

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4

# A Bill

HOUSE BILL 1174

5 By: Representatives Womack, Long, Miller  
6 By: Senator M. McKee  
7

## For An Act To Be Entitled

8  
9 AN ACT TO ADD PROTECTIONS FOR UNBORN CHILDREN BY  
10 ALLOWING APPROPRIATE PROSECUTION WHEN A PERSON CAUSES  
11 THE DEATH OF AN UNBORN CHILD; TO REPEAL PROVISIONS  
12 THAT MAY ALLOW A PERSON TO SOLICIT, ADVISE,  
13 ENCOURAGE, OR COERCE A PREGNANT WOMAN TO ABORT HER  
14 UNBORN CHILD; TO DECLARE AN EMERGENCY; AND FOR OTHER  
15 PURPOSES.  
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## Subtitle

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19 TO ADD PROTECTIONS FOR UNBORN CHILDREN BY  
20 ALLOWING PROSECUTION WHEN A PERSON CAUSES  
21 THE DEATH OF AN UNBORN CHILD; TO REPEAL  
22 LAWS THAT MAY ALLOW A PERSON TO PRESSURE  
23 A PREGNANT WOMAN TO GET AN ABORTION; AND  
24 TO DECLARE AN EMERGENCY.  
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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29 SECTION 1. DO NOT CODIFY. Legislative findings and intent.

30 (a) The General Assembly finds that:

31 (1) Arkansas Constitution, Article 2, § 3 provides that the  
32 equality of all persons before the law is recognized and shall ever remain  
33 inviolate;

34 (2) Arkansas Constitution, Article 2, § 18 further provides that  
35 the General Assembly shall not grant to any citizen, or class of citizens,  
36 privileges or immunities which, upon the same terms, shall not equally belong



1 to all citizens;

2 (3) Section 1 of the Fourteenth Amendment of the United States  
 3 Constitution requires that "No State shall [...] deny to any person within  
 4 its jurisdiction the equal protection of the laws";

5 (4) Innocent human life, created in the image of God, should be  
 6 equally protected under the laws from the time of fertilization to natural  
 7 death;

8 (5) To ensure the right to life and equal protection of the  
 9 laws, all unborn children should be protected under the state homicide laws  
 10 as all other persons;

11 (6) All persons potentially subject to the state homicide laws  
 12 are entitled to due process protections; and

13 (7) A pregnant woman should be protected from being pressured  
 14 through solicitation, advisement, encouragement, or coercion to abort her  
 15 unborn child.

16 (b) The intent of this act is to add protections for unborn children,  
 17 allow appropriate prosecution when a person causes the death of an unborn  
 18 child, and repeal provisions that may allow a person to solicit, advise,  
 19 encourage, or coerce a pregnant woman to abort her unborn child.

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21 SECTION 2. Arkansas Code § 5-1-102(13), concerning the definition of  
 22 "person" in the Arkansas Criminal Code, is amended to read as follows:

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

25 (i) Any natural person; and

26 (ii) When appropriate, an organization as defined in  
 27 § 5-2-501.

28 (B)(i)(a) As used in §§ 5-10-101 – 5-10-105 and 5-4-604,  
 29 "person" also includes an unborn child ~~in utero~~ at any stage of development.

30 (b) "Unborn child" means offspring of human  
 31 beings from ~~conception~~ fertilization until birth.

32 (c) "Fertilization" means the fusion of a  
 33 human spermatozoon with a human ovum.

34 (ii) This subdivision (13)(B) does not apply to a  
 35 lawful medical procedure:

36 ~~(a) An act that causes the death of an unborn~~

1 ~~child in utero if the act was committed during a legal abortion to which the~~  
 2 ~~woman consented, including an abortion performed to remove an ectopic~~  
 3 ~~pregnancy or other nonviable pregnancy when the embryo is not going to~~  
 4 ~~develop further;~~

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

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

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

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

15 (a) Performed:

16 (1) By a licensed physician;

17 (2) On a pregnant woman to avert the  
 18 death of the pregnant woman, including from an ectopic pregnancy; and

19 (3) When all reasonable alternatives to  
 20 save the life of the unborn child are unavailable or were attempted  
 21 unsuccessfully before the performance of the medical procedure; and

22 (b) That results in the accidental or  
 23 unintentional death of the unborn child that the pregnant woman was carrying.

24 ~~(iii) Nothing in this subdivision (13)(B) shall be~~  
 25 ~~construed to allow the charging or conviction of a woman with any criminal~~  
 26 ~~offense in the death of her own unborn child in utero All provisions of the~~  
 27 ~~Arkansas Criminal Code apply to a prosecution for the death of an unborn~~  
 28 ~~child that would apply to a prosecution for the death of any other person,~~  
 29 ~~including any applicable presumptions, defenses, justifications, laws of~~  
 30 ~~parties, immunities, and clemencies.~~

31 (iv) Subdivision (13)(B) does not authorize  
 32 prosecution for an accidental miscarriage;

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34 SECTION 3. Arkansas Code § 16-62-102(a), concerning wrongful death  
 35 actions, is amended to read as follows:

36 (a)(1) Whenever the death of a person, including ~~or~~ an unborn child as

1 defined in § 5-1-102, is caused by a wrongful act, neglect, or default and  
 2 the act, neglect, or default would have entitled the party injured to  
 3 maintain an action and recover damages in respect thereof if death had not  
 4 ensued, then and in every such case, the person or company or corporation  
 5 that would have been liable if death had not ensued shall be liable to an  
 6 action for damages, notwithstanding the death of the person, including ~~or~~ an  
 7 unborn child as defined in § 5-1-102, injured, and although the death may  
 8 have been caused under such circumstances as amount in law to a felony.

9 (2) The cause of action created in this subsection shall survive  
 10 the death of the person wrongfully causing the death of another and may be  
 11 brought, maintained, or revived against the personal representatives of the  
 12 person wrongfully causing the death of another.

13 ~~(3) A person is not liable under this subsection when the death~~  
 14 ~~of the unborn child results from:~~

15 ~~(A) A legal abortion, including an abortion performed to~~  
 16 ~~remove an ectopic pregnancy or other nonviable pregnancy where the embryo is~~  
 17 ~~not going to develop further;~~

18 ~~(B) The fault of the pregnant woman carrying the unborn~~  
 19 ~~child;~~

20 ~~(C) Assisted reproduction technology activity, procedure,~~  
 21 ~~or treatment;~~

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

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

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 27 SECTION 4. DO NOT CODIFY. Applicability.

28 This act is prospective only and does not apply to conduct committed  
 29 before the effective date of this act.

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 31 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the  
 32 General Assembly of the State of Arkansas that unborn children are at risk of  
 33 being aborted in this state and are currently being denied the equal  
 34 protection of laws in violation of the Fourteenth Amendment to the United  
 35 States Constitution; that amending state laws would grant unborn children  
 36 protections that they do not currently possess in this state and would ensure

1 that they receive the equal protections of laws in this state; and that this  
2 act is immediately necessary to provide equal protection to unborn children  
3 and to comply with the United States Constitution. Therefore, an emergency is  
4 declared to exist, and this act being immediately necessary for the  
5 preservation of the public peace, health, and safety shall become effective  
6 on:

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

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

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

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