

State of Arkansas  
91st General Assembly  
Regular Session, 2017

*As Engrossed: S2/13/17*  
**A Bill**

SENATE BILL 148

By: Senators G. Stubblefield, Hester, B. Johnson  
By: Representatives C. Fite, Gates, Cozart, Gonzales, D. Meeks, Miller

### **For An Act To Be Entitled**

*AN ACT TO CREATE BORN-ALIVE INFANT PROTECTION; AND  
FOR OTHER PURPOSES.*

### **Subtitle**

*TO CREATE BORN-ALIVE INFANT PROTECTION.*

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

SECTION 1. DO NOT CODIFY. Legislative findings and purpose.

(a) The General Assembly finds that:

(1) The State of Arkansas has a paramount interest in protecting all human life;

(2) If an abortion results in the live birth of an infant, the infant is a person for all purposes under the laws of this state;

(3) It is not an infringement on a woman's right to terminate her pregnancy for this state to assert its interest in protecting an infant whose live birth occurred as a result of an abortion; and

(4) Without proper legal protection, infants who are born alive and have survived abortions have been denied appropriate life-saving or life-sustaining medical care and treatment and have been left to die.

(b) It is the purpose of this act to:

(1) Ensure the protection and promotion of the health and well-being of all infants born alive in this state; and

(2) Mandate that healthcare professionals give medically appropriate and reasonable life-saving and life-sustaining medical care and treatment to all infants who are born alive.



SECTION 2. Arkansas Code Title 20, Chapter 16, Subchapter 6, is amended to add an additional section to read as follows:

20-16-604. Born-alive infant protection – Cause of action.

(a) As used in this section:

(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 (a)(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) "Infant who is born alive" means the complete expulsion or extraction of an infant from a mother, regardless of the state of gestational development, who shows any evidence of life, including without limitation:

(A) Breathing;

(B) Heartbeat;

(C) Umbilical cord pulsation; or

(D) Definite movement of voluntary muscles; and

(3) "Infant" means a child who has been completely expelled or extracted from the mother, regardless of the stage of gestational development, until thirty (30) days after the birth.

(b) A physician, other healthcare professional, or other person shall not deny or deprive an infant of nourishment with the intent to cause or allow the death of the infant for any reason, including without limitation:

(1) The infant was born with a physical, intellectual, or developmental disability;

(2) The infant was not wanted by the parent or guardian; or

(3) The infant was born alive by natural or artificial means.

(c) A physician, other healthcare professional, or other person shall

not deprive an infant of medically appropriate and reasonable medical care and treatment or surgical care.

(d) This section does not prevent an infant's parent or legal guardian from refusing to give consent to medical treatment or surgical care that is not medically necessary or reasonable, including without limitation, care or treatment that:

(1) Is not necessary to save the life of the infant;

(2) Has a potential risk to the life or health of the infant that outweighs the potential benefit to the infant; or

(3) Is treatment that will do no more than temporarily prolong the act of dying when death is imminent.

(e)(1) A physician performing an abortion shall take all medically appropriate and reasonable steps to preserve the life and health of a infant who is born alive.

(2) If an abortion performed in a hospital results in a live birth, the attending physician shall:

(A) Provide immediate medical care to the infant;

(B) Inform the mother of the live birth; and

(C) Request transfer of the infant to an on-duty resident or emergency care physician who shall provide medically appropriate and reasonable medical care and treatment to the infant.

(3) If an abortion performed in a healthcare facility other than a hospital results in a live birth, the attending physician shall:

(A) Provide immediate medical care to the infant; and

(B) Call 911 for an emergency transfer of the infant to the hospital for medically appropriate and reasonable care and treatment for the infant.

(f) If a physician described in subsection (e) of this section is unable to perform the duties described in subsection (e) of this section because the physician is assisting the woman who received an abortion, the attending physician's assistant, nurse, or other healthcare professional shall assume the duties outlined in subsection (e) of this section.

(g) A infant who is born alive shall be treated as an individual under the laws of this state with the same rights to medically appropriate reasonable care and treatment that an infant born prematurely would have.

(h) The infant who is born alive upon birth immediately shall become a

ward of the state if:

(1) Before the abortion, the pregnant woman, or if married, the pregnant woman and her spouse, have stated in writing that they do not wish to keep the infant if the abortion results in a live birth; and

(2) The writing described in subdivision (h)(1) of this section is not retracted before the abortion.

(i)(1) A infant who is born alive shall not be used for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of the infant who is born alive.

(2) A violation of subdivision (i)(1) of this section is a Class D felony.

(j) Failure to comply with this section shall provide a basis for:

(1) A civil action for compensatory and punitive damages;

(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; and

(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.

(k) This section does not:

(1) Create or recognize a right to abortion;

(2) Affect existing federal or state law regarding abortion; or

(3) Alter generally accepted medical standards.

SECTION 3. DO NOT CODIFY. Right of intervention.

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

SECTION 4. DO NOT CODIFY. EFFECTIVE DATE. This act is effective on and after January 1, 2018.

*/s/G. Stubblefield*

**APPROVED: 03/06/2017**