

# ARKANSAS

States of Tenn. v. EEOC, No. 2:24-cv-84-DPM, 2024 U.S. Dist. LEXIS 106242 (E.D. Ark. June 14, 2024)

The substantive abortion laws cited by the States, Ark. Code Ann. §§ 5-61-303, 304, 403 & 404, only regulate abortion providers.

## **ARK. CONST. Amendment 68**

The Arkansas Constitution declares that no public funds will be used to pay for abortion except to save the life of the mother and declares that the policy of Arkansas is to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution.

## **Title 5 Criminal Offenses, Subtitle 6. Offenses Against Public Health, Safety, or Welfare, Chapter 61 Abortion**

### **Subchapter 4 — Arkansas Unborn Child Protection Act**

5-61-401. Title.

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This subchapter shall be known and may be cited as the “Arkansas Unborn Child Protection Act”.

[Ark. Code Ann. § 5-61-401 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

5-61-402. Legislative findings and intent.

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(a) The General Assembly finds that:

- (1) It is time for the United States Supreme Court to redress and correct the grave injustice and the crime against humanity which is being perpetuated by its decisions in *Roe v. Wade*, *Doe v. Bolton*, and *Planned Parenthood v. Casey*;
- (2) The United States Supreme Court committed a grave injustice and a crime against humanity in the *Dred Scott* decision by denying personhood to a class of human beings, African-Americans;
- (3) The United States Supreme Court also committed a grave injustice and a crime against humanity by upholding the “separate but equal” doctrine in *Plessy v. Ferguson*, which withdrew legal protection from a class of human beings who were persons under the United States Constitution, African-Americans;
- (4) A crime against humanity occurs when a government withdraws legal protection from a class of human beings, resulting in severe deprivation of their rights, up to and including death;
- (5) In *Brown v. Board of Education*, the United States Supreme Court corrected its own grave injustice and crime against humanity created in *Plessy v. Ferguson* by overruling and abolishing the fifty-eight-year-old “separate but equal” doctrine, thus giving equal legal rights to African-Americans;
- (6) Under the doctrine of *stare decisis*, the three (3) abortion cases mentioned in subdivision (a)(1) of this section meet the test for when a case should be overturned by

the United States Supreme Court because of significant changes in facts or laws, including without limitation the following:

(A) The cases have not been accepted by scholars, judges, and the American people, as witnessed to by the fact that these cases are still the most intensely controversial cases in American history and at the present time;

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

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

(D) The laws in all fifty (50) states have now changed through "Safe Haven" laws to eliminate all burden of child care from women who do not want to care for a child; and

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

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

(8) Arkansas Constitution, Amendment 68, states that the policy of Arkansas is to protect the life of every unborn child from conception until birth and that public funds shall not be used to pay for any abortion, except to save the life of the mother;

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

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

(11)

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

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

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

(12) The State of Arkansas urgently pleads with the United States Supreme Court to do the right thing, as they did in one of their greatest cases, *Brown v. Board of Education*, which overturned a fifty-eight-year-old precedent of the United States, and reverse, cancel, overturn, and annul *Roe v. Wade*, *Doe v. Bolton*, and *Planned Parenthood v. Casey*.

(b) It is the intent of this subchapter to ensure that abortion in Arkansas is abolished and to protect the lives of unborn children.

[Ark. Code Ann. § 5-61-402 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

5-61-403. Definitions.

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As used in this subchapter:

(1)

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

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

- (i) Save the life or preserve the health of the unborn child;
- (ii) Remove a dead unborn child caused by spontaneous abortion; or
- (iii) Remove an ectopic pregnancy;

(2) “Fertilization” means the fusion of a human spermatozoon with a human ovum;

(3) “Medical emergency” means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; and

(4) “Unborn child” means an individual organism of the species *Homo sapiens* from fertilization until live birth.

[Ark. Code Ann. § 5-61-403 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

5-61-404. Prohibition.

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(a) A person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency.

(b) Performing or attempting to perform an abortion is an unclassified felony with a fine not to exceed one hundred thousand dollars (\$100,000) or imprisonment not to exceed ten (10) years, or both.

(c) This section does not:

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

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

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

[Ark. Code Ann. § 5-61-404 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

**AR - Arkansas Code Annotated, Title 5 Criminal Offenses, Subtitle 6. Offenses Against Public Health, Safety, or Welfare**  
**Chapter 61 Abortion, Subchapter 3 — Arkansas Human Life Protection Act. [Effective If Contingency In Acts 2019, No. 180, § 2, Is Met]**

5-61-301. Title. [Effective if contingency in Acts 2019, No. 180, § 2, is met]

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This subchapter shall be known and may be cited as the “Arkansas Human Life Protection Act”.  
[Ark. Code Ann. § 5-61-301 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

5-61-302. Legislative findings and intent. [Effective if contingency in Acts 2019, No. 180, § 2, is met]

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(a) The General Assembly finds that:

- (1) It is time for the United States Supreme Court to redress and correct the grave injustice and the crime against humanity which is being perpetuated by its decisions in *Roe v. Wade*, *Doe v. Bolton*, and *Planned Parenthood v. Casey*;
- (2) The United States Supreme Court committed a grave injustice and a crime against humanity in the *Dred Scott* decision by denying personhood to a class of human beings, African-Americans;
- (3) The United States Supreme Court also committed a grave injustice and a crime against humanity by upholding the “separate but equal” doctrine in *Plessy v. Ferguson* which withdrew legal protection from a class of human beings who were persons under the United States Constitution, African-Americans;
- (4) A crime against humanity occurs when a government withdraws legal protection from a class of human beings resulting in severe deprivation of their rights, up to and including death;
- (5) In *Brown v. Board of Education*, the United States Supreme Court corrected its own grave injustice and crime against humanity created in *Plessy v. Ferguson* by overruling and abolishing the fifty-eight-year-old “separate but equal” doctrine, thus giving equal legal rights to African-Americans;
- (6) Under the doctrine of *stare decisis*, the three (3) abortion cases mentioned in subdivision (a)(1) of this section meet the test for when a case should be overturned by the United States Supreme Court because of significant changes in facts or laws, including without limitation the following:
  - (A) The cases have not been accepted by scholars, judges, and the American people, as witnessed to by the fact that these cases are still the most intensely controversial cases in American history and at the present time;
  - (B) New scientific advances have demonstrated since 1973 that life begins at the moment of conception and the child in a woman's womb is a human being;
  - (C) Scientific evidence and personal testimonies document the massive harm that abortion causes to women;

