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4

A Bill

SENATE BILL 13

5 By: Senators Rapert, Hester, B. Ballinger, Caldwell, T. Garner, K. Hammer, G. Stubblefield
6 By: Representatives Bentley, M. Berry, Barker, Payton, Miller, Womack, Pilkington, Furman, Ladyman,
7 Lynch, Cozart, Richmond, Lowery, C. Cooper, Cloud, Speaks, M. McElroy, B. Smith, Tosh, Wooten,
8 Rye, S. Smith, Penzo
9

For An Act To Be Entitled

11 AN ACT TO CREATE THE ARKANSAS HUMAN HEARTBEAT AND
12 HUMAN LIFE CIVIL JUSTICE ACT; TO REGULATE ABORTION IN
13 ARKANSAS; TO SAVE THE LIVES OF UNBORN CHILDREN AND
14 PROTECT THE HEALTH OF WOMEN THROUGH CIVIL LIABILITY
15 FOR VIOLATIONS OF ABORTION LAWS; TO DECLARE AN
16 EMERGENCY; AND FOR OTHER PURPOSES.
17
18

Subtitle

19 TO CREATE THE ARKANSAS HUMAN HEARTBEAT
20 AND HUMAN LIFE CIVIL JUSTICE ACT; TO SAVE
21 THE LIVES OF UNBORN CHILDREN AND PROTECT
22 THE HEALTH OF WOMEN THROUGH CIVIL
23 LIABILITY; AND TO DECLARE AN EMERGENCY.
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

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

31 Subchapter 26 – Arkansas Human Heartbeat and Human Life Civil Justice Act
32

33 20-16-2601. Title.

34 This subchapter shall be known and may be cited as the "Arkansas Human
35 Heartbeat and Human Life Civil Justice Act".
36



1 20-16-2602. Legislative findings.

2 (a) The General Assembly finds that:

3 (1) It is time for the United States Supreme Court to redress
4 and correct the grave injustice against humanity which is being perpetuated
5 by its decisions in Roe v. Wade, Doe v. Bolton, and Planned Parenthood v.
6 Casey;

7 (2) The United States Supreme Court committed a grave injustice
8 against humanity in the Dred Scott decision by denying personhood to a class
9 of human beings, African-Americans;

10 (3) The United States Supreme Court also committed a grave
11 injustice against humanity by upholding the “separate but equal” doctrine in
12 Plessy v. Ferguson, which withdrew legal protection from a class of human
13 beings who were persons under the United States Constitution, African-
14 Americans;

15 (4) An injustice against humanity occurs when a government
16 withdraws legal protection from a class of human beings, resulting in severe
17 deprivation of their rights, up to and including death;

18 (5) In Brown v. Board of Education, the United States Supreme
19 Court corrected its own grave injustice against humanity created in Plessy v.
20 Ferguson by overruling and abolishing the fifty-eight-year-old “separate but
21 equal” doctrine, thus giving equal legal rights to African-Americans;

22 (6) Under the doctrine of stare decisis, the three (3) abortion
23 cases mentioned in subdivision (a)(1) of this section meet the test for when
24 a case should be overturned by the United States Supreme Court because of
25 significant changes in facts or laws, including without limitation the
26 following:

27 (A) The cases have not been accepted by scholars, judges,
28 and the American people, evidenced by the fact that these cases are still the
29 most intensely controversial cases in American history and at the present
30 time;

31 (B) New scientific advances have demonstrated since 1973
32 that life begins at the moment of conception and that the child in a woman’s
33 womb is a human being;

34 (C) Scientific evidence and personal testimonies document
35 the massive harm that abortion causes to women;

36 (D) The laws in all fifty (50) states have now changed

1 through "Safe Haven" laws to eliminate all burdens of child care from women
2 who do not want to care for a child; and

3 (E) Public attitudes favoring adoption have created a
4 culture of adoption in the United States, with many families waiting long
5 periods of time to adopt newborn infants;

