

INTERIM STUDY PROPOSAL 2021-073

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021

A Bill

SENATE BILL 468

4 By: Senator T. Garner

5
6 Filed with: Arkansas Legislative Council
7 pursuant to A.C.A. §10-3-217.

8
9 **For An Act To Be Entitled**

10 AN ACT TO CREATE THE PRENATAL NONDISCRIMINATION ACT
11 OF ARKANSAS; AND FOR OTHER PURPOSES.

12
13
14 **Subtitle**

15 TO CREATE THE PRENATAL NONDISCRIMINATION
16 ACT OF ARKANSAS.

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18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

23 Subchapter 24 – Prenatal Nondiscrimination Act of Arkansas

24
25 20-16-2401. Title.

26 This subchapter shall be known and may be cited as the “Prenatal
27 Nondiscrimination Act of Arkansas”.

28
29 20-16-2402. Legislative findings and purpose.

30 (a) The General Assembly finds that:

31 (1) With regard to race selection abortion:

32 (A) The United States Supreme Court has been "zealous in
33 vindicating the rights of people even potentially subjected to race ... and
34 disability discrimination";

35 (B) The inherent right against discrimination on the basis
36 of race or genetic abnormality is protected in federal and state laws such as

1 the 1964 Civil Rights Acts, 42 U.S.C. § 2000e et seq., and the Americans with
2 Disabilities Amendments Act of 2010, 42 U.S.C. § 12101 et seq.;

3 (C) Notwithstanding these protections, unborn children are
4 often discriminated against and deprived of life;

5 (D) As United States Supreme Court Justice Clarence Thomas
6 has noted, "each of the immutable characteristics protected by this law can
7 be known relatively early in a pregnancy, and this law prevents them from
8 becoming the sole criterion for deciding whether the child will live or die";

9 (E) Abortion is an act rife with the potential for eugenic
10 manipulation;

11 (F) The State of Arkansas maintains a compelling interest
12 in preventing abortion from becoming a tool of modern-day eugenics;

13 (G)(i) Abortions predicated on the presence or presumed
14 presence of genetic abnormalities continue to occur despite the increasingly
15 favorable postnatal outcomes for human beings perceived as having a
16 disability.

17 (ii) Pharmaceutical treatments, gene therapies, and
18 prosthetic advances have given human beings who have a disability much
19 greater opportunities for survival and success than ever before.

20 (iii) Importantly, surgical intervention now
21 includes the availability of intrauterine surgery; and

22 (H) It is the intent of the General Assembly to prohibit
23 the practice of nontherapeutic or elective abortions for the purpose of
24 terminating the life of an unborn child because of that human being's race or
25 the presence or presumed presence of a genetic abnormality;

26 (2) With regard to genetic abnormalities and abortions:

27 (A) Persons with physical or mental disabilities possess
28 the same fundamental human rights as all other human beings;

29 (B) The United States prohibits discrimination against
30 persons with physical or mental disabilities in various circumstances,
31 including housing and employment;

32 (C) In many situations, the United States requires that
33 accommodations be made for the benefit of persons with physical or mental
34 disabilities;

1 (D) In spite of this, studies have revealed that a high
2 percentage of unborn children who are diagnosed with genetic abnormalities or
3 a potential for genetic abnormalities are aborted;

4 (E) Recent years have seen an increase in the use of
5 amniocentesis and other prenatal testing to diagnose potential health
6 problems in unborn children;

7 (F) Amniocentesis and other prenatal testing often give
8 correct results, but also can give false positive results;

9 (G) There are approximately four thousand (4,000) known
10 genetic abnormalities;

11 (H) Persons with physical or mental disabilities
12 contribute to American culture and are a valuable part of our society;

13 (I) Many persons with physical or mental disabilities are
14 able to support themselves financially, obtain an education, and live
15 independently; and

16 (J) As technology advances and as medical treatments and
17 educational methods improve, persons with physical or mental disabilities
18 will increasingly be self-dependent and productive citizens; and

19 (3) With regard to maternal health:

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

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

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

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

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

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

35 (E) Because abortions performed solely based on the sex of
36 a child are generally performed later in pregnancy, women undergoing these

1 abortions are unnecessarily exposed to increased health risks, including an
2 exponentially higher risk of death.

