

1 State of Arkansas As Engrossed: S2/28/19 S3/14/19

2 92nd General Assembly

A Bill

3 Regular Session, 2019

SENATE BILL 2

4

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

7 Wallace

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

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For An Act To Be Entitled

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

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Subtitle

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TO CREATE THE DOWN SYNDROME
21 DISCRIMINATION BY ABORTION PROHIBITION
22 ACT.

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

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

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Subchapter 20 – Down Syndrome Discrimination by Abortion Prohibition Act

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20-16-2001. Title.

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

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20-16-2002. Definitions.

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As used in this subchapter:



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

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

8 (i) Save the life or preserve the health of the
9 unborn child or the pregnant woman;

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

12 (iii) Remove an ectopic pregnancy;

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

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

17 (B) An effective trisomy for chromosome 21;

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

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

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23 20-16-2003. Prohibition – Down Syndrome.

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

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

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

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

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

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

1 Syndrome, the physician who is performing the abortion shall:

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

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

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

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

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

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19 20-16-2004. Criminal penalties.

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

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24 20-16-2005. Civil penalties and professional sanctions.

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

27 (2) The physician may also be enjoined from future acts
28 prohibited by this subchapter.

29 (b)(1) A woman who receives an abortion in violation of this
30 subchapter without being informed of the prohibition of abortion for the
31 purposes of aborting an unborn child diagnosed with Down Syndrome, the parent
32 or legal guardian of the woman if the woman is a minor who is not
33 emancipated, or the legal guardian of the woman if the woman has been
34 adjudicated incompetent, may commence a civil action for any reckless
35 violation of this subchapter and may seek both actual and punitive damages.

36 (2) Damages may include without limitation:

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

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

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

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

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

15 (B) The Attorney General.

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

18
19 20-16-2006. Exclusion of liability for a woman who undergoes
20 prohibited abortion.

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

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

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

33 (2) A court of competent jurisdiction, upon motion or sua
34 sponte, shall issue orders to the parties, witnesses, and counsel and direct
35 the sealing of the record and exclusion of individuals from the courtroom or
36 hearing room to the extent necessary to safeguard the identity of the woman

1 from public disclosure.

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3 20-16-2007. Right of intervention.

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

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10 */s/T. Garner*

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13 **APPROVED: 4/1/19**

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