6 (7) Before the United States Supreme Court decision of Roe v.
7 Wade, Arkansas had already enacted prohibitions on abortions under § 5-61-101
8 et seq., and authorized the refusal to perform, participate, consent, or
9 submit to an abortion under § 20-16-601;

10 (8) Arkansas Constitution, Amendment 68, states that "the policy
11 of Arkansas is to protect the life of every unborn child from conception
12 until birth" and that "no public funds will be used to pay for any abortion,
13 except to save the mother's life";

14 (9) Arkansas passed the Arkansas Human Heartbeat Protection Act,
15 § 20-16-1301 et seq., in 2013, which shows the will of the Arkansas people to
16 save the lives of unborn children;

17 (10) Arkansas has continued to pass additional legislation in
18 2015, 2017, 2019, and 2021 that further shows the will of the Arkansas people
19 to save the lives of unborn children;

20 (11)(A) Since the decision of Roe v. Wade, approximately sixty
21 million sixty-nine thousand nine hundred seventy-one (60,069,971) abortions
22 have ended the lives of unborn children.

23 (B) In 2015, six hundred thirty-eight thousand one hundred
24 sixty-nine (638,169) legal induced abortions were reported to the Centers for
25 Disease Control and Prevention from forty-nine (49) reporting areas in the
26 United States.

27 (C) The Department of Health reports that two thousand
28 nine hundred sixty-three (2,963) abortions took place in Arkansas during
29 2019, including abortions performed on out-of-state residents;

30 (12) Arkansas has a compelling interest from the outset of a
31 woman's pregnancy in protecting the health of the woman and life of an unborn
32 child; and

33 (13) The State of Arkansas urgently pleads with the United
34 States Supreme Court to do the right thing, as they did in one of their
35 greatest cases, Brown v. Board of Education, which overturned a fifty-eight-
36 year-old precedent of the United States, and reverse, cancel, overturn, and

1 annul Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey.

2 (b) It is the intent of this subchapter to ensure that abortion in
 3 Arkansas is abolished and to establish civil liability for the violation of
 4 abortion laws in order to protect the lives of unborn children.

5
 6 20-16-2603. Definitions.

7 As used in this subchapter:

8 (1)(A) "Abortion" means the act of using, prescribing,
 9 administering, procuring, or selling of any instrument, medicine, drug, or
 10 any other substance, device, or means with the purpose to terminate the
 11 pregnancy of a woman, with knowledge that the termination by any of those
 12 means will with reasonable likelihood cause the death of an unborn child.

13 (B) An act under subdivision (1)(A) of this section is not
 14 an abortion if the act is performed with the purpose to:

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

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

19 (iii) Remove an ectopic pregnancy;

20 (2) "Entity" means a corporation, partnership, limited liability
 21 company, association, joint venture, public corporation, any other legal or
 22 commercial entity, fiduciary, or any organized group of persons whether
 23 incorporated or not, including without limitation a church or religious
 24 organization;

25 (3) "Fertilization" means the fusion of a human spermatozoon
 26 with a human ovum;

27 (4) "Medical emergency" means a condition in which an abortion
 28 is necessary to preserve the life of a pregnant woman whose life is
 29 endangered by a physical disorder, physical illness, or physical injury,
 30 including a life-endangering physical condition caused by or arising from the
 31 pregnancy itself; and

32 (5) "Unborn child" means an individual organism of the species
 33 Homo sapiens from fertilization until live birth.

34
 35 20-16-2604. Prohibition.

36 (a) A person shall not purposely perform or attempt to perform an

1 abortion except to save the life of a pregnant woman in a medical emergency.

2 (b) This section does not:

3 (1) Authorize the charging or conviction of a woman with any
4 criminal offense in the death of her own unborn child;

5 (2) Permit a civil liability to be assessed against a woman upon
6 whom an abortion is performed in violation of this subchapter; or

7 (3) Prohibit the sale, use, prescription, or administration of a
8 contraceptive measure, drug, or chemical if the contraceptive measure, drug,
9 or chemical is administered before the time when a pregnancy could be
10 determined through conventional medical testing and if the contraceptive
11 measure, drug, or chemical is sold, used, prescribed, or administered in
12 accordance with manufacturer instructions.

