

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

State of Arkansas
95th General Assembly
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As Engrossed: H3/19/25

A Bill

HOUSE BILL 1668

By: Representative Bentley

By: Senator A. Clark

For An Act To Be Entitled

AN ACT TO CREATE THE VULNERABLE YOUTH PROTECTION ACT;
TO AUTHORIZE A CIVIL ACTION FOR SOCIAL TRANSITIONING
AND CASTRATION, STERILIZATION, OR MUTILATION OF A
MINOR; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE VULNERABLE YOUTH
PROTECTION ACT; AND TO AUTHORIZE A CIVIL
ACTION FOR SOCIAL TRANSITIONING AND
CASTRATION, STERILIZATION, OR MUTILATION
OF A MINOR.

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

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

CHAPTER 132

VULNERABLE YOUTH PROTECTION ACT

16-132-101. Title.

This chapter shall be known and may be cited as the "Vulnerable Youth Protection Act".

16-132-102. Definitions.

As used in this chapter:

(1)(A) "Castration, sterilization, or mutilation" means any of the procedures or treatments prohibited under § 20-9-1501 et seq., regardless



of who performs or provides the procedures or treatments.

(B) "Castration, sterilization, or mutilation" does not include any of the conduct described in § 20-9-1502(c);

(2) "Minor" means an individual who is younger than eighteen (18) years of age; and

(3) "Social transitioning" means any act by which a minor adopts or espouses a gender identity that differs from the minor's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the minor, including without limitation changes in clothing, pronouns, hairstyle, and name.

16-132-103. Civil action – Liability.

(a)(1) Any person who knowingly causes or contributes to the social transitioning of a minor or the castration, sterilization, or mutilation of a minor shall be strictly and jointly and severally liable to the minor and the minor's parents for any personal injuries or harm resulting from the social transitioning or the castration, sterilization, or mutilation of the minor.

(2) Notwithstanding any other law, a person shall not be held liable under this chapter for any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the Supreme Court of the United States' interpretations of the Fourteenth Amendment of the United States Constitution, or by Article 2, § 6 of the Arkansas Constitution.

(b) Notwithstanding any other law, a person may bring an action under this chapter not later than twenty (20) years after the date that the cause of action accrues.

(c) Notwithstanding any other law, a civil action under this chapter shall not be brought against any person that acted at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if the imposition of liability upon that person would violate the doctrines of preemption or intergovernmental immunity.

(d) Notwithstanding any other law or rule, including Arkansas Rule of Civil Procedure 23, a civil action under this chapter shall not be litigated on behalf of a plaintiff class or a defendant class, and a court shall not certify a class under Arkansas Rule of Civil Procedure 23 in any civil action brought under this section.

(e) Any waiver or purported waiver of the right to sue under this chapter shall be void as against public policy and shall not be enforceable in any court.

16-132-104. Recovery.

A person who prevails in a suit brought under this chapter shall be entitled to recover:

- (1) Nominal damages;
- (2) Compensatory damages;
- (3) Statutory damages in an amount of not less than ten thousand dollars (\$10,000) from each defendant, in addition to any compensatory damages that may be awarded;
- (4) Punitive damages in an amount of not less than ten million dollars (\$10,000,000) from each defendant if irreversible sterilization or sexual dysfunction results, in addition to any compensatory damages that may be awarded; and
- (5) Court costs and reasonable attorney's fees.

16-132-105. Affirmative defenses.

It is an affirmative defense under this chapter that:

- (1) The imposition of liability on the defendant will violate constitutional or federally protected rights that belong to the defendant personally; or
- (2) The defendant:
 - (A) Has standing to assert the rights of a third party under the tests for third-party standing established by the United States Supreme Court; and
 - (B) Demonstrates that the imposition of liability on the defendant will violate constitutional or federally protected rights belonging to the third party.

16-132-106. Void defenses.

Notwithstanding any other law, the following are not a defense to an action brought under this chapter:

- (1) Ignorance or mistake of law;
- (2) A defendant's belief that the requirements or provisions of

this chapter are unconstitutional or were unconstitutional;

(3) A defendant's reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the conduct occurred;

(4) A defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5) A defendant's reliance on any federal statute, agency rule or action, or treaty that has been repealed, superseded, or declared invalid or unconstitutional, even if that federal statute, agency rule or action, or treaty had not been repealed, superseded, or declared invalid or unconstitutional when the conduct described in § 16-132-103 occurred;

(6) A nonmutual issue preclusion or nonmutual claim preclusion;

(7) The consent of the plaintiff to the defendant's conduct;

(8) The consent of the minor who was castrated, sterilized, mutilated, or socially transitioned to the defendant's conduct;

(9) Contributory or comparative negligence;

(10) Assumption of risk;

(11) Lack of but-for or proximate causation;

(12) Governmental immunity, official immunity, or qualified immunity;

(13) The plaintiff's waiver or purported waiver of his or her right to sue under this chapter;

(14) The plaintiff's failure to exhaust administrative remedies;

or

(15) A claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided under §16-132-103(a)(2).

