from the abortion facility;~~

~~(B) Be a legally binding contractual document;~~

~~(C) Be signed by the individuals who:~~

~~(i) Are authorized to execute the written agreement on behalf of the abortion facility and the licensed acute care hospital; and~~

~~(ii) Certify that they have the authority described in subdivision (a)(3)(C)(i) of this section;~~

~~(D) Require transfer of a patient if deemed medically necessary by the attending physician;~~

~~(E) Identify responsibilities of the abortion facility in which the abortion facility shall at a minimum:~~

~~(i) At the time of transfer, provide the licensed acute care hospital with complete and accurate information regarding the patient being transferred to the licensed acute care hospital;~~

~~(ii) Notify the licensed acute care hospital of the impending transfer of a patient and receive confirmation of the availability of appropriate facilities, services, and staff necessary for the care of the patient;~~

~~(iii) At the time of the transfer, provide the licensed acute care hospital with copies of relevant portions of the patient's clinical record;~~

~~(iv) Transfer the patient, the patient's medical records, demographic information, insurance information, and other information deemed necessary or otherwise required by law to facilitate the provision of medical care when the patient arrives at the licensed acute care hospital; and~~

~~(v) Arrange for the immediate transfer of the patient's personal effects, including a document listing the effects; and~~

~~(F) Identify responsibilities of the licensed acute care hospital in which the licensed acute care hospital shall at a minimum:~~

~~(i) Provide prompt and appropriate evaluation and treatment of a patient transferred to the licensed acute care hospital under the written agreement;~~

~~(ii) Accept responsibility for the patient's care when the patient is received by the licensed acute care hospital;~~

~~(iii) Direct charges performed by the licensed acute care hospital to the patient or the patient's third-party payer; and~~

~~(iv) Acknowledge receipt of the patient's personal effects in writing signed by an authorized representative of the licensed acute care hospital and deliver the receipt to the abortion facility.~~

~~(b) If an unforeseen complication arises before or during a procedure performed at an abortion facility, the patient shall be transferred to:~~

~~(1) The licensed acute care hospital with which the abortion facility has a written agreement as described in subsection (a) of this section; or~~

~~(2) A hospital selected by the patient.~~

~~(c)(1) An abortion facility shall enter into a written agreement with a licensed local ambulance service for the transport of any emergency patient within the scope of subsection (a) of this section to the licensed acute care hospital.~~

~~(2) The written agreement described in subdivision (c)(1) of this section shall:~~

~~(A) Be with a licensed local ambulance service located:~~

~~(i) In the same county as the abortion facility; or~~

~~(ii) No further than five (5) miles or ten (10)~~

~~minutes' normal driving time from the abortion facility;~~

~~(B) Be signed by the individuals who:~~

~~(i) Are authorized to execute the written agreement on behalf of the abortion facility and the licensed local ambulance service; and~~

~~(ii) Certify that they have the authority described in subdivision (c)(2)(B)(i) of this section; and~~

~~(C) Identify responsibilities of the licensed local ambulance service in which the licensed local ambulance service shall at a minimum:~~

~~(i) Provide services in accordance with all federal and state laws, federal regulations, and state rules applicable to emergency service entities;~~

~~(ii) Employ sufficient staff, including paramedics and emergency medical technicians, to provide patient care and operate vehicles and equipment in accordance with industry standards and applicable federal and state laws, federal regulations, and state rules;~~

~~(iii) Require all responding medical personnel to familiarize themselves with the floor plan of the abortion facility to minimize the time required to locate the patient in the facility and exit the facility with the patient as expeditiously as possible;~~

~~(iv) Acknowledge the existence of and the licensed local ambulance service's familiarity with the terms of the written agreement between the abortion facility and the licensed acute care hospital; and~~

~~(v) Transport the patient to the licensed acute care hospital that is party to the written agreement unless otherwise directed by the patient.~~

~~(d) Within ten (10) days of finalization of the written agreements described in subsections (a) and (c) of this section, the abortion facility shall file the written agreements described in subsections (a) and (c) of this section with the Department of Health.~~

~~(e) An abortion facility shall have ninety (90) days after July 28, 2021, to come into compliance with this section.~~

~~(f)(1) An abortion facility applying for a renewal license or an applicant for a provisional license may submit a request in writing for extensions of time to comply with the written agreement requirements described in subsections (a) and (c) of this section to the Secretary of the Department of Health in accordance with the provisions of this subsection.~~

~~(2) Any request shall:~~

~~(A) Be in writing;~~

~~(B) Contain a certification under oath that the abortion facility seeking the extension of time has exhausted all reasonable efforts to obtain a written agreement described in subsections (a) and (c) of this section for a continuous ninety-calendar-day period before the request; and~~

~~(C) Contain a detailed description of the efforts taken to secure the written agreements described in subsections (a) and (c) of this section.~~

~~(3) In deciding to grant or deny the request for an extension of time, the secretary shall consider all factors the secretary deems relevant under the circumstances, but at least the following factors:~~

~~(A) Whether the abortion facility or applicant made, and continues to make, a good faith effort to obtain a written agreement described in subsections (a) and (c) of this section;~~

~~(B) Whether the abortion facility or applicant can provide the same level of patient care and safety via alternative health services during any extension period; and~~

~~(C) Regulatory compliance history at the abortion facility and at any other healthcare facility owned, in whole or in part, by the applicant or any other individual or entity having an ownership interest with the abortion facility.~~

~~(4) If the request is granted, the extension of time shall be effective for a time period of ninety (90) calendar days from the date of issuance.~~

~~(5) The secretary may rescind a previously granted extension of time at any time upon determining that the abortion facility or applicant has not met, or is not meeting, the conditions of subdivision (f)(3) of this section.~~

~~(6) If the request is for a written agreement described in subsection (a) of this section, the written agreement described in subsection (c) of this section does not have to comply with subdivisions (c)(2)(C)(iv) and (v) of this section for the duration of the extension of time.~~

~~(7)(A) If a request for an extension is denied, an abortion facility or applicant shall have ten (10) calendar days to submit a written request for reconsideration to the secretary, whose decision shall be final.~~

~~(B) The abortion facility or applicant for provisional license may appeal a denial in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

~~(g)(1) This section does not create or recognize a right to abortion.~~

~~(2) This section is not intended to make lawful an abortion that is currently unlawful.~~

SECTION 12. Arkansas Code § 20-16-602 is repealed.

~~20-16-602. Right to Know and See Act — Right to view ultrasound image 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) —An abortion provider who knowingly performs or refers for an abortion shall comply with the requirements of this section.~~

~~(2) —Before a pregnant woman gives informed consent to an abortion or is referred for or 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.~~

~~(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 (c)(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 13. Arkansas Code § 20-16-603 is repealed.

~~20-16-603. Drug-induced abortions—Procedures—Penalties—Causes of action—Definitions.~~

~~(a) As used in this section:~~

~~(1) “Abortion” means the use or prescription of an instrument, medicine, drug, or another substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died in utero as the result of natural causes, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and that causes the premature termination of the 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 physician believes them to be, constitutes a substantial step toward the performance or induction of an abortion in violation of this section;~~

~~(3) “Mifepristone” means the specific abortion-inducing drug regimen known as RU-486; and~~

~~(4) “Physician” means a natural person licensed to practice medicine in the State of Arkansas under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.~~

~~(b)(1) When mifepristone or another drug or chemical regimen is used to induce an abortion, the initial administration of the drug or chemical shall occur in the same room and in the physical presence of the physician~~

~~who prescribed, dispensed, or otherwise provided the drug or chemical to the patient.~~

~~(2) The physician who induces the abortion, or a person acting on behalf of the physician who induces the abortion, shall make all reasonable efforts to ensure that the patient returns twelve (12) to eighteen (18) days after the administration or use of mifepristone or another drug or chemical for a follow up visit so that the physician can confirm that the pregnancy has been terminated and can assess the patient's medical condition.~~

~~(3) A brief description of the efforts made to comply with this section, including the date, time, and identification by name of the person making the efforts, shall be included in the patient's medical record.~~

~~(c) This section does not affect telemedicine practice that does not involve the use of mifepristone or another drug or chemical to induce an abortion.~~

~~(d)(1) If the Arkansas State Medical Board finds that a physician licensed by the board has violated the rules of professional conduct by performing an abortion in violation of this subchapter, the board shall revoke the physician's license.~~

~~(2) A penalty shall not be assessed against the woman upon whom the abortion is performed or attempted to be performed.~~

~~(e)(1)(A) A woman who receives an abortion, the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the time the abortion was performed, or a maternal grandparent of the unborn child may maintain an action against the person who performed the abortion in violation of this section for actual and punitive damages.~~

~~(B) A woman who attempts to receive an abortion in violation of this section may maintain an action against the person who attempted to perform the abortion for actual and punitive damages.~~

~~(2)(A) Upon petition by any citizen in the county in which an alleged violation of this section occurred or in which the defendant resides, a court may enjoin a healthcare professional who has knowingly or recklessly violated this section.~~

~~(B) An injunction under subdivision (e)(2)(A) of this section shall prevent the abortion provider from performing further abortions in violation of this section.~~

~~(f)(1) If a judgment is rendered in favor of the plaintiff who prevails in an action under subsection (e) of this section, the court shall award reasonable attorney's fees and costs in favor of the plaintiff against the defendant.~~

~~(2) If a 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 order the plaintiff to pay reasonable attorney's fees to the defendant.~~

~~(g) A pregnant woman who obtains or possesses mifepristone or another drug or chemical used for the purpose of inducing an abortion to terminate her pregnancy shall not be subject to an action under subsection (e) of this section.~~

~~(h)(1) In a civil proceeding or action brought under this section, the court shall determine if the anonymity of a woman who receives or attempts to receive an abortion shall be preserved from public disclosure without her consent.~~

~~(2)(A) Upon determining that the woman's anonymity shall be preserved, the court shall issue an order to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure.~~

~~(B) An order under subdivision (h)(2)(A) of this section shall be accompanied by specific written findings explaining:~~

~~(i) Why the anonymity of the woman should be preserved from public disclosure;~~

~~(ii) Why the order is essential to that end;~~

~~(iii) How the order is narrowly tailored to serve that interest; and~~

~~(iv) Why no reasonable, less restrictive alternative exists.~~

~~(C) In the absence of written consent of the woman who receives or attempts to receive an abortion, anyone other than a public official who brings an action under subsection (e) of this section shall bring the action under a pseudonym.~~

~~(D) This subsection does not conceal the identity of the plaintiff or of a witness from the defendant.~~

~~(i) This section does not create or recognize a right to abortion.~~

SECTION 14. Arkansas Code § 20-16-605 is repealed.

~~20-16-605. Reporting requirements for abortion complications—~~

~~Definitions.~~

~~(a) As used in this section:~~

~~(1)(A) “Abortion complication” means any harmful event or adverse outcome with respect to a patient related to an abortion that is performed on the patient and that is diagnosed or treated by a physician or at a healthcare facility.~~

~~(B) “Abortion complication” includes without limitation:~~

~~(i) Shock;~~

~~(ii) Uterine perforation;~~

~~(iii) Cervical laceration;~~

~~(iv) Hemorrhage;~~

~~(v) Aspiration or allergic response;~~

~~(vi) Infection;~~

~~(vii) Sepsis;~~

~~(viii) Death;~~

~~(ix) Incomplete abortion;~~

~~(x) Damage to the uterus; and~~

~~(xi) An infant born alive after an abortion~~

~~procedure; and~~

~~(2) “Healthcare facility” means a hospital, abortion facility, or healthcare facility that provides emergency medical care.~~

~~(b) This section applies only to:~~

~~(1) A physician who:~~

~~(A) Performs at an abortion facility an abortion that results in an abortion complication diagnosed or treated by the physician; or~~

~~(B) Diagnoses or treats at an abortion facility an abortion complication that is the result of an abortion performed by another physician at the abortion facility; and~~

~~(2) A healthcare facility.~~

~~(c)(1)(A) A physician described under subdivision (b)(1) of this section shall electronically submit to the Department of Health a report on each abortion complication diagnosed or treated by the physician not later~~

~~than the end of the third business day after the date on which the abortion complication was diagnosed or treated.~~

~~(B) A healthcare facility described under subdivision (b)(2) of this section shall electronically submit to the department a report on each abortion complication diagnosed or treated by the healthcare facility not later than the thirtieth day after the date on which the abortion complication was diagnosed or treated.~~

~~(2) The reports described in subdivision (c)(1) of this section shall:~~

~~(A) Be submitted in the form and manner prescribed by rule of the department;~~

~~(B) Identify the name of the physician submitting the report or the name and type of healthcare facility submitting the report;~~

~~(C) Not identify by any means the physician performing the abortion or the patient on whom the abortion was performed;~~

~~(D) Include the most specific, accurate, and complete reporting for the highest level of specificity; and~~

~~(E) Include the following information, if known, for each abortion complication:~~

~~(i) The date of the abortion that caused or may have caused the abortion complication;~~

~~(ii) The type of abortion that caused or may have caused the abortion complication;~~

~~(iii) The gestational age of the fetus at the time that the abortion was performed;~~

~~(iv) The name and type of healthcare facility in which the abortion was performed;~~

~~(v) The date the abortion complication was diagnosed or treated;~~

~~(vi) The name and type of any healthcare facility other than the reporting healthcare facility in which the abortion complication was diagnosed or treated;~~

~~(vii) A description of the abortion complication;~~

~~(viii) The patient's year of birth, race, marital status, state of residence, and county of residence;~~

~~(ix) The date of the first day of the patient's last~~

~~menstrual period that occurred before the date of the abortion that caused or may have caused the abortion complication, if known;~~

~~(x) The number of previous live births of the patient; and~~

~~(xi) The number of previous induced abortions of the patient.~~

~~(3) An event associated with a medical procedure performed after a natural miscarriage, spontaneous abortion, or fetal death is not subject to reporting under this section.~~

~~(d)(1) The department shall develop and publish on the website of the department an annual report that aggregates on a statewide basis each abortion complication reported under this section.~~

~~(2) The annual report shall not include any duplicative data.~~

~~(e)(1) The information and records held by the department under this section are confidential and shall not be disclosed under the Freedom of Information Act of 1967, § 25-19-101 et seq.~~

~~(2) The information and records shall be released only in the following circumstances:~~

~~(A) For statistical purposes, but only if a person, patient, or healthcare facility is not identified;~~

~~(B) With the consent of each person, patient, and healthcare facility identified in the information released;~~

~~(C) For the purpose of enforcing this section, to medical personnel, appropriate state agencies, county courts, or district courts; or~~

~~(D) For the purpose of enforcing state licensing laws, to appropriate state licensing boards.~~

~~(f)(1) A physician or healthcare facility that violates this section is subject to a civil penalty of five hundred dollars (\$500) for each violation.~~

~~(2) The Attorney General, at the request of the department or appropriate licensing board, may file an action to recover a civil penalty assessed under subdivision (f)(1) of this section and may recover attorney's fees and costs incurred in bringing the civil action.~~

~~(3) Each day of a continuing violation shall constitute a separate violation.~~

~~(4) A third separate violation of this section shall constitute~~

~~grounds for:~~

~~(A) Revocation or suspension of the physician's or the healthcare facility's license, permit, registration, certificate, or other authority; or~~

~~(B) Other disciplinary action against the physician or healthcare facility by the appropriate licensing board.~~

~~(5) The department shall notify the Arkansas State Medical Board of any violations of this section by a physician.~~

SECTION 15. Arkansas Code § 20-16-607 is amended to read as follows:

20-16-607. In custody or guardianship of state.

(a) A state agency shall not:

~~(1) Consent to or approve the termination of a pregnancy for a pregnant woman in the custody or guardianship of the state; or~~

~~(2) Authorize authorize the expenditure of state funds for the purpose of paying for the termination of a pregnancy for a pregnant woman in the custody of the state except to save the life of the pregnant woman, or as required by federal law.~~

(b) A pregnant woman in the custody or guardianship of the state, her family, or a third-party payer is responsible for all costs, including transportation costs, associated with a medical appointment, or any subsequent healthcare service determined necessary, related to the termination of her pregnancy, except as required by federal law.

(c) A state agency may be involved in a court proceeding related to the consideration by the court of whether to approve the termination of a pregnancy for a pregnant woman in the custody or guardianship of the state.

~~(d) A state agency under this section shall report annually to the Senate Committee on Public Health, Welfare, and Labor and the House Committee on Public Health, Welfare, and Labor the number of any terminations of pregnancies that occurred for women in the custody or guardianship of the state agency.~~

~~(e)-(1)~~(d) A state agency under this section shall promulgate rules necessary to implement this section.

~~(2)(A) When adopting the initial rules to implement this section, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):~~

~~(i) On or before January 1, 2020; or~~  
~~(ii) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.~~  
~~(B) A state agency shall file the proposed rule with the Legislative Council under § 10-3-309(e) sufficiently in advance of January 1, 2020, so that the Legislative Council may consider the rule for approval before January 1, 2020.~~

SECTION 16. Arkansas Code § 20-16-608 is repealed.

~~20-16-608. Reporting data on abortions to save life of mother.~~

~~A physician, healthcare provider, or abortion facility shall report to the Department of Health the number of abortions performed to save the life of the mother.~~

SECTION 17. Arkansas Code § 20-16-701 is amended to read as follows:

20-16-701. Legislative intent – Construction.

~~(a) It is the intention of the General Assembly to regulate abortions in a manner consistent with the decisions of the United States Supreme Court.~~

~~(b) All provisions and all terms shall be construed so as to be consistent with those decisions protect a woman's right to obtain abortion services up to the point of fetal viability, as provided for in the United States Constitution, according to the United States Supreme Court in the 1973 decision Roe v. Wade, 410 U.S. 113, 162 (1973), with limited exceptions following fetal viability for the health or life of the mother or in case of rape or incest perpetrated on a minor.~~

SECTION 18. Arkansas Code § 20-16-702(1), concerning the definition of "abortion" related to the prohibition of an abortion of a viable fetus, is amended to read as follows:

(1)(A) ~~"Abortion" means the intentional termination of the pregnancy of a mother with an intention other than to increase the probability of a live birth or to remove a dead or dying fetus~~ the use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a female known to be pregnant.