(D) The laws in all fifty (50) states have now changed through “Safe Haven” laws to eliminate all burden of child care from women who do not want to care for a child; and

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

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

(8) Arkansas Constitution, Amendment 68, states that the policy of Arkansas is to protect the life of every unborn child from conception until birth and that public funds shall not be used to pay for any abortion except to save the life of the mother;

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

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

(11)

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

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

(C) The Department of Health reports that three thousand two hundred forty-nine (3,249) abortions took place in Arkansas during 2017, including abortions performed on out-of-state residents; and

(12) The State of Arkansas urgently pleads with the United States Supreme Court to do the right thing, as it did in one of its greatest cases, *Brown v. Board of Education*, which overturned a fifty-eight-year-old precedent of the United States, and reverse, cancel, overturn, and annul *Roe v. Wade*, *Doe v. Bolton*, and *Planned Parenthood v. Casey*.

(b) It is the intent of this subchapter to ensure that abortion in Arkansas is abolished and protect the lives of unborn children.

[Ark. Code Ann. § 5-61-302 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

5-61-303. Definitions.

As used in this subchapter:

(1)

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

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

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

- (ii) Remove a dead unborn child caused by spontaneous abortion; or
- (iii) Remove an ectopic pregnancy;
- (2) “Fertilization” means the fusion of a human spermatozoon with a human ovum;
- (3) “Medical emergency” means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; and
- (4) “Unborn child” means an individual organism of the species *Homo sapiens* from fertilization until live birth.

[Ark. Code Ann. § 5-61-303 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

5-61-304. Prohibition.

- (a) A person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency.
- (b) Performing or attempting to perform an abortion is an unclassified felony with a fine not to exceed one hundred thousand dollars (\$100,000) or imprisonment not to exceed ten (10) years, or both.
- (c) This section does not:
  - (1) Authorize the charging or conviction of a woman with any criminal offense in the death of her own unborn child; or
  - (2) Prohibit the sale, use, prescription, or administration of a contraceptive measure, drug, or chemical if the contraceptive measure, drug, or chemical is administered before the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure, drug, or chemical is sold, used, prescribed, or administered in accordance with manufacturer instructions.
- (d) It is an affirmative defense to prosecution under this section if a licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional injury or death to the unborn child.

[Ark. Code Ann. § 5-61-304 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

**AR - Arkansas Code Annotated, Title 20 Public Health and Welfare**  
**Subtitle 2. Health and Safety, Chapter 16 Reproductive Health**  
**Subchapter 6 — Abortion Generally**

20-16-601. Refusal to perform, participate, consent, or submit.

- (a) No person shall be required to perform or participate in medical procedures which result in the termination of pregnancy. The refusal of any person to perform or participate in these medical procedures shall not be a basis for civil liability to any person nor a basis for any disciplinary or any other recriminatory action against him or her.
- (b) No hospital, hospital director, or governing board shall be required to permit the termination of human pregnancies within its institution, and the refusal to permit the procedures shall not be

grounds for civil liability to any person nor a basis for any disciplinary or other recriminatory action against it by the state or any person.

(c) The refusal of any person to submit to an abortion or to give consent for an abortion shall not be grounds for loss of any privileges or immunities to which the person would otherwise be entitled, nor shall submission to an abortion or the granting of consent for an abortion be a condition precedent to the receipt of any public benefits.

[Ark. Code Ann. § 20-16-601 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-602. Right-to-Know-and-See Act — Right to view ultrasound image before abortion — Definitions.

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(a) This section shall be known and may be cited as the “Right-to-Know-and-See Act”.

(b) As used in this section:

(1)

(A) “Abortion” means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of the unborn child.

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

(i) Save the life or preserve the health of the unborn child or the pregnant woman;

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

(iii) Remove an ectopic pregnancy;

(2) “Attempt to perform or induce an abortion” means an act or an omission of a statutorily required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of this section;

(3)

(A) “Medical emergency” means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the abortion of her pregnancy to avert:

(i) The death of the pregnant woman; or

(ii) Serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

(B) “Medical emergency” does not include a condition based on a claim or diagnosis that a pregnant woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function;

(4) “Qualified technician” means:

(A) A registered diagnostic medical sonographer who is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical Sonography; or



- (i) One thousand five hundred dollars (\$1,500) for the first violation in a thirty-six-month period;
      - (ii) Three thousand dollars (\$3,000) for the second violation in a thirty-six-month period; and
      - (iii) Five thousand dollars (\$5,000) for the third violation in a thirty-six-month period; and
    - (B) Suspend the license of a physician for six (6) months for the fourth violation in a thirty-six-month period.
- (e)
  - (1) This section does not:
    - (A) Prevent a pregnant woman from averting her eyes or looking away from the ultrasound images required to be provided to and reviewed by the pregnant woman; or
    - (B)
      - (i) Apply in the case of a medical emergency.
      - (ii) Upon a determination by the physician that a medical emergency exists with respect to the pregnant woman, the physician shall certify the specific medical conditions that constitute the medical emergency.
      - (iii) A physician or abortion provider that willfully falsifies a certification under subdivision (e)(1)(B)(ii) of this section is subject to penalties under this section.
  - (2) A physician or pregnant woman is not subject to a penalty if the pregnant woman declines to look at the presented ultrasound images.

[Ark. Code Ann. § 20-16-602 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-603. Drug-induced abortions — Procedures — Penalties — Causes of action — Definitions.

