

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4  
5 By: Senator T. Garner  
6

# A Bill

SENATE BILL 468

## For An Act To Be Entitled

8 AN ACT TO CREATE THE PRENATAL NONDISCRIMINATION ACT  
9 OF ARKANSAS; AND FOR OTHER PURPOSES.  
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11

## Subtitle

12 TO CREATE THE PRENATAL NONDISCRIMINATION  
13 ACT OF ARKANSAS.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. Arkansas Code Title 20, Chapter 16, is amended to add an  
20 additional subchapter to read as follows:

21 Subchapter 24 – Prenatal Nondiscrimination Act of Arkansas  
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23 20-16-2401. Title.

24 This subchapter shall be known and may be cited as the “Prenatal  
25 Nondiscrimination Act of Arkansas”.  
26

27 20-16-2402. Legislative findings and purpose.

28 (a) The General Assembly finds that:

29 (1) With regard to race selection abortion:

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

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



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

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

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

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

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

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

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

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

24                   (2) With regard to genetic abnormalities and abortions:

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

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

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

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

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

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

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

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

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

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

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

15 (3) With regard to maternal health:

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

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

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

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

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

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

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

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

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

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

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6           20-16-2403. Definitions.

7           As used in this subchapter:

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

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

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

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

19                   (iii) Remove an ectopic pregnancy;

20           (2)(A) "Genetic abnormality" means any defect, disease, or  
21 disorder that is inherited genetically.

22           (B) "Genetic abnormality" includes without limitation:

23                   (i) A physical disability;

24                   (ii) A mental disability;

25                   (iii) A physical disfigurement;

26                   (iv) Scoliosis;

27                   (v) Dwarfism;

28                   (vi) Down syndrome;

29                   (vii) Albinism;

30                   (viii) Amelia; and

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

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

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

1 age;

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

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

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

8 (8) "Viability" means the state of fetal development when, in  
9 the judgment of the physician based on the particular facts of the case  
10 before him or her and in light of the most advanced medical technology and  
11 information available to him or her, there is a reasonable likelihood of  
12 sustained survival of the unborn child outside the body of the mother, with  
13 or without artificial life support.

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15 20-16-2404. Prohibition – Race selection abortion – Genetic  
16 abnormality abortion.

17 (a) A physician or other person shall not intentionally perform or  
18 attempt to perform an abortion with the knowledge that the pregnant woman is  
19 seeking the abortion solely:

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

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

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

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27 20-16-2405. Criminal penalties.

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

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32 20-16-2406. Civil penalties and professional sanctions.

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

36 (2) The physician or other person may also be enjoined from

1 future acts prohibited by this subchapter.

2 (b)(1) A woman who receives an abortion in violation of this  
3 subchapter without being informed of the prohibition of abortion under this  
4 subchapter, the parent or legal guardian of the woman if the woman is a minor  
5 who is not emancipated, or the legal guardian of the woman if the woman has  
6 been adjudicated incompetent, may commence a civil action for any reckless  
7 violation of this subchapter and may seek both actual and punitive damages.

8 (2) Damages may include without limitation:

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

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

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

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

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

23 (B) The Attorney General; or

24 (C) A prosecuting attorney with appropriate jurisdiction.

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

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

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32 20-16-2407. Exclusion of liability for woman who undergoes prohibited  
33 abortion.

34 (a) A woman who receives or attempts to receive an abortion in  
35 violation of this subchapter shall not be prosecuted under this subchapter  
36 for conspiracy to violate this subchapter or otherwise be held criminally or

1 civilly liable for any violation.

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

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

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

15 (3) In the absence of written consent of the woman who receives  
16 or attempts to receive an abortion in violation of this subchapter, a person  
17 who initiates a proceeding or action under § 20-16-2406(b) or § 20-16-2406(d)  
18 shall do so under a pseudonym.

19  
20 20-16-2408. Construction.

21 (a) This subchapter does not create or recognize a right to abortion.

22 (b) It is not the intention of this subchapter to make lawful an  
23 abortion that is currently unlawful.

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