

Stricken language would be deleted from and underlined language would be added to present law.
Act 733 of the Regular Session

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: S3/16/17
A Bill

HOUSE BILL 1434

By: Representatives Collins, Bentley, C. Fite, Petty

By: Senators Irvin, Rapert

For An Act To Be Entitled

AN ACT TO CREATE THE SEX DISCRIMINATION BY ABORTION
PROHIBITION ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE SEX DISCRIMINATION BY
ABORTION PROHIBITION ACT.

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

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

Subchapter 18 – Sex Discrimination by Abortion Prohibition Act

20-16-1801. Title

This subchapter shall be known and may be cited as the "Sex Discrimination by Abortion Prohibition Act".

20-16-1802. Legislative findings and purpose.

(a) The General Assembly finds that:

(1) With regard to sex-selection abortion:

(A) The victims of sex-selection abortion are overwhelmingly female;

(B) A sex-selection abortion is used to prevent the birth of a child of an undesired sex;

(C) The United States, along with other countries, has petitioned the United Nations General Assembly to declare sex-selection



abortion a crime against women;

(D) Countries such as India, Great Britain, and China have taken steps to end sex-selection abortions;

(E) Women are a vital part of our society and culture and possess the same fundamental human rights as men;

(F) The United States prohibits discrimination on the basis of sex in various areas including employment, education, athletics, and health insurance;

(G) It is undesirable to have a distortion in the sex ratio within a society, particularly when there is a shortage of women; and

(H) Countries with high rates of male preference have experienced ill effects as a result of having a increasing population of young, unmarried men; and

(2) With regard to maternal health:

(A) It is undisputed that abortion risks to maternal health increase as gestation increases;

(B) The risk of death for pregnant women at eight (8) weeks' gestation is one (1) death per one million (1,000,000) and rises to:

(i) One (1) death per twenty-nine thousand (29,000) abortions between sixteen (16) and twenty (20) weeks' gestation; and

(ii) One (1) death per eleven thousand (11,000) abortions at twenty-one (21) weeks' gestation or later;

(C) A woman is thirty-five (35) times more likely to die from an abortion performed at twenty (20) weeks' gestation than she would have been had the abortion been performed in the first trimester;

(D) A woman is ninety-one (91) times more likely to die from an abortion performed at twenty-one (21) weeks' gestation or later than she would have been had the abortion been performed in the first trimester; and

(E) Because abortions performed solely based on the sex of a child are generally performed later in pregnancy, women undergoing these abortions are unnecessarily exposed to increased health risks, including an exponentially higher risk of death.

(b) Based on the findings in this section, the purpose of this act is to:

(1) Ban abortions performed solely for reasons of sex-selection;

and

(2) Protect women from the risks inherent in late-term abortions.

20-16-1803. Definitions.

As used in this subchapter:

(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 (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) "Incompetent" means an individual who has been adjudicated as an individual with a disability and has had a guardian appointed for her;

(3) "Minor" means an individual under eighteen (18) years of age;

(4) "Physician" means a person licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathy;

(5) "Sex-selection abortion" means an abortion performed solely on the basis of the sex of the unborn child;

(6) "Unborn child" means the offspring of human beings from conception until birth; and

(7) "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.

20-16-1804. Prohibition – Sex-selection abortion.

(a) A physician or other person shall not intentionally perform or attempt to perform an abortion with the knowledge that the pregnant woman is seeking the abortion solely on the basis of the sex of the unborn child.

(b) Before performing an abortion, the physician or other person who is performing the abortion shall:

(1)(A) Ask the pregnant woman if she knows the sex of the unborn child.

(B) If the pregnant woman knows the sex of the unborn child, the physician or other person who is performing the abortion shall inform the pregnant woman of the prohibition of abortion as a method of sex selection for children; and

(2)(A) Request the medical records of the pregnant woman relating directly to the entire pregnancy history of the woman.

(B) An abortion shall not be performed until reasonable time and effort is spent to obtain the medical records of the pregnant woman as described in subdivision (b)(2)(A) of this section.

(c) If this section is held invalid as applied to the period of pregnancy prior to viability, then the section shall remain applicable to the period of pregnancy subsequent to viability.

20-16-1805. Criminal penalties.

A physician or other person who knowingly performs or attempts to perform an abortion prohibited by this subchapter is guilty of a Class A misdemeanor.

20-16-1806. Civil penalties and professional sanctions.

(a)(1) A physician or other person who knowingly violates this subchapter is liable for damages and shall have his or her medical license suspended or revoked as applicable.

(2) The physician or other person may also be enjoined from future acts prohibited by this subchapter.

(b)(1) A woman who receives an abortion in violation of this subchapter without being informed of the prohibition of abortion as a method of sex selection for children, the parent or legal guardian of the woman if the woman is a minor who is not emancipated, or the legal guardian of the woman if the woman has been adjudicated incompetent may commence a civil

action for any reckless violation of this subchapter and may seek both actual and punitive damages.

(2) Damages may include without limitation:

(A) Money damages for all psychological and physical injuries occasioned by the violation of this subchapter; and

(B) Statutory damages equal to ten (10) times the cost of the abortion performed in violation of this subchapter.

(c) A physician or other person who performs an abortion in violation of this subchapter shall be considered to have engaged in unprofessional conduct for which his or her license to provide healthcare services in this state shall be suspended or revoked by the Arkansas State Medical Board.

(d)(1) A cause of action for injunctive relief against any physician or other person who has knowingly violated this subchapter may be maintained by:

(A) A person who is the spouse, parent, guardian, or current or former licensed healthcare provider of the woman who receives or attempts to receive an abortion in violation of this subchapter; or

(B) The Attorney General.

(2) The injunction shall prevent the physician or other person from performing further abortions in violation of this subchapter.

20-16-1807. Exclusion of liability for a woman who undergoes prohibited abortion.

(a) A woman who receives or attempts to receive an abortion in violation of this subchapter shall not be prosecuted under this subchapter for conspiracy to violate this subchapter or otherwise be held criminally or civilly liable for any violation.

(b) In a criminal proceeding or action brought under this subchapter, a woman who receives or attempts to receive an abortion in violation of this subchapter is entitled to all rights, protections, and notifications afforded to crime victims.

(c)(1) In a civil proceeding or action brought under this subchapter, the anonymity of the woman who receives or attempts to receive the abortion in violation of this subchapter shall be preserved from public disclosure unless she gives her consent to disclosure.

(2) A court of competent jurisdiction, upon motion or sua

sponte, shall issue orders to the parties, witnesses, and counsel and direct the sealing of the record and exclusion of the individuals from the courtroom or hearing room to the extent necessary to safeguard the identity of the woman from public disclosure.

(3) In the absence of written consent of the woman who receives or attempts to receive an abortion in violation of this subchapter, a person who initiates a proceeding or action under § 20-16-1806(b) or § 20-16-1806(d) of this subchapter shall do so under a pseudonym.

20-16-1808. Construction.

(a) This act shall not be construed as creating or recognizing a right to abortion.

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

20-16-1809. Right of intervention.

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

20-16-1810. Effective date.

This subchapter takes effect on January 1, 2018.

SECTION 2. DO NOT CODIFY. SEVERABILITY CLAUSE. If any provision of this act or the application of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are declared severable.

/s/Collins

APPROVED: 03/28/2017