(B) "Abortion" does not include the termination of a pregnancy if the termination is intended to:

- (i) Increase the probability of a live birth;
- (ii) Save the life or preserve the health of the child after a live birth;
- (iii) Remove a dead fetus caused by spontaneous miscarriage; or
- (iv) Remove an ectopic pregnancy;

SECTION 19. Arkansas Code § 20-16-705(c), concerning the exceptions to the prohibition of an abortion of a viable fetus, is amended to read as follows:

~~(c)(1) This subchapter shall not prohibit the abortion of a viable fetus if the pregnancy is the result of rape or incest perpetrated on a minor when documentation is presented that states that the crime has been reported to law enforcement.~~

~~(2) The physician or abortion facility shall:~~

~~(A) File the documentation that a crime has been reported to law enforcement in the pregnant woman's medical record; and~~

~~(B) Report to the Department of Health the number of abortions performed because of rape or incest.~~

SECTION 20. Arkansas Code § 20-16-704 is repealed.

~~20-16-704. Penalty.~~

~~(a) A violation of this subchapter shall be a Class A misdemeanor.~~

~~(b) Nothing in this subchapter shall be construed to allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero.~~

SECTION 21. Arkansas Code Title 20, Chapter 16, Subchapter 8, is repealed.

~~Subchapter 8 — Abortion — Parental Involvement Enhancement Act~~

~~20-16-801. Title.~~

~~This subchapter shall be known and may be cited as the "Parental Involvement Enhancement Act".~~

~~20-16-802. Legislative findings and purpose.~~

~~(a) The General Assembly finds that:~~

~~(1) Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences;~~

~~(2) The medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the minor is immature;~~

~~(3) The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related;~~

~~(4) Parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning the minor daughter;~~

~~(5) Parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion; and~~

~~(6) Parental consultation is usually desirable and in the best interests of the minor.~~

~~(b) Based on the findings in subsection (a) of this section, the General Assembly's purposes in enacting this enhancement to the State of Arkansas's parental notice law are to further the important and compelling state interests of:~~

~~(1) Protecting minors against their own immaturity;~~

~~(2) Fostering family unity and preserving the family as a viable social unit;~~

~~(3) Protecting the constitutional rights of parents to rear children who are members of their household;~~

~~(4) Reducing teenage pregnancy and abortion; and~~

~~(5) In light of the foregoing statements of purpose, allowing for judicial bypasses of the parental notice requirement to be made only in exceptional or rare circumstances.~~

~~20-16-803. Definitions.~~

~~As used in this subchapter:~~

~~(1)(A) "Abortion" means the act of using or prescribing an 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) "Coercion" means restraining or dominating the choice of a pregnant woman by force, threat of force, or deprivation of food and shelter;~~

~~(3) "Consent" means:~~

~~(A) In the case of a pregnant woman who is less than eighteen (18) years of age, a notarized written statement signed by the pregnant woman and her mother, father, or legal guardian declaring that the pregnant woman intends to seek an abortion and that her mother, father, or legal guardian consents to the abortion; or~~

~~(B) In the case of a pregnant woman who is an incompetent person, a notarized written statement signed by the pregnant woman's guardian declaring that the guardian consents to the performance of an abortion upon the pregnant woman;~~

~~(4) "Emancipated minor" means a person less than eighteen (18) years of age who is or has been married or who has been legally emancipated;~~

~~(5) "Incompetent" means a person who has been adjudged a disabled person and has had a guardian appointed for her;~~

~~(6) "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 so as to necessitate the immediate abortion 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;~~

~~(7) "Minor" means an individual under eighteen (18) years of age;~~

~~(8) "Parent" means:~~

~~(A) Either parent of the pregnant woman if both parents are living;~~

~~(B) One (1) parent of the pregnant woman if only one (1)~~

~~is living or if the second parent cannot be located through reasonably diligent effort; or~~

~~(C) The court appointed guardian or custodian if the pregnant woman has one;~~

~~(9) "Physician" means a person licensed to practice medicine in this state, including a medical doctor or a doctor of osteopathy; and~~

~~(10) "Pregnant woman" means a pregnant minor or pregnant incompetent woman.~~

~~20-16-804. Notarized consent.~~

~~Except as otherwise provided in §§ 20-16-807 and 20-16-809, a physician shall not perform an abortion upon an unemancipated minor or upon a woman for whom a guardian or custodian has been appointed because of a finding of incompetency unless the physician first obtains the written consent of either parent or the legal guardian or custodian.~~

~~20-16-805. Manner of consent.~~

~~(a) A physician shall not perform an abortion upon a pregnant woman unless:~~

~~(1) In the case of a woman who is less than eighteen (18) years of age, he or she obtains the notarized written consent of both the pregnant woman and one (1) of her parents or her legal guardian; or~~

~~(2) In the case of woman who is an incompetent person, the physician first obtains the notarized written consent of her legal guardian.~~

~~(b) The notarized written consent shall include without limitation the following information:~~

~~(1) The name and birthdate of the minor or incompetent woman;~~

~~(2) The name of the parent or legal guardian;~~

~~(3) A statement from the parent or legal guardian that he or she is aware that the minor or incompetent woman desires an abortion and that he or she does consent to the abortion; and~~

~~(4) The date.~~

~~20-16-806. Proof of identification and relationship to pregnant woman.~~

~~(a) The physician who performs the abortion shall obtain from the parent or legal guardian entitled to consent:~~

~~(1) Positive proof of identification in the form of a valid government-issued photo identification card; and~~

~~(2) Written documentation that establishes that the parent or legal guardian is the lawful parent or legal guardian of the pregnant woman.~~

~~(b) A photocopy of the proof of identification of the parent or legal guardian and the written documentation that establishes the relationship of the parent or legal guardian to the pregnant woman shall be kept in the medical file of the pregnant woman for five (5) years past the age of majority of the pregnant woman, but in no event less than seven (7) years.~~

~~(c) The physician who performs the abortion after receiving parental consent under this subchapter shall execute for inclusion in the medical record of the pregnant woman an affidavit stating the following: "I, (Insert the name of physician who performed the abortion), certify that according to my best information and belief, a reasonable person under similar circumstances would rely on the information presented by both the pregnant woman and her parent or legal guardian as sufficient evidence of identity and relationship."~~

~~20-16-807.—Notice post-emergency.~~

~~(a)(1) Consent is not required under this subchapter if the attending physician certifies in the medical record of the pregnant woman that a medical emergency exists and there is insufficient time to obtain the required consent.~~

~~(2) However, within twenty four (24) hours after the completion of the abortion, the physician shall notify one (1) of the parents or the legal guardian of the minor or incompetent woman in the manner provided in this subchapter that a medical emergency abortion was performed on the pregnant woman and of the circumstances that warranted invocation of this section.~~

~~(b)(1) Unless the minor or incompetent woman gives notice of her intent to seek a judicial waiver under § 20-16-809, the physician shall verbally inform the parent or legal guardian of the minor or incompetent woman within twenty four (24) hours after the performance of a medical emergency abortion that an abortion was performed on the minor or incompetent woman.~~

~~(2) The physician shall:~~

~~(A) Inform the parent or legal guardian of the basis for the certification of the physician required under subsection (a) of this section and provide details regarding any additional risks to the pregnant woman; and~~

~~(B) Send a written notice of the performed abortion to the last known address of the parent or legal guardian by certified mail with restricted delivery and return receipt requested.~~

~~(c) If the minor or incompetent woman gives notice to the physician of her intent to seek a judicial waiver under this subchapter, the physician shall:~~

~~(1) File a notice with a judge of a court that the minor has given notice; and~~

~~(2) Provide the information to the court that the physician would have been required to provide to the parent or legal guardian under subsection (b) of this section if the minor or incompetent woman had not given her intent to seek a judicial waiver.~~

~~(d)(1) The court shall expeditiously schedule a confidential conference with notice to the minor or incompetent woman and the physician.~~

~~(2) If the minor or incompetent woman is able to participate in the proceedings, the court shall advise the minor or incompetent woman that she has the right to a court-appointed counsel and, upon her request, shall provide the minor or incompetent with a court-appointed counsel.~~

~~(3) If the minor or incompetent woman is unable to participate in the proceedings, the court shall appoint counsel on behalf of the minor or incompetent woman.~~

~~(e)(1) After an appropriate hearing, the court, taking into account the medical condition of the minor or incompetent woman, shall set a deadline by which the minor or incompetent woman may file a petition or motion under this subchapter.~~

~~(2) The court may subsequently extend the deadline in light of the medical condition of the minor or incompetent woman or other equitable considerations.~~

~~(3) If the minor or incompetent woman does not file a petition or motion by the deadline, either in the court or in another court with a copy filed in the original court, the court shall direct that the court clerk provide the notice to the parent or legal guardian.~~

~~20-16-808.—Venue.~~

~~The pregnant woman may petition a circuit court in the county in which she resides for a waiver of the consent requirement.~~

~~20-16-809.—Judicial relief from requirement.~~

~~(a) The requirements and procedures of this subchapter are available to a pregnant woman regardless of whether the woman is a resident of the state.~~

~~(b) Notwithstanding the provisions of §§ 20-16-803—20-16-806, if a pregnant minor or incompetent woman does not wish to obtain the consent of one (1) or both parents or the guardian or custodian, then:~~

~~(1)(A) The pregnant woman may petition a circuit court for a waiver of the consent requirement and may participate in the proceedings on her own behalf.~~

~~(B) However, the court shall advise the pregnant woman that she has a right to a court-appointed counsel and, upon her request, shall provide her with such counsel.~~

~~(C) The court may appoint a guardian ad litem for the pregnant woman.~~

~~(D) A guardian ad litem appointed under this subchapter shall act to maintain the confidentiality of the proceedings;~~

~~(2)(A) When the petitioner is a minor, the petition shall include a statement that the minor is pregnant and unemancipated.~~

~~(B) The petition shall include a statement that consent has not been waived and that the pregnant woman wishes to abort the fetus without obtaining consent under this subchapter;~~

~~(3) The pregnant woman shall have the right to file her petition in the circuit court using a pseudonym or using solely her initials;~~

~~(4)(A) The court proceedings under this section shall be confidential and shall ensure the anonymity of the minor or incompetent woman.~~

~~(B) All court proceedings under this section shall be sealed and all documents related to the petition shall be confidential and shall not be available to the public;~~

~~(5) These proceedings shall be given precedence over other~~

~~pending matters to the extent necessary to ensure that the court reaches a decision promptly and without delay as to serve the best interests of the pregnant minor or incompetent woman;~~

~~(6) The judge shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained, including the findings and conclusions of the judge;~~

~~(7)(A) An expedited confidential appeal shall be available to any pregnant minor or incompetent woman for whom the court denies an order authorizing an abortion without consent.~~

~~(B) An order authorizing an abortion without consent shall not be subject to appeal; and~~

~~(8) A filing fee shall not be required of any pregnant minor or incompetent woman at either the trial or the appellate level.~~

~~(c)(1)(A) If the court finds by clear and convincing evidence that the pregnant woman is both sufficiently mature and well-informed to decide whether to have an abortion, the court shall:~~

~~(i) Issue an order authorizing the pregnant woman to consent to the performance or inducement of an abortion without the consent of a parent or legal guardian; and~~

~~(ii) Execute the required forms.~~

~~(B) If the court does not make the findings specified in this subdivision (c)(1) or subdivision (c)(2) of this section, the court shall dismiss the petition.~~

~~(2)(A) If the court finds by clear and convincing evidence that the pregnant woman is the victim of physical or sexual abuse by one (1) or both of her parents or her legal guardian or that obtaining the consent of a parent or legal guardian is not in the best interest of the pregnant woman, the court shall issue an order authorizing the pregnant woman to consent to the performance or inducement of an abortion without the consent of a parent or guardian.~~

~~(B) If the court does not make the findings specified in subdivision (c)(1) of this section or this subdivision (c)(2), the court shall dismiss the petition.~~

~~(3) The attending physician shall report any abuse as provided in the Child Maltreatment Act, § 12-18-101 et seq.~~

~~(d)(1) If the pregnant woman claims to be mature and well-informed at a proceeding held under this subchapter, the pregnant woman shall prove by clear and convincing evidence that she is sufficiently mature and capable of giving informed consent without obtaining consent from or giving notice to her parent or legal guardian based on her experience level, perspective, and judgment.~~

~~(2) In assessing the pregnant woman's experience level, the court may consider the following relevant factors:~~

~~(A) The age of the pregnant woman;~~

~~(B) The pregnant woman's experiences working outside the home;~~

~~(C) The pregnant woman's experiences living away from home;~~

~~(D) The pregnant woman's experiences traveling on her own;~~

~~(E) The pregnant woman's experiences handling personal finances;~~

~~(F) The pregnant woman's experiences making other significant decisions; and~~

~~(G) Other relevant factors as appropriate.~~

~~(3) In assessing the pregnant woman's perspective, the court may consider the following relevant factors:~~

~~(A) The steps that the pregnant woman took to explore her options;~~

~~(B) To what extent she considered and weighed the potential consequences of each option; and~~

~~(C) Other relevant factors as appropriate.~~

~~(4) In assessing the pregnant woman's judgment, the court may consider among other relevant factors the pregnant woman's conduct since learning of her pregnancy and her intellectual ability to understand her options and to make an informed decision.~~

~~20-16-810. Disclosure and consent form.~~

~~(a) Physicians shall use a form created by the Department of Health to obtain the consent required prior to performing an abortion on a pregnant woman.~~

~~(b) A form is not valid and consent is not sufficient unless:~~

~~(1) A parent or legal guardian initials each page of the form, indicating that he or she has read and understands the information included on that page;~~

~~(2) A parent or legal guardian signs the last page of the form in front of a person who is a notary public;~~

~~(3) The pregnant woman initials each list of risks and hazards detailed in subdivision (c)(4) of this section;~~

~~(4) The pregnant woman signs a consent statement described in subdivision (c)(6) of this section; and~~

~~(5) The physician signs a physician declaration described in subdivision (c)(7) of this section.~~

~~(c) The form shall include without limitation the following information:~~

~~(1) A description of the pregnant woman's rights, including the right to informed consent as granted by the Woman's Right to Know Act of 2001, § 20-16-901 et seq. [repealed]; and the Woman's Right to Know Act, § 20-16-1701 et seq.;~~

~~(2) A description of the parent or legal guardian's rights under state law;~~

~~(3) A detailed description of the surgical procedures or medical procedures, or both, that are planned to be performed on the pregnant woman;~~

~~(4) A detailed list of the risks and hazards related to the surgical or medical procedures planned for the pregnant woman, including without limitation the following risks and hazards that may occur:~~

~~(A) Infection;~~

~~(B) Blood clots;~~

~~(C) Hemorrhage;~~

~~(D) Allergic reactions;~~

~~(E) A hole in the uterus or other damage to the uterus;~~

~~(F) Sterility;~~

~~(G) Injury to the bowel or bladder;~~

~~(H) Possible hysterectomy as a result of complication or injury during the procedure;~~

~~(I) Failure to remove all products of conception;~~

~~(J) Possible continuation of pregnancy;~~

~~(K) Cramping of the uterus or pelvic pain;~~

~~(L)—Cervical laceration;~~

~~(M)—Incompetent cervix;~~

~~(N)—Emergency treatment for any complications; or~~

~~(O)—Death;~~

~~(5)—A description of additional information that shall be provided by the physician to the pregnant woman under state law;~~

~~(6)—A consent statement signed by the pregnant woman that includes without limitation the following information individually initialed by the pregnant woman that the pregnant woman:~~

~~(A)—Understands that the doctor is going to perform an abortion on her that will end her pregnancy and will result in the death of her unborn child;~~

~~(B)—Is not being forced to have an abortion and that she has the choice not to have the abortion and may withdraw consent prior to the abortion;~~

~~(C)—Gives permission for the procedure;~~

~~(D)—Understands that there are risks and hazards that could affect her if she has the planned surgical or medical procedures;~~

~~(E)—Has been given the opportunity to ask questions about her condition, alternative forms of treatment, risk of nontreatment, the procedures to be used, and the risks and hazards involved;~~

~~(F)—Has been given information required by statute; and~~

~~(G)—Has sufficient information to give informed consent;~~

~~(7)—A physician declaration, signed by the physician, stating that:~~

~~(A)—The physician or his or her assistant has, as required, explained the procedure and the contents of this form to the pregnant woman and her parent or legal guardian and has answered all questions; and~~

~~(B)—To the best of the physician's knowledge, the patient and her parent or legal guardian have been adequately informed and have consented to the procedure;~~

~~(8)—A parental consent statement that states that the signing parent or legal guardian:~~

~~(A)—Understands that the doctor signing the physician declaration form is going to perform an abortion on the pregnant woman, which~~

~~will end her pregnancy and result in the death of her unborn child;~~

~~(B) Has had the opportunity to read the physician declaration form or have it read to him or her and has initialed each page;~~

~~(C) Had the opportunity to ask questions of the physician or the physician's assistant about the information in the physician declaration form and the surgical and medical procedures to be performed on the pregnant woman;~~

~~(D) Believes that he or she has sufficient information to give informed consent; and~~

~~(E) Affirms by the parent's or legal guardian's signature that he or she is the pregnant woman's father, mother, or legal guardian;~~

~~(9) A page for the parent's or legal guardian's signature that shall be notarized by a notary public; and~~

~~(10) 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 prior to performing an abortion.~~

~~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.~~

~~20-16-812. Legislative intent.~~

~~This subchapter is not intended to create and shall not be construed to create an affirmative right to legal abortion.~~

~~20-16-813.—When consent is not required.~~

~~A minor shall not be required to obtain consent under this subchapter if the guardianship or custody order has expired or is otherwise no longer in effect.~~

~~20-16-814.—Additional information reported by abortion providers.~~

~~(a) In addition to other information reported by an abortion provider to the Department of Health, the following information shall be reported for each induced termination of pregnancy:~~

- ~~(1) Whether parental consent was required;~~
- ~~(2) Whether parental consent was obtained; and~~
- ~~(3) Whether a judicial waiver was obtained.~~

~~(b) The department shall revise its forms utilized by abortion providers to report an induced termination of pregnancy by including the reporting of information required by this section.~~

~~20-16-815.—Construction.~~

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

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

~~20-16-816.—Right of intervention.~~

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

~~20-16-817.—Effective date.~~

~~This subchapter takes effect on January 1, 2016.~~

SECTION 22. Arkansas Code Title 20, Chapter 16, Subchapter 11, is repealed.

