

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 468

By: Senator T. Garner

For An Act To Be Entitled

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

Subtitle

TO CREATE THE PRENATAL NONDISCRIMINATION
ACT OF ARKANSAS.

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 24 – Prenatal Nondiscrimination Act of Arkansas

20-16-2401. Title.

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

20-16-2402. Legislative findings and purpose.

(a) The General Assembly finds that:

(1) With regard to race selection abortion:

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

(B) The inherent right against discrimination on the basis of race or genetic abnormality is protected in federal and state laws such as the 1964 Civil Rights Acts, 42 U.S.C. § 2000e et seq., and the Americans with Disabilities Amendments Act of 2010, 42 U.S.C. § 12101 et seq.;



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

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

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

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

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

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

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

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

(2) With regard to genetic abnormalities and abortions:

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

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

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

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

(E) Recent years have seen an increase in the use of

amniocentesis and other prenatal testing to diagnose potential health problems in unborn children;

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

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

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

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

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

(3) 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 subchapter is to:

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

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

20-16-2403. 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)(A) "Genetic abnormality" means any defect, disease, or disorder that is inherited genetically.

(B) "Genetic abnormality" includes without limitation:

(i) A physical disability;

(ii) A mental disability;

(iii) A physical disfigurement;

(iv) Scoliosis;

(v) Dwarfism;

(vi) Down syndrome;

(vii) Albinism;

(viii) Amelia; and

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

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

(4) "Minor" means an individual under eighteen (18) years of

age;

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

(6) "Race selection abortion" means an abortion performed solely on the basis of the race of the unborn child;

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

(8) "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.

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

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

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

(b) 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.

20-16-2405. 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.

20-16-2406. 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 under this subchapter, 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;

(B) The Attorney General; or

(C) A prosecuting attorney with appropriate jurisdiction.

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

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

20-16-2407. Exclusion of liability for 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 § 20-16-2406(b) or § 20-16-2406(d) shall do so under a pseudonym.

20-16-2408. Construction.

(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.