13 (c) It is an affirmative defense under this section if a licensed
14 physician provides medical treatment to a pregnant woman which results in the
15 accidental or unintentional physical injury or death to the unborn child.

16
17 20-16-2605. Civil liability for violation of aiding or abetting
18 violation.

19 (a) Any resident of this state or entity located in this state, other
20 than an officer or employee of a state or local government in this state, may
21 bring a civil action against any person, entity, or affiliate of an entity
22 who:

23 (1) Performs or induces an abortion in violation of this
24 subchapter;

25 (2) Knowingly engages in conduct that directly aids or abets the
26 performance or inducement of an abortion, including paying for or reimbursing
27 the costs of an abortion through insurance or otherwise, if the abortion is
28 performed or induced in violation of this subchapter, regardless of whether
29 the person knew or should have known that the abortion would be performed or
30 induced in violation of this subchapter; or

31 (3) Intends to engage in the conduct described in subdivision
32 (a)(1) or subdivision (a)(2) of this section.

33 (b) If a claimant prevails in an action brought under this section,
34 the court shall award:

35 (1) Injunctive relief sufficient to prevent the defendant from
36 violating this subchapter or engaging in acts that aid or abet violations of

1 this subchapter;

2 (2) Statutory damages in an amount of not less than ten thousand
3 dollars (\$10,000) for each abortion that the defendant performed or induced
4 in violation of this subchapter, and for each abortion performed or induced
5 in violation of this subchapter that the defendant aided or abetted; and

6 (3) Costs and attorney's fees.

7 (c) Notwithstanding subsection (b) of this section, a court shall not
8 award relief under this section in response to a violation of subdivision
9 (a)(1) or subdivision (a)(2) of this section if the defendant demonstrates
10 that he or she previously paid the full amount of statutory damages under
11 subdivision (b)(2) of this section in a previous action for that particular
12 abortion performed or induced in violation of this subchapter, or for the
13 particular conduct that aided or abetted an abortion performed or induced in
14 violation of this subchapter.

15 (d) Notwithstanding any other law, a person may bring an action under
16 this section not later than four (4) years after the date the cause of action
17 accrues.

18 (e) Notwithstanding any other law, the following are not a defense to
19 an action brought under this section:

20 (1) Ignorance or mistake of law;

21 (2) A defendant's belief that the requirements of this
22 subchapter are unconstitutional;

23 (3) A defendant's reliance on any court decision that has been
24 overruled on appeal or by a subsequent court, even if that court decision has
25 not been overruled when the defendant engaged in conduct that violates this
26 subchapter;

27 (4) A defendant's reliance on any state or federal court
28 decision that is not binding on the court in which the action has been
29 brought;

30 (5) Nonmutual issue preclusion or nonmutual claim preclusion;

31 (6) The consent of the unborn child's mother to the abortion; or

32 (7) Any claim that the enforcement of this subchapter or the
33 imposition of civil liability against the defendant will violate the
34 constitutional rights of third parties, except as provided by § 20-16-2606.

35 (f)(1) It is an affirmative defense if:

36 (A) A person sued under subdivision (a)(2) of this section

1 reasonably believed, after conducting a reasonable investigation, that the
2 physician or person performing or inducing the abortion had complied or would
3 comply with this subchapter; or

4 (B) A person sued under subdivision (a)(3) of this section
5 reasonably believed, after conducting a reasonable investigation, that the
6 physician or person performing or inducing the abortion would comply with
7 this subchapter.

8 (2) The defendant has the burden of proving an affirmative
9 defense under subdivision (f)(1)(A) or subdivision (f)(1)(B) of this section
10 by a preponderance of the evidence.

11 (g) This section does not impose liability on any speech or conduct
12 protected by the First Amendment of the United States Constitution, as made
13 applicable to the states through the United States Supreme Court's
14 interpretation of the Fourteenth Amendment of the United States Constitution,
15 or by Arkansas Constitution, Article 2, § 6.