~~Subchapter 11—Unborn Child Pain Awareness and Prevention Act~~

~~20-16-1101.—Title.~~

~~This subchapter shall be known and may be cited as the “Unborn Child Pain Awareness and Prevention Act”.~~

~~20-16-1102.—Definitions.~~

~~As used in this subchapter:~~

~~(1)(A) “Abortion” means the use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a female known to be pregnant.~~

~~(B) However, “abortion” does not include the termination of a pregnancy if the termination is intended to:~~

~~(i) Increase the probability of a live birth;~~

~~(ii) Preserve the life or health of the child after live birth; or~~

~~(iii) Remove a dead fetus who died as the result of a spontaneous miscarriage;~~

~~(2) “Attempt to perform 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 termination of a pregnancy in this state;~~

~~(3) “Gestational age” means the age of the unborn child as calculated from the first day of the last menstrual period of the pregnant woman;~~

~~(4) “Medical emergency” means any condition that on the basis of the physician’s good faith clinical judgment so complicates the medical condition of a pregnant female that:~~

~~(A) The immediate abortion of her pregnancy is necessary to prevent her death; or~~

~~(B) A delay will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant female;~~

~~(5) “Physician” means a person authorized or licensed to practice medicine under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and a person authorized to practice osteopathy under § 17-91-101 et seq.;~~

~~(6) “Probable gestational age” means the age that with~~

~~reasonable probability in the judgment of a physician will be the gestational age of the unborn child at the time the abortion is planned to be performed; and~~

~~(7) "Unborn child" means a member of the species Homo sapiens from fertilization until birth.~~

~~20-16-1103. Unborn child pain awareness information.~~

~~Except in the case of a medical emergency:~~

~~(1) At least twenty four (24) hours before an abortion is performed on an unborn child whose probable gestational age is twenty (20) weeks or more, the physician performing the abortion or the physician's agent shall inform the pregnant female by telephone or in person:~~

~~(A) She has the right to review the printed materials described in § 20-16-1105;~~

~~(B) These materials are available on a state-sponsored website; and~~

~~(C) What the website address is;~~

~~(2) The physician or the physician's agent shall orally inform the pregnant female that:~~

~~(A) The materials have been provided by the State of Arkansas; and~~

~~(B) They contain information on pain in relation to the unborn child;~~

~~(3) If the pregnant female chooses to view the materials other than on the website, the materials shall either:~~

~~(A) Be given to her at least twenty four (24) hours before the abortion; or~~

~~(B) Mailed to her at least seventy two (72) hours before the abortion by certified mail, restricted delivery to addressee, so that the postal employee may deliver the mail only to the pregnant female;~~

~~(4) If provisions are made to record or otherwise register specifically whether the female does or does not choose to have the printed materials given or mailed to her, the information required by this section may be provided by a tape recording;~~

~~(5) The pregnant female shall certify in writing before the abortion that:~~

~~(A) The information described in subdivision (1) of this section has been furnished to her; and~~

~~(B) She has been informed of her opportunity to review the printed materials described in § 20-16-1105; and~~

~~(6) Before the abortion is performed, the physician who is to perform the abortion or the physician's agent shall:~~

~~(A) Obtain a copy of the written certification required under subdivision (5) of this section; and~~

~~(B) Retain it on file with the female's medical record for at least three (3) years following the date of receipt.~~

~~20-16-1104. Unborn child pain prevention.~~

~~(a) Except in the case of a medical emergency, before an abortion is performed on an unborn child whose gestational age is twenty (20) weeks or more, the physician performing the abortion or the physician's agent shall inform the pregnant female:~~

~~(1) Whether an anesthetic or analgesic would eliminate or alleviate organic pain to the unborn child that could be caused by the particular method of abortion to be employed; and~~

~~(2) Of the particular medical risks associated with the particular anesthetic or analgesic.~~

~~(b) After presenting the information required in subsection (a) of this section and with the consent of the pregnant female, the physician shall administer the anesthetic or analgesic.~~

~~20-16-1105. Printed information.~~

~~(a)(1)(A) The Department of Health shall publish in English and in each language that is the primary language of two percent (2%) or more of the state's population printed materials with the following statement concerning unborn children of twenty (20) weeks gestational age or more:~~

~~"By twenty (20) weeks gestation, the unborn child has the physical structures necessary to experience pain. There is evidence that by twenty (20) weeks gestation unborn children seek to evade certain stimuli in a manner that in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are twenty (20) weeks gestational age or more who undergo prenatal surgery."~~

~~(B) The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the human fetus at the various gestational ages.~~

~~(2) The department shall make the materials available on the department's website.~~

~~(3) The materials referred to in subdivision (a)(1) of this section shall be printed in a typeface large enough to be clearly legible.~~

~~(b)(1) The department's website shall be maintained at a minimum resolution of seventy two dots per inch (72 dpi).~~

~~(2) All pictures appearing on the website shall be a minimum of two hundred by three hundred (200 X 300) pixels.~~

~~(3) All letters on the website shall be presented in a minimum of 11-point type.~~

~~(4) All information and pictures shall be accessible with an industry standard browser that requires no additional plug-ins.~~

~~(c) Upon request, the department shall make available to any person, facility, or hospital at no cost and in appropriate numbers the materials required under this section.~~

~~20-16-1106. Requirements for department website.~~

~~(a) The Department of Health shall include on its website the information described in § 20-16-1105.~~

~~(b) No information regarding persons who use the website shall be collected or maintained.~~

~~(c) The department shall monitor the website on a daily basis to prevent and correct tampering.~~

~~20-16-1107. Procedure in case of medical emergency.~~

~~If a medical emergency compels a physician to perform an abortion, the physician shall inform the pregnant female before the abortion is performed, if possible, of the medical indications supporting the physician's judgment that:~~

~~(1) An abortion is necessary to prevent her death; or~~

~~(2) A twenty four hour delay will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant female.~~

~~20-16-1108.—Reporting.~~

~~(a) The Department of Health shall prepare a reporting form for physicians containing a reprint of this subchapter and listing:~~

~~(1)(A) The number of females to whom the physician or an agent of the physician provided the information described in § 20-16-1103(1).~~

~~(B) Of that number, the number provided by telephone and the number provided in person.~~

~~(C) Of each of the numbers described in this subdivision (a)(1) and subdivision (a)(2) of this section, the number provided in the capacity of:~~

~~(i) A physician who is to perform the abortion; or~~

~~(ii) An agent of the physician;~~

~~(2) The number of females who did not avail themselves of the opportunity to obtain a copy other than on the website of the printed information described in § 20-16-1105;~~

~~(3) The number who, to the best of the reporting physician's information and belief, went on to obtain the abortion;~~

~~(4) The number of abortions performed by the physician for which information otherwise required to be provided at least twenty-four (24) hours before the abortion was not so provided because an immediate abortion was necessary to prevent the female's death; and~~

~~(5) The number of abortions for which information otherwise required to be provided at least twenty-four (24) hours before the abortion information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function of the pregnant female.~~

~~(b) The department shall ensure that copies of the reporting forms described in subsection (a) of this section are provided:~~

~~(1) Within one hundred twenty (120) days after August 12, 2005, to all physicians licensed to practice in this state;~~

~~(2) To each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and~~

~~(3) By December 1 of each year after the calendar year in which this subchapter becomes effective, to all physicians licensed to practice in~~

~~this state.~~

~~(c) By February 28 of each year following a calendar year in any part of which this subchapter was in effect, each physician who provided or whose agent provided information to one (1) or more females in accordance with § 20-16-1103 during the previous calendar year shall submit to the department a copy of the form described in subsection (a) of this section with the requested data entered accurately and completely.~~

~~(d)(1) For each of the items listed in subsection (a) of this section, the department shall issue by June 30 of each year a public report providing statistics compiled by the department on the basis of reports for the previous calendar year submitted in accordance with this section.~~

~~(2) Each report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports.~~

~~(3) The department shall ensure that none of the information included in the public reports could reasonably lead to the identification of any individual providing or provided information in accordance with § 20-16-1103(1) or § 20-16-1103(2).~~

~~(e) So long as reporting forms are sent to all licensed physicians in the state at least one (1) time every year and the report described in this section is issued at least one (1) time every year, the department, in order to achieve administrative convenience or fiscal savings, or to reduce the burden of reporting requirements, may:~~

~~(1) Alter any of the dates established in this section; or~~

~~(2) Consolidate the forms or reports described in this section with other forms or reports issued by the department.~~

~~(f)(1) The department shall assess against a physician who fails to submit a report required under this section within thirty (30) days after the due date a fee of five hundred dollars (\$500) for each additional thirty-day period or portion of a thirty-day period during which the report is overdue.~~

~~(2)(A) If a physician who is required to report under this section has not submitted a report or has submitted an incomplete report more than one (1) year following the due date of the report, the department may bring an action in a court of competent jurisdiction to seek an order requiring the physician to submit a complete report within a period established by the court.~~

~~(B) Failure of the physician to file the complete report within the court ordered period is punishable as civil contempt.~~

~~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 who fails 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) A penalty shall not be assessed against the woman upon whom the abortion is performed or attempted to be performed.~~

~~(c) A penalty or civil liability 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.~~

~~20-16-1110. Civil remedies.~~

~~(a) An action seeking actual and punitive damages may be brought against a person who performed an abortion in knowing or reckless violation of this subchapter by:~~

~~(1) Any person upon whom the abortion was performed;~~

~~(2) The father of the unborn child who was the subject of the abortion; or~~

~~(3) A grandparent of the unborn child who was the subject of the abortion.~~

~~(b) Any female upon whom an abortion has been attempted in violation of this subchapter may bring an action for actual and punitive damages against a person who attempted to perform the abortion in knowing or reckless violation of this subchapter.~~

~~(c)(1) If the Department of Health fails to issue the public report required under § 20-16-1108, any group of ten (10) or more citizens of this state may seek an injunction in a court of competent jurisdiction against the Secretary of the Department of Health requiring that a complete report be issued within a period established by the court.~~

~~(2) Failure of the secretary to obey an injunction issued under~~

~~subdivision (c)(1) of this section is punishable as civil contempt.~~

~~(d)(1) If judgment is rendered in favor of the plaintiff in any action described in this section, the court shall assess a reasonable attorney's fee in favor of the plaintiff against the defendant.~~

~~(2) If judgment is rendered in favor of the defendant and if the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall assess a reasonable attorney's fee in favor of the defendant against the plaintiff.~~

~~20-16-1111. Protection of privacy in court proceedings.~~

~~(a) In every civil or criminal action brought under this subchapter in which any female upon whom an abortion has been performed or attempted has not given her consent to disclosure of her identity, the court shall determine whether the anonymity of the female shall be preserved from public disclosure.~~

~~(b)(1) The court, upon motion or sua sponte, shall make a ruling on preserving the anonymity of the female.~~

~~(2) If the court determines that the female's anonymity should be preserved, that court shall:~~

~~(A) Issue appropriate orders to the parties, witnesses, and counsel;~~

~~(B) Direct the sealing of the record; and~~

~~(C) Order the exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the anonymity of the female.~~

~~(3) Each order issued under subdivisions (b)(1) and (2) of this section shall be accompanied by specific written findings explaining:~~

~~(A) Why the anonymity of the female should be preserved from public disclosure;~~

~~(B) Why the order is essential to that end;~~

~~(C) Why no reasonable less restrictive alternative exists;~~  
and

~~(D) How the order is narrowly tailored to preserve the anonymity of the female.~~

~~(e) In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone other than a public official~~

~~who brings an action under § 20-16-1110(a) shall do so under a pseudonym.~~

~~(d) This section may not be construed to conceal the identity of the plaintiff or witnesses from the defendant.~~

SECTION 23. Arkansas Code Title 20, Chapter 16, Subchapter 13, is repealed.

~~Subchapter 13—Arkansas Human Heartbeat Protection Act~~

~~20-16-1301.—Title.~~

~~This subchapter shall be known and may be cited as the “Arkansas Human Heartbeat Protection Act”.~~

~~20-16-1302.—Definitions.~~

~~As used in this subchapter:~~

~~(1) “Contraceptive” means a device, drug, or chemical that prevents fertilization;~~

~~(2) “Fetus” means the human offspring developing during pregnancy from the moment of fertilization and includes the embryonic stage of development;~~

~~(3) “Heartbeat” means cardiac activity, the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac;~~

~~(4) “Human individual” means an individual organism of the species *Homo sapiens*;~~

~~(5) “Major bodily function” includes without limitation functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions;~~

~~(6) “Medical emergency” means a condition in which an abortion is necessary;~~

~~(A) To preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman; or~~

~~(B) Due to the existence of a highly lethal fetal disorder as defined by the Arkansas State Medical Board;~~

~~(7) "Pregnancy" means the human female reproductive condition that begins with fertilization when the female is carrying the developing human offspring and is calculated from the first day of the last menstrual period of the human female; and~~

~~(8) "Viability" means a medical condition that begins with a detectible fetal heartbeat.~~

~~20-16-1303. Testing for heartbeat.~~

~~(a) A person authorized to perform abortions under Arkansas law shall not perform an abortion on a pregnant woman before the person tests the pregnant woman to determine whether the fetus that the pregnant woman is carrying possesses a detectible heartbeat.~~

~~(b)(1) A person authorized to perform abortions under Arkansas law shall perform an abdominal ultrasound test necessary to detect a heartbeat of an unborn human individual according to standard medical practice, including the use of medical devices as determined by standard medical practice.~~

~~(2) Tests performed under subdivision (b)(1) of this section shall be approved by the Arkansas State Medical Board.~~

~~(c) The Arkansas State Medical Board shall adopt rules:~~

~~(1)(A) Based on standard medical practice for testing for the fetal heartbeat of an unborn human individual.~~

~~(B) Rules adopted under this subsection shall specify that a test for fetal heartbeat is not required in the case of a medical emergency; and~~

~~(2) To define, based on available medical evidence, the statistical probability of bringing an unborn human individual to term based on the gestational age of the unborn human individual possessing a detectible heartbeat.~~

~~(d) If a fetal heartbeat is detected during the test required under this section, the person performing the test shall inform the pregnant woman in writing:~~

~~(1) That the unborn human individual that the pregnant woman is carrying possesses a heartbeat;~~

~~(2) Of the statistical probability of bringing the unborn human~~

~~individual to term based on the gestational age of the unborn human individual possessing a detectible heartbeat; and~~

~~(3) An abortion is prohibited under § 20-16-1304.~~

~~(c) If a heartbeat has been detected, the pregnant woman shall sign a form acknowledging that she has received the information required under subsection (d) of this section.~~

~~20-16-1304. Prohibitions.~~

~~(a) A person authorized to perform abortions under Arkansas law shall not perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human individual whose heartbeat has been detected under § 20-16-1303 and is twelve (12) weeks or greater gestation.~~

~~(b) A violation of this section as determined by the Arkansas State Medical Board shall result in the revocation of the medical license of the person authorized to perform abortions under Arkansas law.~~

~~20-16-1305. Exemptions—Medical personnel.~~

~~(a) A person does not violate this subchapter if the person:~~

~~(1) Performs a medical procedure designed to or intended to prevent the death of a pregnant woman or in reasonable medical judgment to preserve the life of the pregnant woman;~~

~~(2)(A) Has undertaken an examination for the presence of a heartbeat in the fetus utilizing standard medical practice; and~~

~~(B) The examination does not reveal a heartbeat; or~~

~~(3) Has been informed by a medical professional who has undertaken the examination for fetal heartbeat that the examination did not reveal a fetal heartbeat.~~

~~(b) This subchapter does not apply to:~~

~~(1) An abortion performed to save the life of the mother;~~

~~(2)(A) A pregnancy that results from rape under § 5-14-103 or incest under § 5-26-202 when documentation is presented that states that the crime has been reported to law enforcement.~~

~~(B) The physician or abortion facility shall:~~

~~(i) File the documentation that a crime has been reported to law enforcement in the pregnant woman's medical record; and~~

~~(ii) Report to the Department of Health the number of abortions performed because of rape or incest; or~~

~~(3) A medical emergency.~~

~~20-16-1306.—Exemptions.~~

~~This subchapter does not:~~

~~(1) Subject a pregnant female on whom an abortion is performed or attempted to be performed to any criminal prosecution or civil penalty; or~~

~~(2) Prohibit the sale, use, prescription, or administration of a measure, drug, or chemical designed for contraceptive purposes.~~

~~20-16-1307.—Tolling of effective date.~~

~~If a state or federal court of competent jurisdiction voids a provision of this subchapter as unconstitutional, the effective date of that provision shall be tolled until that provision has been upheld as valid by an appellate tribunal.~~

SECTION 24. Arkansas Code Title 20, Chapter 16, Subchapter 14, is repealed.

