MISSISSIPPI LEGISLATURE


REGULAR SESSION 2020

To: Judiciary B

HOUSE BILL NO. 1295
(As Sent to Governor)

AN ACT TO CREATE THE "LIFE EQUALITY ACT OF 2020"; TO STATE LEGISLATIVE FINDINGS AND PURPOSE; TO DEFINE TERMS; TO PROHIBIT Abortions being performed because of race, sex or genetic abnormality except in a medical emergency; TO REQUIRE THE physician performing an abortion to notate in a report that the abortion is not sought because of race, sex or the presence of a genetic abnormality; TO REQUIRE THE STATE DEPARTMENT OF HEALTH TO CREATE THE FORMS NECESSARY FOR THE REPORTS UNDER THIS ACT; TO PROVIDE CRIMINAL PENALTIES, PROFESSIONAL SANCTIONS AND CIVIL PENALTIES FOR VIOLATIONS OF THIS ACT; TO AUTHORIZE THE ATTORNEY GENERAL TO BRING AN ENFORCEMENT ACTION ON BEHALF OF THE STATE DEPARTMENT OF HEALTH OR THE STATE BOARD OF MEDICAL LICENSURE; TO PROVIDE THAT NOTHING IN THE ACT CREATES OR RECOGNIZES A RIGHT TO AN ABORTION; TO PROVIDE THAT THE PROVISIONS OF THIS ACT ARE SEVERABLE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Title. This act shall be known and may be cited as the "Life Equality Act of 2020."

SECTION 2. Legislative findings and purpose. (1) The Legislature finds:

(a) The United States Supreme Court has been "zealous in vindicating the rights of people even potentially subjected to race, sex, and disability discrimination." Box v. Planned Parenthood of Indiana and Kentucky, 139 S.Ct. 1780, 1792 (2019)

(b) The inherent right against discrimination on the basis of race, sex, or genetic abnormality is protected in federal and state laws. For example, the 1964 Civil Rights Act (42 U.S.C. 2000e et seq.) and the laws of every state protect against discrimination on the basis of race or sex. The Rehabilitation Act of 1973 (29 U.S.C. 701), the Americans With Disabilities Amendments Act of 2010 (42 U.S.C. 12101, et seq.), and numerous state laws prohibit discrimination against individuals on the basis of a real or perceived physical or mental impairment that substantially limits one or more major life activities.

(c) Notwithstanding these protections, unborn human beings are often discriminated against and deprived of life.

(d) As Supreme Court Justice Clarence Thomas has noted, "Each of the immutable characteristics protected by this law can be known relatively early in a pregnancy, and this law prevents them from becoming the sole criterion for deciding whether the
child will live or die."  Box v. Planned Parenthood of Indiana and Kentucky, 139 S.Ct. 1780, 1783 (2019) (Thomas, J., concurring).

(e) "Abortion is an act rife with the potential for eugenic manipulation."  Id. at 1787.

(f) The State of Mississippi maintains a "compelling interest in preventing abortion from becoming a tool of modern-day eugenics."  Id.

(g) Sex-selection abortions are used to prevent the birth of a human being of the undesired sex.  Its victims are overwhelming female.

(h) Despite equality under the law being guaranteed to all women in the United States and most of the developed world, sex-selection abortions continue to occur in the United States.

(i) Abortions predicated on the presence or presumed presence of genetic abnormalities continue to occur despite the increasingly favorable post-natal outcomes for human beings perceived as handicapped or disabled.  Pharmaceutical treatments, gene therapies, and prosthetic advances have given formerly handicapped and disabled human beings much greater opportunities for survival and success than ever before.  Importantly, surgical intervention now includes the availability of intrauterine surgery.

(2) Therefore, it is the intent of the Mississippi Legislature, through this act and any regulations and policies promulgated hereunder, to prohibit the practice of nontherapeutic
or elective abortion for the purpose of terminating the life of an unborn human being because of that human being's race, sex, or the presence or presumed presence of a genetic abnormality.

SECTION 3. Definitions. As used in this section:

(a) "Abortion" means the use or prescription of an instrument, medicine, drug, or other substance or device with the intent to terminate a clinically diagnosable pregnancy for reasons other than to increase the probability of a live birth, to preserve the life or health of the unborn human being, to terminate an ectopic pregnancy, or to remove a dead unborn human being.

(b) "Attempt to perform or induce an abortion" means to do or omit anything that, under the circumstances as the person believes them to be, is an act or omission that constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in violation of this section.

(c) "Because of race" means on account of the actual or presumed race or racial makeup of the unborn human being.

(d) "Because of the presence of a genetic abnormality" means on account of the presence or presumed presence of an abnormal gene expression in the unborn human being, including, but not limited to, chromosomal disorders or morphological malformations occurring as the result of defective gene expression.
(e) "Because of sex" means on account of the actual or presumed sex of the unborn human being.

(f) "Conception" means the fusion of human spermatozoon with a human ovum.

(g) "Department" means the Mississippi State Department of Health.

(h) "Human being" means an individual member of the species Homo sapiens, from and after the point of conception.

(i) "Major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, and bladder, bowel, brain, circulatory, digestive, endocrine, neurological, reproductive, and respiratory functions.

(j) "Medical emergency" means a condition in which, on the basis of the physician's good-faith clinical judgment, an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition arising from the pregnancy itself, or when the continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function.

(k) "Physician" or "referring physician" means a person licensed to practice medicine in the State of Mississippi.

SECTION 4. Abortion may not be performed because of race, sex, or genetic abnormality except in a medical emergency. (1)
Except in a medical emergency as defined in paragraph (j) of Section 3 of this act, a person shall not perform, induce or attempt to perform or induce an abortion unless the physician who is to perform or induce the abortion has first confirmed that the abortion is not being sought because of the race or sex of the unborn human being or because of the presence or presumed presence of a genetic abnormality and documented these facts in the maternal patient's chart, as well as in the report to be filed with the department as set forth in subsection (4) of this section.

