

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: H3/23/15
A Bill

HOUSE BILL 1578

5 By: Representatives Lundstrum, Bentley, Copeland, Cozart, Davis, Dotson, Eads, C. Fite, Gates, M.
6 Gray, Harris, Henderson, Lemons, D. Meeks, Miller, Payton, Petty, Rushing, B. Smith, Speaks, Sullivan,
7 Vaught, Womack, *Ballinger, Brown, G. Hodges, J. Mayberry, Wallace*
8 By: Senators J. Hendren, B. Johnson, Files, Hester, *D. Sanders*
9

10 **For An Act To Be Entitled**

11 AN ACT TO REPEAL AND REPLACE THE WOMAN'S RIGHT TO
12 KNOW ACT OF 2001; TO PROVIDE FOR VOLUNTARY AND
13 INFORMED CONSENT FOR AN ABORTION; TO PROVIDE
14 PROCEDURES FOR ENSURING VOLUNTARY AND INFORMED
15 CONSENT FOR AN ABORTION; TO REQUIRE CERTAIN SIGNAGE
16 IN ABORTION FACILITIES; TO PROVIDE FOR CERTAIN
17 REQUIREMENTS OF THE DEPARTMENT OF HEALTH AND
18 HOSPITALS RELATIVE TO ABORTION; TO PROVIDE FOR THE
19 DELIVERY OF CERTAIN INFORMATION UNDER THE WOMAN'S
20 RIGHT TO KNOW LAW; TO PROVIDE FOR PENALTIES; AND FOR
21 OTHER PURPOSES.
22
23

24 **Subtitle**

25 TO REPEAL AND REPLACE THE WOMAN'S RIGHT
26 TO KNOW ACT OF 2001; AND TO PROVIDE FOR
27 VOLUNTARY AND INFORMED CONSENT FOR AN
28 ABORTION.
29
30

31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
32

33 SECTION 1. DO NOT CODIFY. Legislative findings and purposes.

34 (a) The General Assembly finds that:

35 (1) It is essential to the psychological and physical well-being
36 of a woman who is considering an abortion that she receive complete and



1 accurate information on abortion and its alternatives;

2 (2) The knowledgeable exercise of a woman's decision to have an
3 abortion depends on the extent to which she receives sufficient information
4 to make an informed choice between two (2) alternatives: giving birth or
5 having an abortion;

6 (3) Adequate and legitimate informed consent includes
7 information which "relating to the consequences to the fetus," as stated in
8 Planned Parenthood v. Casey, 505 U.S. 833, 882-883 (1992);

9 (4)(A) According to the Guttmacher Institute, in 2008 seventy
10 percent (70%) of all abortions performed in the United States were performed
11 in clinics devoted solely to providing abortions and family planning
12 services.

13 (B) Most women who seek abortions at these facilities do
14 not:

15 (i) Have any relationship with the physician who
16 performs the abortion, before or after the procedure; or

17 (ii) Return to the facility for postsurgical care.

18 (C) In most instances, the woman's only actual contact
19 with the physician occurs simultaneously with the abortion procedure, with
20 little opportunity to receive counseling concerning her decision;

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

25 (6) "The medical, emotional, and psychological consequences of
26 an abortion are serious and can be lasting", as stated in H.L. v. Matheson,
27 450 U.S. 398, 411 (1981);

28 (7) Abortion facilities or providers often offer only limited or
29 impersonal counseling opportunities; and

30 (8) Many abortion facilities or providers hire untrained and
31 unprofessional counselors to provide preabortion counseling whose primary
32 goal is actually to sell or promote abortion services.

33 (b) Based on the findings presented in subsection (a) of this section,
34 the purposes of this act are to:

35 (1) Ensure that every woman considering an abortion receives
36 complete information on abortion and its alternatives and that every woman

1 receiving an abortion does so only after giving her voluntary and fully
2 informed consent to the abortion procedure;

3 (2) Protect unborn children from a woman's uninformed decision
4 to have an abortion;

5 (3) Reduce "the risk that a woman may elect an abortion, only to
6 discover later, with devastating psychological consequences, that her
7 decision was not fully informed", as stated in Planned Parenthood v. Casey,
8 505 U.S. 833, 882 (1992); and

9 (4) Adopt the construction of the term "medical emergency"
10 accepted by the United States Supreme Court in Planned Parenthood v. Casey,
11 505 U.S. 833 (1992).