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- (a) As used in this section:
  - (1) “Abortion” means the use or prescription of an instrument, medicine, drug, or another substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died in utero as the result of natural causes, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and that causes the premature termination of the pregnancy;
  - (2) “Attempt to perform or induce an abortion” means an act or an omission of a statutorily required act that, under the circumstances as the physician believes them to be, constitutes a substantial step toward the performance or induction of an abortion in violation of this section;
  - (3) “Mifepristone” means the specific abortion-inducing drug regimen known as RU-486; and
  - (4) “Physician” means a natural person licensed to practice medicine in the State of Arkansas under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.
- (b)

- (1) When mifepristone or another drug or chemical regimen is used to induce an abortion, the initial administration of the drug or chemical shall occur in the same room and in the physical presence of the physician who prescribed, dispensed, or otherwise provided the drug or chemical to the patient.
  - (2) The physician who induces the abortion, or a person acting on behalf of the physician who induces the abortion, shall make all reasonable efforts to ensure that the patient returns twelve (12) to eighteen (18) days after the administration or use of mifepristone or another drug or chemical for a follow-up visit so that the physician can confirm that the pregnancy has been terminated and can assess the patient's medical condition.
  - (3) A brief description of the efforts made to comply with this section, including the date, time, and identification by name of the person making the efforts, shall be included in the patient's medical record.
- (c) This section does not affect telemedicine practice that does not involve the use of mifepristone or another drug or chemical to induce an abortion.
- (d)
  - (1) If the Arkansas State Medical Board finds that a physician licensed by the board has violated the rules of professional conduct by performing an abortion in violation of this subchapter, the board shall revoke the physician's license.
  - (2) A penalty shall not be assessed against the woman upon whom the abortion is performed or attempted to be performed.
- (e)
  - (1)
    - (A) A woman who receives an abortion, the father of the unborn child who was the subject of the abortion if the father was married to the woman who received the abortion at the time the abortion was performed, or a maternal grandparent of the unborn child may maintain an action against the person who performed the abortion in violation of this section for actual and punitive damages.
    - (B) A woman who attempts to receive an abortion in violation of this section may maintain an action against the person who attempted to perform the abortion for actual and punitive damages.
  - (2)
    - (A) Upon petition by any citizen in the county in which an alleged violation of this section occurred or in which the defendant resides, a court may enjoin a healthcare professional who has knowingly or recklessly violated this section.
    - (B) An injunction under subdivision (e)(2)(A) of this section shall prevent the abortion provider from performing further abortions in violation of this section.
- (f)
  - (1) If a judgment is rendered in favor of the plaintiff who prevails in an action under subsection (e) of this section, the court shall award reasonable attorney's fees and costs in favor of the plaintiff against the defendant.
  - (2) If a judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall order the plaintiff to pay reasonable attorney's fees to the defendant.
- (g) A pregnant woman who obtains or possesses mifepristone or another drug or chemical used for the purpose of inducing an abortion to terminate her pregnancy shall not be subject to an action under subsection (e) of this section.

**(h)**

**(1)** In a civil proceeding or action brought under this section, the court shall determine if the anonymity of a woman who receives or attempts to receive an abortion shall be preserved from public disclosure without her consent.

**(2)**

**(A)** Upon determining that the woman's anonymity shall be preserved, the court shall issue an order to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure.

**(B)** An order under subdivision (h)(2)(A) of this section shall be accompanied by specific written findings explaining:

**(i)** Why the anonymity of the woman should be preserved from public disclosure;

**(ii)** Why the order is essential to that end;

**(iii)** How the order is narrowly tailored to serve that interest; and

**(iv)** Why no reasonable, less restrictive alternative exists.

**(C)** In the absence of written consent of the woman who receives or attempts to receive an abortion, anyone other than a public official who brings an action under subsection (e) of this section shall bring the action under a pseudonym.

**(D)** This subsection does not conceal the identity of the plaintiff or of a witness from the defendant.

**(i)** This section does not create or recognize a right to abortion.

[Ark. Code Ann. § 20-16-603 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-604. Born-alive infant protection — Cause of action — Definitions.

**(a)** As used in this section:

**(1)**

**(A)** “Abortion” means the act of using or prescribing any instrument, medicine, drug, or other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child.

**(B)** A use, prescription, or means under this subdivision (a)(1) is not an abortion if the use, prescription, or means is performed with the intent to:

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

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

**(iii)** Remove an ectopic pregnancy;

**(2)** “Infant” means a child who has been completely expelled or extracted from the mother, regardless of the stage of gestational development, until thirty (30) days after the birth; and

**(3)** “Infant who is born alive” means the complete expulsion or extraction of an infant from a mother, regardless of the state of gestational development, who shows any evidence of life, including without limitation:

- (A) Breathing;
- (B) Heartbeat;
- (C) Umbilical cord pulsation; or
- (D) Definite movement of voluntary muscles.

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

- (1) The infant was born with a physical, intellectual, or developmental disability;
- (2) The infant was not wanted by the parent or guardian; or
- (3) The infant was born alive by natural or artificial means.

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

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

- (1) Is not necessary to save the life of the infant;
- (2) Has a potential risk to the life or health of the infant that outweighs the potential benefit to the infant; or
- (3) Is treatment that will do no more than temporarily prolong the act of dying when death is imminent.

(e)

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

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

- (A) Provide immediate medical care to the infant;
- (B) Inform the mother of the live birth;
- (C) Request transfer of the infant to an on-duty resident or emergency care physician who shall provide medically appropriate and reasonable medical care and treatment to the infant; and
- (D) Report the abortion resulting in a live birth to the Department of Health.

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

- (A) Provide immediate medical care to the infant;
- (B) Call 911 for an emergency transfer of the infant to the hospital for medically appropriate and reasonable care and treatment for the infant; and
- (C) Report the abortion resulting in a live birth to the department.

(4) The department shall report and publish the number of abortions resulting in a live birth annually.

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

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

- (h) The infant who is born alive upon birth immediately shall become a ward of the state if:
- (1) Before the abortion, the pregnant woman, or if married, the pregnant woman and her spouse, have stated in writing that they do not wish to keep the infant if the abortion results in a live birth; and
  - (2) The writing described in subdivision (h)(1) of this section is not retracted before the abortion.
- (i)
- (1) An infant who is born alive shall not be used for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of the infant who is born alive.
  - (2) A violation of subdivision (i)(1) of this section is a Class D felony.
- (j) Failure to comply with this section shall provide a basis for:
- (1) A civil action for compensatory and punitive damages which may include a medical malpractice action under § 16-114-201 et seq.;
  - (2) Professional disciplinary action by the appropriate healthcare licensing board for the suspension or revocation of a license for a healthcare professional for at least one (1) year;
  - (3) Recovery for the parent of the infant or the parent or legal guardian of the pregnant woman, if the pregnant woman is a minor, for the wrongful death of the infant under § 16-62-102; and
  - (4) Injunction from future acts prohibited by this section.
- (k) This section does not:
- (1) Create or recognize a right to abortion;
  - (2) Affect existing federal or state law regarding abortion; or
  - (3) Alter generally accepted medical standards.
- (l) A physician or other person who purposefully or recklessly violates this section is guilty of a Class A misdemeanor.