~~Subchapter 14—Pain-Capable Unborn Child Protection Act~~

~~20-16-1401.—Title.~~

~~This subchapter shall be known and may be cited as the “Pain-Capable Unborn Child Protection Act”.~~

~~20-16-1402.—Definitions.~~

~~As used in this subchapter:~~

~~(1) “Abortion” means the use or prescription of any instrument, medicine, drug, or any other substance or device:~~

~~(A) To terminate the pregnancy of a woman known to be pregnant with an intention other than to:~~

~~(i) Increase the probability of a live birth;~~

~~(ii) Preserve the life or health of the child after live birth; or~~

~~(iii) Remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault~~

~~on the pregnant woman or her unborn child; and~~

~~(B) Which causes the premature termination of the 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 subchapter;~~

~~(3) “Fertilization” means the fusion of a human spermatozoon with a human ovum;~~

~~(4)(A) “Medical emergency” means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the immediate abortion of her pregnancy;~~

~~(i) Without first determining post-fertilization age to avert the death of the pregnant woman; or~~

~~(ii) For which the delay necessary to determine post-fertilization age will create 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 which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function;~~

~~(5) “Physician” means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state;~~

~~(6) “Post-fertilization age” means the age of the unborn child as calculated from the fertilization of the human ovum;~~

~~(7) “Probable post-fertilization age of the unborn child” means what, in reasonable medical judgment, will, with reasonable probability, be the post-fertilization age of the unborn child at the time the abortion is planned to be performed or induced;~~

~~(8) “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;~~

~~(9) “Unborn child” means an individual organism of the species~~

~~Homo sapiens from fertilization until live birth; and~~

~~(10) “Woman” means a female human being whether or not she has reached the age of majority.~~

~~20-16-1403.—Legislative findings.~~

~~The General Assembly finds that:~~

~~(1) Pain receptors known as nociceptors are present throughout the unborn child’s entire body by no later than sixteen (16) weeks after fertilization, and nerves link these receptors to the brain’s thalamus and subcortical plate by no later than twenty (20) weeks;~~

~~(2)(A) By eight (8) weeks after fertilization, the unborn child reacts to touch.~~

~~(B) After twenty (20) weeks after fertilization, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling;~~

~~(3) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response;~~

~~(4) Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life;~~

~~(5) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to those levels when painful stimuli are applied without such anesthesia;~~

~~(6)(A) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than twenty (20) weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex.~~

~~(B) However, recent medical research and analysis, especially since 2007, provide strong evidence for the conclusion that a functioning cortex is not necessary to experience pain;~~

~~(7) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless~~

~~experience pain;~~

~~(8) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does;~~

~~(9) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults and use different neural elements available at specific times during development, such as the subeortical plate, to fulfill the role of pain processing;~~

~~(10) Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by twenty (20) weeks after fertilization;~~

~~(11) It is the purpose of the state to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain; and~~

~~(12) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion, the United States Supreme Court noted that an explicit statement of legislative intent specifically made applicable to a particular statute is of greater weight than a general savings or severability clause, it is the intent of the state that § 1-2-117 be specifically applied to this subchapter, and moreover the General Assembly declares that it would have passed this subchapter, and each section, subsection, subdivision, sentence, clause, phrase, or word in this subchapter, irrespective of the fact that any one (1) or more sections, subsections, subdivisions, sentences, clauses, phrases, or words, or any of their applications, were to be declared unconstitutional.~~

~~20-16-1404. Determination of post-fertilization age.~~

~~(a)(1) Except in the case of a medical emergency, an abortion shall not be performed or induced or be attempted to be performed or induced unless the physician performing or inducing the abortion has first made a determination of the probable post-fertilization age of the unborn child or relied upon such a determination made by another physician.~~

~~(2) In making such a determination under subdivision (a)(1) of this section, the physician shall make such inquiries of the woman and~~

~~perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to accurately diagnose the probable post fertilization age of the unborn child.~~

~~(b) Any physician who purposely, knowingly, or recklessly fails to conform to any requirement of this section engages in unprofessional conduct under § 17-95-409(a)(2)(D).~~

~~20-16-1405. Abortion of unborn child of 20 or more weeks post-fertilization age prohibited.~~

~~(a)(1) A person shall not perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies that the probable post-fertilization age of the unborn child of the woman is twenty (20) or more weeks.~~

~~(2)(A) However, subdivision (a)(1) of this section does not apply if, in reasonable medical judgment, the pregnant woman has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman, not including psychological or emotional conditions.~~

~~(B) A condition creating an exemption under subdivision (a)(2)(A) of this section shall not be deemed to exist if the condition is based on a claim or diagnosis that the 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.~~

~~(3)(A) Subdivision (a)(1) of this section does not apply if the pregnancy results from rape under § 5-14-103 or incest under § 5-26-202 when documentation is presented that states that the crime has been reported to law enforcement.~~

~~(B) The physician or abortion facility shall:~~

~~(i) File the documentation that a crime has been reported to law enforcement in the pregnant woman's medical record; and~~

~~(ii) Report to the Department of Health the number of abortions performed because of rape or incest.~~

~~(b)(1) When an abortion upon a woman whose unborn child has been determined under subdivision (a)(1) of this section to have a probable post-fertilization age of twenty (20) or more weeks is not prohibited by this section, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive.~~

~~(2)(A) However, subdivision (b)(1) of this section does not apply if, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman, not including psychological or emotional conditions, than would other available methods.~~

~~(B) A risk creating an exemption under subdivision (b)(2)(A) of this section shall not be deemed to exist if it is based on a claim or diagnosis that the 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.~~

~~20-16-1406. Reporting.~~

~~(a)(1) A physician who performs or induces or attempts to perform or induce an abortion shall report to the Department of Health on a schedule and in accordance with rules adopted by the department.~~

~~(2) The report required under subdivision (a)(1) of this section shall include without limitation:~~

~~(A) Whether a determination of probable post-fertilization age was made, the probable post-fertilization age of the unborn child determined, and the method and basis of the determination;~~

~~(B) If a determination of probable post-fertilization age of the unborn child was not made, the basis of the determination that a medical emergency existed;~~

~~(C) If the probable post-fertilization age of the unborn child was determined to be twenty (20) or more weeks, the basis of the determination that the pregnant woman had a condition which so complicated her medical condition as to necessitate the immediate abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant~~

woman, not including psychological or emotional conditions;

~~(D) The method used for the abortion; and~~

~~(E) If an abortion was performed when the probable post-fertilization age of the unborn child was determined to be twenty (20) or more weeks;~~

~~(i) Whether the method used was one that in reasonable medical judgment provided the best opportunity for the unborn child to survive; or~~

~~(ii) If such a method under subdivision (a)(2)(E)(i) of this section was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman, not including psychological or emotional conditions, than would other available methods.~~

~~(b)(1) By June 30 of each year the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted under this section for each of the items listed in subsection (a) of this section.~~

~~(2) Each report also shall provide the statistics for all previous calendar years during which this section was in effect, adjusted to reflect any additional information from late or corrected reports.~~

~~(3) 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 pregnant woman upon whom an abortion was performed or induced or attempted to be performed or induced.~~

~~(c)(1) A physician who fails to submit a report by the end of thirty (30) days after the date the report is due shall be subject to a late fee of five hundred dollars (\$500) for each additional thirty-day period or portion of a thirty-day period the report is overdue.~~

~~(2) A physician required to report in accordance with this subchapter who has not submitted a report or has submitted only an incomplete report more than one (1) year following the date the report is due, in an action brought in the manner in which actions are brought by the department, may be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to civil contempt.~~

~~(d)(1) Purposeful, knowing, or reckless failure by a physician to~~

~~conform to any requirement of this section, other than late filing of a report, constitutes unprofessional conduct under § 17-95-409.~~

~~(2) Purposeful, knowing, or reckless failure by a physician to submit a complete report in accordance with a court order constitutes unprofessional conduct under § 17-95-409.~~

~~(3) Purposeful, knowing, or reckless falsification of any report required under this section is a Class C misdemeanor.~~

~~(e) Within ninety (90) days after the effective date of this subchapter, the department shall adopt rules to assist in compliance with this section, and subdivision (a)(1) of this section shall take effect so as to require reports regarding all abortions performed or induced on or after the first day of the first calendar month following the effective date of such rules.~~

~~20-16-1407. Criminal penalties.~~

~~(a) A person who purposely, knowingly, or recklessly performs or induces or attempts to perform or induce an abortion in violation of this subchapter is guilty of a Class D felony.~~

~~(b) A penalty may not be assessed against the woman upon whom the abortion is performed or induced or attempted to be performed or induced.~~

~~20-16-1408. Civil remedies.~~

~~(a)(1) A woman upon whom an abortion has been performed in violation of this subchapter or the father of the unborn child who was the subject of an abortion in violation of this subchapter may bring an action against the person who purposely, knowingly, or recklessly performed or induced the abortion in violation of this subchapter for actual and punitive damages.~~

~~(2) A woman upon whom an abortion has been attempted in violation of this subchapter may bring an action against the person who attempted purposely, knowingly, or recklessly to perform or induce the abortion in violation of this subchapter for actual and punitive damages.~~

~~(b)(1) A cause of action for injunctive relief against a person who has purposely, knowingly, or recklessly violated this subchapter may be maintained by:~~

~~(A) The woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this~~

~~subchapter;~~

~~(B) A person who is the spouse, parent, sibling, or guardian of or a current or former licensed healthcare provider of the woman upon whom an abortion has been performed or induced or attempted to be performed or induced in violation of this subchapter;~~

~~(C) A prosecuting attorney with appropriate jurisdiction;~~  
~~or~~

~~(D) The Attorney General.~~

~~(2) The injunction shall prevent the abortion provider from performing or inducing and from attempting to perform or induce further abortions in violation of this subchapter.~~

~~(c) If judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.~~

~~(d) 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 render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.~~

~~(e) Damages or attorney's fee shall not be assessed against the woman upon whom an abortion was performed or induced or attempted to be performed or induced except under subsection (d) of this section.~~

~~20-16-1409. Protection of privacy in court proceedings.~~

~~(a) In every civil or criminal proceeding or action brought under this subchapter, the court shall rule whether the anonymity of a woman upon whom an abortion has been performed or induced or attempted to be performed or induced shall be preserved from public disclosure if she does not give her consent to the disclosure.~~

~~(b) The court, upon motion or sua sponte, shall make a ruling under subsection (a) of this section and, upon determining that the woman's anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure.~~

~~(c) Each order under subsection (b) of this section shall be accompanied by specific written findings explaining:~~

~~(1) Why the anonymity of the woman should be preserved from public disclosure;~~

~~(2) Why the order is essential to that end;~~

~~(3) How the order is narrowly tailored to serve that interest;~~  
and

~~(4) Why no reasonable less restrictive alternative could be fashioned.~~

~~(d) In the absence of written consent of the woman upon whom an abortion has been performed or induced or attempted to be performed or induced, anyone other than a public official who brings an action under § 20-16-1408 shall do so under a pseudonym.~~

~~(e) This section is not intended to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.~~

~~20-16-1410. Construction.~~

~~(a) Since it is the intent of the state to assert two (2) separate and independent compelling state interests, those in protecting the lives of viable unborn children and protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain, this subchapter does not repeal by implication or otherwise § 20-16-705.~~

~~(b) This subchapter does not repeal by implication or otherwise any other provision of this chapter.~~

SECTION 25. Arkansas Code § 20-16-1502 is repealed.

~~20-16-1502. Legislative findings and purpose.~~

~~(a) The General Assembly finds that:~~

~~(1) The use of abortion inducing drugs, including the Mifeprex regimen, also known as "RU-486" or "mifepristone", presents significant medical risks, including without limitation incomplete abortion, sepsis or other infections, uterine hemorrhage, blood clots, abdominal pain, fever, vomiting, headache, fatigue, pelvic inflammatory disease, and death;~~

~~(2) Medical evidence demonstrates that women who use abortion-inducing drugs risk significantly more complications than those who undergo surgical abortions;~~

~~(3) The risk of complications, as well as the failure rate for drug-induced abortions, increases with advancing gestational age;~~

~~(4) A woman's ability to provide informed consent depends on the extent to which the woman receives information sufficient to make an informed choice;~~

~~(5) The decision to abort "is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences", as stated in Planned Parenthood v. Danforth, 428 U.S. 52, 67 (1976);~~

~~(6) To facilitate reliable scientific studies and research on the safety and efficacy of abortion-inducing drugs, it is essential that the medical and public health communities have access to accurate information on the efficacy of abortion-inducing drugs and resulting complications;~~

~~(7) Abortion "recordkeeping and reporting requirements that are reasonably directed to the preservation of maternal health and that properly respect a patient's confidentiality and privacy are permissible", as stated in Planned Parenthood v. Danforth, 428 U.S. 52, 80 (1976); and~~

~~(8) "The collection of information with respect to actual patients is a vital element of medical research, and so it cannot be said that the [abortion reporting] requirements serve no purpose other than to make abortions more difficult", as stated in Planned Parenthood v. Casey, 505 U.S. 833, 900-901 (1992).~~

~~(b) Based on the findings in subsection (a) of this section, it is the purpose of this subchapter to:~~

~~(1) Protect the health and welfare of every woman considering a drug-induced abortion;~~

~~(2) Ensure that:~~

~~(A) A physician examines a woman before prescribing, administering, or dispensing an abortion-inducing drug; and~~

~~(B) A woman considering a drug-induced abortion receives comprehensive information on abortion-inducing drugs;~~

~~(3) Reduce "the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed", as stated in Planned Parenthood v. Casey, 505 U.S. 833, 882 (1992); and~~

~~(4) Add to the sum of medical and public health knowledge~~

~~through the compilation of relevant data on drug-induced abortions performed in the state, as well as on all medical complications and maternal deaths resulting from these abortions.~~

SECTION 26. Arkansas Code § 20-16-1505 is repealed.

~~20-16-1505.—Reporting.~~

~~(a) If a physician provides an abortion-inducing drug to another for the purpose of inducing an abortion as authorized in § 20-16-1504 and if the physician knows that the woman who uses the abortion-inducing drug for the purpose of inducing an abortion experiences an adverse event, the physician shall provide a written report of the adverse event within three (3) days of the event to the United States Food and Drug Administration via the MedWatch program reporting system and to the Arkansas State Medical Board.~~

~~(b)(1) The board shall compile and retain all reports it receives under this section.~~

~~(2)(A) All reports received by the board are public records open to inspection under the Freedom of Information Act of 1967, § 25-19-101 et seq.~~

~~(B) The board shall not release to any person or entity the name or any other personal identifying information regarding a person who:~~

~~(i) Uses an abortion-inducing drug to induce an abortion; and~~

~~(ii) Is the subject of a report received by the board under this section.~~

SECTION 27. Arkansas Code § 20-16-1506 is repealed.

~~20-16-1506.—Criminal penalties.~~

~~(a) A person who intentionally, knowingly, or recklessly violates a provision of this subchapter is guilty of a Class A misdemeanor.~~

~~(b) A criminal penalty may not be assessed against the pregnant woman upon whom the drug-induced abortion is performed.~~

SECTION 28. Arkansas Code § 20-16-1507(f) is repealed.

~~(f) Upon a finding of the Arkansas State Medical Board that a physician failed to comply with the requirements of this subchapter, the~~

~~board shall revoke the physician's medical license.~~

SECTION 29. Arkansas Code Title 20, Chapter 16, Subchapter 16, is repealed.

~~Subchapter 16—Advancing Women's Health Act of 2015~~

~~20-16-1601. Definitions.~~

~~As used in this subchapter:~~

~~(1)(A) "Abortion" means the act of using or prescribing an instrument, medicine, drug, device, or another substance 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 of the mother;~~

~~(ii) Save the life or preserve the health of the unborn child;~~

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

~~(iv) Remove an ectopic pregnancy;~~

~~(2) "Abortion referral" means the act of recommending a pregnant woman to a doctor, clinic, or other person or entity for the purpose of obtaining or learning about obtaining an abortion;~~

~~(3) "Affiliate" means an individual or entity that, directly or indirectly, owns, controls, is controlled by, or is under the common control of another person or entity, in whole or in part, or a subsidiary, parent, or sibling entity;~~

~~(4) "Pregnancy" means the female reproductive condition of having an unborn child in the woman's uterus; and~~

~~(5) "Unborn child" means the offspring of human beings from fertilization until birth.~~

~~20-16-1602. Awarding of public funds to entities that perform abortions prohibited.~~

~~(a) An agency or instrumentality of the state shall not award a grant~~

~~to pay the direct or indirect costs of performing, inducing, referring, or counseling in favor of abortions, including without limitation:~~

- ~~(1) Administrative costs and expenses;~~
- ~~(2) Overhead costs;~~
- ~~(3) Employee salaries;~~
- ~~(4) Rent and mortgage payments; and~~
- ~~(5) Telephone and other utility payments.~~

~~(b) An agency or instrumentality of the state shall not grant, appropriate, or distribute a grant to an individual or entity that:~~

- ~~(1) Performs abortions, induces abortions, provides abortion referrals, or counsels in favor of elective abortions; or~~
- ~~(2) Is an affiliate of a person or entity that performs abortions, induces abortions, provides abortion referrals, or counsels in favor of elective abortions.~~

~~20-16-1603. Construction.~~

~~(a)(1) This subchapter does not affect the funding of a hospital, medical school, or university.~~

~~(2) The restrictions under § 20-16-1602 apply to funding available through the Arkansas Medicaid Program.~~

~~(b) This subchapter does not create or recognize:~~

- ~~(1) A right to an abortion; or~~
- ~~(2) A right to public funds, a contract, or a grant.~~

SECTION 30. Arkansas Code Title 20, Chapter 16, Subchapter 17, is repealed.

