

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

1 State of Arkansas *As Engrossed: H2/19/19 S3/7/19*

2 92nd General Assembly

# A Bill

3 Regular Session, 2019

HOUSE BILL 1439

4

5 By: Representatives Lundstrum, *Barker, Bentley, Cavanaugh, Cloud, Crawford, Dotson, M. Gray,*

6 *Ladyman, McCollum, Petty, Richmond, Slape, Penzo, B. Smith, C. Cooper, Sullivan, Christiansen*

7 By: Senators Rapert, *J. Cooper, B. Davis, Hester*

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## For An Act To Be Entitled

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AN ACT TO CREATE THE CHERISH ACT; TO PROHIBIT

11

ABORTIONS AFTER EIGHTEEN (18) WEEKS' GESTATION EXCEPT

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IN A MEDICAL EMERGENCY; AND FOR OTHER PURPOSES.

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## Subtitle

16

TO CREATE THE CHERISH ACT; AND TO

17

PROHIBIT ABORTIONS AFTER EIGHTEEN (18)

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WEEKS' GESTATION EXCEPT IN A MEDICAL

19

EMERGENCY.

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

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24 SECTION 1. Arkansas Code Title 20, Chapter 16, is amended to add an

25 additional subchapter to read as follows:

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### Subchapter 20 – Cherish Act

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28

20-16-2001. Title.

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This subchapter shall be known and may be cited as the "Cherish Act".

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20-16-2002. Legislative findings and intent.

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(a) The General Assembly finds that:

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(1)(A) The United States is one (1) of only seven (7) nations in the world that permits nontherapeutic or elective abortion on request after the twentieth week of gestation.

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35

the twentieth week of gestation.

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(B) Fully seventy-five percent (75%) of all nations do not



1 permit abortion after twelve (12) weeks' gestation, except to save the life  
2 and preserve the physical health of the mother;

3 (2) Medical and other authorities now know more about human  
4 prenatal development than ever before, including without limitation:

5 (A) Between five (5) and six (6) weeks' gestation, an  
6 unborn human being's heart begins to beat;

7 (B) An unborn human being begins to move about in the womb  
8 at approximately eight (8) weeks' gestation;

9 (C) At nine (9) weeks' gestation, all basic physiological  
10 functions, buds for teeth, eyes, and external genitalia are present;

11 (D)(i) An unborn human being's vital organs begin to  
12 function at ten (10) weeks' gestation.

13 (ii) Hair, fingernails, and toenails begin to form  
14 at ten (10) weeks' gestation;

15 (E)(i) At eleven (11) weeks' gestation, an unborn human  
16 being's diaphragm develops, which can result in hiccups.

17 (ii) In addition, an unborn human being begins to  
18 move about freely in the womb; and

19 (F)(i) At twelve (12) weeks' gestation, an unborn human  
20 being can open and close his or her fingers, make sucking motions, and sense  
21 stimulation from outside the womb.

22 (ii) At this stage, the unborn human being takes on  
23 "the human form" in all relevant aspects as stated in Gonzales v. Carhart,  
24 550 U.S. 124, 160 (2007);

25 (3) The United States Supreme Court has recognized that a state  
26 has an "important and legitimate interest in protecting the potentiality of  
27 human life" in Roe v. Wade, 410 U.S. 113, 162 (1973), and, specifically, that  
28 "the state has an interest in protecting the life of the unborn" as discussed  
29 in Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833,  
30 873 (1992);

31 (4)(A) The majority of abortion procedures performed after  
32 fifteen (15) weeks' gestation are dismemberment abortions as defined by § 20-  
33 16-1802, which are prohibited under the Arkansas Unborn Child Protection from  
34 Dismemberment Abortion Act, § 20-16-1801 et seq.

