

1 State of Arkansas *As Engrossed: H3/15/13 H4/1/13*

2 89th General Assembly

# A Bill

3 Regular Session, 2013

SENATE BILL 417

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5 By: Senator J. Hendren

6 *By: Representative Steel*

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## For An Act To Be Entitled

9 AN ACT TO MODIFY THE DEFINITION OF AN UNBORN CHILD IN  
10 THE CRIMINAL CODE AND IN WRONGFUL DEATH ACTIONS; AND  
11 FOR OTHER PURPOSES.

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14

### Subtitle

15

TO MODIFY THE DEFINITION OF AN UNBORN  
16 CHILD IN THE CRIMINAL CODE AND IN  
17 WRONGFUL DEATH ACTIONS.

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19

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

21

22 SECTION 1. Arkansas Code § 5-1-102(13), concerning the definition of  
23 "person" in the criminal code, is amended to read as follows:

24 (13)(A) "Person", "actor", "defendant", "he", "she", "her", or  
25 "him" includes:

26

(i) Any natural person; and

27

(ii) When appropriate, an "organization" as defined

28

in § 5-2-501.

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(B)(i)(a) As used in §§ 5-10-101 – 5-10-105, "person" also  
30 includes an unborn child in utero at any stage of development.

31

(b) "Unborn child" means ~~a living fetus of~~  
32 ~~twelve (12) weeks or greater gestation~~ offspring of human beings from  
33 conception until birth.

34

(ii) *This subdivision (13)(B) does not apply to:*

35

(a) *An act that causes the death of an unborn*  
36 *child in utero if the act was committed during a legal abortion to which the*



1 woman consented, including an abortion performed to remove an ectopic  
 2 pregnancy or other nonviable pregnancy when the embryo is not going to  
 3 develop further;

4 (b) *An act that is committed pursuant to a*  
 5 *usual and customary standard of medical practice during diagnostic testing or*  
 6 *therapeutic treatment; ~~or~~*

7 (c) *An act that is committed in the course of*  
 8 *medical research, experimental medicine, or an act deemed necessary to save*  
 9 *the life or preserve the health of the woman;*

10 (d) Assisted reproduction technology activity,  
 11 procedure, or treatment; or

12 (e) An act occurring before transfer to the  
 13 uterus of the woman of an embryo created through in vitro fertilization.

14 (iii) *Nothing in this subdivision (13)(B) shall be*  
 15 *construed to allow the charging or conviction of a woman with any criminal*  
 16 *offense in the death of her own unborn child in utero;*

17  
 18 SECTION 2. Arkansas Code § 16-62-102(a), concerning survival of  
 19 wrongful death actions, is amended to read as follows:

20 (a)(1) Whenever the death of a person or ~~a viable fetus~~ an unborn  
 21 child as defined in § 5-1-102 is caused by a wrongful act, neglect, or  
 22 default and the act, neglect, or default ~~is such as~~ would have entitled the  
 23 party injured to maintain an action and recover damages in respect thereof if  
 24 death had not ensued, then and in every such case, the person or company or  
 25 corporation that would have been liable if death had not ensued shall be  
 26 liable to an action for damages, notwithstanding the death of the person or  
 27 the ~~viable fetus-unborn child as defined in § 5-1-102~~ injured, and although  
 28 the death may have been caused under such circumstances as amount in law to a  
 29 felony.

30 (2) The cause of action created in this subsection shall survive  
 31 the death of the person wrongfully causing the death of another and may be  
 32 brought, maintained, or revived against the personal representatives of the  
 33 person wrongfully causing the death of another.

34 (3) ~~No person shall be~~ A person is not liable under this  
 35 subsection when the death of the ~~fetus~~ unborn child results from:

36 (A) a legal abortion, including an abortion performed to

1 remove an ectopic pregnancy or other nonviable pregnancy where the embryo is  
2 not going to develop further;

3 (B) ~~or from the~~ The fault of the pregnant woman carrying  
4 the fetus ~~unborn child~~;

5 (C) Assisted reproduction technology activity, procedure,  
6 or treatment;

7 (D) Actions occurring before transfer to the uterus of the  
8 woman of an embryo created through in vitro fertilization; or

9 (E) A woman or her healthcare provider using contraception  
10 approved by the United States Food and Drug Administration.

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13 /s/J. Hendren  
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16 **APPROVED: 04/10/2013**  
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