12
13 SECTION 2. Arkansas Code Title 20, Chapter 16, is amended to add an
14 additional subchapter to read as follows:

15 Subchapter 15 – Woman's Right-to-Know Act

16
17 20-16-1501. Title.

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

20
21 20-16-1502. Definitions.

22 As used in this subchapter:

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

28 (B) A use, prescription, or means under this subdivision
29 (1) is not an abortion if the use, prescription, or means is performed with
30 the intent to:

31 (i) Save the life or preserve the health of the
32 unborn child;

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

35 (iii) Remove an ectopic pregnancy;

36 (2)(A) "Abortion-inducing drug" means a medicine, drug, or any

1 other substance prescribed or dispensed with the intent of terminating the
2 clinically diagnosable pregnancy of a woman, with knowledge that the
3 termination will with reasonable likelihood cause the death of the unborn
4 child.

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

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

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

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

17 (A) Death;

18 (B) Threat to life;

19 (C) Hospitalization;

20 (D) Disability or permanent damage;

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

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

24 (G) Other serious important medical events, including
25 without limitation:

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

28 (ii) Serious blood dyscrasias;

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

31 (iv) The development of drug dependence or drug
32 abuse;

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

36 (A) An adverse reaction to anesthesia or other

- 1 drugs;
2 (B) Bleeding;
3 (C) A blood clot;
4 (D) Cardiac arrest;
5 (E) Cervical perforation;
6 (F) Coma;
7 (G) Embolism;
8 (H) Endometritis;
9 (I) Failure to actually terminate the pregnancy;
10 (J) Free fluid in the abdomen;
11 (K) Hemorrhage;
12 (L) Incomplete abortion, also referred to as "retained
13 tissue";
14 (M) Infection;
15 (N) Metabolic disorder;
16 (O) Undiagnosed ectopic pregnancy;
17 (P) Placenta previa in subsequent pregnancies;
18 (Q) Pelvic inflammatory disease;
19 (R) A psychological or emotional complication such as
20 depression, anxiety, or a sleeping disorder;
21 (S) Preterm delivery in subsequent pregnancies;
22 (T) Renal failure;
23 (U) Respiratory arrest;
24 (V) Shock;
25 (W) Uterine perforation; and
26 (X) Other adverse event;
27 (5) "Conception" means the fusion of a human spermatozoon with a
28 human ovum;
29 (6) "Emancipated minor" means a person under eighteen (18) years
30 of age who is or has been married or who has been legally emancipated;
31 (7) "Facility" means a public or private hospital, clinic,
32 center, medical school, medical training institution, healthcare facility,
33 physician's office, infirmary, dispensary, ambulatory surgical treatment
34 center, or other institution or location where medical care is provided to a
35 person;
36 (8) "First trimester" means the first twelve (12) weeks of

1 gestation;

2 (9) "Gestational age" means the time that has elapsed since the
3 first day of the woman's last menstrual period;

4 (10) "Hospital" means any institution licensed as a hospital
5 pursuant to the laws of this state;

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

12 (12) "Physician" means any person licensed to practice medicine
13 in this state including medical doctors and doctors of osteopathy;

14 (13) "Pregnant" or "pregnancy" means that female reproductive
15 condition of having an unborn child in the woman's uterus;

16 (14) "Qualified person" means an agent of the physician who is a
17 psychologist, licensed social worker, licensed professional counselor,
18 registered nurse, physician assistant, or physician;

19 (15) "Unborn child" means the offspring of human beings from
20 conception until birth; and

21 (16) "Viability" means the state of fetal development when, in
22 the judgment of the physician based on the particular facts of the case
23 before him or her and in light of the most advanced medical technology and
24 information available to him or her, there is a reasonable likelihood of
25 sustained survival of the unborn child outside the body of his or her mother,
26 with or without artificial support.

27
28 20-16-1503. Informed consent requirement.