35 (B) The performance of these types of abortions for  
36 nontherapeutic or elective reasons is a barbaric practice that is dangerous

1 for the pregnant woman and demeaning to the medical profession;

2 (5) Most obstetricians and gynecologists practicing in this  
3 state do not offer or perform nontherapeutic or elective abortions;

4 (6)(A) According to a 2004 article, abortion can cause  
5 significant physical and psychological risks to the pregnant woman that  
6 increase with gestational age.

7 (B) Specifically, the relative physical and psychological  
8 risks escalate exponentially as gestational age increases in abortions  
9 performed after eight (8) weeks' gestation;

10 (7) In the vast majority of uncomplicated pregnancies, the  
11 maternal health risks of undergoing an abortion become greater than the risks  
12 of carrying a pregnancy to term as the second trimester progresses;

13 (8) In abortions performed after fifteen (15) weeks' gestation,  
14 there is a higher risk that a pregnant woman will require a hysterectomy,  
15 other reparative surgery, or blood transfusions; and

16 (9) The state has "legitimate interests from the outset of  
17 pregnancy in protecting the health of women" as determined by Planned  
18 Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 847 (1992),  
19 as the "medical, emotional, and psychological consequences of abortion are  
20 serious and can be lasting" as stated in H.L. v. Matheson, 450 U.S. 398, 411  
21 (1981).

22 (b) It is the intent of the General Assembly to restrict the practice  
23 of nontherapeutic or elective abortions to the period up to the eighteenth  
24 week of gestation.

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26 20-16-2003. Definitions.

27 As used in this subchapter:

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

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

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

33 (ii) Preserve the life or health of the unborn  
34 child;

35 (iii) Terminate an ectopic pregnancy; or

36 (iv) Remove a dead unborn child who died in utero as

1 the result of natural causes, accidental trauma, or a criminal assault on the  
2 pregnant woman or her unborn child; and

3 (B) That causes the premature termination of the  
4 pregnancy;

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

10 (3) "Conception" means the fusion of human spermatozoon with a  
11 human ovum;

12 (4) "Gestation" means the time that has elapsed since the first  
13 day of the woman's last menstrual period;

14 (5) "Human being" means an individual member of the species Homo  
15 sapiens from and after the point of conception;

16 (6) "Major bodily function" means the functions of the body,  
17 including without limitation functions of the immune system, normal cell  
18 growth, and digestive, bowel, bladder, neurological, brain, respiratory,  
19 circulatory, endocrine, and reproductive functions;

20 (7) "Medical emergency" means a condition that, on the basis of  
21 the physician's good-faith clinical judgment, necessitates an abortion to  
22 preserve the life of a pregnant woman whose life is endangered by a physical  
23 disorder, physical illness, or physical injury, including a life endangering  
24 physical condition arising from the pregnancy itself, or when the  
25 continuation of the pregnancy will create a serious risk of substantial and  
26 irreversible impairment of a major bodily function;

27 (8) "Physician" means a person licensed to practice medicine in  
28 this state, including a medical doctor; and

29 (9) "Probable gestational age" means the age of an unborn human  
30 being as calculated from the first day of the last menstrual period of the  
31 pregnant woman.

32  
33 20-16-2004. Abortion limited to eighteen (18) weeks' gestation.

34 (a) Except in a medical emergency or if the pregnancy results from a  
35 rape under § 5-14-103 or incest under § 5-26-202, a person shall not perform,  
36 induce, or attempt to perform or induce an abortion unless the physician or

1 referring physician has:

2 (1) Made a determination of the probable gestational age of the  
3 unborn human being according to standard medical practices and techniques  
4 used in the medical community; and

5 (2) Documented the probable gestational age in the medical  
6 records of the pregnant woman and, if required, in a report with the  
7 Department of Health as described in subsection (c) of this section.

8 (b) Except in a medical emergency or if the pregnancy results from a  
9 rape under § 5-14-103 or incest under § 5-26-202, a person shall not  
10 intentionally or knowingly perform, induce, or attempt to perform or induce  
11 an abortion of an unborn human being if the probable gestational age of the  
12 unborn human being is determined to be greater than eighteen (18) weeks'  
13 gestation.