~~Subchapter 17—Woman's Right to Know Act~~

~~20-16-1701. Title.~~

~~This subchapter shall be known and may be cited as the "Woman's Right to Know Act".~~

~~20-16-1702. Definitions.~~

~~As used in this subchapter:~~

~~(1)(A) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or 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) A use, prescription, or means under this subdivision (1) is not an abortion if the use, prescription, or means 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)(A) "Abortion-inducing drug" means a medicine, drug, or any other substance 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) "Abortion-inducing drugs" includes 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, Gytotec, and methotrexate.~~

~~(C) This definition does not apply to drugs that may be known to cause an abortion but which are prescribed for other medical indications such as chemotherapeutic agents or diagnostic drugs.~~

~~(D) Use of drugs to induce abortion is also known as a medical, drug-induced, or chemical abortion;~~

~~(3) "Adverse event" means an undesirable experience associated with the use of a medical product in a patient, including without limitation an event that causes:~~

~~(A) Death;~~

~~(B) Threat to life;~~

~~(C) Hospitalization;~~

~~(D) Disability or permanent damage;~~

~~(E) Congenital anomaly or birth defect, or both;~~

~~(F) Required intervention to prevent permanent impairment or damage; or~~

~~(G) Other serious important medical events, including~~

~~without limitation;~~

~~(i) Allergic bronchospasm requiring treatment in an emergency room;~~

~~(ii) Serious blood dyscrasias;~~

~~(iii) Seizures or convulsions that do not result in hospitalization; and~~

~~(iv) The development of drug dependence or drug abuse;~~

~~(4) "Complication" means an adverse physical or psychological condition arising from the performance of an abortion, including without limitation:~~

~~(A) An adverse reaction to anesthesia or other drugs;~~

~~(B) Bleeding;~~

~~(C) A blood clot;~~

~~(D) Cardiac arrest;~~

~~(E) Cervical perforation;~~

~~(F) Coma;~~

~~(G) Embolism;~~

~~(H) Endometritis;~~

~~(I) Failure to actually terminate the pregnancy;~~

~~(J) Free fluid in the abdomen;~~

~~(K) Hemorrhage;~~

~~(L) Incomplete abortion, also referred to as "retained tissue";~~

~~(M) Infection;~~

~~(N) Metabolic disorder;~~

~~(O) Undiagnosed ectopic pregnancy;~~

~~(P) Placenta previa in subsequent pregnancies;~~

~~(Q) Pelvic inflammatory disease;~~

~~(R) A psychological or emotional complication such as depression, anxiety, or a sleeping disorder;~~

~~(S) Preterm delivery in subsequent pregnancies;~~

~~(T) Renal failure;~~

~~(U) Respiratory arrest;~~

~~(V) Shock;~~

~~(W) Uterine perforation; and~~

- ~~(X) — Other adverse event;~~
- ~~(5) — “Conception” means the fusion of a human spermatozoon with a human ovum;~~
- ~~(6) — “Emancipated minor” means a person under eighteen (18) years of age who is or has been married or who has been legally emancipated;~~
- ~~(7) — “Facility” means a public or private hospital, clinic, center, medical school, medical training institution, healthcare facility, physician’s office, infirmary, dispensary, ambulatory surgical treatment center, or other institution or location where medical care is provided to a person;~~
- ~~(8) — “First trimester” means the first twelve (12) weeks of gestation;~~
- ~~(9) — “Gestational age” means the time that has elapsed since the first day of the woman’s last menstrual period;~~
- ~~(10) — “Hospital” means any institution licensed as a hospital pursuant to the laws of this state;~~
- ~~(11) — “Medical emergency” means that condition which, 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;~~
- ~~(12) — “Physician” means any person licensed to practice medicine in this state, including medical doctors and doctors of osteopathy;~~
- ~~(13) — “Pregnant” or “pregnancy” means that female reproductive condition of having an unborn child in the woman’s uterus;~~
- ~~(14) — “Qualified person” means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse, physician assistant, or physician;~~
- ~~(15) — “Unborn child” means the offspring of human beings from conception until birth; and~~
- ~~(16) — “Viability” means the state of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a reasonable likelihood of sustained survival of the unborn child outside the body of his or her mother, with or without artificial support.~~

~~20-16-1703.—Informed consent requirement.~~

~~(a)—A person shall not perform or induce an abortion without the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced.~~

~~(b)—Except in the case of a medical emergency, consent to an abortion is voluntary and informed only if:~~

~~(1)—At least 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 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;~~

~~(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; and~~

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

~~(3)(A) The information required under subdivisions (b)(1) and (2) of this section is provided to the woman individually and in a private room to protect her privacy, to maintain the confidentiality of her decision, to ensure that the information focuses on her individual circumstances, and to ensure that she has an adequate opportunity to ask questions.~~

~~(B) Subdivision (b)(3)(A) of this section does not preclude the provision of required information through a translator in a language understood by the woman;~~

~~(4)(A) At least 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 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;~~

~~(6)(A) Before the abortion, the pregnant woman certifies in writing on a checklist form provided or approved by the Department of Health that the information required under § 20-16-1704 has been provided.~~

~~(B) A physician who performs an abortion shall report monthly to the department the total number of certifications the physician has received.~~

~~(C) The department shall make available to the public annually the number of certifications received under subdivision (b)(6)(B) of this section;~~

~~(7)(A) Except in the case of a medical emergency, the physician who is to perform the abortion receives and signs a copy of the written certification required under subdivision (b)(6)(A) of this section before performing the abortion.~~

~~(B) The physician shall retain a copy of the checklist certification form in the pregnant woman's medical record;~~

~~(8) At least 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;~~

~~(9)(A) After dispensing the first dose of abortion inducing drugs to a woman, the physician who is to perform the abortion, the referring physician, or a qualified person shall provide a written notice to the patient that states:~~

~~"Notice to Patients Having Medication Abortions That Use Mifepristone: Mifepristone, also known as 'RU 486' or 'Mifeprex', alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can locate immediate help by searching the term 'abortion pill reversal' on the internet."~~

~~(B) The notice shall also include directions to access the department website that is required to be maintained under § 20-16-1704 and other appropriate telephone and internet resources; and~~

~~(10) 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.~~

~~(c)(1)—In the event of a medical emergency requiring an immediate termination of pregnancy, the physician who performed the abortion clearly certifies in writing the nature of the medical emergency and the circumstances that necessitated the waiving of the informed consent requirements under this subchapter.~~

~~(2)—The certification required under subdivision (c)(1) of this section shall be signed by the physician who performed the emergency abortion and shall be permanently filed in both the records of the physician performing the abortion and the records of the facility where the abortion took place.~~

~~(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 seventy-two-hour reflection period required in this section.~~

~~(e) All ultrasound images, test results, and forms signed by the patient or legal guardian shall be retained as a part of the patient's medical record and be made available for inspection by the department or other authorized agency.~~

~~20-16-1704. Publication of materials.~~

~~(a)(1) The Department of Health shall:~~

~~(A) Publish easily comprehensible printed materials and an informational DVD in English and Spanish within ninety (90) days after July 22, 2015;~~

~~(B) Develop and maintain a secure internet website, which may be part of an existing website, to provide the information required under this subchapter; and~~

~~(C) Monitor the website on a weekly basis to prevent and correct tampering.~~

~~(2) The department shall not collect or maintain information regarding persons using the website.~~

~~(b) The department shall review and update annually, if necessary, the following printed materials and informational DVD, which shall be easily comprehensible:~~

~~(1)(A) Geographically indexed materials that inform a pregnant woman seeking an abortion of public and private agencies and services available to assist her through pregnancy, upon childbirth, and while her child is dependent, including without limitation adoption agencies.~~

~~(B) The materials shall:~~

~~(i) Include:~~

~~(a) A comprehensive list of the public and private agencies and services, a description of the services they offer, and the telephone numbers and addresses of the agencies; and~~

~~(b) The following statement: "There are many public and private agencies willing and able to help you to carry your child to term and to assist you and your child after your child is born, whether~~

~~you choose to keep your child or to place her or him for adoption. The State of Arkansas strongly urges you to contact one or more of these agencies before making a final decision about abortion. The law requires that your physician or his or her agent give you the opportunity to call agencies like these before you undergo an abortion.”;~~

~~(ii) Inform the pregnant woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care;~~

~~(iii) Contain a toll free, twenty four hour telephone number that may be called to obtain information about the agencies in the geographic area of the caller and of the services offered; and~~

~~(iv) State that:~~

~~(a) It is unlawful for any individual to coerce a woman to undergo an abortion;~~

~~(b) If a minor is denied financial support by the minor's parents, guardian, or custodian due to the minor's refusal to undergo an abortion, the minor shall be deemed emancipated for the purposes of eligibility for public assistance benefits, except that benefits may not be used to obtain an abortion;~~

~~(c) A physician who performs an abortion upon a woman without her informed consent may be liable to her for damages in a civil action; and~~

~~(d) The law permits adoptive parents to pay costs of prenatal care, childbirth, and neonatal care.~~

~~(C) The department shall ensure that the materials described in this section are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any public or private agency or service described in this section;~~

~~(2)(A) Materials that include information on the support obligations of a father of a child who is born alive, including without limitation the father's legal duty to support the child, including child support payments and health insurance, and the fact that paternity may be established by the father's signature on a birth certificate, by a statement of paternity, or by court action.~~

~~(B) The materials shall state that more information concerning establishment of paternity and child support services and enforcement may be obtained by calling state or county public assistance~~

agencies;

~~(3)(A) Materials that describe the probable anatomical and physiological characteristics of the unborn child at two week gestational increments from fertilization to full term, including color photographs of the unborn child at two week gestational increments.~~

~~(B) The materials and descriptions shall:~~

~~(i)(a) Include information about brain and heart functions, the presence of external features and internal organs during the applicable stages of development, and any relevant information on the possibility of the unborn child's survival.~~

~~(b) If a photograph is not available, a picture shall contain the dimensions of the unborn child and shall be realistic; and~~

~~(ii) Be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages;~~

~~(4) Materials that contain objective information describing the various surgical and drug-induced methods of abortion, as well as the immediate and long-term medical risks commonly associated with each abortion method, including without limitation the risks of:~~

~~(A) Cervical or uterine perforation or rupture;~~

~~(B) Danger to subsequent pregnancies;~~

~~(C) Hemorrhage;~~

~~(D) Infection;~~

~~(E) Medical risks associated with carrying a child to term following an abortion; and~~

~~(F) Possible adverse psychological effects associated with an abortion;~~

~~(5) A uniform resource locator for the state website where the materials required under this section can be found;~~

~~(6)(A) Materials that include information on the potential ability of a qualified person to reverse the effects of abortion inducing drugs, such as mifepristone, Mifeprex, and misoprostol, including without limitation information directing a woman to obtain further information at appropriate websites and by contacting appropriate agencies for assistance in locating a healthcare professional to aid in the reversal of an abortion.~~

~~(B) The materials shall include a notice to the patient that states:~~

~~“Notice to Patients Having Medication Abortions That Use Mifepristone: Mifepristone, also known as ‘RU 486’ or ‘Mifeprex’, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can locate immediate help by searching the term ‘abortion pill reversal’ on the internet.”~~

~~(C) The notice shall also include directions to access the department website and other appropriate telephone and internet resources; and~~

~~(7) A checklist certification form to be used by the physician or a qualified person assisting the physician that lists the items of information to be given to the woman by a physician or the agent under this subchapter.~~

~~(c) The materials shall be printed in a typeface large enough to be clearly legible.~~

~~(d)(1) The department shall produce a standard format DVD that may be used statewide presenting the information required under this section.~~

~~(2) In preparing the DVD, the department may summarize and make reference to the comprehensive printed list of geographically indexed names and services described in this section.~~

~~(3)(A) The DVD shall show, in addition to the information described in this section, an ultrasound of the heartbeat of an unborn child at four to five (4-5) weeks’ gestational age, at six to eight (6-8) weeks’ gestational age, and each month thereafter, until viability.~~

~~(B) The information in the DVD shall be presented in an objective, unbiased manner designed to convey only accurate scientific information.~~

~~(e) The materials and the DVD required under this section shall be available at no cost from the department upon request and in appropriate number to any person, facility, or hospital.~~

~~20-16-1705. Prevention of forced abortion—Signage in abortion facilities.~~

~~(a)(1) A licensed facility where abortions are performed shall post a sign conspicuously in a location defined in subsection (b) of this section that is clearly visible to all individuals who enter and that features the text contained in subdivision (a)(2) of this section.~~

~~(2) The sign shall display the following text:~~

~~“It is against the law for anyone, regardless of his or her relationship to you, to force you to have an abortion. You have the right to contact any local or state law enforcement or any social service agency to receive protection from any actual or threatened physical, emotional, or psychological abuse. It is against the law to perform, induce, prescribe for, or provide you with the means for an abortion without your voluntary consent.”~~

~~(b) The sign shall be posted in each waiting room, patient consultation room, and procedure room used by patients for whom abortions are performed, induced, prescribed or for whom the means for an abortion are provided.~~

~~(c) The continued posting of signage shall be a condition of licensure of any facility that performs or induces abortions.~~

~~(d) The display of signage does not discharge the duty of a facility to have a physician orally inform a pregnant woman of information and materials contained in § 20-16-1703.~~

~~(e)(1) The Department of Health shall provide all signs required by this section to the licensed abortion facility.~~

~~(2) The department may require that a licensed abortion facility reimburse the department for any costs associated with the sign or signs.~~

~~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 seventy-two hour delay will cause substantial and irreversible impairment of a major bodily function.~~

~~20-16-1707. Rules—Collection and reporting of information.~~

~~(a) The Department of Health shall develop and promulgate rules~~

~~regarding reporting requirements.~~

~~(b)(1) The Arkansas Center for Health Statistics shall ensure that all information collected by the center regarding abortions performed in this state shall be available to the public in printed form and on a twenty-four-hour basis on the center's website.~~

~~(2) In no case shall the privacy of a patient or doctor be compromised.~~

~~(c) The information collected by the center 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.~~

~~20-16-1708. Rules.~~

~~(a)(1) The Department of Health shall adopt rules to implement this subchapter.~~

~~(2) The department 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.~~

~~20-16-1709. Criminal penalty.~~

~~A person who intentionally, knowingly, or recklessly violates this subchapter commits a Class A misdemeanor.~~

~~20-16-1710. 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 liability 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.~~

~~20-16-1711. 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.~~

SECTION 31. Arkansas Code Title 20, Chapter 16, Subchapter 18, is repealed.

~~Subchapter 18—Arkansas Unborn Child Protection from Dismemberment Abortion Act~~

~~20-16-1801. Title.~~

~~This subchapter shall be known and may be cited as the "Arkansas Unborn Child Protection from Dismemberment Abortion Act".~~

~~20-16-1802. Definitions.~~

~~As used in this subchapter:~~

~~(1) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device;~~

~~(A) To terminate the pregnancy of a woman known to be pregnant with an intention other than to:~~

~~(i) Increase the probability of a live birth;~~

~~(ii) Preserve the life or health of the child after live birth; or~~

~~(iii) Remove a dead unborn child who died in utero as the result of natural causes, accidental trauma, or a criminal assault on the pregnant woman or her unborn child; and~~

~~(B) Which causes the premature termination of the 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 subchapter;~~

~~(3)(A)(i) "Dismemberment abortion" means an abortion performed with the purpose of causing the death of an unborn child that purposely dismembers the living unborn child and extracts one (1) piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors, or similar instruments that, through the convergence of two (2) rigid levers, slice, crush, or grasp a portion of the body of the unborn child to cut or tear off a portion of the body of the unborn child.~~

~~(ii) "Dismemberment abortion" includes an abortion in which suction is used to extract the body of the unborn child subsequent to the dismemberment of the unborn child as described under subdivision (3)(A)(i) of this section.~~

~~(B) "Dismemberment abortion" does not include an abortion that uses suction to dismember the body parts of the unborn child into a collection container;~~

~~(4) "Physician" means any person licensed to practice medicine in this state, including a medical doctor or a doctor of osteopathy;~~

~~(5) "Purposely" means to act with purpose with respect to a material element of an offense when:~~

~~(A) If the element involves the nature of the conduct of the actor or a result of the conduct of the actor, it is the conscious object of the actor to engage in conduct of that nature or cause such a result; and~~

~~(B) If the element involves the attendant circumstances, the actor is aware of the existence of such circumstances or the actor believes or hopes that such circumstances exist;~~

~~(6)(A) "Serious health risk to the pregnant woman" means a condition that, in a reasonable medical judgment, complicates the medical condition of a pregnant woman to such an extent that the abortion of a pregnancy is necessary to avert either the death of the pregnant woman or the serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman.~~

~~(B) "Serious health risk to the pregnant woman" does not include:~~

~~(i) A psychological or emotional condition; or~~

~~(ii) A medical diagnosis that is based on a claim of the pregnant woman or on a presumption that the pregnant woman will engage in conduct that could result in her death or that could cause substantial and irreversible physical impairment of a major bodily function of the pregnant woman;~~

~~(7) "Unborn child" means an individual organism of the species Homo sapiens from fertilization until live birth; and~~

~~(8) "Woman" means a female human being whether or not she has reached the age of majority.~~

~~20-16-1803. Ban on dismemberment abortion.~~

~~(a) A person shall not purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless it is necessary to prevent a serious health risk to the pregnant woman.~~

~~(b)(1) A person who is accused of violating subsection (a) of this section may seek a hearing before the Arkansas State Medical Board regarding whether the dismemberment abortion was necessary to prevent a serious health risk to the pregnant woman.~~

~~(2) The findings of the board are admissible in any court proceedings under this subchapter.~~

~~(3) Upon a motion by the person who is accused of violating~~

~~subsection (a) of this section, a court shall delay the beginning of a trial for no more than thirty (30) days to permit a hearing under subdivision (b)(1) of this section.~~

~~(c) The following individuals are excluded from liability under this subchapter:~~

~~(1) A woman who receives or attempts to receive a dismemberment abortion;~~

~~(2) A nurse, technician, secretary, receptionist, or other employee or agent who is not a physician but acts at the direction of a physician; and~~

~~(3) A pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in a dismemberment abortion to the physician or at the direction of the physician.~~

~~(d)(1) This subchapter does not prohibit an abortion by any other method for any reason, including rape or incest when documentation is presented that states that the crime has been reported to law enforcement.~~

~~(2) The physician or abortion facility shall:~~

~~(A) File the documentation that a crime has been reported to law enforcement in the pregnant woman's medical record; and~~

~~(B) Report to the Department of Health the number of abortions performed because of rape or incest.~~

~~20-16-1804. Civil remedies—Attorney's fees.~~

~~(a)(1) A cause of action for injunctive relief against a person who has purposely violated this subchapter may be maintained by:~~

~~(A) The woman who receives or attempted to receive a dismemberment abortion in violation of this subchapter;~~

~~(B) A person who is the spouse, parent, or legal guardian of the woman who receives or attempted to receive a dismemberment abortion in violation of this subchapter; or~~

~~(C) A current or former licensed healthcare provider of the woman who receives or attempted to receive a dismemberment abortion in violation of this subchapter.~~

~~(2) The injunction shall prevent the abortion provider from performing or attempting to perform further dismemberment abortions in violation of this subchapter.~~

~~(b)(1) A cause of action for civil damages against a person who has purposely violated this subchapter may be maintained by:~~

~~(A) The woman who receives a dismemberment abortion in violation of this subchapter;~~

~~(B) The father of the unborn child, if the father is married to the woman at the time the dismemberment abortion was performed in violation of this subchapter; or~~

~~(C) If the woman who received a dismemberment abortion in violation of this subchapter is a minor or has died as a result of the dismemberment abortion, the parents or legal guardians of the woman who received a dismemberment abortion in violation of this subchapter.~~

~~(2) Civil damages shall not be awarded to a plaintiff if the pregnancy resulted from the criminal conduct of the plaintiff.~~

~~(3) Civil damages shall include:~~

~~(A) Monetary damages for psychological injuries and physical injuries associated with the dismemberment abortion; and~~

~~(B) Statutory damages equal to three (3) times the cost of the dismemberment abortion.~~

~~(c)(1) 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.~~

~~(2) 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.~~

~~(3) A reasonable attorney's fee shall not be assessed against the woman who received a dismemberment abortion.~~

~~20-16-1805. Criminal penalty.~~

~~A person who violates § 20-16-1803(a) commits a Class D felony.~~

~~20-16-1806. Protection of privacy in court proceedings.~~

~~(a) In a civil proceeding or action brought under this subchapter, the court shall determine whether the anonymity of a woman who received or attempted to receive a dismemberment abortion shall be preserved from public disclosure without her written consent.~~

~~(b)(1) Upon determining that the anonymity of a woman who received or attempted to receive a dismemberment abortion shall be preserved, the court shall issue an order to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard from public disclosure the identity of the woman who received or attempted to receive a dismemberment abortion.~~

~~(2) An order under subdivision (b)(1) of this section shall be accompanied by specific written findings explaining:~~

~~(A) Why the anonymity of the woman who received or attempted to receive a dismemberment abortion should be preserved from public disclosure;~~

~~(B) Why the order is essential to that end;~~

~~(C) How the order is narrowly tailored to serve that end;~~

~~and~~

~~(D) Why no reasonable, less restrictive alternative exists.~~

~~(3) In the absence of written consent of the woman who received or attempted to receive a dismemberment abortion, anyone other than a public official who brings an action under § 20-16-1804 shall bring the action under a pseudonym.~~

~~(4) This subsection does not conceal from the defendant the identity of the plaintiff or of a witness.~~

~~20-16-1807. Construction.~~

~~This subchapter does not:~~

~~(1) Create or recognize a right to abortion;~~

~~(2) Create or recognize a right to a particular method of abortion; or~~

~~(3) Make lawful an abortion that is currently unlawful under any law of this state.~~

SECTION 32. Arkansas Code Title 20, Chapter 16, Subchapter 19, is repealed.

