

By: Senators Flippo, Irvin, Rice, B. Johnson, Hill, D. Wallace

SENATE RESOLUTION

TO AUTHORIZE THE INTRODUCTION OF A NONAPPROPRIATION BILL TO CREATE THE ARKANSAS UNBORN CHILD PROTECTION ACT OF 2022, ABOLISH ABORTION IN ARKANSAS, AND PROTECT THE LIVES OF UNBORN CHILDREN.

Subtitle

TO AUTHORIZE THE INTRODUCTION OF A NONAPPROPRIATION BILL TO CREATE THE ARKANSAS UNBORN CHILD PROTECTION ACT OF 2022, ABOLISH ABORTION IN ARKANSAS, AND PROTECT THE LIVES OF UNBORN CHILDREN.

BE IT RESOLVED BY THE SENATE OF THE NINETY-THIRD GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

THAT Representative Wardlaw is authorized to introduce a bill which as introduced will read substantially as follows:

"Title

AN ACT TO CREATE THE ARKANSAS UNBORN CHILD PROTECTION ACT OF 2022; TO ABOLISH ABORTION IN ARKANSAS AND PROTECT THE LIVES OF UNBORN CHILDREN; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ARKANSAS UNBORN CHILD PROTECTION ACT OF 2022; TO ABOLISH ABORTION IN ARKANSAS AND PROTECT THE LIVES OF UNBORN CHILDREN; AND TO DECLARE AN EMERGENCY.



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

SECTION 1. Arkansas Code Title 5, Chapter 61, is amended to add an additional subchapter to read as follows:

Subchapter 5 – Arkansas Unborn Child Protection Act of 2022

5-61-501. Title.

This subchapter shall be known and may be cited as the “Arkansas Unborn Child Protection Act of 2022”.

5-61-502. Legislative findings and intent.

(a) The General Assembly finds that:

(1) It is time for the United States Supreme Court to redress and correct the grave injustice and the crime 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 and a crime 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 and a crime 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) A crime 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 and crime 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, as witnessed to 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 an unborn 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 burden 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 "[t]he policy of Arkansas is to protect the life of every unborn child from conception until birth" and that "[n]o 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, and 2019 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; and

(12) 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) In anticipation of the groundbreaking decision of Dobbs v. Jackson Women's Health Organization, it is the intent of this subchapter to ensure that abortion in Arkansas is abolished and to protect the lives of unborn children.

5-61-503. 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 the 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 whose death was caused by spontaneous abortion; or

(iii) Remove an ectopic pregnancy;

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

(3) "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

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

5-61-504. Prohibition.

(a) A person shall not purposely perform or attempt to perform an abortion except in the case of incest; rape, if documentation is presented that states that the rape was reported to law enforcement; or to save the life of the pregnant woman in a medical emergency.

(b) A violation of subsection (a) of this section is a Class A felony.

(c) 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; or

(2) 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.

(d) It is an affirmative defense to prosecution 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.

SECTION 2. Arkansas Code Title 5, Chapter 61, Subchapter 4, is repealed.

~~Subchapter 4 — Arkansas Unborn Child Protection Act~~

~~5-61-401. Title.~~

~~This subchapter shall be known and may be cited as the "Arkansas Unborn Child Protection Act".~~

~~5-61-402. Legislative findings and intent.~~

~~(a) The General Assembly finds that:~~

~~(1) It is time for the United States Supreme Court to redress and correct the grave injustice and the crime 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 and a crime 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 and a crime 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) A crime 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 and crime 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, as witnessed to 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 burden 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 public funds shall not be used to pay for any abortion, except to save the life of the mother;~~

~~(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, and 2019 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; and~~

~~(12) 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 protect the lives of unborn children.~~

~~5-61-403. 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 the 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) "Fertilization" means the fusion of a human spermatozoon with a human ovum;~~

~~(3) "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~~

~~(4) "Unborn child" means an individual organism of the species Homo sapiens from fertilization until live birth.~~

~~5-61-404. 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) Performing or attempting to perform an abortion is an unclassified felony with a fine not to exceed one hundred thousand dollars (\$100,000) or imprisonment not to exceed ten (10) years, or both.~~

~~(c) 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; or~~

~~(2) 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.~~

~~(d) It is an affirmative defense to prosecution 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.~~

SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that existing state laws to protect the lives of unborn children have been insufficient; that pregnancies in Arkansas are still routinely terminated by persons purposely performing or attempting to perform an abortion in contradiction of state law; tougher criminal penalties directed at persons purposely performing or attempting to perform an abortion in contradiction of state law will ensure that these persons do not perform or attempt to perform an abortion in contradiction of state law; and that this act is immediately necessary to ensure persons do not purposely perform or attempt to perform abortions in contradiction of state law and to protect the lives of unborn children 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."