16 (h)(1) Notwithstanding any other law, this state, a state official, or
17 a district or county attorney shall not intervene in an action brought under
18 this section.

19 (2) This subsection does not prohibit a person described by this
20 subsection from filing an amicus curiae brief in the action.

21 (i) Notwithstanding any other law, a court may not award costs or
22 attorney's fees under the Arkansas Rules of Civil Procedure or any other rule
23 adopted by the Supreme Court to a defendant in an action brought under this
24 section.

25 (j) Notwithstanding any other law, a civil action under this section
26 shall not be brought by a person who impregnated the woman who obtained an
27 abortion through an act of rape, sexual assault, or incest under state law.

28
29 20-16-2606. Civil liability – Undue burden defense limitations.

30 (a) A defendant against whom an action is brought under § 20-16-2605
31 does not have standing to assert the rights of women seeking to obtain
32 abortions as a defense to liability under § 20-16-2605 unless:

33 (1) The United States Supreme Court holds that the courts of
34 this state must confer standing on the defendant to assert the third-party
35 rights of women seeking to obtain abortions in state court as a matter of
36 federal constitutional law; or

1 (2) The defendant has standing to assert the rights of women
2 seeking to obtain abortions under the tests for third-party standing
3 established by the United States Supreme Court.

4 (b) A defendant in an action brought under § 20-16-2605 may assert an
5 affirmative defense to liability under this section if:

6 (1) The defendant has standing to assert the third-party rights
7 of women seeking to obtain abortions according to subsection (a) of this
8 section; and

9 (2) The defendant demonstrates that the relief sought by the
10 claimant will impose an undue burden on women seeking to obtain abortions.

11 (c) A court shall not find an undue burden under subsection (b) of
12 this section unless the defendant introduces evidence proving that:

13 (1) An award of relief will prevent women from obtaining
14 abortions; or

15 (2) An award of relief will place a substantial obstacle for
16 women seeking to obtain abortions.

17 (d) A defendant may not establish an undue burden under this section
18 by:

19 (1) Merely demonstrating that an award of relief will prevent
20 women from obtaining support or assistance, financial or otherwise, from
21 others in the women's efforts to obtain abortions; or

22 (2) Arguing or attempting to demonstrate that an award of relief
23 against other defendants or other potential defendants will impose an undue
24 burden on the women seeking to obtain abortions.

25 (e) The affirmative defense under subsection (b) of this section is
26 not available if the United States Supreme Court overrules Roe v. Wade, 410
27 U.S. 113 (1973), or Planned Parenthood v. Casey, 505 U.S. 833 (1992),
28 regardless of whether the conduct on which the cause of action is based under
29 § 20-16-2605 occurred before the United States Supreme Court overruled either
30 of those decisions.

31 (f) This section does not in any way limit or preclude a defendant
32 from asserting the defendant's personal constitutional rights as a defense to
33 liability under § 20-16-2605, and a court may not award relief under § 20-16-
34 2605 if the conduct for which the defendant has been sued was an exercise of
35 state or federal constitutional rights that personally belong to the
36 defendant.

1
2 20-16-2607. Civil liability – Venue.

3 (a) Notwithstanding any other law, a civil action brought under § 20-
4 16-2605 shall be brought in:

5 (1) The county in which all or a substantial part of the events
6 or omissions giving rise to the claim occurred;

7 (2) The county of residence for any one (1) of the natural
8 person defendants at the time the cause of action accrued;

9 (3) The county of the principal office in this state of any one
10 (1) of the defendants that is not a natural person; or

11 (4) The county of residence for the claimant if the claimant is
12 a natural person residing in this state.

13 (b) If a civil action is brought under § 20-16-2605 in any one (1) of
14 the venues described in subsection (a) of this section, the action shall not
15 be transferred to a different venue without the written consent of all
16 parties.

17
18 20-16-2608. Award of attorney’s fees in actions challenging abortion
19 laws.