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

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

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

1 (A) The name of the physician who will perform the
2 abortion;

3 (B) Medically accurate information that a reasonable
4 patient would consider material to the decision concerning whether or not to
5 undergo the abortion, including:

6 (i) A description of the proposed abortion method;

7 (ii) The immediate and long-term medical risks
8 associated with the proposed abortion method, including without limitation
9 the risks of:

10 (a) Cervical or uterine perforation;

11 (b) Danger to subsequent pregnancies;

12 (c) Hemorrhage; and

13 (d) Infection; and

14 (iii) Alternatives to the abortion;

15 (C) The probable gestational age of the unborn child at
16 the time the abortion is to be performed;

17 (D) The probable anatomical and physiological
18 characteristics of the unborn child at the time the abortion is to be
19 performed;

20 (E) The medical risks associated with carrying the unborn
21 child to term;

22 (F) Any need for anti-Rh immune globulin therapy if the
23 woman is Rh negative, the likely consequences of refusing such therapy, and
24 the cost of the therapy; and

25 (G) Information on reversing the effects of abortion-
26 inducing drugs;

27 (2) At least forty-eight (48) hours before the abortion, the
28 physician who is to perform the abortion, the referring physician, or a
29 qualified person informs the woman, orally and in person, that:

30 (A) Medical assistance benefits may be available for
31 prenatal care, childbirth, and neonatal care, and that more detailed
32 information on the availability of such assistance is contained in the
33 printed materials and informational DVD given to her under § 20-16-1504;

34 (B) The printed materials and informational DVD under §
35 20-16-1504 describe the unborn child and list agencies that offer
36 alternatives to abortion;

1 (C)(i) The father of the unborn child is liable to assist
2 in the support of the child, even in instances where he has offered to pay
3 for the abortion.

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

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

10 (E) The information contained in the printed materials and
11 informational DVD given to her under § 20-16-1504, is also available on a
12 state website;

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

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

21 (4)(A) At least forty-eight (48) hours before the abortion, the
22 woman is given a copy of the printed materials and permitted to view and
23 given a copy of the informational DVD under § 20-16-1504.

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

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

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

36 (B) The information required under subdivision (b)(5)(A)

1 of this section and counseling related to that information shall include
2 without limitation the following:

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

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

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

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

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

16 (6)(A) Before the abortion, the pregnant woman certifies in
17 writing on a checklist form provided or approved by the Department of Health
18 that the information required under § 20-16-1504 has been provided.

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

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

25 (7)(A) Except in the case of a medical emergency, the physician
26 who is to perform the abortion shall receive and sign a copy of the written
27 certification required under subdivision (b)(6)(A) of this section before
28 performing the abortion.

29 (B) The physician shall retain a copy of the checklist
30 certification form in the pregnant woman's medical record; and

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

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

1 essence; and

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

4 (c)(1) In the event of a medical emergency requiring an immediate
5 termination of pregnancy, the physician who performed the abortion clearly
6 certifies in writing the nature of the medical emergency and the
7 circumstances that necessitated the waiving of the informed consent
8 requirements under this subchapter.

9 (2) The certification required under subdivision (c)(1) of this
10 section shall be signed by the physician who performed the emergency abortion
11 and shall be permanently filed in both the records of the physician
12 performing the abortion and the records of the facility where the abortion
13 took place.

14 (d) A physician shall not require or obtain payment for a service
15 provided in relation to abortion to a patient who has inquired about an
16 abortion or scheduled an abortion until the expiration of the *forty-eight-*
17 hour reflection period required in this section.

18 (e) All ultrasound images, test results, and forms signed by the
19 patient or legal guardian shall be retained as a part of the patient's
20 medical record and be made available for inspection by the department or
21 other authorized agency.

22
23 20-16-1504. Publication of materials.

24 (a)(1) The Department of Health shall:

25 (A) Publish easily comprehensible printed materials and an
26 informational DVD in English and Spanish within ninety (90) days after the
27 effective date of this subchapter;

28 (B) Develop and maintain a secure Internet website, which
29 may be part of an existing website, to provide the information required under
30 this subchapter; and

31 (C) Monitor the website on a weekly basis to prevent and
32 correct tampering.

33 (2) The department shall not collect or maintain information
34 regarding persons using the website.

35 (b) The department shall review and update annually, if necessary, the
36 following printed materials and informational DVD which shall be easily

1 comprehensible:

2 (1)(A) Geographically indexed materials that inform a pregnant
3 woman seeking an abortion of public and private agencies and services
4 available to assist her through pregnancy, upon childbirth, and while her
5 child is dependent, including without limitation adoption agencies.

