

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

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: H3/15/13 H4/1/13
A Bill

SENATE BILL 417

By: Senator J. Hendren
By: Representative Steel

For An Act To Be Entitled

AN ACT TO MODIFY THE DEFINITION OF AN UNBORN CHILD IN
THE CRIMINAL CODE AND IN WRONGFUL DEATH ACTIONS; AND
FOR OTHER PURPOSES.

Subtitle

TO MODIFY THE DEFINITION OF AN UNBORN
CHILD IN THE CRIMINAL CODE AND IN
WRONGFUL DEATH ACTIONS.

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

SECTION 1. Arkansas Code § 5-1-102(13), concerning the definition of "person" in the criminal code, is amended to read as follows:

(13)(A) "Person", "actor", "defendant", "he", "she", "her", or "him" includes:

- (i) Any natural person; and
- (ii) When appropriate, an "organization" as defined

in § 5-2-501.

(B)(i)(a) As used in §§ 5-10-101 – 5-10-105, "person" also includes an unborn child in utero at any stage of development.

(b) "Unborn child" means ~~a living fetus of twelve (12) weeks or greater gestation~~ offspring of human beings from conception until birth.

(ii) This subdivision (13)(B) does not apply to:

(a) An act that causes the death of an unborn child in utero if the act was committed during a legal abortion to which the



woman consented, including an abortion performed to remove an ectopic pregnancy or other nonviable pregnancy when the embryo is not going to develop further;

(b) *An act that is committed pursuant to a usual and customary standard of medical practice during diagnostic testing or therapeutic treatment; ~~or~~*

(c) *An act that is committed in the course of medical research, experimental medicine, or an act deemed necessary to save the life or preserve the health of the woman;*

(d) Assisted reproduction technology activity, procedure, or treatment; or

(e) An act occurring before transfer to the uterus of the woman of an embryo created through in vitro fertilization.

(iii) *Nothing in this subdivision (13)(B) 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 2. Arkansas Code § 16-62-102(a), concerning survival of wrongful death actions, is amended to read as follows:

(a)(1) Whenever the death of a person or ~~a viable fetus~~ an unborn child as defined in § 5-1-102 is caused by a wrongful act, neglect, or default and the act, neglect, or default ~~is such as~~ would have entitled the party injured to maintain an action and recover damages in respect thereof if death had not ensued, then and in every such case, the person or company or corporation that would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person or the ~~viable fetus-unborn child as defined in § 5-1-102~~ injured, and although the death may have been caused under such circumstances as amount in law to a felony.

(2) The cause of action created in this subsection shall survive the death of the person wrongfully causing the death of another and may be brought, maintained, or revived against the personal representatives of the person wrongfully causing the death of another.

(3) ~~No person shall be~~ A person is not liable under this subsection when the death of the ~~fetus~~ unborn child results from:

(A) a legal abortion, including an abortion performed to

remove an ectopic pregnancy or other nonviable pregnancy where the embryo is not going to develop further;

(B) ~~or from the~~ The fault of the pregnant woman carrying the fetus unborn child;

(C) Assisted reproduction technology activity, procedure, or treatment;

(D) Actions occurring before transfer to the uterus of the woman of an embryo created through in vitro fertilization; or

(E) A woman or her healthcare provider using contraception approved by the United States Food and Drug Administration.

/s/J. Hendren