

State of Arkansas

*As Engrossed: S1/30/13 H2/8/13*

89th General Assembly

# A Bill

Regular Session, 2013

SENATE BILL 134

By: Senators Rapert, Bledsoe, Caldwell, A. Clark, J. Dismang, J. English, Files, J. Hendren, Hester, Hickey, Holland, J. Hutchinson, Irvin, J. Key, B. King, D. Sanders, G. Stubblefield, E. Williams, J. Woods

By: Representatives Clemmer, Alexander, D. Altes, Bell, Dale, Davis, Deffenbaugh, Dotson, C. Douglas, Farrer, Fite, Harris, Hobbs, House, Hutchison, Lea, Mayberry, D. Meeks, Neal, Scott, Westerman, Womack

## For An Act To Be Entitled

*AN ACT TO CREATE THE ARKANSAS HUMAN HEARTBEAT PROTECTION ACT; TO PROTECT UNBORN CHILDREN; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.*

## Subtitle

*TO CREATE THE ARKANSAS HUMAN HEARTBEAT PROTECTION ACT; TO PROTECT UNBORN CHILDREN; AND TO DECLARE AN EMERGENCY.*

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

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

Subchapter 13 – Arkansas Human Heartbeat Protection Act

20-16-1301. Title.

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

20-16-1302. Definitions.

As used in this subchapter:

(1) "Contraceptive" means a device, drug, or chemical that



1 prevents fertilization;

2 (2) "Fetus" means the human offspring developing during  
3 pregnancy from the moment of fertilization and includes the embryonic stage  
4 of development;

5 (3) "Gestational sac" comprises the extraembryonic membranes  
6 that envelop the fetus, typically visible by ultrasound after the fourth week  
7 of pregnancy;

8 (4) "Heartbeat" means cardiac activity, the steady and  
9 repetitive rhythmic contraction of the fetal heart within the gestational  
10 sac;

11 (5) "Human individual" means an individual organism of the  
12 species *Homo sapiens*;

13 (6) "Major bodily function" includes without limitation,  
14 functions of the immune system, normal cell growth, and digestive, bowel,  
15 bladder, neurological, brain, respiratory, circulatory, endocrine, and  
16 reproductive functions;

17 (7) "Medical emergency" means a condition in which an abortion  
18 is necessary to preserve the life of the pregnant woman whose life is  
19 endangered by a physical disorder, physical illness, or physical injury,  
20 including a life-endangering physical condition caused by or arising from the  
21 pregnancy itself, or when continuation of the pregnancy will create a serious  
22 risk of substantial and irreversible impairment of a major bodily function of  
23 the pregnant woman;

24 (8) "Pregnancy" means the human female reproductive condition  
25 that begins with fertilization when the female is carrying the developing  
26 human offspring and is calculated from the first day of the last menstrual  
27 period of the human female; and

28 (9) "Spontaneous miscarriage" means the natural or accidental  
29 termination of a pregnancy and the expulsion of the fetus, typically caused  
30 by genetic defects in the fetus or physical abnormalities in the mother; and

31 (10) "Viability" means a medical condition that begins with a  
32 detectible fetal heartbeat.

33 20-16-1303. Testing for heartbeat.

34 (a) A person authorized to perform abortions under Arkansas law shall  
35 not perform an abortion on a pregnant woman before the person tests the  
36 pregnant woman to determine whether the fetus that the pregnant woman is

1 carrying possesses a detectible heartbeat.

2 (b)(1) A person authorized to perform abortions under Arkansas law  
3 shall perform an abdominal ultrasound test necessary to detect a heartbeat of  
4 an unborn human individual according to standard medical practice, including  
5 the use of medical devices as determined by standard medical practice.

6 (2) Tests performed under subdivision (b)(1) of this section  
7 shall be approved by the Arkansas State Medical Board.

8 (c)(1) The Arkansas State Medical Board shall adopt rules:

9 (A)(i) Based on standard medical practice for testing for the fetal  
10 heartbeat of an unborn human individual.

11 (ii) Rules adopted under subdivision (c)(1) of this  
12 section shall specify that a test for fetal heartbeat is not required in the  
13 case of a life-threatening medical emergency; and

14 (B) To define, based on available medical evidence, the  
15 statistical probability of bringing an unborn human individual to term based  
16 on the gestational age of the unborn human individual possessing a detectible  
17 heartbeat.

18 (d) If a fetal heartbeat is detected during the test required under  
19 this section, the person performing the test shall inform the pregnant woman  
20 in writing:

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

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; and

26 (3) An abortion is prohibited under §20-16-1304.

27 (e) If a heartbeat has been detected, the pregnant woman shall sign a  
28 form acknowledging that she has received the information required under  
29 subsection (d) of this section.

30  
31 20-16-1304. Prohibitions.

32 (a) A person authorized to perform abortions under Arkansas law shall  
33 not perform an abortion on a pregnant woman with the specific intent of  
34 causing or abetting the termination of the life of an unborn human individual  
35 whose heartbeat has been detected under § 20-16-1303 and is twelve (12) weeks  
36 or greater gestation.

1 (b) A violation of this section is a Class D felony.

2  
3 20-16-1305. Exemptions.

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

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

8 (2)(A) Has undertaken an examination for the presence of a  
9 heartbeat in the fetus utilizing standard medical practice; and

10 (B)(i) The examination does not reveal a heartbeat; or

11 (ii) Has been informed by a medical professional who  
12 has undertaken the examination for fetal heartbeat that the examination did  
13 not reveal a fetal heartbeat.

14 (b) This subchapter does not apply to:

15 (1) An abortion performed to save the life of the mother; or

16 (2) A pregnancy that results from rape under § 5-14-103 or  
17 incest under § 5-26-202.

18  
19 20-16-1306. Interpretation.

20 This subchapter does not:

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

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

25  
26 20-16-1307. Tolling of effective date.

27 If a state or federal court of competent jurisdiction voids a provision  
28 of this subchapter as unconstitutional, the effective date of that provision  
29 shall be tolled until that provision has been upheld as valid by an appellate  
30 tribunal.

31  
32 SECTION 2. *EMERGENCY CLAUSE. It is found and determined by the*  
33 *General Assembly of the State of Arkansas that abortions are currently being*  
34 *performed in Arkansas on unborn children with detectable heartbeats; and*  
35 *that this act is immediately necessary because to protect the lives of unborn*  
36 *children with detectable heartbeats. Therefore, an emergency is declared to*

1 exist, and this act being immediately necessary for the preservation of the  
2 public peace, health, and safety shall become effective on:

3 (1) The date of its approval by the Governor;

4 (2) If the bill is neither approved nor vetoed by the Governor,  
5 the expiration of the period of time during which the Governor may veto the  
6 bill; or

7 (3) If the bill is vetoed by the Governor and the veto is  
8 overridden, the date the last house overrides the veto.

9  
10 /s/Rapert  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36