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

5 (1) Ban abortions performed solely for reasons of race selection
6 or feared genetic abnormalities; and

7 (2) Protect women from the risks inherent in later-term
8 abortions.

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10 20-16-2403. Definitions.

11 As used in this subchapter:

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

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

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

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

23 (iii) Remove an ectopic pregnancy;

24 (2)(A) "Genetic abnormality" means any defect, disease, or
25 disorder that is inherited genetically.

26 (B) "Genetic abnormality" includes without limitation:

27 (i) A physical disability;

28 (ii) A mental disability;

29 (iii) A physical disfigurement;

30 (iv) Scoliosis;

31 (v) Dwarfism;

32 (vi) Down syndrome;

33 (vii) Albinism;

34 (viii) Amelia; and

35 (ix) Any other type of physical or mental
36 abnormality or disease;

1 (3) “Incompetent” means an individual who has been adjudicated
2 as an individual with a disability and has had a guardian appointed for him
3 or her;

4 (4) “Minor” means an individual under eighteen (18) years of
5 age;

6 (5) “Physician” means a person licensed to practice medicine in
7 this state, including a medical doctor and a doctor of osteopathy;

8 (6) “Race selection abortion” means an abortion performed solely
9 on the basis of the race of the unborn child;

10 (7) “Unborn child” means the offspring of human beings from
11 conception until birth; and

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

18
19 20-16-2404. Prohibition – Race selection abortion – Genetic
20 abnormality abortion.

21 (a) A physician or other person shall not intentionally perform or
22 attempt to perform an abortion with the knowledge that the pregnant woman is
23 seeking the abortion solely:

24 (1) On the basis of the race of the unborn child; or

25 (2) Because the unborn child has been diagnosed with either a
26 genetic abnormality or a potential for a genetic abnormality.

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

30
31 20-16-2405. Criminal penalties.

32 A physician or other person who knowingly performs or attempts to
33 perform an abortion prohibited by this subchapter is guilty of a Class D
34 felony.

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36 20-16-2406. Civil penalties and professional sanctions.

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

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

6 (b)(1) A woman who receives an abortion in violation of this
7 subchapter without being informed of the prohibition of abortion under this
8 subchapter, the parent or legal guardian of the woman if the woman is a minor
9 who is not emancipated, or the legal guardian of the woman if the woman has
10 been adjudicated incompetent, may commence a civil action for any reckless
11 violation of this subchapter and may seek both actual and punitive damages.

12 (2) Damages may include without limitation:

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

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

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

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

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

27 (B) The Attorney General; or

28 (C) A prosecuting attorney with appropriate jurisdiction.

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

31 (e) A physician or person who knowingly violates the terms of an
32 injunction issued under this subchapter is subject to contempt and shall be
33 finned not to exceed five hundred dollars (\$500) or be imprisoned not to
34 exceed thirty (30) days, or both.

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1 20-16-2407. Exclusion of liability for woman who undergoes prohibited
2 abortion.

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

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

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

15 (2) A court of competent jurisdiction, upon motion or sua
16 sponte, shall issue orders to the parties, witnesses, and counsel and direct
17 the sealing of the record and exclusion of the individuals from the courtroom
18 or hearing room to the extent necessary to safeguard the identity of the
19 woman from public disclosure.

20 (3) In the absence of written consent of the woman who receives
21 or attempts to receive an abortion in violation of this subchapter, a person
22 who initiates a proceeding or action under § 20-16-2406(b) or § 20-16-2406(d)
23 shall do so under a pseudonym.

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25 20-16-2408. Construction.

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

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

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31 Referred requested by the Arkansas Senate

32 Prepared by: MBM/KFW