

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: S2/13/17

A Bill

SENATE BILL 148

5 By: Senators G. Stubblefield, Hester, B. Johnson
6 By: Representatives C. Fite, Gates, Cozart, Gonzales, D. Meeks, Miller
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For An Act To Be Entitled

9 AN ACT TO CREATE BORN-ALIVE INFANT PROTECTION; AND
10 FOR OTHER PURPOSES.

Subtitle

11 TO CREATE BORN-ALIVE INFANT PROTECTION.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. DO NOT CODIFY. Legislative findings and purpose.

20 (a) The General Assembly finds that:

21 (1) The State of Arkansas has a paramount interest in protecting
22 all human life;

23 (2) If an abortion results in the live birth of an infant, the
24 infant is a person for all purposes under the laws of this state;

25 (3) It is not an infringement on a woman's right to terminate
26 her pregnancy for this state to assert its interest in protecting an infant
27 whose live birth occurred as a result of an abortion; and

28 (4) Without proper legal protection, infants who are born alive
29 and have survived abortions have been denied appropriate life-saving or life-
30 sustaining medical care and treatment and have been left to die.

31 (b) It is the purpose of this act to:

32 (1) Ensure the protection and promotion of the health and well-
33 being of all infants born alive in this state; and

34 (2) Mandate that healthcare professionals give medically
35 appropriate and reasonable life-saving and life-sustaining medical care and
36 treatment to all infants who are born alive.



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2 SECTION 2. Arkansas Code Title 20, Chapter 16, Subchapter 6, is
3 amended to add an additional section to read as follows:

4 20-16-604. Born-alive infant protection – Cause of action.

5 (a) As used in this section:

6 (1)(A) "Abortion" means the act of using or prescribing any
7 instrument, medicine, drug, or other substance, device, or means with the
8 intent to terminate the clinically diagnosable pregnancy of a woman with
9 knowledge that the termination by those means will with reasonable likelihood
10 cause the death of the unborn child.

11 (B) A use, prescription, or means under this subdivision
12 (a)(1) is not an abortion if the use, prescription, or means is performed
13 with the intent to:

14 (i) Save the life or preserve the health of the
15 unborn child;

16 (ii) Remove a dead unborn child caused by
17 spontaneous abortion; or

18 (iii) Remove an ectopic pregnancy;

19 (2) "Infant who is born alive" means the complete expulsion or
20 extraction of an infant from a mother, regardless of the state of gestational
21 development, who shows any evidence of life, including without limitation:

22 (A) Breathing;

23 (B) Heartbeat;

24 (C) Umbilical cord pulsation; or

25 (D) Definite movement of voluntary muscles; and

26 (3) "Infant" means a child who has been completely expelled or
27 extracted from the mother, regardless of the stage of gestational
28 development, until thirty (30) days after the birth.

29 (b) A physician, other healthcare professional, or other person shall
30 not deny or deprive an infant of nourishment with the intent to cause or
31 allow the death of the infant for any reason, including without limitation:

32 (1) The infant was born with a physical, intellectual, or
33 developmental disability;

34 (2) The infant was not wanted by the parent or guardian; or

35 (3) The infant was born alive by natural or artificial means.

36 (c) A physician, other healthcare professional, or other person shall

1 not deprive an infant of medically appropriate and reasonable medical care
2 and treatment or surgical care.

3 (d) This section does not prevent an infant's parent or legal guardian
4 from refusing to give consent to medical treatment or surgical care that is
5 not medically necessary or reasonable, including without limitation, care or
6 treatment that:

7 (1) Is not necessary to save the life of the infant;

8 (2) Has a potential risk to the life or health of the infant
9 that outweighs the potential benefit to the infant; or

10 (3) Is treatment that will do no more than temporarily prolong
11 the act of dying when death is imminent.

12 (e)(1) A physician performing an abortion shall take all medically
13 appropriate and reasonable steps to preserve the life and health of a infant
14 who is born alive.

15 (2) If an abortion performed in a hospital results in a live
16 birth, the attending physician shall:

17 (A) Provide immediate medical care to the infant;

18 (B) Inform the mother of the live birth; and

19 (C) Request transfer of the infant to an on-duty resident
20 or emergency care physician who shall provide medically appropriate and
21 reasonable medical care and treatment to the infant.

22 (3) If an abortion performed in a healthcare facility other than
23 a hospital results in a live birth, the attending physician shall:

24 (A) Provide immediate medical care to the infant; and

25 (B) Call 911 for an emergency transfer of the infant to
26 the hospital for medically appropriate and reasonable care and treatment for
27 the infant.

28 (f) If a physician described in subsection (e) of this section is
29 unable to perform the duties described in subsection (e) of this section
30 because the physician is assisting the woman who received an abortion, the
31 attending physician's assistant, nurse, or other healthcare professional
32 shall assume the duties outlined in subsection (e) of this section.

33 (g) A infant who is born alive shall be treated as an individual under
34 the laws of this state with the same rights to medically appropriate
35 reasonable care and treatment that an infant born prematurely would have.

36 (h) The infant who is born alive upon birth immediately shall become a

1 ward of the state if:

2 (1) Before the abortion, the pregnant woman, or if married, the
3 pregnant woman and her spouse, have stated in writing that they do not wish
4 to keep the infant if the abortion results in a live birth; and

5 (2) The writing described in subdivision (h)(1) of this section
6 is not retracted before the abortion.

7 (i)(1) A infant who is born alive shall not be used for any type of
8 scientific research or other kind of experimentation except as necessary to
9 protect or preserve the life and health of the infant who is born alive.

10 (2) A violation of subdivision (i)(1) of this section is a Class
11 D felony.

12 (j) Failure to comply with this section shall provide a basis for:

13 (1) A civil action for compensatory and punitive damages;

14 (2) Professional disciplinary action by the appropriate
15 healthcare licensing board for the suspension or revocation of a license for
16 a healthcare professional for at least one (1) year; and

17 (3) Recovery for the parent of the infant or the parent or legal
18 guardian of the pregnant woman, if the pregnant woman is a minor, for the
19 wrongful death of the infant under § 16-62-102.

20 (k) This section does not:

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

22 (2) Affect existing federal or state law regarding abortion; or

23 (3) Alter generally accepted medical standards.

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25 SECTION 3. DO NOT CODIFY. Right of intervention.

26 The General Assembly by joint resolution may appoint one (1) or more of
27 its members who sponsored or cosponsored this act in his or her official
28 capacity to intervene as a matter of right in any case in which the
29 constitutionality of this act is challenged.

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31 SECTION 4. DO NOT CODIFY. EFFECTIVE DATE. This act is effective on
32 and after January 1, 2018.

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34 */s/G. Stubblefield*