

Stricken language would be deleted from and underlined language would be added to present law.  
Act 45 of the Regular Session

1 State of Arkansas *As Engrossed: H1/17/17 H1/18/17*

2 91st General Assembly

# A Bill

3 Regular Session, 2017

HOUSE BILL 1032

4

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

9 By: Senators D. Sanders, Bledsoe

10

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## For An Act To Be Entitled

12

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

15

16

17

## Subtitle

18

THE ARKANSAS UNBORN CHILD PROTECTION FROM  
19 DISMEMBERMENT ABORTION ACT.

20

21

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

23

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

26 Subchapter 18 – Arkansas Unborn Child Protection from Dismemberment Abortion

27

Act

28

29 20-16-1801. Title.

30 This subchapter shall be known and may be cited as the "Arkansas Unborn  
31 Child Protection from Dismemberment Abortion Act".

32

33 20-16-1802. Definitions.

34 As used in this subchapter:

35

36 (1) "Abortion" means the use or prescription of any instrument,  
medicine, drug, or any other substance or device:



1 (A) To terminate the pregnancy of a woman known to be  
2 pregnant with an intention other than to:

3 (i) Increase the probability of a live birth;

4 (ii) Preserve the life or health of the child after  
5 live birth; or

6 (iii) Remove a dead unborn child who died in utero  
7 as the result of natural causes, accidental trauma, or a criminal assault on  
8 the pregnant woman or her unborn child; and

9 (B) Which causes the premature termination of the  
10 pregnancy;

11 (2) "Attempt to perform or induce an abortion" means an act or  
12 an omission of a statutorily required act, that under the circumstances as  
13 the actor believes them to be, constitutes a substantial step in a course of  
14 conduct planned to culminate in the performance or induction of an abortion  
15 in this state in violation of this subchapter;

16 (3)(A)(i) "Dismemberment abortion" means an abortion performed  
17 with the purpose of causing the death of an unborn child that purposely  
18 dismembers the living unborn child and extracts one (1) piece at a time from  
19 the uterus through the use of clamps, grasping forceps, tongs, scissors, or  
20 similar instruments that, through the convergence of two (2) rigid levers,  
21 slice, crush, or grasp a portion of the body of the unborn child to cut or  
22 tear off a portion of the body of the unborn child.

23 (ii) "Dismemberment abortion" includes an abortion  
24 in which suction is used to extract the body of the unborn child subsequent  
25 to the dismemberment of the unborn child as described under subdivision  
26 (3)(A)(i) of this section.

27 (B) "Dismemberment abortion" does not include an abortion  
28 that uses suction to dismember the body parts of the unborn child into a  
29 collection container;

30 (4) "Physician" means any person licensed to practice medicine  
31 in this state, including a medical doctor or a doctor of osteopathy;

32 (5) "Purposely" means to act with purpose with respect to a  
33 material element of an offense when:

34 (A) If the element involves the nature of the conduct of  
35 the actor or a result of the conduct of the actor, it is the conscious object  
36 of the actor to engage in conduct of that nature or cause such a result; and

1 (B) If the element involves the attendant circumstances,  
2 the actor is aware of the existence of such circumstances or the actor  
3 believes or hopes that such circumstances exist;

4 (6)(A) "Serious health risk to the pregnant woman" means a  
5 condition that, in a reasonable medical judgment, complicates the medical  
6 condition of a pregnant woman to such an extent that the abortion of a  
7 pregnancy is necessary to avert either the death of the pregnant woman or the  
8 serious risk of substantial and irreversible physical impairment of a major  
9 bodily function of the pregnant woman.

10 (B) "Serious health risk to the pregnant woman" does not  
11 include:

12 (i) A psychological or emotional condition; or

13 (ii) A medical diagnosis that is based on a claim of  
14 the pregnant woman or on a presumption that the pregnant woman will engage in  
15 conduct that could result in her death or that could cause substantial and  
16 irreversible physical impairment of a major bodily function of the pregnant  
17 woman;

18 (7) "Unborn child" means an individual organism of the species  
19 Homo sapiens from fertilization until live birth; and

20 (8) "Woman" means a female human being whether or not she has  
21 reached the age of majority.

22  
23 20-16-1803. Ban on dismemberment abortion.

24 (a) A person shall not purposely perform or attempt to perform a  
25 dismemberment abortion and thereby kill an unborn child unless it is  
26 necessary to prevent a serious health risk to the pregnant woman.

27 (b)(1) A person who is accused of violating subsection (a) of this  
28 section may seek a hearing before the Arkansas State Medical Board regarding  
29 whether the dismemberment abortion was necessary to prevent a serious health  
30 risk to the pregnant woman.

31 (2) The findings of the board are admissible in any court  
32 proceedings under this subchapter.

33 (3) Upon a motion by the person who is accused of violating  
34 subsection (a) of this section, a court shall delay the beginning of a trial  
35 for no more than thirty (30) days to permit a hearing under subdivision  
36 (b)(1) of this section.

