

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

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A Bill

HOUSE BILL 1032

By: Representatives A. Mayberry, Ballinger, Baltz, Barker, Bentley, Capp, Cavanaugh, Coleman, Davis, Della Rosa, Eubanks, C. Fite, L. Fite, Fortner, Gazaway, Holcomb, Lowery, Lundstrum, Lynch, Maddox, D. Meeks, Payton, Pilkington, Richmond, Rushing, Rye, Speaks, Sullivan, Vaught, Warren, Watson, J. Williams, Wing, Womack, *Dotson*
By: Senators D. Sanders, Bledsoe

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS UNBORN CHILD PROTECTION
FROM DISMEMBERMENT ABORTION ACT; AND FOR OTHER
PURPOSES.

Subtitle

THE ARKANSAS UNBORN CHILD PROTECTION FROM
DISMEMBERMENT ABORTION ACT.

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

SECTION 1. Arkansas Code Title 20, Chapter 16, is amended to add an additional subchapter to read as follows:

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) This subchapter does not prohibit an abortion by any other method for any reason, including 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.

/s/A. Mayberry