

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

State of Arkansas

93rd General Assembly

Second Extraordinary Session, 2021

A Bill

HOUSE BILL 1010

By: Representatives Bentley, M. Berry, Barker, Payton, Miller, Womack, Pilkington, Furman, Ladyman, Lynch, Cozart, Richmond, Lowery, C. Cooper, Cloud, Speaks, M. McElroy, B. Smith, Tosh, Wooten, Rye, S. Smith, Penzo, Lundstrum, Wing, Haak

By: Senators Rapert, Hester, B. Ballinger, Caldwell, T. Garner, K. Hammer, G. Stubblefield

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS HUMAN HEARTBEAT AND HUMAN LIFE CIVIL JUSTICE ACT; TO REGULATE ABORTION IN ARKANSAS; TO SAVE THE LIVES OF UNBORN CHILDREN AND PROTECT THE HEALTH OF WOMEN THROUGH CIVIL LIABILITY FOR VIOLATIONS OF ABORTION LAWS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ARKANSAS HUMAN HEARTBEAT AND HUMAN LIFE CIVIL JUSTICE ACT; TO SAVE THE LIVES OF UNBORN CHILDREN AND PROTECT THE HEALTH OF WOMEN THROUGH CIVIL LIABILITY; AND TO DECLARE AN EMERGENCY.

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 26 – Arkansas Human Heartbeat and Human Life Civil Justice Act

20-16-2601. Title.

This subchapter shall be known and may be cited as the "Arkansas Human Heartbeat and Human Life Civil Justice Act".



20-16-2602. Legislative findings.(a) The General Assembly finds that:

(1) It is time for the United States Supreme Court to redress and correct the grave injustice 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 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 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) An injustice 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 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, evidenced 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 burdens 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 "no public funds will be used to pay for any abortion, except to save the mother's life";

(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, 2019, and 2021 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;

(12) Arkansas has a compelling interest from the outset of a woman's pregnancy in protecting the health of the woman and life of an unborn child; and

(13) 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 establish civil liability for the violation of abortion laws in order to protect the lives of unborn children.

20-16-2603. 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 an 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) "Entity" means a corporation, partnership, limited liability company, association, joint venture, public corporation, any other legal or commercial entity, fiduciary, or any organized group of persons whether incorporated or not, including without limitation a church or religious organization;

(3) "Fertilization" means the fusion of a human spermatozoon with a human ovum;

(4) "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

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

20-16-2604. 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) 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;

(2) Permit a civil liability to be assessed against a woman upon whom an abortion is performed in violation of this subchapter; or

(3) 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.

(c) It is an affirmative defense 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.

20-16-2605. Civil liability for violation of aiding or abetting violation.

(a) Any resident of this state or entity located in this state, other than an officer or employee of a state or local government in this state, may bring a civil action against any person, entity, or affiliate of an entity who:

(1) Performs or induces an abortion in violation of this subchapter;

(2) Knowingly engages in conduct that directly aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this subchapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this subchapter; or

(3) Intends to engage in the conduct described in subdivision (a)(1) or subdivision (a)(2) of this section.

(b) If a claimant prevails in an action brought under this section, the court shall award:

(1) Injunctive relief sufficient to prevent the defendant from violating this subchapter or engaging in acts that aid or abet violations of

this subchapter;

(2) Statutory damages in an amount of not less than ten thousand dollars (\$10,000) for each abortion that the defendant performed or induced in violation of this subchapter, and for each abortion performed or induced in violation of this subchapter that the defendant aided or abetted; and

(3) Costs and attorney's fees.

(c) Notwithstanding subsection (b) of this section, a court shall not award relief under this section in response to a violation of subdivision (a)(1) or subdivision (a)(2) of this section if the defendant demonstrates that he or she previously paid the full amount of statutory damages under subdivision (b)(2) of this section in a previous action for that particular abortion performed or induced in violation of this subchapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.

(d) Notwithstanding any other law, a person may bring an action under this section not later than four (4) years after the date the cause of action accrues.

(e) Notwithstanding any other law, the following are not a defense to an action brought under this section:

(1) Ignorance or mistake of law;

(2) A defendant's belief that the requirements of this subchapter are unconstitutional;

(3) A defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision has not been overruled when the defendant engaged in conduct that violates this subchapter;

(4) A defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5) Nonmutual issue preclusion or nonmutual claim preclusion;

(6) The consent of the unborn child's mother to the abortion; or

(7) Any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by § 20-16-2606.

(f)(1) It is an affirmative defense if:

(A) A person sued under subdivision (a)(2) of this section

reasonably believed, after conducting a reasonable investigation, that the physician or person performing or inducing the abortion had complied or would comply with this subchapter; or

(B) A person sued under subdivision (a)(3) of this section reasonably believed, after conducting a reasonable investigation, that the physician or person performing or inducing the abortion would comply with this subchapter.

(2) The defendant has the burden of proving an affirmative defense under subdivision (f)(1)(A) or subdivision (f)(1)(B) of this section by a preponderance of the evidence.

(g) This section does not impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Arkansas Constitution, Article 2, § 6.

(h)(1) Notwithstanding any other law, this state, a state official, or a district or county attorney shall not intervene in an action brought under this section.

(2) This subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.

(i) Notwithstanding any other law, a court may not award costs or attorney's fees under the Arkansas Rules of Civil Procedure or any other rule adopted by the Supreme Court to a defendant in an action brought under this section.