[Ark. Code Ann. § 20-16-604 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-605. Reporting requirements for abortion complications — Definitions.

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- (a) As used in this section:
- (1)
    - (A) “Abortion complication” means any harmful event or adverse outcome with respect to a patient related to an abortion that is performed on the patient and that is diagnosed or treated by a physician or at a healthcare facility.
    - (B) “Abortion complication” includes without limitation:
      - (i) Shock;
      - (ii) Uterine perforation;
      - (iii) Cervical laceration;
      - (iv) Hemorrhage;
      - (v) Aspiration or allergic response;
      - (vi) Infection;
      - (vii) Sepsis;
      - (viii) Death;



- (viii) The patient's year of birth, race, marital status, state of residence, and county of residence;
        - (ix) The date of the first day of the patient's last menstrual period that occurred before the date of the abortion that caused or may have caused the abortion complication, if known;
        - (x) The number of previous live births of the patient; and
        - (xi) The number of previous induced abortions of the patient.
      - (3) An event associated with a medical procedure performed after a natural miscarriage, spontaneous abortion, or fetal death is not subject to reporting under this section.
- (d)
  - (1) The department shall develop and publish on the website of the department an annual report that aggregates on a statewide basis each abortion complication reported under this section.
  - (2) The annual report shall not include any duplicative data.
- (e)
  - (1) The information and records held by the department under this section are confidential and shall not be disclosed under the Freedom of Information Act of 1967, § 25-19-101 et seq.
  - (2) The information and records shall be released only in the following circumstances:
    - (A) For statistical purposes, but only if a person, patient, or healthcare facility is not identified;
    - (B) With the consent of each person, patient, and healthcare facility identified in the information released;
    - (C) For the purpose of enforcing this section, to medical personnel, appropriate state agencies, county courts, or district courts; or
    - (D) For the purpose of enforcing state licensing laws, to appropriate state licensing boards.
- (f)
  - (1) A physician or healthcare facility that violates this section is subject to a civil penalty of five hundred dollars (\$500) for each violation.
  - (2) The Attorney General, at the request of the department or appropriate licensing board, may file an action to recover a civil penalty assessed under subdivision (f)(1) of this section and may recover attorney's fees and costs incurred in bringing the civil action.
  - (3) Each day of a continuing violation shall constitute a separate violation.
  - (4) A third separate violation of this section shall constitute grounds for:
    - (A) Revocation or suspension of the physician's or the healthcare facility's license, permit, registration, certificate, or other authority; or
    - (B) Other disciplinary action against the physician or healthcare facility by the appropriate licensing board.
  - (5) The department shall notify the Arkansas State Medical Board of any violations of this section by a physician.

[Ark. Code Ann. § 20-16-605 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-606. Qualifications to perform an abortion.

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- (a) A person shall not perform or induce an abortion unless that person is a physician licensed to practice medicine in the State of Arkansas and is board-certified or board-eligible in obstetrics and gynecology.
- (b) A violation of this section is a Class D felony and may result in the revocation, suspension, or nonrenewal of the professional license of an abortion facility or physician.

[Ark. Code Ann. § 20-16-606 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-607. In custody or guardianship of state.

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- (a) A state agency shall not:
- (1) Consent to or approve the termination of a pregnancy for a pregnant woman in the custody or guardianship of the state; or
  - (2) Authorize the expenditure of state funds for the purpose of paying for the termination of a pregnancy for a pregnant woman in the custody of the state except to save the life of the pregnant woman, or as required by federal law.
- (b) A pregnant woman in the custody or guardianship of the state, her family, or a third-party payer is responsible for all costs, including transportation costs, associated with a medical appointment, or any subsequent healthcare service determined necessary, related to the termination of her pregnancy, except as required by federal law.
- (c) A state agency may be involved in a court proceeding related to the consideration by the court of whether to approve the termination of a pregnancy for a pregnant woman in the custody or guardianship of the state.
- (d) A state agency under this section shall report annually to the Senate Committee on Public Health, Welfare, and Labor and the House Committee on Public Health, Welfare, and Labor the number of any terminations of pregnancies that occurred for women in the custody or guardianship of the state agency.
- (e)
- (1) A state agency under this section shall promulgate rules necessary to implement this section.
  - (2)
    - (A) When adopting the initial rules to implement this section, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):
      - (i) On or before January 1, 2020; or
      - (ii) If approval under § 10-3-309 has not occurred by January 1, 2020, as soon as practicable after approval under § 10-3-309.
    - (B) A state agency shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2020, so that the Legislative Council may consider the rule for approval before January 1, 2020.

[Ark. Code Ann. § 20-16-607 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-608. Reporting data on abortions to save life of mother.

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A physician, healthcare provider, or abortion facility shall report to the Department of Health the number of abortions performed to save the life of the mother.

[Ark. Code Ann. § 20-16-608 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

## **AR - Arkansas Code Annotated, Title 20 Public Health and Welfare**

### **Subtitle 2. Health and Safety, Chapter 16 Reproductive Health**

#### **Subchapter 7 — Abortion — Viable Fetus**

20-16-701. Legislative intent — Construction.

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(a) It is the intention of the General Assembly to regulate abortions in a manner consistent with the decisions of the United States Supreme Court.

(b) All provisions and all terms shall be construed so as to be consistent with those decisions.

[Ark. Code Ann. § 20-16-701 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-702. Definitions.

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As used in this subchapter:

(1) “Abortion” means the intentional termination of the pregnancy of a mother with an intention other than to increase the probability of a live birth or to remove a dead or dying fetus;

(2) “Physician” means any person licensed to practice medicine in this state; and

(3) “Viability” means the state of fetal development when, in the judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a reasonable likelihood of sustained survival of the unborn child outside the body of the mother, with or without artificial life support.

[Ark. Code Ann. § 20-16-702 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-704. Penalty.

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(a) A violation of this subchapter shall be a Class A misdemeanor.

(b) Nothing in this subchapter shall be construed to allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero.