6 (B) The materials shall:

7 (i) Include:

8 (a) A comprehensive list of the public and
9 private agencies and services, a description of the services they offer, and
10 the telephone numbers and addresses of the agencies; and

11 (b) The following statement: "There are many
12 public and private agencies willing and able to help you to carry your child
13 to term and to assist you and your child after your child is born, whether
14 you choose to keep your child or to place her or him for adoption. The State
15 of Arkansas strongly urges you to contact one or more of these agencies
16 before making a final decision about abortion. The law requires that your
17 physician or his or her agent give you the opportunity to call agencies like
18 these before you undergo an abortion.";

19 (ii) Inform the pregnant woman about available
20 medical assistance benefits for prenatal care, childbirth, and neonatal care;

21 (iii) Contain a toll-free, twenty-four-hour
22 telephone number that may be called to obtain information about the agencies
23 in the geographic area of the caller and of the services offered; and

24 (iv) State that:

25 (a) It is unlawful for any individual to
26 coerce a woman to undergo an abortion;

27 (b) If a minor is denied financial support by
28 the minor's parents, guardian, or custodian due to the minor's refusal to
29 undergo an abortion, the minor shall be deemed emancipated for the purposes
30 of eligibility for public assistance benefits, except that benefits may not
31 be used to obtain an abortion;

32 (c) A physician who performs an abortion upon
33 a woman without her informed consent may be liable to her for damages in a
34 civil action; and

35 (d) The law permits adoptive parents to pay
36 costs of prenatal care, childbirth, and neonatal care.

1 (C) The department shall ensure that the materials
2 described in this section are comprehensive and do not directly or indirectly
3 promote, exclude, or discourage the use of any public or private agency or
4 service described in this section.

5 (2)(A) Materials that include information on the support
6 obligations of a father of a child who is born alive, including without
7 limitation the father's legal duty to support the child, including child
8 support payments and health insurance, and the fact that paternity may be
9 established by the father's signature on a birth certificate, by a statement
10 of paternity, or by court action.

11 (B) The materials shall state that more information
12 concerning establishment of paternity and child support services and
13 enforcement may be obtained by calling state or county public assistance
14 agencies;

15 (3)(A) Materials that describe the probable anatomical and
16 physiological characteristics of the unborn child at two-week gestational
17 increments from fertilization to full term, including color photographs of
18 the unborn child at two-week gestational increments.

19 (B) The materials and descriptions shall:

20 (i)(a) Include information about brain and heart
21 functions, the presence of external features and internal organs during the
22 applicable stages of development, and any relevant information on the
23 possibility of the unborn child's survival.

24 (b) If a photograph is not available, a
25 picture shall contain the dimensions of the unborn child and shall be
26 realistic; and

27 (ii) Be objective, nonjudgmental, and designed to
28 convey only accurate scientific information about the unborn child at the
29 various gestational ages;

30 (4) Materials that contain objective information describing the
31 various surgical and drug-induced methods of abortion, as well as the
32 immediate and long-term medical risks commonly associated with each abortion
33 method, including without limitation the risks of:

34 (A) Cervical or uterine perforation or rupture;

35 (B) Danger to subsequent pregnancies;

36 (C) Hemorrhage;

1 (D) Infection;

2 (E) Medical risks associated with carrying a child to term
3 following an abortion; and

4 (F) Possible adverse psychological effects associated with
5 an abortion;

6 (5) A uniform resource locator for the state website where the
7 materials required under this section can be found;

8 (6) Materials that include information on the potential ability
9 of a qualified person to reverse the effects of abortion-inducing drugs, such
10 as mifepristone, Mifeprex, and misoprostol, including without limitation
11 information directing a woman to obtain further information at appropriate
12 websites and by contacting appropriate agencies for assistance in locating a
13 healthcare professional to aide in the reversal of an abortion; and

14 (7) A checklist certification form to be used by the physician
15 or a qualified person assisting the physician that lists the items of
16 information to be given to the woman by a physician or the agent under this
17 subchapter.

18 (c) The materials shall be printed in a typeface large enough to be
19 clearly legible.

20 (d)(1) The department shall produce a standard format DVD that may be
21 used statewide presenting the information required under this section.

22 (2) In preparing the DVD, the department may summarize and make
23 reference to the comprehensive printed list of geographically indexed
24 names and services described in this section.

