

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

As Engrossed: S3/23/11 S3/30/11

# A Bill

SENATE BILL 843

5 By: Senator Rapert  
6

## For An Act To Be Entitled

8 *AN ACT TO CREATE THE ARKANSAS HUMAN HEARTBEAT*  
9 *PROTECTION ACT; TO PROTECT UNBORN CHILDREN; AND FOR*  
10 *OTHER PURPOSES.*

## Subtitle

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14 *AN ACT TO CREATE THE ARKANSAS HUMAN*  
15 *HEARTBEAT PROTECTION ACT AND TO PROTECT*  
16 *UNBORN CHILDREN.*

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 *SECTION 1. Arkansas Code Title 20, Chapter 16 is amended to add an*  
22 *additional subchapter to read as follows:*

23 *Subchapter 13 – Arkansas Human Heartbeat Protection Act*

24  
25 *20-16-1301. Title.*

26 *This subchapter shall be known and may be cited as the "Arkansas Human*  
27 *Heartbeat Protection Act".*

28  
29 *20-16-1302. Legislative findings.*

30 *The General Assembly finds that according to contemporary medical*  
31 *research:*

32 *(1) As many as thirty percent (30%) of natural pregnancies end*  
33 *in spontaneous miscarriage;*

34 *(2) Less than five percent (5%) of all natural pregnancies end*  
35 *in spontaneous miscarriage after detection of fetal cardiac activity;*

36 *(3) Over ninety percent (90%) of in vitro pregnancies survive*



1 the first trimester if cardiac activity is detected in the gestational sac;

2 (4) Nearly ninety percent (90%) of in vitro pregnancies do not  
3 survive the first trimester if cardiac activity is not detected in the  
4 gestational sac;

5 (5) Fetal heartbeat, therefore, has become a key medical  
6 predictor that an unborn human individual will reach viability and live  
7 birth; and

8 (6) Cardiac activity begins at a biologically identifiable  
9 moment in time, normally when the fetal heart is formed in the gestational  
10 sac.

11  
12 23-16-1303. Definitions.

13 As used in this subchapter:

14 (1) "Cardiac activity" means the steady and repetitive rhythmic  
15 contraction of the fetal heart within the gestational sac;

16 (2) "Contraceptive" means a device, drug, or chemical that  
17 prevents conception;

18 (3) "Fetus" means the human offspring developing during  
19 pregnancy from the moment of conception and includes the embryonic stage of  
20 development;

21 (4) "Gestational sac" means the extraembryonic membranes that  
22 envelop the fetus, typically visible by ultrasound after the fourth week of  
23 pregnancy;

24 (5) "Heartbeat" means cardiac activity;

25 (6) "Human individual" means an individual organism of the  
26 species homo sapiens;

27 (7) "Pregnancy" means the human female reproductive condition  
28 that begins with fertilization when the female is carrying the developing  
29 human offspring and is calculated from the first day of the last menstrual  
30 period of the human female; and

31 (8) "Spontaneous miscarriage" means the natural or accidental  
32 termination of a pregnancy and the expulsion of the fetus, typically caused  
33 by genetic defects in the fetus or physical abnormalities in the mother.

34  
35 20-16-1304. Testing for heartbeat.

36 (a) A person authorized to perform abortions under Arkansas law shall

1 not perform an abortion on a pregnant woman before the person tests the  
2 pregnant woman to determine whether the fetus the pregnant woman is carrying  
3 possesses a detectible heartbeat.

4 (b) A person authorized to perform abortions under Arkansas law shall  
5 perform a detection of a heartbeat of an unborn human individual according to  
6 standard medical practice, including the use of medical devices as determined  
7 by standard medical practice.

8 (c)(1) The State Board of Health may adopt rules based on standard  
9 medical practice for testing for the fetal heartbeat of an unborn human  
10 individual.

11 (2) Rules adopted under subdivision (c)(1) of this section shall  
12 specify that a test for fetal heartbeat is not required in the case of a  
13 medical emergency.

14  
15 20-16-1305. Informed consent.

16 (a) This subchapter applies to all abortions not prohibited under  
17 Arkansas law except as under § 20-16-1307.

18 (b) If a fetal heartbeat is detected, the person performing the  
19 intended abortion shall inform the pregnant woman in writing no later than  
20 twenty-four (24) hours before the performance of the intended abortion:

21 (1) That the unborn human individual that the pregnant woman is  
22 carrying possesses a heartbeat; and

23 (2) Of the statistical probability of bringing the unborn human  
24 individual to term based on the gestational age of the unborn human  
25 individual possessing a detectible heartbeat.

26 (c) If a heartbeat has been detected, then no later than twenty-four  
27 (24) hours before the performance of the intended abortion, the pregnant  
28 woman shall sign a form acknowledging that she has received information that:

29 (1) The unborn human individual that she is carrying possesses a  
30 heartbeat; and

31 (2) She is aware of the statistical probability of her pregnancy  
32 coming to term.

33 (d) The State Board of Health may adopt rules to define, based upon  
34 available medical evidence, the statistical probability of bringing an unborn  
35 human individual to term based on the gestational age of the unborn human  
36 individual possessing a detectible heartbeat.

1 (e) This section does not affect any other provision of Arkansas law  
2 relating to informed consent.

3  
4 20-16-1306. Exemptions.

5 (a) A person does not violate this subchapter if the person:

6 (1) Performs a medical procedure designed to or intended to  
7 prevent the death of a pregnant woman or in reasonable medical judgment, to  
8 preserve the life or health of the pregnant woman.

9 (2) Has either

10 (A) Undertaken an examination for the presence of a  
11 heartbeat in the fetus utilizing standard medical practice and the  
12 examination does not reveal a heartbeat; or

13 (B) Been informed by a medical professional who has  
14 undertaken the examination for fetal heartbeat that the examination did not  
15 reveal a fetal heartbeat.

16 (b) This section does not affect any other provision of Arkansas law  
17 that restricts the performance of abortion by a particular method or during a  
18 particular stage of a pregnancy.

19  
20 20-16-1307. Interpretation.

21 This subchapter does not:

22 (1) Subject a pregnant female upon whom an abortion is performed  
23 or attempted to be performed to any criminal prosecution or civil penalty; or

24 (2) Prohibit the sale, use, prescription, or administration of a  
25 measure, drug, or chemical designed for contraceptive purposes.

26  
27 20-16-1308. Tolling of effective date.

28 If a state or federal court of competent jurisdiction voids a provision  
29 of this subchapter as unconstitutional, the effective date of that provision  
30 shall be tolled until:

31 (1) That provision has been upheld as valid by an appellate  
32 tribunal; or

33 (2) The Attorney General certifies in an opinion to the Governor  
34 that due to a subsequent decision by the United States Supreme Court, it is  
35 reasonably probable that the provision would be upheld as constitutional by a  
36 court of competent jurisdiction.

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*/s/Rapert*