

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

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

As Engrossed: S2/28/19

A Bill

SENATE BILL 2

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
11

For An Act To Be Entitled

12 AN ACT TO CREATE THE DOWN SYNDROME DISCRIMINATION BY
13 ABORTION PROHIBITION ACT; TO PROHIBIT ABORTION FOR
14 THE PURPOSE OF GENETIC SELECTION BECAUSE THE UNBORN
15 CHILD HAS OR MAY HAVE DOWN SYNDROME; AND FOR OTHER
16 PURPOSES.
17

Subtitle

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19
20 TO CREATE THE DOWN SYNDROME
21 DISCRIMINATION BY ABORTION PROHIBITION
22 ACT.
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25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

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

30 Subchapter 20 – Down Syndrome Discrimination by Abortion Prohibition Act

31
32 20-16-2001. Title.

33 This subchapter shall be known and may be cited as the "Down Syndrome
34 Discrimination by Abortion Prohibition Act".
35

36 20-16-2002. Definitions.



1 As used in this subchapter:

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

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

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

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

13 (iii) Remove an ectopic pregnancy;

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

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

18 (B) An effective trisomy for chromosome 21;

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

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

23
24 20-16-2003. Prohibition – Genetic selection.

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

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

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

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

32 (b) Before performing an abortion, the physician or other person
33 performing the abortion shall:

34 (1)(A) Ask the pregnant woman if she is aware of any test
35 results, prenatal diagnosis, or any other reason that the unborn child may
36 have Down Syndrome.

1 (B) If the pregnant woman knows of any test results,
2 prenatal diagnosis, or any other reason that the unborn child may have Down
3 Syndrome, the physician or other person who is performing the abortion shall
4 inform the pregnant woman of the prohibition of abortion for genetic
5 selection; and

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

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

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

14
15 20-16-2004. Criminal penalties.

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

19
20 20-16-2005. Civil penalties and professional sanctions.

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

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

25 (b)(1) A woman who receives an abortion in violation of this
26 subchapter without being informed of the prohibition of abortion for genetic
27 selection, the parent or legal guardian of the woman if the woman is a minor
28 who is not emancipated, or the legal guardian of the woman if the woman has
29 been adjudicated incompetent, may commence a civil action for any reckless
30 violation of this subchapter and may seek both actual and punitive damages.

31 (2) Damages may include without limitation:

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

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

36 (c) A physician or other person who performs an abortion in violation

1 of this subchapter shall be considered to have engaged in unprofessional
2 conduct and his or her license to provide healthcare services in this state
3 shall be revoked by the Arkansas State Medical Board.

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

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

10 (B) The Attorney General.

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

13
14 20-16-2006. Exclusion of liability for a woman who undergoes
15 prohibited abortion.

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

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

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

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

33
34 20-16-2007. Right of intervention.

35 The General Assembly by joint resolution may appoint one (1) or more of
36 its members who sponsored or cosponsored this subchapter in his or her

1 official capacity to intervene as a matter of right in any case in which the
2 constitutionality of this law is challenged.

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/s/T. Garner