[Ark. Code Ann. § 20-16-704 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-705. Abortion of viable fetus prohibited — Exceptions.

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(a) No abortion of a viable fetus shall be performed unless necessary to preserve the life or health of the woman.

(b) Before a physician may perform an abortion upon a pregnant woman after such time as her fetus has become viable, the physician shall first certify in writing that the abortion is necessary to preserve the life or health of the woman and shall further certify in writing the medical indications for the abortion and the probable health consequences.

(c)

(1) This subchapter shall not prohibit the abortion of a viable fetus if the pregnancy is the result of rape or incest perpetrated on a minor when documentation is presented that states that the crime has been reported to law enforcement.

(2) The physician or abortion facility shall:

(A) File the documentation that a crime has been reported to law enforcement in the pregnant woman's medical record; and

(B) Report to the Department of Health the number of abortions performed because of rape or incest.

[Ark. Code Ann. § 20-16-705 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-706. Method or technique required.

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(a) Any physician who performs an abortion upon a woman carrying a viable fetus shall utilize the available method or technique of abortion most likely to preserve the life and health of the viable fetus.

(b) In cases in which the method or technique of abortion which would most likely preserve the life and health of the viable fetus would present a greater risk to the life and health of the woman than another available method or technique, the physician may utilize the other method or technique.

(c) In all cases in which the physician performs an abortion upon a viable fetus, the physician shall certify in writing the available method or techniques considered and the reasons for choosing the method or technique employed.

[Ark. Code Ann. § 20-16-706 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-707. Attendance of additional physician required.

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(a) An abortion of a viable fetus shall be performed or induced only when there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for a child born as a result of the abortion.

(b) During the performance of the abortion, the physician performing it and, subsequent to the abortion, the physician required by this section to be in attendance shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the viable fetus, provided that it does not pose an increased risk to the life or health of the woman.

[Ark. Code Ann. § 20-16-707 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

**AR - Arkansas Code Annotated, Title 5 Criminal Offenses**  
**Subtitle 6. Offenses Against Public Health, Safety, or Welfare**  
**Chapter 61 Abortion**  
**Subchapter 1 — General Provisions**

5-61-101. Abortion only by licensed physician.

(a) It is unlawful for any person to induce another person to have an abortion or to knowingly terminate the pregnancy of a woman known to be pregnant with the purpose to cause fetal death unless the person is a physician licensed to practice medicine in the State of Arkansas.

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

(c) This section does not allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero.

5-61-102. Unlawful abortion.

(a) It is unlawful for any person to administer or prescribe any medicine or drug to any woman with child with the intent to produce an abortion or premature delivery of any fetus before or after the period of quickening or to produce or attempt to produce the abortion by any other means.

(b) Any person violating a provision of this section is guilty of a Class D felony.

(c) Nothing in this section shall be construed to allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero.

[Ark. Code Ann. § 5-61-102 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

**AR - Arkansas Code Annotated, Title 20 Public Health and Welfare**  
**Subtitle 2. Health and Safety, Chapter 16 Reproductive Health**  
**Subchapter 13 — Arkansas Human Heartbeat Protection Act**

20-16-1301. Title.

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

[Ark. Code Ann. § 20-16-1301 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-1302. Definitions.

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As used in this subchapter:

(1) “Contraceptive” means a device, drug, or chemical that prevents fertilization;

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

(3) “Heartbeat” means cardiac activity, the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac;

(4) “Human individual” means an individual organism of the species *Homo sapiens*;

(5) “Major bodily function” includes without limitation functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions;

(6) “Medical emergency” means a condition in which an abortion is necessary:

(A) To preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman; or

(B) Due to the existence of a highly lethal fetal disorder as defined by the Arkansas State Medical Board;

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

(8) “Viability” means a medical condition that begins with a detectible fetal heartbeat.

[Ark. Code Ann. § 20-16-1302 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-1303. Testing for heartbeat.

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(a) A person authorized to perform abortions under Arkansas law shall not perform an abortion on a pregnant woman before the person tests the pregnant woman to determine whether the fetus that the pregnant woman is carrying possesses a detectible heartbeat.

(b)

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

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

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

(1)

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

(B) Rules adopted under this subsection shall specify that a test for fetal heartbeat is not required in the case of a medical emergency; and

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

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

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

(2) Of the statistical probability of bringing the unborn human individual to term based on the gestational age of the unborn human individual possessing a detectible heartbeat; and

- (3) An abortion is prohibited under § 20-16-1304.
- (e) If a heartbeat has been detected, the pregnant woman shall sign a form acknowledging that she has received the information required under subsection (d) of this section.

[Ark. Code Ann. § 20-16-1303 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-1304. Prohibitions.

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- (a) A person authorized to perform abortions under Arkansas law shall not perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human individual whose heartbeat has been detected under § 20-16-1303 and is twelve (12) weeks or greater gestation.
- (b) A violation of this section as determined by the Arkansas State Medical Board shall result in the revocation of the medical license of the person authorized to perform abortions under Arkansas law.

[Ark. Code Ann. § 20-16-1304 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-1305. Exemptions — Medical personnel.

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- (a) A person does not violate this subchapter if the person:
- (1) Performs a medical procedure designed to or intended to prevent the death of a pregnant woman or in reasonable medical judgment to preserve the life of the pregnant woman;
  - (2)
    - (A) Has undertaken an examination for the presence of a heartbeat in the fetus utilizing standard medical practice; and
    - (B) The examination does not reveal a heartbeat; or
  - (3) Has been informed by a medical professional who has undertaken the examination for fetal heartbeat that the examination did not reveal a fetal heartbeat.
- (b) This subchapter does not apply to:
- (1) An abortion performed to save the life of the mother;
  - (2)
    - (A) A pregnancy that results from rape under § 5-14-103 or incest under § 5-26-202 when documentation is presented that states that the crime has been reported to law enforcement.
    - (B) The physician or abortion facility shall:
      - (i) File the documentation that a crime has been reported to law enforcement in the pregnant woman's medical record; and
      - (ii) Report to the Department of Health the number of abortions performed because of rape or incest; or
  - (3) A medical emergency.

[Ark. Code Ann. § 20-16-1305 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-1306. Exemptions.

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This subchapter does not:

- (1) Subject a pregnant female on whom an abortion is performed or attempted to be performed to any criminal prosecution or civil penalty; or
- (2) Prohibit the sale, use, prescription, or administration of a measure, drug, or chemical designed for contraceptive purposes.