~~Subchapter 19 — Sex Discrimination by Abortion Prohibition Act~~

~~20-16-1901.—Title.~~

~~This subchapter shall be known and may be cited as the “Sex Discrimination by Abortion Prohibition Act”.~~

~~20-16-1902.—Legislative findings and purpose.~~

~~(a) The General Assembly finds that:~~

~~(1) With regard to sex-selection abortion:~~

~~(A) The victims of sex-selection abortion are overwhelmingly female;~~

~~(B) A sex-selection abortion is used to prevent the birth of a child of an undesired sex;~~

~~(C) The United States, along with other countries, has petitioned the United Nations General Assembly to declare sex-selection abortion a crime against women;~~

~~(D) Countries such as India, Great Britain, and China have taken steps to end sex-selection abortions;~~

~~(E) Women are a vital part of our society and culture and possess the same fundamental human rights as men;~~

~~(F) The United States prohibits discrimination on the basis of sex in various areas, including employment, education, athletics, and health insurance;~~

~~(G) It is undesirable to have a distortion in the sex ratio within a society, particularly when there is a shortage of women; and~~

~~(H) Countries with high rates of male preference have experienced ill effects as a result of having an increasing population of young, unmarried men; and~~

~~(2) With regard to maternal health:~~

~~(A) It is undisputed that abortion risks to maternal health increase as gestation increases;~~

~~(B) The risk of death for pregnant women at eight (8) weeks’ gestation is one (1) death per one million (1,000,000) and rises to:~~

~~(i) One (1) death per twenty-nine thousand (29,000) abortions between sixteen (16) and twenty (20) weeks’ gestation; and~~

~~(ii) One (1) death per eleven thousand (11,000) abortions at twenty-one (21) weeks’ gestation or later;~~

~~(C) A woman is thirty-five (35) times more likely to die~~

~~from an abortion performed at twenty (20) weeks' gestation than she would have been had the abortion been performed in the first trimester;~~

~~(D) A woman is ninety one (91) times more likely to die from an abortion performed at twenty one (21) weeks' gestation or later than she would have been had the abortion been performed in the first trimester; and~~

~~(E) Because abortions performed solely based on the sex of a child are generally performed later in pregnancy, women undergoing these abortions are unnecessarily exposed to increased health risks, including an exponentially higher risk of death.~~

~~(b) Based on the findings in this section, the purpose of this subchapter is to:~~

~~(1) Ban abortions performed solely for reasons of sex selection; and~~

~~(2) Protect women from the risks inherent in late-term abortions.~~

~~20-16-1903. 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 any of 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) "Incompetent" means an individual who has been adjudicated as an individual with a disability and has had a guardian appointed for her;~~

~~(3) "Minor" means an individual under eighteen (18) years of age;~~

~~(4) "Physician" means a person licensed to practice medicine in~~

~~this state, including a medical doctor and a doctor of osteopathy;~~

~~(5) “Sex selection abortion” means an abortion performed solely on the basis of the sex of the unborn child;~~

~~(6) “Unborn child” means the offspring of human beings from conception until birth; and~~

~~(7) “Viability” means the state of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a reasonable likelihood of sustained survival of the unborn child outside the body of the mother, with or without artificial life support.~~

~~20-16-1904. Prohibition — Sex selection abortion.~~

~~(a) A physician or other person shall not intentionally perform or attempt to perform an abortion with the knowledge that the pregnant woman is seeking the abortion solely on the basis of the sex of the unborn child.~~

~~(b) Before performing an abortion, the physician or other person who is performing the abortion shall:~~

~~(1)(A) Ask the pregnant woman if she knows the sex of the unborn child.~~

~~(B) If the pregnant woman knows the sex of the unborn child, the physician or other person who is performing the abortion shall inform the pregnant woman of the prohibition of abortion as a method of sex selection for children; and~~

~~(2)(A) Request the medical records of the pregnant woman relating directly to the entire pregnancy history of the woman.~~

~~(B) An abortion shall not be performed until reasonable time and effort is spent to obtain the medical records of the pregnant woman as described in subdivision (b)(2)(A) of this section.~~

~~(c) If this section is held invalid as applied to the period of pregnancy prior to viability, then the section shall remain applicable to the period of pregnancy subsequent to viability.~~

~~20-16-1905. Criminal penalties.~~

~~A physician or other person who knowingly performs or attempts to perform an abortion prohibited by this subchapter is guilty of a Class A~~

~~misdemeanor.~~

~~20-16-1906. Civil penalties and professional sanctions.~~

~~(a)(1) A physician or other person who knowingly violates this subchapter is liable for damages and shall have his or her medical license suspended or revoked as applicable.~~

~~(2) The physician or other person may also be enjoined from future acts prohibited by this subchapter.~~

~~(b)(1) A woman who receives an abortion in violation of this subchapter without being informed of the prohibition of abortion as a method of sex selection for children, the parent or legal guardian of the woman if the woman is a minor who is not emancipated, or the legal guardian of the woman if the woman has been adjudicated incompetent, may commence a civil action for any reckless violation of this subchapter and may seek both actual and punitive damages.~~

~~(2) Damages may include without limitation:~~

~~(A) Money damages for all psychological and physical injuries occasioned by the violation of this subchapter; and~~

~~(B) Statutory damages equal to ten (10) times the cost of the abortion performed in violation of this subchapter.~~

~~(c) A physician or other person who performs an abortion in violation of this subchapter shall be considered to have engaged in unprofessional conduct for which his or her license to provide healthcare services in this state shall be suspended or revoked by the Arkansas State Medical Board.~~

~~(d)(1) A cause of action for injunctive relief against any physician or other person who has knowingly violated this subchapter may be maintained by:~~

~~(A) A person who is the spouse, parent, guardian, or current or former licensed healthcare provider of the woman who receives or attempts to receive an abortion in violation of this subchapter; or~~

~~(B) The Attorney General.~~

~~(2) The injunction shall prevent the physician or other person from performing further abortions in violation of this subchapter.~~

~~20-16-1907. Exclusion of liability for a woman who undergoes prohibited abortion.~~

~~(a) A woman who receives or attempts to receive an abortion in violation of this subchapter shall not be prosecuted under this subchapter for conspiracy to violate this subchapter or otherwise be held criminally or civilly liable for any violation.~~

~~(b) In a criminal proceeding or action brought under this subchapter, a woman who receives or attempts to receive an abortion in violation of this subchapter is entitled to all rights, protections, and notifications afforded to crime victims.~~

~~(c)(1) In a civil proceeding or action brought under this subchapter, the anonymity of the woman who receives or attempts to receive the abortion in violation of this subchapter shall be preserved from public disclosure unless she gives her consent to disclosure.~~

~~(2) A court of competent jurisdiction, upon motion or sua sponte, shall issue orders to the parties, witnesses, and counsel and direct the sealing of the record and exclusion of the individuals from the courtroom or hearing room to the extent necessary to safeguard the identity of the woman from public disclosure.~~

~~(3) In the absence of written consent of the woman who receives or attempts to receive an abortion in violation of this subchapter, a person who initiates a proceeding or action under § 20-16-1906(b) or § 20-16-1906(d) shall do so under a pseudonym.~~

~~20-16-1908. Construction.~~

~~(a) This subchapter shall not be construed as creating or recognizing a right to abortion.~~

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

~~20-16-1909. 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.~~

~~20-16-1910. Effective date.~~

~~This subchapter takes effect on January 1, 2018.~~

SECTION 33. Arkansas Code Title 20, Chapter 16, Subchapter 20, is repealed.

~~Subchapter 20—Cherish Act~~

~~20-16-2001.—Title.~~

~~This subchapter shall be known and may be cited as the “Cherish Act”.~~

~~20-16-2002.—Legislative findings and intent.~~

~~(a)—The General Assembly finds that:~~

~~(1)(A)—The United States is one (1) of only seven (7) nations in the world that permits nontherapeutic or elective abortion on request after the twentieth week of gestation.~~

~~(B)—Fully seventy-five percent (75%) of all nations do not permit abortion after twelve (12) weeks’ gestation, except to save the life and preserve the physical health of the mother;~~

~~(2)—Medical and other authorities now know more about human prenatal development than ever before, including without limitation:~~

~~(A)—Between five (5) and six (6) weeks’ gestation, an unborn human being’s heart begins to beat;~~

~~(B)—An unborn human being begins to move about in the womb at approximately eight (8) weeks’ gestation;~~

~~(C)—At nine (9) weeks’ gestation, all basic physiological functions, buds for teeth, eyes, and external genitalia are present;~~

~~(D)(i)—An unborn human being’s vital organs begin to function at ten (10) weeks’ gestation.~~

~~(ii)—Hair, fingernails, and toenails begin to form at ten (10) weeks’ gestation;~~

~~(E)(i)—At eleven (11) weeks’ gestation, an unborn human being’s diaphragm develops, which can result in hiccups.~~

~~(ii)—In addition, an unborn human being begins to move about freely in the womb; and~~

~~(F)(i)—At twelve (12) weeks’ gestation, an unborn human being can open and close his or her fingers, make sucking motions, and sense stimulation from outside the womb.~~

~~(ii)—At this stage, the unborn human being takes on~~

~~“the human form” in all relevant aspects as stated in Gonzales v. Carhart, 550 U.S. 124, 160 (2007);~~

~~(3) The United States Supreme Court has recognized that a state has an “important and legitimate interest in protecting the potentiality of human life” in Roe v. Wade, 410 U.S. 113, 162 (1973), and, specifically, that “the state has an interest in protecting the life of the unborn” as discussed in Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 873 (1992);~~

~~(4)(A) The majority of abortion procedures performed after fifteen (15) weeks’ gestation are dismemberment abortions as defined by § 20-16-1802, which are prohibited under the Arkansas Unborn Child Protection from Dismemberment Abortion Act, § 20-16-1801 et seq.~~

~~(B) The performance of these types of abortions for nontherapeutic or elective reasons is a barbaric practice that is dangerous for the pregnant woman and demeaning to the medical profession;~~

~~(5) Most obstetricians and gynecologists practicing in this state do not offer or perform nontherapeutic or elective abortions;~~

~~(6)(A) According to a 2004 article, abortion can cause significant physical and psychological risks to the pregnant woman that increase with gestational age.~~

~~(B) Specifically, the relative physical and psychological risks escalate exponentially as gestational age increases in abortions performed after eight (8) weeks’ gestation;~~

~~(7) In the vast majority of uncomplicated pregnancies, the maternal health risks of undergoing an abortion become greater than the risks of carrying a pregnancy to term as the second trimester progresses;~~

~~(8) In abortions performed after fifteen (15) weeks’ gestation, there is a higher risk that a pregnant woman will require a hysterectomy, other reparative surgery, or blood transfusions; and~~

~~(9) The state has “legitimate interests from the outset of pregnancy in protecting the health of women” as determined by Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 847 (1992), as the “medical, emotional, and psychological consequences of abortion are serious and can be lasting” as stated in H.L. v. Matheson, 450 U.S. 398, 411 (1981).~~

~~(b) It is the intent of the General Assembly to restrict the practice~~

~~of nontherapeutic or elective abortions to the period up to the eighteenth week of gestation.~~

~~20-16-2003. 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 any of 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) "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 subchapter;~~

~~(3) "Conception" means the fusion of human spermatozoon with a human ovum;~~

~~(4) "Gestation" means the time that has elapsed since the first day of the woman's last menstrual period;~~

~~(5) "Human being" means an individual member of the species Homo sapiens from and after the point of conception;~~

~~(6) "Major bodily function" means the functions of the body, including without limitation functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions;~~

~~(7) "Medical emergency" means a condition that, on the basis of the physician's good faith clinical judgment, necessitates an abortion to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering~~

~~physical condition arising from the pregnancy itself, or when the continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function;~~

~~(8) "Physician" means a person licensed to practice medicine in this state, including a medical doctor; and~~

~~(9) "Probable gestational age" means the age of an unborn human being as calculated from the first day of the last menstrual period of the pregnant woman.~~

~~20-16-2004. Abortion limited to 18 weeks' gestation.~~

~~(a) Except in a medical emergency or if the pregnancy results from a rape under § 5-14-103 or incest under § 5-26-202 when documentation is presented that states that the crime has been reported to law enforcement, a person shall not perform, induce, or attempt to perform or induce an abortion unless the physician or referring physician has:~~

~~(1) Made a determination of the probable gestational age of the unborn human being according to standard medical practices and techniques used in the medical community; and~~

~~(2) Documented the probable gestational age in the medical records of the pregnant woman and, if required, in a report with the Department of Health as described in subsection (c) of this section.~~

~~(b) Except in a medical emergency or if the pregnancy results from a rape under § 5-14-103 or incest under § 5-26-202 when documentation is presented that states that the crime has been reported to law enforcement, a person shall not intentionally or knowingly perform, induce, or attempt to perform or induce an abortion of an unborn human being if the probable gestational age of the unborn human being is determined to be greater than eighteen (18) weeks' gestation.~~

~~(c)(1) If a physician performs or induces an abortion on an unborn human being whose gestational age is greater than eighteen (18) weeks, the physician shall file a report with the department within fifteen (15) days of the abortion.~~

~~(2) The report described in subdivision (c)(1) of this section shall contain:~~

~~(A) The date that the abortion was performed;~~

~~(B) The specific method used for the abortion;~~

~~(C) The probable gestational age of the unborn human being and the method used to calculate gestational age;~~

~~(D) A statement declaring that the abortion was necessitated by a medical emergency;~~

~~(E) The specific medical indications supporting the abortion and medical emergency;~~

~~(F) The probable health consequences of the abortion and of the specific method used; and~~

~~(G) The signature of the physician attesting that the information stated is true and correct to the best of his or her knowledge.~~

~~(3) A report made under this subsection shall not contain the name of the pregnant woman upon whom the abortion was performed or any other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who obtained or sought to obtain an abortion.~~

~~(d) The physician or abortion facility shall:~~

~~(1) File the documentation that a crime has been reported to law enforcement in the pregnant woman's medical record; and~~

~~(2) Report to the department the number of abortions performed because of rape or incest.~~

~~20-16-2005. Reporting forms.~~

~~(a) Within thirty (30) days of July 24, 2019, the Department of Health shall create forms required by this subchapter.~~

~~(b) The reporting requirements shall be enforceable ten (10) days after either July 24, 2019, or the date that the forms described in subsection (a) of this section become available, whichever occurs later.~~

~~20-16-2006. Penalties — Additional enforcement.~~

~~(a)(1) A person who purposely or knowingly violates this subchapter is guilty of a Class D felony.~~

~~(2) A woman upon whom an abortion is performed, induced, or attempted in violation of this subchapter shall not be prosecuted for conspiracy to commit a violation of this subchapter.~~

~~(b) A physician who purposely or knowingly violates this subchapter commits an act of unprofessional conduct that shall result in the Arkansas~~

~~State Medical Board's suspending or revoking his or her license.~~

~~(c) A physician who purposely or knowingly delivers to the Department of Health any report required under this subchapter that he or she knows is false is subject to a civil penalty or fine up to two thousand dollars (\$2,000) per violation imposed by the department.~~

~~(d) A woman upon whom an abortion has been performed, induced, or attempted in violation of this subchapter may bring an action against the person who purposely, knowingly, or recklessly performed, induced, or attempted the abortion in violation of this subchapter for actual and punitive damages.~~

~~(e)(1) A cause of action for injunctive relief against a person who has purposely, knowingly, or recklessly violated this subchapter may be maintained by:~~

~~(A) A prosecuting attorney with appropriate jurisdiction;~~  
~~or~~

~~(B) The Attorney General.~~

~~(2) The injunction shall prevent the abortion provider from performing or inducing and from attempting to perform or induce further abortions in violation of this subchapter.~~

~~(f) If judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.~~

~~(g) 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 render judgment for reasonable attorney's fees in favor of the defendant against the plaintiff.~~

~~(h) Damages or attorney's fees shall not be assessed against the woman upon whom an abortion was performed or induced or attempted to be performed or induced except under subsection (d) of this section.~~

~~20-16-2007. Construction.~~

~~This subchapter does not:~~

- ~~(1) Create or recognize a right to abortion;~~
- ~~(2) Create or recognize a right to a particular method of abortion; or~~
- ~~(3) Make lawful an abortion that is currently unlawful under any~~

~~law of this state.~~

~~20-16-2008. Right of intervention.~~

~~(a) 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.~~

~~(b) The Governor may also intervene as a matter of right in any case in which the constitutionality of this law is challenged.~~

SECTION 34. Arkansas Code Title 20, Chapter 16, Subchapter 21, is repealed.