16-132-107. Enforcement as private civil action.

(a)(1) Notwithstanding any other law, this chapter shall be enforced exclusively through the private civil action in § 16-132-103.

(2) A direct or indirect enforcement of this chapter shall not be taken or threatened by the state, a political subdivision, a district or

county attorney, or any officer or employee of this state or a political subdivision against any person or entity, by any means whatsoever, except through the private civil action in § 16-132-103.

(b) The state, a political subdivision of the state, a district or county attorney, or any officer or employee of this state or a political subdivision shall not:

(1) Use the conduct described under § 16-132-103 to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except through the private civil action under § 16-132-103;

(2) Act in concert or participate with another person who brings suit under this chapter;

(3) Establish or attempt to establish any type of agency or fiduciary relationship with another person who brings suit under this chapter;

(4) Make any attempt to control or influence another person's decision to bring suit under this chapter or that person's conduct of the litigation; or

(5)(A) Intervene in any action brought under this chapter.

(B) Subdivision (b)(5)(A) of this section does not prohibit the state, a political subdivision of the state, a district or county attorney, or any officer or employee of this state or a political subdivision from filing an amicus curiae brief in the action if the state, a political subdivision of the state, a district or county attorney, or any officer or employee of this state or a political subdivision does not act in concert or participate with the plaintiff.

(c) Notwithstanding any other law, this section does not preclude or limit the enforcement of any other law or rule against conduct that is independently prohibited by such other law or rule, and that would remain prohibited by such other law or rule in the absence of this chapter.

(d) Notwithstanding any other law, a private civil action brought under this chapter is not subject to the Citizen Participation in Government Act, § 16-63-501 et seq., or the Religious Freedom Restoration Act, § 16-123-401 et seq.

16-132-108. Immunity.

(a) Notwithstanding any other law and except as provided in subsection (b) of this section, in any action, claim, counterclaim, or any type of legal or equitable action that challenges the validity or enforceability of any provision or application of this subchapter, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer, employee, or agent of this state or a political subdivision from enforcing any provision or application of this chapter, or from hearing, adjudicating, or docketing a civil action brought under this chapter:

(1) The state and each of its officers and employees shall have sovereign immunity;

(2) The political subdivisions of the state and each of their officers and employees shall have governmental immunity; and

(3) Each officer and employee of this state or a political subdivision shall have official immunity and qualified immunity.

(b) The sovereign immunity provided under subsection (a)(1) of this section includes the constitutional sovereign immunity recognized by the United States Supreme Court in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), and *Alden v. Maine*, 527 U.S. 706 (1999), which applies in both state and federal court, and which may not be abrogated by the United States Congress or by any state or federal court except pursuant to legislation authorized by Section 5 of the Fourteenth Amendment, by the Bankruptcy Clause of Article I of the United States Constitution, by Congress's powers to raise and support Armies and to provide and maintain a Navy, or by any other constitutional provision that might be recognized by the United States Supreme Court as a basis for authorizing the United States Congress to abrogate state sovereign immunity.

(c) The immunities provided under subsection (a) of this section shall apply in every court, both state and federal, and in every adjudicative proceeding of any type whatsoever.

(d) State law shall not waive or abrogate an immunity provided under subsection (a) of this section unless the state law expressly waives or abrogates immunity with specific reference to this section.

(e) An attorney representing the state, its political subdivisions, or any officer, employee, or agent of this state or a political subdivision shall not:

(1) Waive an immunity provided under subsection (a) of this section; or

(2)(A) Take any action that would result in a waiver of the immunity provided under subsection (a) of this section.

(B) Any action or purported waiver made in violation of subdivision (e)(2)(A) of this section shall be regarded as a legal nullity and an ultra vires act.

(f) Notwithstanding any other law, including § 16-111-101 et seq., and § 16-115-102, a court of this state shall not :

(1) Award declaratory or injunctive relief, or any type of writ, including a writ of prohibition, that would pronounce any provision or application of this chapter invalid or unconstitutional, or that would restrain or prevent the state or a political subdivision of the state, any officer, employee, or agent of this state or a political subdivision, or any person from enforcing any provision or application of this chapter, or from hearing, adjudicating, docketing, or filing a civil action brought under this chapter; or

(2) Have jurisdiction to consider any action, claim, or counterclaim that seeks the relief as described in subdivision (f)(1) of this section.

(g)(1) An action, claim, or counterclaim that seeks the relief described in subsection (f) of this section shall not be litigated on behalf of a plaintiff or defendant class, notwithstanding Arkansas Rule of Civil Procedure 23.

(2) A court shall not certify a plaintiff or defendant class in any action seeking the relief described in subsection (f) of this section.

16-132-109. Fee shifting.

(a) Any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, its political subdivision, any officer or employee of the state or a political subdivision of the state, or any person from enforcing or bringing suit to enforce any provision of this chapter, in a state or federal court, or that represents a litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and reasonable attorney's fees of the prevailing party, including the costs and reasonable attorney's fees that the

prevailing party incurs in the prevailing party's efforts to recover costs and fees.