[Ark. Code Ann. § 20-16-1306 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-1307. Tolling of effective date.

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

[Ark. Code Ann. § 20-16-1307 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

**AR - Arkansas Code Annotated, Title 20 Public Health and Welfare  
Subtitle 2. Health and Safety, Chapter 16 Reproductive Health  
Subchapter 8 — Abortion — Parental Involvement Enhancement Act**

20-16-801. Title.

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This subchapter shall be known and may be cited as the “Parental Involvement Enhancement Act”.

[Ark. Code Ann. § 20-16-801 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-802. Legislative findings and purpose.

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(a) The General Assembly finds that:

- (1) Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences;
- (2) The medical, emotional, and psychological consequences of abortion are sometimes serious and can be lasting, particularly when the minor is immature;
- (3) The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related;
- (4) Parents ordinarily possess information essential to a physician's exercise of his or her best medical judgment concerning the minor daughter;
- (5) Parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion; and
- (6) Parental consultation is usually desirable and in the best interests of the minor.

(b) Based on the findings in subsection (a) of this section, the General Assembly's purposes in enacting this enhancement to the State of Arkansas's parental notice law are to further the important and compelling state interests of:

- (1) Protecting minors against their own immaturity;
- (2) Fostering family unity and preserving the family as a viable social unit;
- (3) Protecting the constitutional rights of parents to rear children who are members of their household;
- (4) Reducing teenage pregnancy and abortion; and
- (5) In light of the foregoing statements of purpose, allowing for judicial bypasses of the parental notice requirement to be made only in exceptional or rare circumstances.

[Ark. Code Ann. § 20-16-802 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-803. Definitions.

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As used in this subchapter:

- (1)
  - (A) “Abortion” means the act of using or prescribing an instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child.
  - (B) An act under subdivision (1)(A) of this section is not an abortion if the act is performed with the intent to:
    - (i) Save the life or preserve the health of the unborn child;
    - (ii) Remove a dead unborn child caused by spontaneous abortion; or
    - (iii) Remove an ectopic pregnancy;
- (2) “Coercion” means restraining or dominating the choice of a pregnant woman by force, threat of force, or deprivation of food and shelter;
- (3) “Consent” means:
  - (A) In the case of a pregnant woman who is less than eighteen (18) years of age, a notarized written statement signed by the pregnant woman and her mother, father, or legal guardian declaring that the pregnant woman intends to seek an abortion and that her mother, father, or legal guardian consents to the abortion; or
  - (B) In the case of a pregnant woman who is an incompetent person, a notarized written statement signed by the pregnant woman's guardian declaring that the guardian consents to the performance of an abortion upon the pregnant woman;
- (4) “Emancipated minor” means a person less than eighteen (18) years of age who is or has been married or who has been legally emancipated;
- (5) “Incompetent” means a person who has been adjudged a disabled person and has had a guardian appointed for her;
- (6) “Medical emergency” means a condition that, on the basis of the physician's good-faith clinical judgment, complicates the medical condition of a pregnant woman so as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;
- (7) “Minor” means an individual under eighteen (18) years of age;
- (8) “Parent” means:

- (A) Either parent of the pregnant woman if both parents are living;
  - (B) One (1) parent of the pregnant woman if only one (1) is living or if the second parent cannot be located through reasonably diligent effort; or
  - (C) The court-appointed guardian or custodian if the pregnant woman has one;
- (9) “Physician” means a person licensed to practice medicine in this state, including a medical doctor or a doctor of osteopathy; and
- (10) “Pregnant woman” means a pregnant minor or pregnant incompetent woman.

[Ark. Code Ann. § 20-16-803 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-804. Notarized consent.

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Except as otherwise provided in §§ 20-16-807 and 20-16-809, a physician shall not perform an abortion upon an unemancipated minor or upon a woman for whom a guardian or custodian has been appointed because of a finding of incompetency unless the physician first obtains the written consent of either parent or the legal guardian or custodian.

[Ark. Code Ann. § 20-16-804 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-805. Manner of consent.

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- (a) A physician shall not perform an abortion upon a pregnant woman unless:
- (1) In the case of a woman who is less than eighteen (18) years of age, he or she obtains the notarized written consent of both the pregnant woman and one (1) of her parents or her legal guardian; or
  - (2) In the case of woman who is an incompetent person, the physician first obtains the notarized written consent of her legal guardian.
- (b) The notarized written consent shall include without limitation the following information:
- (1) The name and birthdate of the minor or incompetent woman;
  - (2) The name of the parent or legal guardian;
  - (3) A statement from the parent or legal guardian that he or she is aware that the minor or incompetent woman desires an abortion and that he or she does consent to the abortion; and
  - (4) The date.

[Ark. Code Ann. § 20-16-805 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-806. Proof of identification and relationship to pregnant woman.

- 
- (a) The physician who performs the abortion shall obtain from the parent or legal guardian entitled to consent:
- (1) Positive proof of identification in the form of a valid government-issued photo identification card; and
  - (2) Written documentation that establishes that the parent or legal guardian is the lawful parent or legal guardian of the pregnant woman.

(b) A photocopy of the proof of identification of the parent or legal guardian and the written documentation that establishes the relationship of the parent or legal guardian to the pregnant woman shall be kept in the medical file of the pregnant woman for five (5) years past the age of majority of the pregnant woman, but in no event less than seven (7) years.

(c) The physician who performs the abortion after receiving parental consent under this subchapter shall execute for inclusion in the medical record of the pregnant woman an affidavit stating the following: “I, (Insert the name of physician who performed the abortion), certify that according to my best information and belief, a reasonable person under similar circumstances would rely on the information presented by both the pregnant woman and her parent or legal guardian as sufficient evidence of identity and relationship.”

[Ark. Code Ann. § 20-16-806 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-807. Notice post-emergency.

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(a)

(1) Consent is not required under this subchapter if the attending physician certifies in the medical record of the pregnant woman that a medical emergency exists and there is insufficient time to obtain the required consent.

(2) However, within twenty-four (24) hours after the completion of the abortion, the physician shall notify one (1) of the parents or the legal guardian of the minor or incompetent woman in the manner provided in this subchapter that a medical emergency abortion was performed on the pregnant woman and of the circumstances that warranted invocation of this section.