20 (a) Notwithstanding any other law, any person, including an entity,
21 attorney, or law firm, that seeks declaratory or injunctive relief to prevent
22 this state, a political subdivision of this state, any governmental entity or
23 public official in this state, or any person in this state from enforcing any
24 statute, ordinance, rule, regulation, or any other type of law that regulates
25 or restricts abortion or that limits taxpayer funding for individuals or
26 entities that perform or promote abortions, in any state or federal court, or
27 that represents any litigant seeking such relief in any state or federal
28 court, is jointly and severally liable to pay the costs and attorney’s fees
29 of the prevailing party.

30 (b) For purposes of this section, a party is considered a prevailing
31 party if a state or federal court:

32 (1) Dismisses any claim or cause of action brought against the
33 party that seeks the declaratory or injunctive relief described in subsection
34 (a) of this section, regardless of the reason for the dismissal; or

35 (2) Enters judgment in the party’s favor on any such claim or
36 cause of action.

1 (c) Regardless of whether a prevailing party sought to recover costs
 2 or attorney's fees in the underlying action, a prevailing party under this
 3 section may bring a civil action to recover costs and attorney's fees against
 4 a person, including an entity, attorney, or law firm, that sought declaratory
 5 or injunctive relief described in subsection (a) of this section not later
 6 than three (3) years after the date on which, as applicable:

7 (1) The dismissal or judgment described in subsection (b) of
 8 this section becomes final on the conclusion of appellate review; or

9 (2) The time for seeking appellate review expires.

10 (d) It is not a defense to an action brought under subsection (c) of
 11 this section that:

12 (1) A prevailing party under this section failed to seek
 13 recovery of costs or attorney's fees in the underlying action;

14 (2) The court in the underlying action declined to recognize or
 15 enforce the requirements of this section; or

16 (3) The court in the underlying action held that any provisions
 17 of this section are invalid, unconstitutional, or preempted by federal law,
 18 notwithstanding the doctrines of issue or claim preclusion.

19
 20 SECTION 2. DO NOT CODIFY. Construction.

21 It is the specific intent of this act that the provisions of this act
 22 are supplemental to, cumulative to, and in addition to existing laws, civil
 23 or criminal, and shall not be construed to amend, repeal, or otherwise affect
 24 those existing laws, including without limitation:

25 (1) The Arkansas Human Life Protection Act, § 5-61-301 et seq.;

26 (2) The Arkansas Unborn Child Protection Act, § 5-61-401 et
 27 seq.;

28 (3) Section 20-16-603;

29 (4) Section 20-16-604;

30 (5) Section 20-16-701 et seq.;

31 (6) The Unborn Child Pain Awareness and Prevention Act, § 20-16-
 32 1101 et seq.;

33 (7) The Partial-Birth Abortion Ban Act, § 20-16-1201 et seq.;

34 (8) The Arkansas Human Heartbeat Protection Act, § 20-16-1301 et
 35 seq.;

36 (9) The Pain-Capable Unborn Child Protection Act, § 20-16-1401

1 et seq.;

2 (10) The Abortion-Inducing Drugs Safety Act, § 20-16-1501 et
3 seq.;

4 (11) The Arkansas Unborn Child Protection from Dismemberment
5 Abortion Act, § 20-16-1801 et seq.;

6 (12) The Sex Discrimination by Abortion Prohibition Act, § 20-
7 16-1901 et seq.;

8 (13) The Cherish Act, § 20-16-2001 et seq.; and

9 (14) The Down Syndrome Discrimination by Abortion Prohibition
10 Act, § 20-16-2101 et seq.

11
12 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
13 General Assembly of the State of Arkansas that legislation in other states
14 has created a situation in which individuals from other states are entering
15 Arkansas seeking abortions, which is burdening the healthcare system in this
16 state; that the General Assembly previously enacted legislation in the spring
17 to abolish abortions, which has been enjoined; that abortions have increased
18 in this state causing harm to unborn children and the health and safety of
19 pregnant women; and that this act is immediately necessary to protect the
20 lives of unborn children and the health and safety of pregnant women in this
21 state. Therefore, an emergency is declared to exist, and this act being
22 immediately necessary for the preservation of the public peace, health, and
23 safety shall become effective on:

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

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

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