(j) Notwithstanding any other law, a civil action under this section shall not be brought by a person who impregnated the woman who obtained an abortion through an act of rape, sexual assault, or incest under state law.

20-16-2606. Civil liability – Undue burden defense limitations.

(a) A defendant against whom an action is brought under § 20-16-2605 does not have standing to assert the rights of women seeking to obtain abortions as a defense to liability under § 20-16-2605 unless:

(1) The United States Supreme Court holds that the courts of this state must confer standing on the defendant to assert the third-party rights of women seeking to obtain abortions in state court as a matter of federal constitutional law; or

(2) The defendant has standing to assert the rights of women seeking to obtain abortions under the tests for third-party standing established by the United States Supreme Court.

(b) A defendant in an action brought under § 20-16-2605 may assert an affirmative defense to liability under this section if:

(1) The defendant has standing to assert the third-party rights of women seeking to obtain abortions according to subsection (a) of this section; and

(2) The defendant demonstrates that the relief sought by the claimant will impose an undue burden on women seeking to obtain abortions.

(c) A court shall not find an undue burden under subsection (b) of this section unless the defendant introduces evidence proving that:

(1) An award of relief will prevent women from obtaining abortions; or

(2) An award of relief will place a substantial obstacle for women seeking to obtain abortions.

(d) A defendant may not establish an undue burden under this section by:

(1) Merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in the women's efforts to obtain abortions; or

(2) Arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on the women seeking to obtain abortions.

(e) The affirmative defense under subsection (b) of this section is not available if the United States Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973), or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based under § 20-16-2605 occurred before the United States Supreme Court overruled either of those decisions.

(f) This section does not in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under § 20-16-2605, and a court may not award relief under § 20-16-2605 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

20-16-2607. Civil liability – Venue.

(a) Notwithstanding any other law, a civil action brought under § 20-16-2605 shall be brought in:

(1) The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) The county of residence for any one (1) of the natural person defendants at the time the cause of action accrued;

(3) The county of the principal office in this state of any one (1) of the defendants that is not a natural person; or

(4) The county of residence for the claimant if the claimant is a natural person residing in this state.

(b) If a civil action is brought under § 20-16-2605 in any one (1) of the venues described in subsection (a) of this section, the action shall not be transferred to a different venue without the written consent of all parties.

20-16-2608. Award of attorney's fees in actions challenging abortion laws.

(a) Notwithstanding any other law, any person, including an entity, attorney, or law firm, that seeks declaratory or injunctive relief to prevent this state, a political subdivision of this state, any governmental entity or public official in this state, or any person in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that perform or promote abortions, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and attorney's fees of the prevailing party.

(b) For purposes of this section, a party is considered a prevailing party if a state or federal court:

(1) Dismisses any claim or cause of action brought against the party that seeks the declaratory or injunctive relief described in subsection (a) of this section, regardless of the reason for the dismissal; or

(2) Enters judgment in the party's favor on any such claim or cause of action.

(c) Regardless of whether a prevailing party sought to recover costs or attorney's fees in the underlying action, a prevailing party under this section may bring a civil action to recover costs and attorney's fees against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described in subsection (a) of this section not later than three (3) years after the date on which, as applicable:

(1) The dismissal or judgment described in subsection (b) of this section becomes final on the conclusion of appellate review; or

(2) The time for seeking appellate review expires.

(d) It is not a defense to an action brought under subsection (c) of this section that:

(1) A prevailing party under this section failed to seek recovery of costs or attorney's fees in the underlying action;

(2) The court in the underlying action declined to recognize or enforce the requirements of this section; or

(3) The court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

SECTION 2. DO NOT CODIFY. Construction.

It is the specific intent of this act that the provisions of this act are supplemental to, cumulative to, and in addition to existing laws, civil or criminal, and shall not be construed to amend, repeal, or otherwise affect those existing laws, including without limitation:

(1) The Arkansas Human Life Protection Act, § 5-61-301 et seq.;

(2) The Arkansas Unborn Child Protection Act, § 5-61-401 et seq.;

(3) Section 20-16-603;

(4) Section 20-16-604;

(5) Section 20-16-701 et seq.;

(6) The Unborn Child Pain Awareness and Prevention Act, § 20-16-1101 et seq.;

(7) The Partial-Birth Abortion Ban Act, § 20-16-1201 et seq.;

(8) The Arkansas Human Heartbeat Protection Act, § 20-16-1301 et seq.;

(9) The Pain-Capable Unborn Child Protection Act, § 20-16-1401

et seq.;

(10) The Abortion-Inducing Drugs Safety Act, § 20-16-1501 et

seq.;

(11) The Arkansas Unborn Child Protection from Dismemberment Abortion Act, § 20-16-1801 et seq.;

(12) The Sex Discrimination by Abortion Prohibition Act, § 20-16-1901 et seq.;

(13) The Cherish Act, § 20-16-2001 et seq.; and

(14) The Down Syndrome Discrimination by Abortion Prohibition Act, § 20-16-2101 et seq.

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that legislation in other states has created a situation in which individuals from other states are entering Arkansas seeking abortions, which is burdening the healthcare system in this state; that the General Assembly previously enacted legislation in the spring to abolish abortions, which has been enjoined; that abortions have increased in this state causing harm to unborn children and the health and safety of pregnant women; and that this act is immediately necessary to protect the lives of unborn children and the health and safety of pregnant women in this state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.