

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

# A Bill

HOUSE BILL 1434

5 By: Representatives Collins, Bentley, C. Fite, Petty  
6 By: Senators Irvin, Rapert  
7

## For An Act To Be Entitled

9 AN ACT TO CREATE THE SEX DISCRIMINATION BY ABORTION  
10 PROHIBITION ACT; AND FOR OTHER PURPOSES.  
11

## Subtitle

14 TO CREATE THE SEX DISCRIMINATION BY  
15 ABORTION PROHIBITION ACT.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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20 SECTION 1. Arkansas Code Title 20, Chapter 16, is amended to add an  
21 additional subchapter to read as follows:

22 Subchapter 18 – Sex Discrimination by Abortion Prohibition Act  
23

24 20-16-1801. Title

25 This subchapter shall be known and may be cited as the "Sex  
26 Discrimination by Abortion Prohibition Act".  
27

28 20-16-1802. Legislative findings and purpose.

29 (a) The General Assembly finds that:

30 (1) With regard to sex-selection abortion:

31 (A) The victims of sex-selection abortion are  
32 overwhelmingly female;

33 (B) A sex-selection abortion is used to prevent the birth  
34 of a child of an undesired sex;

35 (C) The United States, along with other countries, has  
36 petitioned the United Nations General Assembly to declare sex-selection



1 abortion a crime against women;

2 (D) Countries such as India, Great Britain, and China have  
3 taken steps to end sex-selection abortions;

4 (E) Women are a vital part of our society and culture and  
5 possess the same fundamental human rights as men;

6 (F) The United States prohibits discrimination on the  
7 basis of sex in various areas including employment, education, athletics, and  
8 health insurance;

9 (G) It is undesirable to have a distortion in the sex  
10 ratio within a society, particularly when there is a shortage of women; and

11 (H) Countries with high rates of male preference have  
12 experienced ill effects as a result of having a increasing population of  
13 young, unmarried men; and

14 (2) With regard to maternal health:

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

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

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

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

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

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

30 (E) Because abortions performed solely based on the sex of  
31 a child are generally performed later in pregnancy, women undergoing these  
32 abortions are unnecessarily exposed to increased health risks, including an  
33 exponentially higher risk of death.

34 (b) Based on the findings in this section, the purpose of this act is  
35 to:

36 (1) Ban abortions performed solely for reasons of sex-selection;

1 and

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

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5 20-16-1803. Definitions.

6 As used in this subchapter:

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

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

14 (i) Save the life or preserve the health of the  
15 unborn child;

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

18 (iii) Remove an ectopic pregnancy;

19 (2) "Incompetent" means an individual who has been adjudicated  
20 as an individual with a disability and has had a guardian appointed for her;

21 (3) "Minor" means an individual under eighteen (18) years of  
22 age;

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

25 (5) "Sex-selection abortion" means an abortion performed solely  
26 on the basis of the sex of the unborn child;

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

29 (7) "Viability" means the state of fetal development when, in  
30 the judgment of the physician based on the particular facts of the case  
31 before him or her and in light of the most advanced medical technology and  
32 information available to him or her, there is a reasonable likelihood of  
33 sustained survival of the unborn child outside the body of the mother, with  
34 or without artificial life support.

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36 20-16-1804. Prohibition – Sex-selection abortion.

1       (a) A physician or other person shall not intentionally perform or  
2 attempt to perform an abortion with the knowledge that the pregnant woman is  
3 seeking the abortion solely on the basis of the sex of the unborn child.

4       (b) Before performing an abortion, the physician or other person who  
5 is performing the abortion shall:

6               (1)(A) Ask the pregnant woman if she knows the sex of the unborn  
7 child.

8               (B) If the pregnant woman knows the sex of the unborn  
9 child, the physician or other person who is performing the abortion shall  
10 inform the pregnant woman of the prohibition of abortion as a method of sex  
11 selection for children; and

12              (2)(A) Request the medical records of the pregnant woman  
13 relating directly to the entire pregnancy history of the woman.

14              (B) An abortion shall not be performed until reasonable  
15 time and effort is spent to obtain the medical records of the pregnant woman  
16 as described in subdivision (b)(2)(A) of this section.

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

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21       20-16-1805. Criminal penalties.

22       A physician or other person who knowingly performs or attempts to  
23 perform an abortion prohibited by this subchapter is guilty of a Class A  
24 misdemeanor.

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26       20-16-1806. Civil penalties and professional sanctions.

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

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

32       (b)(1) A woman who receives an abortion in violation of this  
33 subchapter without being informed of the prohibition of abortion as a method  
34 of sex selection for children, the parent or legal guardian of the woman if  
35 the woman is a minor who is not emancipated, or the legal guardian of the  
36 woman if the woman has been adjudicated incompetent may commence a civil

1 action for any reckless violation of this subchapter and may seek both actual  
2 and punitive damages.

3 (2) Damages may include without limitation:

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

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

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

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

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

18 (B) The Attorney General; or

19 (C) A prosecuting attorney with appropriate jurisdiction.

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

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23 20-16-1807. Exclusion of liability for a woman who undergoes  
24 prohibited abortion.

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

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

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

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

6           (3) In the absence of written consent of the woman who receives  
7 or attempts to receive an abortion in violation of this subchapter, a person  
8 who initiates a proceeding or action under § 20-16-1806(b) or § 20-16-1806(d)  
9 of this subchapter shall do so under a pseudonym.

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11           20-16-1808. Construction.

12           (a) This act shall not be construed as creating or recognizing a right  
13 to abortion.

14           (b) It is not the intention of this act to make lawful an abortion  
15 that is currently unlawful.

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17           20-16-1809. Right of intervention.

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

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23           20-16-1810. Effective date.

24           This subchapter takes effect on January 1, 2018.

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26           SECTION 2. DO NOT CODIFY. SEVERABILITY CLAUSE. If any provision of  
27 this act or the application of this act to any person or circumstance is held  
28 invalid, the invalidity shall not affect other provisions or applications of  
29 this act which can be given effect without the invalid provision or  
30 application, and to this end, the provisions of this act are declared  
31 severable.