(b)

(1) Unless the minor or incompetent woman gives notice of her intent to seek a judicial waiver under § 20-16-809, the physician shall verbally inform the parent or legal guardian of the minor or incompetent woman within twenty-four (24) hours after the performance of a medical emergency abortion that an abortion was performed on the minor or incompetent woman.

(2) The physician shall:

(A) Inform the parent or legal guardian of the basis for the certification of the physician required under subsection (a) of this section and provide details regarding any additional risks to the pregnant woman; and

(B) Send a written notice of the performed abortion to the last known address of the parent or legal guardian by certified mail with restricted delivery and return receipt requested.

(c) If the minor or incompetent woman gives notice to the physician of her intent to seek a judicial waiver under this subchapter, the physician shall:

(1) File a notice with a judge of a court that the minor has given notice; and

(2) Provide the information to the court that the physician would have been required to provide to the parent or legal guardian under subsection (b) of this section if the minor or incompetent woman had not given her intent to seek a judicial waiver.

(d)

(1) The court shall expeditiously schedule a confidential conference with notice to the minor or incompetent woman and the physician.

(2) If the minor or incompetent woman is able to participate in the proceedings, the court shall advise the minor or incompetent woman that she has the right to a court-appointed counsel and, upon her request, shall provide the minor or incompetent with a court-appointed counsel.

(3) If the minor or incompetent woman is unable to participate in the proceedings, the court shall appoint counsel on behalf of the minor or incompetent woman.

(e)

(1) After an appropriate hearing, the court, taking into account the medical condition of the minor or incompetent woman, shall set a deadline by which the minor or incompetent woman may file a petition or motion under this subchapter.

(2) The court may subsequently extend the deadline in light of the medical condition of the minor or incompetent woman or other equitable considerations.

(3) If the minor or incompetent woman does not file a petition or motion by the deadline, either in the court or in another court with a copy filed in the original court, the court shall direct that the court clerk provide the notice to the parent or legal guardian.

[Ark. Code Ann. § 20-16-807 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-808. Venue.

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The pregnant woman may petition a circuit court in the county in which she resides for a waiver of the consent requirement.

[Ark. Code Ann. § 20-16-808 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-809. Judicial relief from requirement.

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(a) The requirements and procedures of this subchapter are available to a pregnant woman regardless of whether the woman is a resident of the state.

(b) Notwithstanding the provisions of §§ 20-16-803 — 20-16-806, if a pregnant minor or incompetent woman does not wish to obtain the consent of one (1) or both parents or the guardian or custodian, then:

(1)

(A) The pregnant woman may petition a circuit court for a waiver of the consent requirement and may participate in the proceedings on her own behalf.

(B) However, the court shall advise the pregnant woman that she has a right to a court-appointed counsel and, upon her request, shall provide her with such counsel.

(C) The court may appoint a guardian ad litem for the pregnant woman.

(D) A guardian ad litem appointed under this subchapter shall act to maintain the confidentiality of the proceedings;

(2)

(A) When the petitioner is a minor, the petition shall include a statement that the minor is pregnant and unemancipated.



(d)

(1) If the pregnant woman claims to be mature and well-informed at a proceeding held under this subchapter, the pregnant woman shall prove by clear and convincing evidence that she is sufficiently mature and capable of giving informed consent without obtaining consent from or giving notice to her parent or legal guardian based on her experience level, perspective, and judgment.

(2) In assessing the pregnant woman's experience level, the court may consider the following relevant factors:

- (A) The age of the pregnant woman;
- (B) The pregnant woman's experiences working outside the home;
- (C) The pregnant woman's experiences living away from home;
- (D) The pregnant woman's experiences traveling on her own;
- (E) The pregnant woman's experiences handling personal finances;
- (F) The pregnant woman's experiences making other significant decisions; and
- (G) Other relevant factors as appropriate.

(3) In assessing the pregnant woman's perspective, the court may consider the following relevant factors:

- (A) The steps that the pregnant woman took to explore her options;
- (B) To what extent she considered and weighed the potential consequences of each option; and
- (C) Other relevant factors as appropriate.

(4) In assessing the pregnant woman's judgment, the court may consider among other relevant factors the pregnant woman's conduct since learning of her pregnancy and her intellectual ability to understand her options and to make an informed decision.

[Ark. Code Ann. § 20-16-809 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-810. Disclosure and consent form.

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(a) Physicians shall use a form created by the Department of Health to obtain the consent required prior to performing an abortion on a pregnant woman.

(b) A form is not valid and consent is not sufficient unless:

- (1) A parent or legal guardian initials each page of the form, indicating that he or she has read and understands the information included on that page;
- (2) A parent or legal guardian signs the last page of the form in front of a person who is a notary public;
- (3) The pregnant woman initials each list of risks and hazards detailed in subdivision (c)(4) of this section;
- (4) The pregnant woman signs a consent statement described in subdivision (c)(6) of this section; and
- (5) The physician signs a physician declaration described in subdivision (c)(7) of this section.

(c) The form shall include without limitation the following information:

- (1) A description of the pregnant woman's rights, including the right to informed consent as granted by the Woman's Right to Know Act of 2001, § 20-16-901 et seq. [repealed]; and the Woman's Right-to-Know Act of 2015, § 20-16-1701 et seq.;