(2) Except in a medical emergency as defined in paragraph (j) of Section 3 of this act, a person shall not intentionally or knowingly perform, induce or attempt to perform or induce an abortion of an unborn human being if the abortion is being sought because of the actual or presumed race or sex of the unborn human being or because of the presence or presumed presence of a genetic abnormality.

(3) In every case in which a physician performs or induces an abortion on an unborn human being, the physician shall within fifteen (15) days of the procedure cause to be filed with the department, on a form supplied by the department, a report containing the following information:

(a) Date the abortion was performed;
(b) Specific method of abortion used;
(c) Whether the race of, sex of, or the presence or presumed presence of any genetic abnormality in the unborn human being had been detected at the time of the abortion by genetic testing (such as by maternal serum tests) or ultrasound (such as by nuchal translucency screening (NT)), or by other forms of testing;

(d) A statement confirming that the reason for the abortion, as stated by the maternal patient, was not because of the unborn human being's actual or presumed race or sex or the presence or presumed presence of any genetic abnormality; and

(e) Probable health consequences of the abortion and specific abortion method used.

The physician shall sign the form as his or her attestation under oath that the information stated thereon is true and correct to the best of his or her knowledge.

(4) Reports required and submitted under subsection (3) of this section shall not contain the name of the maternal patient upon whom the abortion was performed or any other information or identifiers that would make it possible to identify, in any manner or under any circumstances, a woman who obtained or sought to obtain an abortion.

SECTION 5. Reporting forms. The department shall create the forms required by this section within thirty (30) days after the effective date of this section. No provision of this act requiring the reporting of information on forms published by the
department shall be applicable until ten (10) days after the
requisite forms have been made available or July 1, 2020,
whichever is later.

SECTION 6. Criminal penalties. (1) Any person who
intentionally or knowingly violates the prohibitions in Section
4(1) and/or (2) of this act shall be guilty of a felony and shall,
upon conviction, be imprisoned in the custody of the Department of
Corrections not less than one (1) nor more than ten (10) years.
(2) A woman upon whom an abortion is performed, induced, or
attempted in violation of this Section 6 of this act shall not be
prosecuted for conspiracy to commit any violation of this Section
6 of this act.

SECTION 7. Professional sanction and civil penalties. (1)
A physician who intentionally or knowingly violates the
prohibitions in Section 4(1) and/or (2) of this act commits an act
of unprofessional conduct and his or her license to practice
medicine in the State of Mississippi shall be suspended or revoked
pursuant to action by the Mississippi State Board of Medical
Licensure.
(2) A physician who knowingly or intentionally delivers to
the Department any report required by Section 4 of this act and
known by him or her to be false shall be subject to a civil
penalty or fine up to Five Hundred Dollars ($500.00) per violation
imposed by the department.
SECTION 8. Additional enforcement. The Attorney General shall have authority to bring an action in law or equity to enforce the provisions of this act on behalf of the Director of the Mississippi State Department of Health or the Mississippi State Board of Medical Licensure. The Mississippi State Board of Medical Licensure shall also have authority to bring such action on its own behalf.

SECTION 9. Construction. Nothing in this act shall be construed as creating or recognizing a right to abortion or as altering generally accepted medical standards. It is not the intention of this act to make lawful an abortion that is otherwise unlawful. An abortion that complies with this act, but violates any other state law, is unlawful. An abortion that complies with another state law, but violates this act is unlawful.

SECTION 10. Severability. (1) It is the intent of the Legislature that every provision of this act shall operate with equal force and shall be severable one from the other and that, in the event that any provision of this act shall be held invalid or unenforceable by a court of competent jurisdiction, the provision shall be severable and the remaining provisions of this act shall be fully enforceable.

(2) In the event that any provision of this act shall be held invalid or unenforceable by a court of competent jurisdiction, the other sections shall remain in effect. If some or all of the provisions of this act are ever temporarily or
permanently restrained or enjoined by judicial order, all other provisions of Mississippi law regulating or restricting abortion shall be enforced as though the restrained or enjoined provisions had not been adopted; however, whenever the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the provisions of this act shall have full force and effect.

(3) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), regarding the context of determining the severability of a state section of law regulating abortion, the United States Supreme Court held that an explicit statement of legislative intent is controlling. Accordingly, it is the intent of the Legislature that every provision, section, subsection, paragraph, sentence, clause, phrase or word in this act and every application of the provisions in this act is severable from each other. If any application of any provision in this act to any person, group of persons, or circumstances is found by a competent court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the Legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this statute to impose an undue burden in a large or
substantial fraction of relevant cases, the applications that do not represent an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the Legislature had enacted a section limited to the persons, group of persons, or circumstances for which the section's application does not present an undue burden. The Legislature further declares that it would have passed this act and each provision, section, subsection, paragraph, sentence, clause, phrase or word, and all constitutional applications of this act, without regard to the fact that any provision, section, subsection, paragraph, sentence, clause, phrase or word, or applications of this act, were to be declared unconstitutional or to represent an undue burden.

(4) If this act is found by any competent court to be invalid or to impose an undue burden as applied to any person, group of persons, or circumstances, the prohibition shall apply to that person or group of persons or circumstances on the earliest date on which this section can be constitutionally applied.

(5) If any provisions of this section are found by a competent court to be unconstitutionally vague, then the applications of the provision that do not present constitutional vagueness problems shall be severed and remain in force.

SECTION 11. This act shall take effect and be in force from and after July 1, 2020.