14 (c)(1) If a physician performs or induces an abortion on an unborn  
15 human being whose gestational age is greater than eighteen (18) weeks, the  
16 physician shall file a report with the department within fifteen (15) days of  
17 the abortion.

18 (2) The report described in subdivision (c)(1) of this section  
19 shall contain:

20 (A) The date that the abortion was performed;

21 (B) The specific method used for the abortion;

22 (C) The probable gestational age of the unborn human being  
23 and the method used to calculate gestational age;

24 (D) A statement declaring that the abortion was  
25 necessitated by a medical emergency;

26 (E) The specific medical indications supporting the  
27 abortion and medical emergency;

28 (F) The probable health consequences of the abortion and  
29 of the specific method used; and

30 (G) The signature of the physician attesting that the  
31 information stated is true and correct to the best of his or her knowledge.

32 (3) A report made under subsection (c) of this section shall not  
33 contain the name of the pregnant woman upon whom the abortion was performed  
34 or any other information or identifiers that would make it possible to  
35 identify, in any manner or under any circumstances, a woman who obtained or  
36 sought to obtain an abortion.

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20-16-2005. Reporting forms.

(a) Within thirty (30) days of the effective date of this subchapter, the Department of Health shall create forms required by this subchapter.

(b) The reporting requirements shall be enforceable ten (10) days after either the effective date of this subchapter or the date that the forms described in subsection (a) of this section become available, whichever occurs later.

20-16-2006. Penalties – Additional enforcement.

(a)(1) A person who purposely or knowingly violates this subchapter is guilty of a Class D felony.

(2) A woman upon whom an abortion is performed, induced, or attempted in violation of this subchapter shall not be prosecuted for conspiracy to commit a violation of this subchapter.

(b) A physician who purposely or knowingly violates this subchapter commits an act of unprofessional conduct that shall result in the Arkansas State Medical Board suspending or revoking his or her license.

(c) A physician who purposely or knowingly delivers to the Department of Health any report required under this subchapter that he or she knows is false is subject to a civil penalty or fine up to two thousand dollars (\$2,000) per violation imposed by the department.

(d) A woman upon whom an abortion has been performed, induced, or attempted in violation of this subchapter may bring an action against the person who purposely, knowingly, or recklessly performed, induced, or attempted the abortion in violation of this subchapter for actual and punitive damages.

(e)(1) A cause of action for injunctive relief against a person who has purposely, knowingly, or recklessly violated this subchapter may be maintained by:

(A) A prosecuting attorney with appropriate jurisdiction;

or

(B) The Attorney General.

(2) The injunction shall prevent the abortion provider from performing or inducing and from attempting to perform or induce further abortions in violation of this subchapter.

1 (f) If judgment is rendered in favor of the plaintiff in an action  
2 described in this section, the court shall also render judgment for a  
3 reasonable attorney's fee in favor of the plaintiff against the defendant.

4 (g) If judgment is rendered in favor of the defendant and the court  
5 finds that the plaintiff's suit was frivolous and brought in bad faith, the  
6 court shall render judgment for a reasonable attorney's fees in favor of the  
7 defendant against the plaintiff.

8 (h) Damages or attorney's fee shall not be assessed against the woman  
9 upon whom an abortion was performed or induced or attempted to be performed  
10 or induced except under subsection (d) of this section.

11  
12 20-16-2007. Construction.

13 This subchapter does not:

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

15 (2) Create or recognize a right to a particular method of  
16 abortion; or

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

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20 20-16-2008. Right of intervention.

21 (a) The General Assembly by joint resolution may appoint one (1) or  
22 more of its members who sponsored or cosponsored this subchapter in his or  
23 her official capacity to intervene as a matter of right in any case in which  
24 the constitutionality of this law is challenged.

25 (b) The Governor may also intervene as a matter of right in any case  
26 in which the constitutionality of this law is challenged.

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28 */s/Lundstrum*  
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