25 (3)(A) The DVD shall show, in addition to the information
26 described in this section, an ultrasound of the heartbeat of an unborn child
27 at four to five (4-5) weeks gestational age, at six to eight (6-8) weeks
28 gestational age, and each month thereafter, until viability.

29 (B) The information in the DVD shall be presented in an
30 objective, unbiased manner designed to convey only accurate scientific
31 information.

32 (e) The materials and the DVD required under this section shall
33 be available at no cost from the department upon request and in appropriate
34 number to any person, facility, or hospital.

35

36 20-16-1505. Prevention of forced abortion – Signage in abortion

1 facilities.

2 (a)(1) A licensed facility where abortions are performed shall post a
3 sign conspicuously in a location defined in subsection (b) of this section
4 that is clearly visible to all individuals who enter and that features the
5 text contained in subdivision (a)(2) of this section.

6 (2) The sign shall display the following text:

7 "It is against the law for anyone, regardless of his or her
8 relationship to you, to force you to have an abortion. You have the right to
9 contact any local or state law enforcement or any social service agency to
10 receive protection from any actual or threatened physical, emotional, or
11 psychological abuse. It is against the law to perform, induce, prescribe
12 for, or provide you with the means for an abortion without your voluntary
13 consent."

14 (b) The sign shall be posted in each waiting room, patient
15 consultation room, and procedure room used by patients for whom abortions are
16 performed, induced, prescribed or for whom the means for an abortion are
17 provided.

18 (c) The continued posting of signage shall be a condition of licensure
19 of any facility that performs or induces abortions.

20 (d) The display of signage does not discharge the duty of a facility
21 to have a physician orally inform a pregnant woman of information and
22 materials contained in § 20-16-1503.

23 (e)(1) The Department of Health shall provide all signs required by
24 this section to the licensed abortion facility.

25 (2) The department may require that a licensed abortion facility
26 reimburse the department for any costs associated with the sign or signs.

27
28 20-16-1506. Medical emergencies.

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

35
36 20-16-1507. Regulations – Collection and reporting of information.

1 (a) The Department of Health shall develop and promulgate regulations
2 regarding reporting requirements.

3 (b)(1) The Arkansas Center for Health Statistics of the Department of
4 Health shall ensure that all information collected by the center regarding
5 abortions performed in this state shall be available to the public in printed
6 form and on a twenty-four-hour basis on the center's website.

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

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

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

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

18 (2) The department shall take care to ensure that none of the
19 information included in the public reports could reasonably lead to the
20 identification of any individual who received information or materials in
21 accordance with § 20-16-1503.

22
23 20-16-1508. Rules.

24 (a)(1) The Department of Health shall adopt rules to implement this
25 subchapter.

26 (2) The department may add by rule additional examples of
27 complications to supplement those in § 20-16-1503.

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

31
32 20-16-1509. Criminal penalty.

33 A person who intentionally, knowingly, or recklessly violates this
34 subchapter commits a Class A misdemeanor.

35
36 20-16-1510. Civil penalties.

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

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

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

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

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

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

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

22
23 20-16-1511. Construction.

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

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

27
28 SECTION 3. Arkansas Code Title 20, Chapter 16, Subchapter 9, is
29 repealed.

30 ~~Subchapter 9 — Woman's Right to Know Act of 2001~~

31
32 ~~20-16-901. Title.~~

33 ~~This subchapter shall be known and may be cited as the "Woman's Right~~
34 ~~to Know Act of 2001".~~

35
36 ~~20-16-902. Definitions.~~

1 ~~As used in this subchapter:~~

2 ~~(1) "Abortion" means the use or prescription of any instrument,~~
3 ~~medicine, drug, or any other substance or device intentionally to terminate~~
4 ~~the pregnancy of a woman known to be pregnant, for a purpose other than to~~
5 ~~increase the probability of a live birth, to preserve the life or health of~~
6 ~~the child after a live birth, or to remove a dead fetus;~~

7 ~~(2) "Attempt to perform an abortion" means an act or an omission~~
8 ~~of a statutorily required act that under the circumstances as the actor~~
9 ~~believes them to be constitutes a substantial step in a course of conduct~~
10 ~~planned to culminate in the termination of a pregnancy in Arkansas;~~

11 ~~(3) "Board" means the Arkansas State Medical Board or the~~
12 ~~appropriate health care professional licensing board;~~

