

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

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: H3/13/23
A Bill

HOUSE BILL 1174

By: Representatives Womack, Long, Miller

For An Act To Be Entitled

AN ACT TO ADD PROTECTIONS FOR UNBORN CHILDREN BY ALLOWING APPROPRIATE PROSECUTION WHEN A PERSON CAUSES THE DEATH OF AN UNBORN CHILD; TO REPEAL PROVISIONS THAT MAY ALLOW A PERSON TO SOLICIT, ADVISE, ENCOURAGE, OR COERCE A PREGNANT WOMAN TO ABORT HER UNBORN CHILD; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO ADD PROTECTIONS FOR UNBORN CHILDREN BY ALLOWING PROSECUTION WHEN A PERSON CAUSES THE DEATH OF AN UNBORN CHILD; TO REPEAL LAWS THAT MAY ALLOW A PERSON TO PRESSURE A PREGNANT WOMAN TO GET AN ABORTION; AND TO DECLARE AN EMERGENCY.

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

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

(a) The General Assembly finds that:

(1) Arkansas Constitution, Article 2, § 3 provides that the equality of all persons before the law is recognized and shall ever remain inviolate;

(2) Arkansas Constitution, Article 2, § 18 further provides that the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens;



(3) Section 1 of the Fourteenth Amendment of the United States Constitution requires that "No State shall [...] deny to any person within its jurisdiction the equal protection of the laws";

(4) Innocent human life, created in the image of God, should be equally protected under the laws from the time of fertilization to natural death;

(5) To ensure the right to life and equal protection of the laws, all unborn children should be protected under the state homicide laws as all other persons;

(6) All persons potentially subject to the state homicide laws are entitled to due process protections; and

(7) A pregnant woman should be protected from being pressured through solicitation, advisement, encouragement, or coercion to abort her unborn child.

(b) The intent of this act is to add protections for unborn children, allow appropriate prosecution when a person causes the death of an unborn child, and repeal provisions that may allow a person to solicit, advise, encourage, or coerce a pregnant woman to abort her unborn child.

SECTION 2. Arkansas Code § 5-1-102(13), concerning the definition of "person" in the Arkansas 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 and 5-4-604, "person" also includes an unborn child ~~in utero~~ at any stage of development.

(b) "Unborn child" means offspring of human beings from ~~conception~~ fertilization until birth.

(c) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

(ii) This subdivision (13)(B) does not apply to a lawful medical procedure:

~~(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;~~

~~(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.~~

(a) Performed:

(1) By a licensed physician;

(2) On a pregnant woman to avert the death of the pregnant woman, including from an ectopic pregnancy; and

(3) When all reasonable alternatives to save the life of the unborn child are unavailable or were attempted unsuccessfully before the performance of the medical procedure; and

(b) That results in the accidental or unintentional death of the unborn child that the pregnant woman was carrying.

~~(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. All provisions of the Arkansas Criminal Code apply to a prosecution for the death of an unborn child that would apply to a prosecution for the death of any other person, including any applicable presumptions, defenses, justifications, laws of parties, immunities, and clemencies.~~

(iv) Subdivision (13)(B) does not authorize prosecution for an accidental miscarriage;

SECTION 3. Arkansas Code § 16-62-102(a), concerning wrongful death actions, is amended to read as follows:

(a)(1) Whenever the death of a person, including ~~or~~ an unborn child as defined in § 5-1-102, is caused by a wrongful act, neglect, or default and

the act, neglect, or default 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, including ~~or~~ an 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) A person is not liable under this subsection when the death of the 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) The fault of the pregnant woman carrying the 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.~~

SECTION 4. DO NOT CODIFY. Applicability.

This act is prospective only and does not apply to conduct committed before the effective date of this act.

SECTION 5. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that unborn children are at risk of being aborted in this state and are currently being denied the equal protection of laws in violation of the Fourteenth Amendment to the United States Constitution; that amending state laws would grant unborn children protections that they do not currently possess in this state and would ensure that they receive the equal protections of laws in this state; and that this

act is immediately necessary to provide equal protection to unborn children and to comply with the United States Constitution. 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.

/s/Womack