

Stricken language would be deleted from and underlined language would be added to present law.

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As Engrossed: S2/28/19 S3/14/19

A Bill

SENATE BILL 2

By: Senators T. Garner, *B. Ballinger, Bledsoe, A. Clark, J. Cooper, B. Davis, L. Eads, J. English, Flippo, K. Hammer, Hester, Hill, Irvin, B. Johnson, M. Johnson, Rapert, Rice, G. Stubblefield, J. Sturch, D. Wallace*

By: Representatives *Barker, Beck, Bentley, Breaux, Brown, Capp, Christiansen, Cloud, C. Cooper, Crawford, Della Rosa, Evans, C. Fite, M. Gray, Hawks, Kelly, Lundstrum, Maddox, Penzo, Petty, Rye, B. Smith, S. Smith, Speaks, Vaught*

For An Act To Be Entitled

AN ACT TO CREATE THE DOWN SYNDROME DISCRIMINATION BY
ABORTION PROHIBITION ACT; TO PROHIBIT ABORTION
BECAUSE THE UNBORN CHILD HAS OR MAY HAVE DOWN
SYNDROME; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE DOWN SYNDROME
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 20 – Down Syndrome Discrimination by Abortion Prohibition Act

20-16-2001. Title.

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

20-16-2002. 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 or the pregnant woman;

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

(iii) Remove an ectopic pregnancy;

(2) "Down Syndrome" means a chromosome disorder associated with either:

(A) An extra copy of the chromosome 21, in whole or in part; or

(B) An effective trisomy for chromosome 21;

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

(4) "Unborn child" means the offspring of human beings from conception until birth.

20-16-2003. Prohibition – Down Syndrome.

(a) A physician shall not intentionally perform or attempt to perform an abortion with the knowledge that a pregnant woman is seeking an abortion solely on the basis of:

(1) A test result indicating Down Syndrome in an unborn child;

(2) A prenatal diagnosis of Down Syndrome in an unborn child; or

(3) Any other reason to believe that an unborn child has Down Syndrome.

(b)(1) Before performing an abortion, the physician performing the abortion shall ask the pregnant woman if she is aware of any test results, prenatal diagnosis, or any other evidence that the unborn child may have Down Syndrome.

(2) If the pregnant woman knows of any test results, prenatal diagnosis, or any other evidence that the unborn child may have Down

Syndrome, the physician who is performing the abortion shall:

(A) Inform the pregnant woman of the prohibition of abortion contained in subsection (a) of this section; and

(B) Request the medical records of the pregnant woman relevant to determining whether she has previously aborted an unborn child or children after she became aware of any test results, prenatal diagnosis, or any other evidence that the unborn child may have had Down Syndrome.

(3) When the physician performing the abortion is required to request the medical records of the pregnant women under subdivision (b)(2)(B) of this section, the physician shall not perform an abortion until the physician spends at least fourteen (14) days to obtain the medical records described in subdivision (b)(2)(B) of this section.

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

(d) This section does not apply to an abortion performed on a pregnant woman if the pregnancy is the result of rape or incest.

20-16-2004. 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 D felony.

20-16-2005. Civil penalties and professional sanctions.

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

(2) The physician 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 for the purposes of aborting an unborn child diagnosed with Down Syndrome, 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 any 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 and his or her license to provide healthcare services in this state shall be 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.

20-16-2006. 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 of this subchapter.

(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 individuals from the courtroom or hearing room to the extent necessary to safeguard the identity of the woman

from public disclosure.

20-16-2007. 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.

/s/T. Garner