13 ~~(4) "Division" means the Department of Health;~~

14 ~~(5) "Director" means the Director of the Department of Health;~~

15 ~~(6) "Gestational age" means the age of the fetus as calculated~~
16 ~~from the first day of the last menstrual period of the pregnant woman;~~

17 ~~(7) "Medical emergency" means any condition which, on the basis~~
18 ~~of the physician's good faith clinical judgment, so complicates the medical~~
19 ~~condition of a pregnant woman as to necessitate the immediate termination of~~
20 ~~her pregnancy to avert her death or for which a delay will create serious~~
21 ~~risk of impairment of a major bodily function which is substantial and deemed~~
22 ~~to be irreversible;~~

23 ~~(8) "Physician" means any person licensed to practice medicine~~
24 ~~in this state; and~~

25 ~~(9) "Probable gestational age of the fetus" means what in the~~
26 ~~judgment of the physician will with reasonable probability be the gestational~~
27 ~~age of the fetus at the time the abortion is planned to be performed.~~

28
29 ~~20-16-903. Informed consent.~~

30 ~~(a) No abortion shall be performed in this state except with the~~
31 ~~voluntary and informed consent of the woman upon whom the abortion is to be~~
32 ~~performed.~~

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

35 ~~(1)(A) Before and in no event on the same day as the abortion,~~
36 ~~the woman is told the following by telephone or in person by the physician~~

1 ~~who is to perform the abortion, by a referring physician, or by an agent of~~
2 ~~either physician;~~

3 ~~(i) The name of the physician who will perform the~~
4 ~~abortion;~~

5 ~~(ii) The medical risks associated with the~~
6 ~~particular abortion procedure to be employed;~~

7 ~~(iii) The probable gestational age of the fetus at~~
8 ~~the time the abortion is to be performed;~~

9 ~~(iv) The medical risks associated with carrying the~~
10 ~~fetus to term; and~~

11 ~~(v) That a spouse, boyfriend, parent, friend, or~~
12 ~~other person cannot force her to have an abortion.~~

13 ~~(B) The information required by this subdivision (b)(1):~~

14 ~~(i) Shall be provided during a consultation in which~~
15 ~~the physician or his or her agent is able to ask questions of the woman and~~
16 ~~the woman is able to ask questions of the physician;~~

17 ~~(ii)(a) May be provided by telephone without~~
18 ~~conducting a physical examination or tests on the woman.~~

19 ~~(b) If the information is supplied by~~
20 ~~telephone, the information may be based both on facts supplied to the~~
21 ~~physician or his or her agent by the woman and on whatever other relevant~~
22 ~~information is reasonably available to the physician or his or her agent; and~~

23 ~~(iii) Shall not be provided by a tape recording.~~

24 ~~(C) If a physical examination, tests, or other new~~
25 ~~information subsequently indicates the need in the medical judgment of the~~
26 ~~physician for a revision of the information previously supplied to the woman,~~
27 ~~that revised information may be communicated to the woman at any time before~~
28 ~~the performance of the abortion.~~

29 ~~(D) This section does not preclude the provision of~~
30 ~~required information through a translator in a language understood by the~~
31 ~~woman;~~

32 ~~(2)(A) Before and in no event on the same day as the abortion,~~
33 ~~the woman is informed by telephone or in person by the physician who is to~~
34 ~~perform the abortion, by a referring physician, or by an agent of either~~
35 ~~physician;~~

36 ~~(i) That medical assistance benefits may be~~

1 ~~available for prenatal care, childbirth, and neonatal care;~~

2 ~~(ii) That the father is liable to assist in the~~
3 ~~support of her child, even in instances in which the father has offered to~~
4 ~~pay for the abortion;~~

5 ~~(iii) That she has the option to review the printed~~
6 ~~or electronic materials described in § 20-16-904 and that those materials:~~

7 ~~(a) Have been provided by the state; and~~

8 ~~(b) Describe the fetus and list agencies that~~
9 ~~offer alternatives to abortion; and~~

10 ~~(iv) That if the woman chooses to exercise her~~
11 ~~option to view the materials:~~

12 ~~(a) In a printed form, the materials shall be~~
13 ~~mailed to her by a method chosen by her; or~~