1       (c) The following individuals are excluded from liability under this  
2 subchapter:

3           (1) A woman who receives or attempts to receive a dismemberment  
4 abortion;

5           (2) A nurse, technician, secretary, receptionist, or other  
6 employee or agent who is not a physician but acts at the direction of a  
7 physician; and

8           (3) A pharmacist or other individual who is not a physician but  
9 who fills a prescription or provides instruments or materials used in a  
10 dismemberment abortion to the physician or at the direction of the physician.

11       (d) This subchapter does not prohibit an abortion by any other method  
12 for any reason, including rape or incest.

13  
14       20-16-1804. Civil remedies – Attorney’s fees.

15       (a)(1) A cause of action for injunctive relief against a person who  
16 has purposely violated this subchapter may be maintained by:

17           (A) The woman who receives or attempted to receive a  
18 dismemberment abortion in violation of this subchapter;

19           (B) A person who is the spouse, parent, or legal guardian  
20 of the woman who receives or attempted to receive a dismemberment abortion in  
21 violation of this subchapter; or

22           (C) A current or former licensed healthcare provider of  
23 the woman who receives or attempted to receive a dismemberment abortion in  
24 violation of this subchapter.

25       (2) The injunction shall prevent the abortion provider from  
26 performing or attempting to perform further dismemberment abortions in  
27 violation of this subchapter.

28       (b)(1) A cause of action for civil damages against a person who has  
29 purposely violated this subchapter may be maintained by:

30           (A) The woman who receives a dismemberment abortion in  
31 violation of this subchapter;

32           (B) The father of the unborn child, if the father is  
33 married to the woman at the time the dismemberment abortion was performed in  
34 violation of this subchapter; or

35           (C) If the woman who received a dismemberment abortion in  
36 violation of this subchapter is a minor or has died as a result of the

1 dismemberment abortion, the parents or legal guardians of the woman who  
2 received a dismemberment abortion in violation of this subchapter.

3 (2) Civil damages shall not be awarded to a plaintiff if the  
4 pregnancy resulted from the criminal conduct of the plaintiff.

5 (3) Civil damages shall include:

6 (A) Monetary damages for psychological injuries and  
7 physical injuries associated with the dismemberment abortion; and

8 (B) Statutory damages equal to three (3) times the cost of  
9 the dismemberment abortion.

10 (c)(1) If judgment is rendered in favor of the plaintiff, the court  
11 shall also render judgment for a reasonable attorney's fee in favor of the  
12 plaintiff against the defendant.

13 (2) If judgment is rendered in favor of the defendant and the  
14 court finds that the plaintiff's suit was frivolous and brought in bad faith,  
15 the court shall also render judgment for a reasonable attorney's fee in favor  
16 of the defendant against the plaintiff.

17 (3) A reasonable attorney's fee shall not be assessed against  
18 the woman who received a dismemberment abortion.

19  
20 20-16-1805. Criminal penalty.

21 A person who violates § 20-16-1803(a) commits a Class D felony.

22  
23 20-16-1806. Protection of privacy in court proceedings.

24 (a) In a civil proceeding or action brought under this subchapter, the  
25 court shall determine whether the anonymity of a woman who received or  
26 attempted to receive a dismemberment abortion shall be preserved from public  
27 disclosure without her written consent.

28 (b)(1) Upon determining that the anonymity of a woman who received or  
29 attempted to receive a dismemberment abortion shall be preserved, the court  
30 shall issue an order to the parties, witnesses, and counsel and shall direct  
31 the sealing of the record and exclusion of individuals from courtrooms or  
32 hearing rooms to the extent necessary to safeguard from public disclosure the  
33 identity of the woman who received or attempted to receive a dismemberment  
34 abortion.

35 (2) An order under subdivision (b)(1) of this section shall be  
36 accompanied by specific written findings explaining:

1 (A) Why the anonymity of the woman who received or  
 2 attempted to receive a dismemberment abortion should be preserved from public  
 3 disclosure;

4 (B) Why the order is essential to that end;

5 (C) How the order is narrowly tailored to serve that end;  
 6 and

7 (D) Why no reasonable, less restrictive alternative  
 8 exists.

9 (3) In the absence of written consent of the woman who received  
 10 or attempted to receive a dismemberment abortion, anyone other than a public  
 11 official who brings an action under § 20-16-1804 shall bring the action under  
 12 a pseudonym.

13 (4) This subsection does not conceal from the defendant the  
 14 identity of the plaintiff or of a witness.

15  
 16 20-16-1807. Construction.

17 This subchapter does not:

18 (1) Create or recognize a right to abortion;

19 (2) Create or recognize a right to a particular method of  
 20 abortion; or

21 (3) Make lawful an abortion that is currently unlawful under any  
 22 law of this state.

23  
 24 */s/A. Mayberry*

25  
 26  
 27 **APPROVED: 01/26/2017**