~~Subchapter 21 — Down Syndrome Discrimination by Abortion Prohibition Act~~

~~20-16-2101. Title.~~

~~This subchapter shall be known and may be cited as the “Down Syndrome Discrimination by Abortion Prohibition Act”.~~

~~20-16-2102. 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 any of 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 or the pregnant woman;~~

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

~~(iii) Remove an ectopic pregnancy;~~

~~(2) “Down Syndrome” means a chromosome disorder associated with either:~~

~~(A) An extra copy of the chromosome 21, in whole or in part; or~~

~~(B) An effective trisomy for chromosome 21;~~  
~~(3) "Physician" means a person licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathy; and~~  
~~(4) "Unborn child" means the offspring of human beings from conception until birth.~~

~~20-16-2103. Prohibition—Down Syndrome.~~

~~(a) A physician shall not intentionally perform or attempt to perform an abortion with the knowledge that a pregnant woman is seeking an abortion solely on the basis of:~~

~~(1) A test result indicating Down Syndrome in an unborn child;~~  
~~(2) A prenatal diagnosis of Down Syndrome in an unborn child; or~~  
~~(3) Any other reason to believe that an unborn child has Down Syndrome.~~

~~(b)(1) Before performing an abortion, the physician performing the abortion shall ask the pregnant woman if she is aware of any test results, prenatal diagnosis, or any other evidence that the unborn child may have Down Syndrome.~~

~~(2) If the pregnant woman knows of any test results, prenatal diagnosis, or any other evidence that the unborn child may have Down Syndrome, the physician who is performing the abortion shall:~~

~~(A) Inform the pregnant woman of the prohibition of abortion contained in subsection (a) of this section; and~~

~~(B) Request the medical records of the pregnant woman relevant to determining whether she has previously aborted an unborn child or children after she became aware of any test results, prenatal diagnosis, or any other evidence that the unborn child may have had Down Syndrome.~~

~~(3) When the physician performing the abortion is required to request the medical records of the pregnant woman under subdivision (b)(2)(B) of this section, the physician shall not perform an abortion until the physician spends at least fourteen (14) days to obtain the medical records described in subdivision (b)(2)(B) of this section.~~

~~(c) If this section is held invalid as applied to the period of pregnancy prior to viability, then this section shall remain applicable to the period of pregnancy subsequent to viability.~~

~~(d) This section does not apply to an abortion performed on a pregnant~~

~~woman if the pregnancy is the result of rape or incest.~~

~~20-16-2104.—Criminal penalties.~~

~~A physician or other person who knowingly performs or attempts to perform an abortion prohibited by this subchapter is guilty of a Class D felony.~~

~~20-16-2105.—Civil penalties and professional sanctions.~~

~~(a)(1)—A physician who knowingly violates this subchapter is liable for damages and shall have his or her medical license revoked as applicable.~~

~~(2)—The physician may also be enjoined from future acts prohibited by this subchapter.~~

~~(b)(1)—A woman who receives an abortion in violation of this subchapter without being informed of the prohibition of abortion for the purposes of aborting an unborn child diagnosed with Down Syndrome, the parent or legal guardian of the woman if the woman is a minor who is not emancipated, or the legal guardian of the woman if the woman has been adjudicated incompetent, may commence a civil action for any reckless violation of this subchapter and may seek both actual and punitive damages.~~

~~(2)—Damages may include without limitation:~~

~~(A)—Money damages for any psychological and physical injuries occasioned by the violation of this subchapter; and~~

~~(B)—Statutory damages equal to ten (10) times the cost of the abortion performed in violation of this subchapter.~~

~~(c)—A physician or other person who performs an abortion in violation of this subchapter shall be considered to have engaged in unprofessional conduct and his or her license to provide healthcare services in this state shall be revoked by the Arkansas State Medical Board.~~

~~(d)(1)—A cause of action for injunctive relief against any physician or other person who has knowingly violated this subchapter may be maintained by:~~

~~(A)—A person who is the spouse, parent, guardian, or current or former licensed healthcare provider of the woman who receives or attempts to receive an abortion in violation of this subchapter; or~~

~~(B)—The Attorney General.~~

~~(2)—The injunction shall prevent the physician or other person~~

~~from performing further abortions in violation of this subchapter.~~

~~20-16-2106. Exclusion of liability for a woman who undergoes prohibited abortion.~~

~~(a) A woman who receives or attempts to receive an abortion in violation of this subchapter shall not be prosecuted under this subchapter for conspiracy to violate this subchapter or otherwise be held criminally or civilly liable for any violation of this subchapter.~~

~~(b) In a criminal proceeding or action brought under this subchapter, a woman who receives or attempts to receive an abortion in violation of this subchapter is entitled to all rights, protections, and notifications afforded to crime victims.~~

~~(c)(1) In a civil proceeding or action brought under this subchapter, the anonymity of the woman who receives or attempts to receive the abortion in violation of this subchapter shall be preserved from public disclosure unless she gives her consent to disclosure.~~

~~(2) A court of competent jurisdiction, upon motion or sua sponte, shall issue orders to the parties, witnesses, and counsel and direct the sealing of the record and exclusion of individuals from the courtroom or hearing room to the extent necessary to safeguard the identity of the woman from public disclosure.~~

~~20-16-2107. 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.~~

SECTION 35. Arkansas Code Title 20, Chapter 16, Subchapter 22, is repealed.

~~Subchapter 22 — Prohibition of Public Funding on Human Cloning and Destructive Embryo Research Act~~

~~20-16-2201. Title.~~

~~This subchapter shall be known and may be cited as the “Prohibition of Public Funding of Human Cloning and Destructive Embryo Research Act”.~~

~~20-16-2202. Legislative findings and purpose—Public policy.~~

~~(a) The General Assembly finds that:~~

~~(1) The prospect of creating new human life solely to be exploited or destroyed has been condemned on moral grounds as displaying a profound disrespect for a human life;~~

~~(2) Destructive human embryo research reduces the status of human embryos to a mere means for possible benefit for another person;~~

~~(3) The moral justification of medical or scientific research cannot be based upon the dehumanizing and utilitarian premise that the ends justify any means;~~

~~(4) Research and development of therapeutic cloning and methods to ethically obtain adult stem cells have contributed valuable therapeutic advancements and improved patient health and have proven more promising than research involving the destruction or exploitation of human embryos as a therapeutic means;~~

~~(5) Recent and promising advances in reprogramming human cells to behave as if in an embryonic state render controversial cloned human embryos unnecessary for use in destructive embryo research;~~

~~(6) Cloning embryos and destructive embryo research require human egg cells which are very expensive to obtain;~~

~~(7) Harvesting human egg cells also creates significant health risks to a woman, including without limitation:~~

~~(A) Ovarian hyperstimulation syndrome;~~

~~(B) Damage to internal organs or blood vessels;~~

~~(C) Infertility;~~

~~(D) Depression; and~~

~~(E) Death;~~

~~(8) Harvesting human egg cells for research contributes to the commoditization and exploitation of women;~~

~~(9) Public opinion is divided over the deeply conflicting moral and ethical concerns:~~

~~(A) Related to payments to women for access to human egg cells; and~~

~~(B) Surrounding the creation and destruction of human embryos; and~~

~~(10) Providing public funding of destructive embryo research would be a misuse of revenue collected by the state.~~

~~(b) Based on the findings in this section, the purpose of this subchapter is to further the important and compelling state interest of:~~

~~(1) Respecting life and fostering a culture of life;~~

~~(2) Directing public expenditures:~~

~~(A) Away from funding research that has not yielded significant scientific contributions or benefit to patients; and~~

~~(B) Toward funding research that has already made significant contributions to patients; and~~

~~(3) Relieving the consciences of taxpayers who:~~

~~(A) Are concerned about the possible exploitation of women that may result from payment for human egg cells; and~~

~~(B) Object to human cloning and destructive embryo research.~~

~~(c) Public funding of human cloning and destructive embryo research, including embryonic stem cell research, is against the public policy of this state.~~

#### ~~20-16-2203. Definitions.~~

~~As used in this subchapter:~~

~~(1)(A) "Destructive embryo research" means medical procedures, scientific or laboratory research, or other types of investigation that kill or injure the human embryo subject of the procedure or research.~~

~~(B) "Destructive embryo research" does not include:~~

~~(i) In vitro fertilization and accompanying embryo transfer to the body of a woman;~~

~~(ii) Research in the use of nuclear transfer or other cloning techniques to produce molecules, deoxyribonucleic acid, cells other than human embryos, tissues, organs, plants, or animals other than humans; or~~

~~(iii) Any diagnostic procedure that benefits the human embryo subject of the procedure or research while not imposing risks greater than those considered acceptable for other human research subjects;~~

~~(2) "Embryo" means an organism of the species Homo sapiens from the single cell stage to eight (8) weeks of development that is derived by fertilization, parthenogenesis, human cloning, or any other means from one~~

~~(1) or more human gametes or human diploid cells;~~

~~(3) "Embryonic stem cell" means a stem cell obtained from an embryo of the species Homo sapiens;~~

~~(4) "Human cloning" means human asexual reproduction accomplished by:~~

~~(A) Introducing the genetic material from one (1) or more human somatic cells into a fertilized or unfertilized oocyte whose nuclear material has been removed or inactivated so as to produce a living organism, at any stage of development, that is genetically identical to an existing or previously existing human organism;~~

~~(B) Artificially subdividing a human embryo at any time from the two-cell stage onward resulting in more than one (1) human organism; or~~

~~(C) Introducing pluripotent stem cells from any source into a human embryo or artificially manufactured human embryo or trophoblast under conditions where the introduced cells generate all or most of the body tissues of the developing organism;~~

~~(5) "Public funds" means without limitation:~~

~~(A) Moneys received or collected by the state or any official, department, division, agency, or educational or political subdivision of the state, including without limitation:~~

~~(i) Moneys derived from federal, state, or local taxes;~~

~~(ii) Gifts or grants from any source;~~

~~(iii) Settlement of any claim or cause of action;~~

~~(iv) Bond proceeds or investment income;~~

~~(v) Federal grants or payments; or~~

~~(vi) Intergovernmental transfers; and~~

~~(B) Moneys received or controlled by an official, department, division, or agency of the state government or any educational or political subdivision of the state pursuant to an appropriation by the General Assembly; and~~

~~(6) "Somatic cell" means a diploid cell, having a complete set of chromosomes, obtained or derived from a living or deceased human body at any stage of development.~~

~~20-16-2204. Prohibitions.~~~~(a) Public funds shall not be used to:~~~~(1) Finance human cloning or destructive embryo research, including destructive embryonic stem cell research;~~~~(2) Buy, receive, or otherwise transfer a human embryo with the knowledge that the embryo will be subject to destructive research; or~~~~(3) Buy, receive, or otherwise transfer gametes with the knowledge that a human embryo will be produced from the gametes to be used in destructive research.~~~~(b) The state, a state educational institution, or a political subdivision of the state shall not use public funds, facilities, or employees to knowingly destroy human embryos for the purpose of research or knowingly participate in human cloning or attempted human cloning.~~~~20-16-2205. Exceptions.~~~~This subchapter does not restrict the funding of areas of scientific research not specifically prohibited by this subchapter, including without limitation:~~~~(1) In vitro fertilization and accompanying embryo transfer to the body of a woman;~~~~(2) Administration of fertility enhancing drugs;~~~~(3) Research in the use of nuclear transfer or other cloning techniques to produce molecules, deoxyribonucleic acid, cells other than human embryos, tissues, organs, plants, or animals other than humans; and~~~~(4) Any diagnostic procedure that benefits the human embryo subject to destructive tests while not imposing risks greater than those considered acceptable for other human research subjects.~~~~20-16-2206. Penalties and sanctions.~~~~(a) A person or entity that knowingly fails to comply with the provisions of this subchapter is guilty of a Class A misdemeanor.~~~~(b) A person or entity that knowingly fails to comply with the provisions of this subchapter shall be fined a civil penalty in the amount of one thousand dollars (\$1,000).~~~~(c) A violation of this subchapter may be the basis for:~~~~(1) Denying an application for an initial license, permit,~~

~~certificate, or any other form of permission required to practice or engage in a trade, occupation, or profession;~~

~~(2) Denying an application for renewal of a license, permit, certificate, or any other form of permission required to practice or engage in a trade, occupation, or profession; or~~

~~(3) Revoking a license, permit, certificate, or any other form of permission required to practice or engage in a trade, occupation, or profession.~~

~~20-16-2207. Standing.~~

~~A taxpayer of this state or any political subdivision of this state shall have standing to bring suit to enforce this subchapter against:~~

~~(1) The state, any official, department, division, agency, or political subdivision of this state; and~~

~~(2) A recipient of public funds that is in violation of this subchapter.~~

~~20-16-2208. 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 subchapter is challenged.~~

SECTION 36. Arkansas Code Title 20, Chapter 16, Subchapter 23, is repealed.

~~Subchapter 23 — Perinatal Palliative Care Information Act~~

~~20-16-2301. Title.~~

~~This subchapter shall be known and may be cited as the “Perinatal Palliative Care Information Act”.~~

~~20-16-2302. Legislative findings and purpose.~~

~~(a) The General Assembly finds that:~~

~~(1) As diagnosis of prenatal conditions improves, more lethal fetal anomalies are diagnosed earlier in pregnancy;~~

~~(2)(A) Currently, parents are often given minimal options.~~

~~(B) Parents must choose between terminating the pregnancy or simply waiting for the child to die;~~

~~(3) The majority of parents in the situation described in subdivision (a)(2) of this section choose to terminate the pregnancy, with only twenty percent (20%) of parents deciding to continue the pregnancy;~~

~~(4) Studies indicate that choosing to terminate a pregnancy can pose severe long term psychological risks for a woman, including the risk of post-traumatic stress, depression, and anxiety;~~

~~(5) Parents who choose to continue the pregnancy under the supportive, compassionate care of a perinatal palliative care team report being emotionally and spiritually prepared for the birth of a child; and~~

~~(6) Studies reveal that when given the option, at least eighty to eighty-seven percent (80-87%) of parents choose to continue their pregnancies in a supportive environment of perinatal palliative care.~~

~~(b) It is the purpose of this subchapter to:~~

~~(1) Guarantee that a woman considering an abortion after a diagnosis of a lethal fetal anomaly is presented with information on the option of perinatal palliative care; and~~

~~(2) Ensure that any abortion choice that a woman makes has been fully informed.~~

~~20-16-2303. 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 any of 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) "Lethal fetal anomaly" means a fetal condition diagnosed~~

~~before birth that will result in the death of the unborn child with reasonable certainty within three (3) months of the birth;~~

~~(3) “Medical emergency” means, based on the good faith clinical judgment of the physician, a condition that has complicated the medical condition of the pregnant woman so as to necessitate the immediate termination of the pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function;~~

~~(4)(A) “Perinatal palliative care” means comprehensive support to the pregnant woman and her family that includes support from the time of diagnosis, through the time of birth and the death of the infant, and through the postpartum period.~~

~~(B) “Perinatal palliative care” may include without limitation counseling and medical care by maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, clergy, social workers, and specialty nurses focused on alleviating fear and ensuring that the woman and her family experience the life and death of the child in a comfortable and supportive environment; and~~

~~(5) “Physician” means a person licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathy.~~

~~20-16-2304. Informed consent for abortion to include perinatal palliative care information.~~

~~(a) Except in the case of a medical emergency, consent to an abortion when the unborn child has been diagnosed with a lethal fetal anomaly is voluntary and informed only if at least seventy-two (72) hours before the abortion;~~

~~(1) The physician performing the abortion has verbally informed the pregnant woman that perinatal palliative care services are available and has offered perinatal palliative care services as an alternative to abortion; and~~

~~(2) The pregnant woman is given a list of perinatal palliative care services available both in the state and nationally that is prepared by the Department of Health and organized geographically by location.~~

~~(b) If the pregnant woman declines perinatal palliative care services, the pregnant woman shall certify in writing that;~~

~~(1) She declines the perinatal palliative care services; and  
(2) She has received the materials described in subdivision  
(a)(2) of this section.~~

~~20-16-2305. Professional sanctions.~~

~~(a) A violation of this subchapter shall constitute unprofessional conduct and shall result in the revocation of a physician's license to practice medicine.~~

~~(b) A violation of this subchapter may be used as the basis for:~~

~~(1) Denying an application for licensure, certification, permit, registration, or other form of permission required to practice or engage in a trade, occupation, or profession;~~

~~(2) Denying an application for renewal of licensure, certification, permit, registration, or other form of permission required to practice or engage in a trade, occupation, or profession; and~~

~~(3) Revoking a license, certification, permit, registration, or other form of permission required to practice or engage in a trade, occupation, or profession.~~

~~20-16-2306. 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 subchapter is challenged.~~

SECTION 37. Arkansas Code Title 20, Chapter 16, Subchapter 24, is repealed.