14 ~~(b) Via the Internet, she shall be informed~~
15 ~~before and in no event on the same day as the abortion of the specific~~
16 ~~address of the website where the materials can be accessed.~~

17 ~~(B) The information required by this subdivision (b)(2)~~
18 ~~may be provided by a tape recording if provision is made to record or~~
19 ~~otherwise register specifically whether the woman does or does not choose to~~
20 ~~review the printed materials;~~

21 ~~(3) Before the abortion, the woman certifies in writing that the~~
22 ~~information described in subdivision (b)(1) of this section and her options~~
23 ~~described in subdivision (b)(2) of this section have been furnished to her~~
24 ~~and that she has been informed of her option to review the information~~
25 ~~referred to in subdivision (b)(2)(A)(iii) of this section;~~

26 ~~(4) Before the abortion, the physician who is to perform the~~
27 ~~procedure or the physician's agent receives a copy of the written~~
28 ~~certification prescribed by subdivision (b)(3) of this section; and~~

29 ~~(5) Before the abortion, the physician confirms with the patient~~
30 ~~that she has received information regarding:~~

31 ~~(A) The medical risks associated with the particular~~
32 ~~abortion procedure to be employed;~~

33 ~~(B) The probable gestational age of the fetus at the time~~
34 ~~the abortion is to be performed;~~

35 ~~(C) The medical risks associated with carrying the fetus~~
36 ~~to term; and~~

1 ~~(D) That a spouse, boyfriend, parent, friend, or other~~
2 ~~person cannot force her to have an abortion.~~

3 ~~(e) The Arkansas State Medical Board shall promulgate regulations to~~
4 ~~ensure that physicians who perform abortions, referring physicians, or agents~~
5 ~~of either physician comply with all the requirements of this section.~~

6
7 ~~20-16-904. Printed materials.~~

8 ~~(a) The Department of Health shall cause to be published in English~~
9 ~~and in each language which is the primary language of two percent (2%) or~~
10 ~~more of the state's population and shall update on an annual basis the~~
11 ~~following printed materials in such a way as to ensure that the information~~
12 ~~is easily comprehensible.~~

13 ~~(1) At the option of the department:~~

14 ~~(A) Geographically indexed materials designed to inform~~
15 ~~the woman of public and private agencies, including adoption agencies, and~~
16 ~~services available to assist a woman through pregnancy, upon childbirth, and~~
17 ~~while the child is dependent, including:~~

18 ~~(i) A comprehensive list of the agencies available;~~
19 ~~(ii) A description of the services they offer; and~~
20 ~~(iii) A description of the manner, including~~
21 ~~telephone numbers, in which they might be contacted; or~~

22 ~~(B) Printed materials, including a toll-free telephone~~
23 ~~number which may be called twenty-four (24) hours per day to obtain orally a~~
24 ~~list and description of agencies in the locality of the caller and of the~~
25 ~~services they offer; and~~

26 ~~(2)(A) Materials designed to inform the woman of the probable~~
27 ~~anatomical and physiological characteristics of the fetus at two-week~~
28 ~~gestational increments from the time when a woman can be known to be pregnant~~
29 ~~to full term, including:~~

30 ~~(i) Any relevant information on the possibility of~~
31 ~~the fetus' survival; and~~

32 ~~(ii) Pictures or drawings representing the~~
33 ~~development of fetuses at two-week gestational increments, provided that the~~
34 ~~pictures or drawings shall describe the dimensions of the fetus and shall be~~
35 ~~realistic and appropriate for the stage of pregnancy depicted.~~

36 ~~(B) The materials shall be objective, nonjudgmental, and~~

1 ~~designed to convey only accurate scientific information about the fetus at~~
2 ~~the various gestational ages.~~

3 ~~(C) The material shall also contain objective information~~
4 ~~describing:~~

5 ~~(i) The methods of termination of pregnancy~~
6 ~~procedures commonly employed;~~

7 ~~(ii) The medical risks commonly associated with each~~
8 ~~of those procedures;~~

9 ~~(iii) The possible detrimental psychological effects~~
10 ~~of termination of pregnancy; and~~

11 ~~(iv) The medical risks commonly associated with~~
12 ~~carrying a child to term.~~

13 ~~(b) The materials referred to in subsection (a) of this section shall~~
14 ~~be printed in a typeface large enough to be clearly legible.~~