- (2) A description of the parent or legal guardian's rights under state law;
- (3) A detailed description of the surgical procedures or medical procedures, or both, that are planned to be performed on the pregnant woman;
- (4) A detailed list of the risks and hazards related to the surgical or medical procedures planned for the pregnant woman, including without limitation the following risks and hazards that may occur:
  - (A) Infection;
  - (B) Blood clots;
  - (C) Hemorrhage;
  - (D) Allergic reactions;
  - (E) A hole in the uterus or other damage to the uterus;
  - (F) Sterility;
  - (G) Injury to the bowel or bladder;
  - (H) Possible hysterectomy as a result of complication or injury during the procedure;
  - (I) Failure to remove all products of conception;
  - (J) Possible continuation of pregnancy;
  - (K) Cramping of the uterus or pelvic pain;
  - (L) Cervical laceration;
  - (M) Incompetent cervix;
  - (N) Emergency treatment for any complications; or
  - (O) Death;
- (5) A description of additional information that shall be provided by the physician to the pregnant woman under state law;
- (6) A consent statement signed by the pregnant woman that includes without limitation the following information individually initialed by the pregnant woman that the pregnant woman:
  - (A) Understands that the doctor is going to perform an abortion on her that will end her pregnancy and will result in the death of her unborn child;
  - (B) Is not being forced to have an abortion and that she has the choice not to have the abortion and may withdraw consent prior to the abortion;
  - (C) Gives permission for the procedure;
  - (D) Understands that there are risks and hazards that could affect her if she has the planned surgical or medical procedures;
  - (E) Has been given the opportunity to ask questions about her condition, alternative forms of treatment, risk of nontreatment, the procedures to be used, and the risks and hazards involved;
  - (F) Has been given information required by statute; and
  - (G) Has sufficient information to give informed consent;
- (7) A physician declaration, signed by the physician, stating that:
  - (A) The physician or his or her assistant has, as required, explained the procedure and the contents of this form to the pregnant woman and her parent or legal guardian and has answered all questions; and
  - (B) To the best of the physician's knowledge, the patient and her parent or legal guardian have been adequately informed and have consented to the procedure;
- (8) A parental consent statement that states that the signing parent or legal guardian:

- (A) Understands that the doctor signing the physician declaration form is going to perform an abortion on the pregnant woman, which will end her pregnancy and result in the death of her unborn child;
  - (B) Has had the opportunity to read the physician declaration form or have it read to him or her and has initialed each page;
  - (C) Had the opportunity to ask questions of the physician or the physician's assistant about the information in the physician declaration form and the surgical and medical procedures to be performed on the pregnant woman;
  - (D) Believes that he or she has sufficient information to give informed consent; and
  - (E) Affirms by the parent's or legal guardian's signature that he or she is the pregnant woman's father, mother, or legal guardian;
- (9) A page for the parent's or legal guardian's signature that shall be notarized by a notary public; and
- (10) Any additional information that may be provided to a woman under the laws of this state in order for a physician to obtain her informed consent prior to performing an abortion.

[Ark. Code Ann. § 20-16-810 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-811. Penalty.

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- (a) The performance of an abortion in violation of this subchapter or failure to report under § 20-16-814 shall be a Class A misdemeanor and shall be grounds for a civil action by a person whose consent is required.
  - (b) This subchapter does not allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero.
  - (c) Failure to comply with this subchapter shall provide a basis for:
    - (1) A civil action for compensatory and punitive damages which may include a medical malpractice action under § 16-114-201 et seq.;
    - (2) Professional disciplinary action by the appropriate healthcare licensing board for the suspension or revocation of a license for a healthcare professional for at least one (1) year;
    - (3) Recovery for the parent of the infant or the parent or legal guardian of the pregnant woman, if the pregnant woman is a minor, for the wrongful death of the infant under § 16-62-102; and
    - (4) Injunction from future acts prohibited by this section.

[Ark. Code Ann. § 20-16-811 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-812. Legislative intent.

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This subchapter is not intended to create and shall not be construed to create an affirmative right to legal abortion.

[Ark. Code Ann. § 20-16-812 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-813. When consent is not required.

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A minor shall not be required to obtain consent under this subchapter if the guardianship or custody order has expired or is otherwise no longer in effect

[Ark. Code Ann. § 20-16-813 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-814. Additional information reported by abortion providers.

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(a) In addition to other information reported by an abortion provider to the Department of Health, the following information shall be reported for each induced termination of pregnancy:

- (1) Whether parental consent was required;
- (2) Whether parental consent was obtained; and
- (3) Whether a judicial waiver was obtained.

(b) The department shall revise its forms utilized by abortion providers to report an induced termination of pregnancy by including the reporting of information required by this section.

[Ark. Code Ann. § 20-16-814 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-815. Construction.

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(a) This subchapter does not create or recognize a right to abortion.

(b) It is not the intention of this subchapter to make lawful an abortion that is currently unlawful.

[Ark. Code Ann. § 20-16-815 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-816. Right of intervention.

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The General Assembly, by joint resolution, may appoint one (1) or more of its members who sponsored or cosponsored this subchapter, as a matter of right and in his or her official capacity, to intervene to defend this law in any case in which its constitutionality is challenged.

[Ark. Code Ann. § 20-16-816 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)

20-16-817. Effective date.

This subchapter takes effect on January 1, 2016.

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**AR - Arkansas Code Annotated, Title 12 Law Enforcement, Emergency Management, and Military Affairs, Subtitle 2. Law Enforcement Agencies and Programs  
Chapter 18 Child Maltreatment Act  
Subchapter 2 — Offenses and Penalties**

12-18-210. Prohibition on intentionally causing, aiding, abetting, or assisting a child to obtain an abortion without parental consent.

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**(a)**

**(1)** A person shall not intentionally cause, aid, or assist a child to obtain an abortion without the consent or notification regarding judicial bypass of the requirement for consent under §§ 20-16-801, 20-16-804, and 20-16-805.

**(2)** Subdivision (a)(1) of this section does not affect § 20-16-808.

**(b)**

**(1)** A person who violates subsection (a) of this section shall be civilly liable to the child and to the person or persons required to give the consent under § 20-16-801.

**(2)** A court may award:

**(A)** Damages to the person or persons adversely affected by a violation of subsection (a) of this section, including compensation for emotional injury without the need for personal presence at the act or event; and

**(B)** Attorney's fees, litigation costs, and punitive damages.

**(3)** An adult who engages in or consents to another person's engaging in a sexual act with a child in violation of the Arkansas Criminal Code, § 5-1-101 et seq., that results in the child's pregnancy shall not be awarded damages under this section.

**(c)** An unemancipated child does not have capacity to consent to any action in violation of this section.

**(d)** Upon a petition by any person adversely affected or who reasonably may be adversely affected by the conduct, a court of competent jurisdiction may enjoin conduct that would violate this section upon a showing that the conduct:

**(1)** Is reasonably anticipated to occur in the future; or

**(2)** Has occurred in the past, whether with the same child or others, and that it is not unreasonable to expect that the conduct will be repeated.

[Ark. Code Ann. § 12-18-210 \(Lexis Advance through all acts of the Third Extraordinary Session \(2022\), including corrections and edits by the Arkansas Code Revision Commission\)](#)