(b) For purposes of this section, a party is considered a prevailing party if:

(1) A state or federal court dismisses any claim or cause of action brought against the party by the litigant that seeks the declaratory or injunctive relief described by subsection (a) of this section, regardless of the reason for the dismissal;

(2) A state or federal court enters judgment in the party's favor on any such claim or cause of action; or

(3) The party that seeks the declaratory or injunctive relief described by subsection (a) of this section voluntarily dismisses or nonsuits the party's claims against the other party under Fed. R. Civ. P. 41, Ark. R. Civ. P. 41, or any other source of law.

(c) A prevailing party may recover costs and attorney's fees under this section only to the extent that those costs and attorney's fees were incurred while defending claims or causes of action on which the party prevailed.

(d) Regardless of whether a prevailing party sought to recover costs or attorney's fees in the underlying action, a prevailing party under this section may bring a civil action to recover costs and attorney's fees against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief as described in subsection (a) of this section no later than three (3) years from the date on which:

(1) The dismissal or judgment described by subsection (b) of this section becomes final on the conclusion of appellate review; or

(2) The time for seeking appellate review expires.

(e) It is not a defense to an action brought under subsection (d) of this section that:

(1) A prevailing party under this section failed to seek recovery of costs or attorney's fees in the underlying action;

(2) The court in the underlying action declined to recognize or enforce the requirements of this section; or

(3) The court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

(f) Notwithstanding any other law, including § 16-60-101 et seq., a civil action brought under subsection (d) of this section may be brought in:

(1) The county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) The county of residence for any one of the natural person defendants at the time the cause of action accrued;

(3) The county of the principal office in this state of any one of the defendants that is not a natural person; or

(4) The county of residence for the claimant if the claimant is a natural person residing in this state.

(g) If a civil action is brought under subsection (d) of this section in any one of the venues described by subsection (f) of this section, then the action may not be transferred to a different venue without the written consent of all parties.

(h) Any contractual choice of forum provision that purports to require a civil action under subsection (d) of this section to be litigated in another forum shall be void as against public policy and may not be enforced in any state or federal court.

16-132-110. Applicability.

(a)(1) Notwithstanding any other law, this chapter and the law of this state shall apply to any social transitioning of a minor resident of this state, and to any castration, sterilization, or mutilation of a minor who is a resident of this state, regardless of where that treatment occurred, and to any civil action brought under this chapter, to the maximum extent permitted by federal law and state law.

(2) Any contractual choice-of-law provision that purports to require the law of a different jurisdiction to apply shall be void as against public policy and shall not be enforced in any court.

(b) This chapter shall apply extraterritorially to the maximum extent permitted by the United States Constitution and the Arkansas Constitution.

(c) Notwithstanding any other law, a court of this state shall have personal jurisdiction over a defendant sued under this chapter to the maximum extent permitted by the Fourteenth Amendment to the United States Constitution.

(d) This chapter does not limit or preclude a defendant from asserting

the unconstitutionality of any provision or application of state law as a defense to liability under this chapter or from asserting any other defense that might be available under any other source of law.

16-132-111. Severability.

(a) Under *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the General Assembly that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of this chapter to every person, group of persons, or circumstances, are severable from each other.

(b)(1) If any application of a provision of this chapter to any person, group of persons, or circumstances is found by a court to be invalid, preempted, or unconstitutional, for any reason whatsoever, then the remaining applications of that provision of this chapter to all other persons and circumstances shall be severed and preserved and shall remain in effect.

(2) All constitutionally valid applications of the provisions in this chapter shall be severed from any applications that a court finds to be invalid, preempted, or unconstitutional, because it is the intent of the General Assembly and priority that every single valid application of every statutory provision be allowed to stand alone.

(c) The General Assembly further declares that it would have enacted this chapter, and each provision and all constitutional applications of the provisions of this chapter, irrespective of the fact that any provision of this chapter were to be declared invalid, preempted, or unconstitutional.

(d) If any provision of this chapter is found by a court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of subsections (a) through (c) of this section.

(e)(1) A court shall not decline to enforce the severability requirements of subsections (a) through (d) of this section on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity.

(2) A court that declines to enforce or enjoins a state official

from enforcing a statutory provision does not rewrite a statute or engaging in legislative or lawmaking activity, as the statute continues to contain the same words as before the court's decision.

(3) A judicial injunction or declaration of unconstitutionality:

(A) Is nothing more than an edict prohibiting enforcement of the disputed statute against the named parties to that lawsuit, which may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Arkansas Constitution or the United States Constitution;

(B) Is not a formal amendment of the language in a statute; and

(C) No more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

(f) If any state or federal court disregards any of the severability requirements in subsections (a) through (e) of this section, and declares or finds any provision of this subchapter facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision that can be enforced against a person, group of persons, or circumstances without violating federal law or the federal or state constitutions, then that provision shall be interpreted, as a matter of state law, as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal law or the federal or state constitutions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.

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/Bentley