15 ~~(c) The materials required under this section shall be available at no~~
16 ~~cost from the department and shall be distributed upon request in appropriate~~
17 ~~numbers to any person, facility, or hospital.~~

18 ~~(d)(1) The department shall develop and maintain a secure website to~~
19 ~~provide the information described under subsection (a) of this section.~~

20 ~~(2) The website shall be maintained at a minimum resolution of~~
21 ~~seventy two pixels per inch (72 ppi).~~

22
23 ~~20-16-905. Procedure in case of medical emergency.~~

24 ~~When a medical emergency compels the performance of an abortion, the~~
25 ~~physician shall inform the woman, prior to the abortion if possible, of the~~
26 ~~medical indications supporting the physician's judgment that:~~

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

28 ~~(2) A delay will create a serious risk of impairment of a major~~
29 ~~bodily function which is substantial and deemed to be irreversible.~~

30
31 ~~20-16-906. Regulations—Collection and reporting of information.~~

32 ~~(a) The Department of Health shall develop and promulgate regulations~~
33 ~~regarding reporting requirements.~~

34 ~~(b) The Arkansas Center for Health Statistics of the Department of~~
35 ~~Health shall ensure that all information collected by the center regarding~~
36 ~~abortions performed in this state shall be available to the public in printed~~

1 ~~form and on a twenty four hour basis on the center's website, provided that~~
2 ~~in no case shall the privacy of a patient or doctor be compromised.~~

3 ~~(c) The information collected by the center regarding abortions~~
4 ~~performed in this state shall be continually updated.~~

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

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

11 ~~(2) The department shall take care to ensure that none of the~~
12 ~~information included in the public reports could reasonably lead to the~~
13 ~~identification of any individual who received information in accordance with~~
14 ~~§ 20-16-903.~~

15
16 ~~20-16-907. Penalties.~~

17 ~~(a) A person who knowingly or recklessly performs or attempts to~~
18 ~~perform a termination of a pregnancy in violation of this subchapter shall be~~
19 ~~subject to disciplinary action by the Arkansas State Medical Board.~~

20 ~~(b) No penalty may be assessed against the woman upon whom the~~
21 ~~abortion is performed or attempted to be performed.~~

22 ~~(c) No penalty or civil liability may be assessed for failure to~~
23 ~~comply with any provision of § 20-16-903 unless the Department of Health has~~
24 ~~made the printed materials available at the time that the physician or the~~
25 ~~physician's agent is required to inform the woman of her right to review~~
26 ~~them.~~

27
28 ~~20-16-908. Woman's anonymity.~~

29 ~~(a) In every proceeding or action brought under this subchapter, the~~
30 ~~court or board shall rule, upon motion or sua sponte, whether the identity of~~
31 ~~any woman upon whom a termination of pregnancy has been performed or~~
32 ~~attempted shall be preserved from public disclosure if she does not give her~~
33 ~~consent to disclosure.~~

34 ~~(b) If the court or board rules that the woman's anonymity should be~~
35 ~~preserved, the court or board shall order the parties, witnesses, and counsel~~
36 ~~to preserve her anonymity and shall direct the sealing of the record and the~~

1 ~~exclusion of individuals from courtrooms or hearing rooms to the extent~~
2 ~~necessary to safeguard her identity from public disclosure.~~

3 ~~(c) Each order to preserve the woman's anonymity shall be accompanied~~
4 ~~by specific written findings explaining:~~

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

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

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

9 and

10 ~~(4) Why no reasonable less restrictive alternative exists.~~

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

13
14 SECTION 4. DO NOT CODIFY. The enactment and adoption of this act
15 shall be in conjunction with and not supersede the Arkansas Human Heartbeat
16 Protection Act, § 20-16-1301 et seq., derived from Acts 2013, No. 301.

17
18 SECTION 5. DO NOT CODIFY. SAVINGS CLAUSE. If any section or part of
19 a section of this act is determined by a court to be unconstitutional, the
20 Woman's Right to Know Act of 2001, § 20-16-901 et seq., shall be revived, and
21 to prevent a hiatus in the law, the relevant section or part of a section of
22 the Woman's Right to Know Act of 2001 shall remain in full force and effect
23 from and after the effective date of this act notwithstanding its repeal by
24 this act.

25
26 /s/Lundstrum

27
28
29 **APPROVED: 04/06/2015**