

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

# A Bill

SENATE BILL 148

5 By: Senators G. Stubblefield, Hester, B. Johnson  
6 By: Representatives C. Fite, Gates, Cozart, Gonzales, D. Meeks, Miller  
7

## For An Act To Be Entitled

9 AN ACT TO CREATE THE OFFENSE OF INFANTICIDE; TO  
10 CREATE BORN-ALIVE INFANT PROTECTION; AND FOR OTHER  
11 PURPOSES.  
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## Subtitle

14 TO CREATE THE OFFENSE OF INFANTICIDE; AND  
15 TO CREATE BORN-ALIVE INFANT PROTECTION.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. DO NOT CODIFY. Legislative findings and purpose.

22 (a) The General Assembly finds that:

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

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

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

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

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

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

36 (2) Mandate that healthcare professionals give medically



1 appropriate and reasonable life-saving and life-sustaining medical care and  
2 treatment to all infants who are born alive.

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4 SECTION 2. Arkansas Code Title 5, Chapter 61, Subchapter 1, is amended  
5 to add an additional section to read as follows:

6 5-61-103. Infanticide.

7 (a) A physician, nurse, or other licensed healthcare professional  
8 commits the offense of infanticide if:

9 (1) He or she knowingly fails to provide medically appropriate  
10 and reasonable care and treatment to a infant who is born alive; and

11 (2) The infant who is born alive dies as a result of the failure  
12 described in subdivision (a)(1) of this section.

13 (b) Infanticide is a Class D felony.

14 (c) It is a defense to a prosecution under this section that the  
15 parent or legal guardian of the infant who is born alive did not give consent  
16 for or refuses the medically appropriate and reasonable care and treatment.

17 (d) As used in this section:

18 (1) "Infant who is born alive" means the same as defined in §  
19 20-16-604; and

20 (2) "Infant" means the same as defined in § 20-16-604.

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

24 20-16-604. Born-alive infant protection – Cause of action.

25 (a) As used in this section:

26 (1) "Abortion" means the use or prescription of an instrument,  
27 medicine, drug, or another substance or device to terminate the pregnancy of  
28 a woman known to be pregnant with an intention other than to increase the  
29 probability of a live birth, to preserve the life or health of the child  
30 after live birth, or to remove a dead unborn child who died in utero as the  
31 result of natural causes, accidental trauma, or a criminal assault on the  
32 pregnant woman or her unborn child, and that causes the premature termination  
33 of the pregnancy;

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

1                   (A) Breathing;

2                   (B) Heartbeat;

3                   (C) Umbilical cord pulsation; or

4                   (D) Definite movement of voluntary muscles; and

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

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

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

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

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

15                   (c) A physician or other healthcare professional shall not deprive an  
16 infant of medically appropriate and reasonable medical care and treatment or  
17 surgical care.

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

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

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

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

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

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

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

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

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

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

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

4                   (B) Call 911 for an emergency transfer of the infant to  
5 the hospital for medically appropriate and reasonable care and treatment for  
6 the infant.

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

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

15           (h) The infant who is born alive upon birth immediately shall become a  
16 ward of the state if:

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

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

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

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

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

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

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

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

35           (k) This section does not:

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

1           (2) Affect existing federal or state law regarding abortion; or  
2           (3) Affirm, deny, expand, or contract the legal status or legal  
3 right applicable to any person prior to being born alive.

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5           SECTION 4. DO NOT CODIFY. Right of intervention.

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

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11           SECTION 5. DO NOT CODIFY. EFFECTIVE DATE. This act is effective on  
12 and after January 1, 2018.