~~Subchapter 24 — Every Mom Matters Act~~

~~20-16-2401. Title.~~

~~This subchapter shall be known and may be cited as the "Every Mom Matters Act".~~

~~20-16-2402. 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 any of 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) "Abuse" means the same as defined in § 12-18-103;~~

~~(3) "Agency" means an entity that contracts with the Department of Human Services to provide the services required under § 20-8-1001 or the resource access assistance offer;~~

~~(4) "Assault" means the act or offense described in §§ 5-13-204—5-13-207;~~

~~(5) "Care agent" means a person employed by an agency to perform the services required by this subchapter;~~

~~(6) "Human trafficking" means the act or offense described in the Human Trafficking Act of 2013, § 5-18-101 et seq.;~~

~~(7) "Medical emergency" means a condition that, based on the good faith clinical judgment of the physician, has complicated the medical condition of the pregnant woman so as to necessitate the immediate termination of the pregnancy to avert the woman's death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function;~~

~~(8) "Neglect" means the same as defined in § 12-18-103; and~~

~~(9) "Sexual assault" means an act or offense described in § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110.~~

~~20-16-2403. Resource access assistance offer.~~

~~(a) A person shall not perform an abortion unless the person verifies that the woman on whom the abortion is to be performed has received a resource access assistance offer.~~

~~(b) A resource access assistance offer under subsection (a) of this section shall consist of a care agent's:~~

~~(1) Informing the pregnant woman of the availability of free:~~

~~(A) Healthy pregnancy program services offered under § 20-8-1001(d)(2); and~~

~~(B) Care plan coordination services offered under § 20-8-1001(d)(3);~~

~~(2) Providing education on other public and private resources available to address the socioeconomic needs of the pregnant woman or the biological father of the unborn child;~~

~~(3) Offering screening and assistance for abuse, assault, sexual assault, neglect, coercion, and human trafficking; and~~

~~(4) Offering medically accurate information using the informational materials described in the Woman's Right to Know Act, § 20-16-1701 et seq.~~

~~(c) The pregnant woman is not required to:~~

~~(1) Initiate any offered services in order to obtain an abortion; or~~

~~(2) Provide any information to the care agent except her unique identifying number as described in § 20-16-2407.~~

~~(d) The resource access assistance offer shall be provided by the state at no cost to the woman.~~

~~(e) A care agent who provides a resource access assistance offer under this section shall not refer a woman to an abortion provider, recommend abortion, or take any other action that directly or indirectly advises a woman to obtain or assists a woman in obtaining an abortion.~~

~~20-16-2404. Applicability.~~

~~(a) For healthy pregnancy program services and care plan coordination services offered under § 20-8-1001(d)(2) and (3):~~

~~(1) A pregnant woman is not required to initiate or complete healthy pregnancy program services or care plan coordination services in order to obtain an abortion;~~

~~(2) A pregnant woman who initiates healthy pregnancy program services or care plan coordination services may decline or discontinue the healthy pregnancy program services or care plan coordination services at any~~

~~time; and~~

~~(3) An agency shall prioritize care plan coordination services and healthy pregnancy program services for women who have received a resource access assistance offer.~~

~~(b)(1) This subchapter does not apply in the case of a medical emergency.~~

~~(2) A person who performs an abortion in a medical emergency shall:~~

~~(A) Include in the pregnant woman's medical records a statement signed by the physician of the pregnant woman certifying the nature of the medical emergency; and~~

~~(B) Not later than thirty (30) days after the date that the abortion is performed, certify to the Department of Health the specific medical condition that constituted the medical emergency.~~

~~20-16-2405. Agencies. [Effective if contingency in Acts 2023, No. 703, § 10 is met.]~~

~~(a) Upon the effective date of this section, the Department of Human Services shall:~~

~~(1)(A) Contract with a number of agencies sufficient to ensure that each pregnant woman seeking an abortion in Arkansas receives a resource access assistance offer and has the opportunity to receive care plan coordination services and healthy pregnancy program services.~~

~~(B) The procurement of a vendor to serve as an agency shall be done through the Arkansas Procurement Law, § 19-11-201 et seq., by the Office of State Procurement;~~

~~(2) Annually, designate the proportion of resource access assistance offers to be provided by each agency's share of participants in care plan coordination services or healthy pregnancy program services; and~~

~~(3) Contract only with agencies that are capable of offering all of the services required under § 20-8-1001 or the resource access assistance offer.~~

~~(b) An agency shall be able, at a minimum, to provide resource access assistance offers, care plan coordination services, and healthy pregnancy program services by telephonic means using a toll-free number established by the department.~~

~~(c) Each agency and any subcontractor or care agent of the agency providing services related to § 20-8-1001 or resource access assistance offers shall not:~~

~~(1) Be an abortion provider or entity that directly or indirectly assists women in obtaining an abortion;~~

~~(2) Own, operate, or be affiliated with an abortion provider or an entity that directly or indirectly promotes abortions or assists women in obtaining an abortion;~~

~~(3) Employ a person who has performed an abortion in the last two (2) years;~~

~~(4) Have as a director, board member, officer, volunteer, or employee a person who serves in any of these roles for an entity described in subdivisions (c)(1)-(3) of this section; or~~

~~(5) Refer women to an abortion provider, recommend abortion, or take any other action that directly or indirectly advises or assists a woman in obtaining an abortion.~~

~~20-16-2406. Care agents.~~

~~A care agent or other person providing healthy pregnancy program services or care plan coordination services through a subcontract with an agency or as a volunteer with an agency shall:~~

~~(1) Meet the qualifications established by rule of the Department of Health;~~

~~(2) Have not performed an abortion in the last two (2) years;~~

~~(3) Have not served as a director, board member, officer, volunteer, or employee for an entity described in § 20-16-2405(c)(1)-(3) in the last two (2) years;~~

~~(4) Agree to maintain the confidentiality of information the care agent or other person obtains while performing services under § 20-8-1001 or the resource access assistance offer;~~

~~(5) Complete a training program using a standardized curriculum regarding recognizing signs that a person may have been a victim of human trafficking and providing appropriate assistance to a person who may have been a victim of human trafficking; and~~

~~(6) Not refer women to an abortion provider, recommend abortion, or take any other action that directly or indirectly advises a woman to~~

~~obtain or assists a woman in obtaining an abortion.~~

~~20-16-2407. Administration.~~

~~(a) The Department of Human Services shall:~~

~~(1)(A) Before implementation of the services under § 20-8-1001 or the resource access assistance offer, create a program-specific website that describes the services offered by § 20-8-1001 and the resource access assistance offer.~~

~~(B) The department may also create materials using other media, including print and electronic media, to convey information about the services under § 20-8-1001 and the resource access assistance offer to the public;~~

~~(2)(A) Establish a single toll-free number for pregnant women seeking an abortion in Arkansas to call in order to receive a resource access assistance offer.~~

~~(B) The toll-free number shall automatically connect the pregnant woman to an agency based on the proportion determined under § 20-16-2405(a)(2);~~

~~(3)(A) Before implementation of the resource access assistance offer, develop and maintain a secure database.~~

~~(B) The secure database shall:~~

~~(i) Generate a unique identifying number;~~

~~(ii) Be accessible only to a person who is to perform an abortion or an agent of the person performing an abortion, agencies, and the department; and~~

~~(iii) Not transmit any information to:~~

~~(a) The agency or care agent concerning the identity or location of the person who performs the abortion or the facility at which the abortion is performed; or~~

~~(b) The person providing the abortion or the agent of the person performing the abortion concerning the identity of the agency or care agent providing the resource access assistance offer.~~

~~(C) The unique identifying number shall not contain personally identifiable information; and~~

~~(4) For each agency, report on the department's website the percentage of pregnant women who received a resource access assistance offer~~

~~from the agency and subsequently obtained an abortion in the state.~~

~~(b)(1) Before receiving payment for abortion related services, administering any sedative or anesthesia, or performing an abortion, a person who is performing an abortion or an agent of the person performing the abortion shall:~~

~~(A) Register each prospective abortion in the secure database and obtain a unique identifying number for the pregnant woman's prospective abortion;~~

~~(B) Provide the pregnant woman seeking an abortion with the unique identifying number for her prospective abortion;~~

~~(C) Record the unique identifying number for the pregnant woman's prospective abortion in the pregnant woman's medical file;~~

~~(D) Verify through the secure database that the pregnant woman received a resource access assistance offer;~~

~~(E) Document the verification in the secure database; and~~

~~(F) Record the verification in the pregnant woman's medical record.~~

~~(2) Within two (2) business days after performing an abortion, the person who performs the abortion or the person's agent shall report to the department the unique identifying number for each abortion performed and the date and time that the abortion was performed.~~

~~(c) A care agent shall:~~

~~(1) Provide the resource access assistance offer, care plan coordination services, and healthy pregnancy program services; and~~

~~(2) Record the information required under this section.~~

~~(d) An agency shall:~~

~~(1) Record and report monthly to the department information pertaining to resource access assistance offers provided by the agency or the care agents employed by the agency, including without limitation:~~

~~(A) The number of pregnant women who indicated a need for assistance as victims of:~~

~~(i) Assault, sexual assault, abuse, or neglect;~~

~~(ii) Coercion; or~~

~~(iii) Human trafficking;~~

~~(B) The number of individuals receiving resource access assistance offers who requested care plan coordination services; and~~

~~(C) The number of individuals receiving resource access assistance offers who requested healthy pregnancy program services;~~

~~(2) Record and report monthly to the department information pertaining to care plan coordination services and healthy pregnancy program services provided by the agency or the care agents employed by the agency, including without limitation:~~

~~(A) The number of individuals receiving resource access assistance offers who identified a need for support in one (1) or more of the following areas:~~

~~(i) Abuse, assault, sexual assault, coercion, or neglect;~~

~~(ii) Education or training for a professional certification;~~

~~(iii) Housing assistance;~~

~~(iv) Employment assistance;~~

~~(v) Resume development;~~

~~(vi) Childcare;~~

~~(vii) Adoption services;~~

~~(viii) Financial assistance;~~

~~(ix) Substance abuse treatment and alcohol abuse treatment;~~

~~(x) Mental health care;~~

~~(xi) Medical care;~~

~~(xii) Human trafficking; or~~

~~(xiii) Health benefit plan coverage; and~~

~~(B) The resources, services, and referrals provided by the agency or a care agent; and~~

~~(3)(A) Confirm in the secure database using the unique identifying number that a resource access assistance offer was made.~~

~~(B) The confirmation required under subdivision (d)(3)(A) of this section shall be completed before 11:59 p.m. on the day that the resource access assistance offer was made.~~

~~20-16-2408. Medical record audit procedure.~~

~~(a) The Department of Health shall audit abortion facilities and persons performing abortions to ensure compliance with this subchapter.~~

- ~~(b) An audit under subsection (a) of this section shall:~~
- ~~(1) Be at a random, unannounced, and reasonable time;~~
  - ~~(2) Occur at least one (1) time each year for each abortion facility and person who performs abortions; and~~
  - ~~(3) Consist of:~~
    - ~~(A) A review of the medical records of no less than ten percent (10%) of the women who obtained an abortion since the last audit was performed; and~~
    - ~~(B) A verification and confirmation that the person performing the abortion fully complied with the requirements of § 20-16-2407(b).~~
- ~~(c) If the department finds that more than five percent (5%) of the audited medical records indicate noncompliance with the requirements of § 20-16-2407(b), the department shall audit the remainder of the medical records of the women who received abortions since the last audit was performed.~~

~~20-16-2409. Penalties.~~

- ~~(a)(1) A person who performs an abortion shall be subject to a fine of five thousand dollars (\$5,000) for each abortion performed without complying with the requirements of § 20-16-2407.~~
- ~~(2) The abortion facility at which the abortion was performed shall be jointly and severally liable for each fine assessed under subdivision (a)(1) of this section.~~
- ~~(b) The fine imposed by this section is in addition to the criminal liability under the Woman's Right to Know Act, § 20-16-1701 et seq.~~
- ~~(c) The Attorney General or the prosecuting attorney of the judicial district in which the abortion was performed may file an action to recover the fine assessed under subdivision (a)(1) of this section as well as reasonable and necessary attorney's fees and costs incurred in bringing the action.~~
- ~~(d)(1) Any person may bring a civil action to recover the civil penalty assessed under this section if:~~
- ~~(A) An action has not already been initiated by the Attorney General or the prosecuting attorney of the judicial district in which the abortion was performed; and~~
  - ~~(B) Another person has not already recovered a fine for~~

~~that specific violation of this subchapter.~~

~~(2) If the person recovers the fine assessed under this section, the person may also recover attorney's fees and costs incurred in bringing the action.~~

~~20-16-2410. Confidentiality and disclosure.~~

~~(a) All personally identifiable information held by the Department of Health or Department of Human Services under this subchapter is confidential and is not subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.~~

~~(b) Disclosure of information and records may be made:~~

~~(1) For statistical purposes if a care agent, pregnant woman, biological father of the unborn child, physician, or abortion facility is not identified;~~

~~(2) With the consent of each person, patient, and abortion facility identified in the information released; or~~

~~(3) To:~~

~~(A) Appropriate state agencies or courts to enforce this subchapter;~~

~~(B) Appropriate state licensing boards to enforce licensing laws;~~

~~(C) Licensed medical or healthcare personnel currently treating the patient; or~~

~~(D) Physicians providing abortions or agencies, to the extent necessary to fulfill the agencies' obligations under this subchapter.~~

~~(e) Disclosure of protected health information that is allowed for public health, safety, and law enforcement purposes is not a violation of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.~~

~~20-16-2411. Conscience protections.~~

~~The Department of Human Services shall not require any care agent or agency to refer a woman for any social or medical service to which the care agent or agency has a conscience objection.~~

~~20-16-2412. Construction.~~

~~This subchapter does not:~~

- ~~(1) Create or recognize a right to abortion;~~
- ~~(2) Create or recognize a right to a particular method of abortion; or~~
- ~~(3) Make lawful an abortion that is currently unlawful under any law of this state.~~

SECTION 38. Arkansas Code Title 20, Chapter 16, Subchapter 25, is repealed.

~~Subchapter 25 — Informed Consent for Chemical Abortion Act~~

~~20-16-2501. — Title.~~

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

~~20-16-2502. — 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.~~

~~20-16-2503.— 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.~~

~~20-16-2504. 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~~

~~(H) 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 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:~~

~~(1) The name of the pregnant woman;~~

~~(2) Common identifiers of the pregnant woman, including her~~

~~Social Security number or her driver's license number; or~~

~~(3) 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 & 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.~~

~~20-16-2505. 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 § 20-16-2503.~~

~~20-16-2506.—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 § 20-16-2503.~~

~~(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.~~

~~20-16-2507.—Criminal penalty.~~

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

~~20-16-2508.—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.~~

~~20-16-2509. 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.~~

SECTION 39. Arkansas Code Title 25, Chapter 1, Subchapter 6, is repealed.

~~Subchapter 6 — Prohibited Taxpayer Resource Transactions for Abortions~~

~~25-1-601. Definitions.~~

~~As used in this subchapter:~~

~~(1)(A) "Abortion" means the act of using or prescribing an instrument, medicine, drug, device, or another substance 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) "Abortion" as defined under subdivision (1)(A) of this section shall not include an act performed to:~~

~~(i) Save the life of the mother;~~

~~(ii) Save the life or preserve the health of the unborn child;~~

~~(iii) Remove a dead unborn child caused by natural causes; or~~

~~(iv) Remove an ectopic pregnancy;~~

~~(2) "Affiliate" means an individual or entity that, directly or indirectly, owns, controls, is controlled by, or is under the common control of another individual or entity, in whole or in part, or a subsidiary, parent, or sibling entity;~~

~~(3) "Governmental entity" means:~~

~~(A) This state;~~

~~(B) A state agency in the executive, judicial, or legislative branch of state government; or~~

~~(C) A political subdivision of this state;~~

~~(4) "Political subdivision" means a legally separate and distinct instrumentality of the state, including without limitation a:~~

~~(A) County;~~

~~(B) City; or~~

~~(C) Municipality; and~~

~~(5)(A) "Taxpayer resource transaction" means a sale, purchase, lease, donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity that provides to the private entity something of value derived from state or local tax revenue, regardless of whether the governmental entity receives something of value in return.~~

~~(B) "Taxpayer resource transaction" includes advocacy or lobbying by or on behalf of a governmental entity in behalf of an abortion provider or an affiliate of an abortion provider, but does not include an:~~

~~(i) Officer's or employee of a governmental entity's providing information to a member of the legislature or appearing before a legislative committee at the request of the member or committee;~~

~~(ii) Elected official's advocating for or against legislation pending before the legislature or otherwise influencing or attempting to influence the outcome of legislation pending before the legislature while acting in the capacity of an elected official; or~~

~~(iii) Individual's speaking as a private citizen on a matter of public concern.~~

~~(C) "Taxpayer resource transaction" does not include the provision of basic public services, including without limitation fire and police protection and utilities, by a governmental entity to an abortion provider or an affiliate of an abortion provider in the same manner as the governmental entity provides the services to the general public.~~

~~25-1-602. Taxpayer resource transaction prohibited.~~

~~(a) Except as provided by subsections (b) and (c) of this section, a governmental entity may not enter into a taxpayer resource transaction with an abortion provider or an affiliate of an abortion provider.~~

~~(b) Subsection (a) of this section does not apply to a taxpayer resource transaction that is subject to a federal law in conflict with~~

~~subsection (a) of this section as determined and confirmed in writing by the Attorney General.~~

~~(c) Subsection (a) of this section does not apply to:~~

~~(1) A hospital licensed under the laws of this state;~~

~~(2) A state hospital;~~

~~(3) A teaching hospital of a public or private institution of higher education; or~~

~~(4) An accredited residency program providing training to resident physicians.~~

~~(d) Subsection (c) of this section shall not permit the use of taxpayer funds to pay for an abortion.~~

~~25-1-603. Action by Attorney General.~~

~~(a) The office of the Attorney General may investigate and collect information concerning a violation of this subchapter.~~

~~(b) The Attorney General may bring an action in the name of the State of Arkansas to enjoin a violation of this subchapter.~~

*/s/A. Collins*