

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

A Bill

SENATE BILL 2

5 By: Senator T. Garner
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE DOWN SYNDROME DISCRIMINATION BY
9 ABORTION PROHIBITION ACT; TO PROHIBIT ABORTION FOR
10 THE PURPOSE OF GENETIC SELECTION BECAUSE THE UNBORN
11 CHILD HAS OR MAY HAVE DOWN SYNDROME; AND FOR OTHER
12 PURPOSES.
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Subtitle

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

25 Subchapter 20 – Down Syndrome Discrimination by Abortion Prohibition Act

26
27 20-16-2001. Title.

28 This subchapter shall be known and may be cited as the "Down Syndrome
29 Discrimination by Abortion Prohibition Act".
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31 20-16-2002. Definitions.

32 As used in this subchapter:

33 (1)(A) "Abortion" means the act of using or prescribing any
34 instrument, medicine, drug, or any other substance, device, or means with the
35 intent to terminate the clinically diagnosable pregnancy of a woman, with
36 knowledge that the termination by any of those means will with reasonable

1 likelihood cause the death of the unborn child.

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

4 (i) Save the life or preserve the health of the
5 unborn child or the pregnant woman;

6 (ii) Remove a dead unborn child caused by
7 spontaneous abortion; or

8 (iii) Remove an ectopic pregnancy;

9 (2) "Down Syndrome" means a chromosome disorder associated with
10 either:

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

13 (B) An effective trisomy for chromosome 21;

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

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

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19 20-16-2003. Prohibition – Genetic selection.

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

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

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

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

27 (b) Before performing an abortion, the physician or other person
28 performing the abortion shall:

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

32 (B) If the pregnant woman knows of any test results,
33 prenatal diagnosis, or any other reason that the unborn child may have Down
34 Syndrome, the physician or other person who is performing the abortion shall
35 inform the pregnant woman of the prohibition of abortion for genetic
36 selection; and

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

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

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

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10 20-16-2004. Criminal penalties.

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

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15 20-16-2005. Civil penalties and professional sanctions.

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

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

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

26 (2) Damages may include without limitation:

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

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

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

35 (d)(1) A cause of action for injunctive relief against any physician
36 or other person who has knowingly violated this subchapter may be maintained

1 by:

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

5 (B) The Attorney General.

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

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9 20-16-2006. Exclusion of liability for a woman who undergoes
10 prohibited abortion.

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

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

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

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

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29 20-16-2007. Right of intervention.

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

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