

By: Representatives Crawford, Williamson,
Hobgood-Wilkes, Carpenter, Arnold, Criswell,
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To: Judiciary B

HOUSE BILL NO. 1295

1 AN ACT TO CREATE THE "LIFE EQUALITY ACT OF 2020"; TO STATE
2 LEGISLATIVE FINDINGS AND PURPOSE; TO DEFINE TERMS; TO PROHIBIT
3 ABORTIONS BEING PERFORMED BECAUSE OF RACE, SEX OR GENETIC
4 ABNORMALITY EXCEPT IN A MEDICAL EMERGENCY; TO REQUIRE THE
5 PHYSICIAN PERFORMING AN ABORTION TO NOTATE IN A REPORT THAT THE
6 ABORTION IS NOT SOUGHT BECAUSE OF RACE, SEX OR THE PRESENCE OF A
7 GENETIC ABNORMALITY; TO REQUIRE THE STATE DEPARTMENT OF HEALTH TO
8 CREATE THE FORMS NECESSARY FOR THE REPORTS UNDER THIS ACT; TO
9 PROVIDE CRIMINAL PENALTIES, PROFESSIONAL SANCTIONS AND CIVIL
10 PENALTIES FOR VIOLATIONS OF THIS ACT; TO AUTHORIZE THE ATTORNEY
11 GENERAL TO BRING AN ENFORCEMENT ACTION ON BEHALF OF THE STATE
12 DEPARTMENT OF HEALTH OR THE STATE BOARD OF MEDICAL LICENSURE; TO
13 PROVIDE THAT NOTHING IN THE ACT CREATES OR RECOGNIZES A RIGHT TO
14 AN ABORTION; TO PROVIDE THAT THE PROVISIONS OF THIS ACT ARE
15 SEVERABLE; AND FOR RELATED PURPOSES.

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

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

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

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



25 (Thomas J., concurring) (citing *Pena-Rodriguez v. Colorado*, 580
26 U.S. ___, ___ (2017) (slip op., at 15) (condemning "discrimination
27 on the basis of race" as "'odious in all aspects'"); *United States*
28 *v. Virginia*, 518 U.S. 515, 532 (1996) (denouncing any "law or
29 official policy [that] denies to women, simply because they are
30 women...equal opportunity to aspire, achieve, participate in and
31 contribute to society based on their individual talents and
32 capacities"); *Tennessee v. Lane*, 541 U.S. 509, 522 (2004)
33 (condemning "irrational disability discrimination")).

34 (b) The inherent right against discrimination on the
35 basis of race, sex, or genetic abnormality is protected in federal
36 and state laws. For example, the 1964 Civil Rights Act (42 U.S.C.
37 2000e et seq.) and the laws of every state protect against
38 discrimination on the basis of race or sex. The Rehabilitation
39 Act of 1973 (29 U.S.C. 701), the Americans With Disabilities
40 Amendments Act of 2010 (42 U.S.C. 12101, et seq.), and numerous
41 state laws prohibit discrimination against individuals on the
42 basis of a real or perceived physical or mental impairment that
43 substantially limits one or more major life activities.

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

46 (d) As Supreme Court Justice Clarence Thomas has noted,
47 "Each of the immutable characteristics protected by this law can
48 be known relatively early in a pregnancy, and this law prevents
49 them from becoming the sole criterion for deciding whether the



50 child will live or die." *Box v. Planned Parenthood of Indiana and*
51 *Kentucky*, 139 S.Ct. 1780, 1783 (2019) (Thomas, J., concurring).

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

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

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

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

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

72 (2) Therefore, it is the intent of the Mississippi
73 Legislature, through this act and any regulations and policies
74 promulgated hereunder, to prohibit the practice of nontherapeutic



75 or elective abortion for the purpose of terminating the life of an
76 unborn human being because of that human being's race, sex, or the
77 presence or presumed presence of a genetic abnormality.

78 **SECTION 3. Definitions.** As used in this section:

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

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

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

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



100 (e) "Because of sex" means on account of the actual or
101 presumed sex of the unborn human being.

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

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

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

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

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

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

123 **SECTION 4. Abortion may not be performed because of race,**
124 **sex, or genetic abnormality except in a medical emergency. (1)**



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

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

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

- 147 (a) Date the abortion was performed;
- 148 (b) Specific method of abortion used;



149 (c) Whether the race of, sex of, or the presence or
150 presumed presence of any genetic abnormality in the unborn human
151 being had been detected at the time of the abortion by genetic
152 testing (such as by maternal serum tests) or ultrasound (such as
153 by nuchal translucency screening (NT)), or by other forms of
154 testing;

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

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

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

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

170 **SECTION 5. Reporting forms.** The department shall create the
171 forms required by this section within thirty (30) days after the
172 effective date of this section. No provision of this act
173 requiring the reporting of information on forms published by the



174 department shall be applicable until ten (10) days after the
175 requisite forms have been made available or July 1, 2020,
176 whichever is later.

177 **SECTION 6. Criminal penalties.** (1) Any person who
178 intentionally or knowingly violates the prohibitions in Section
179 4(1) and/or (2) of this act shall be guilty of a felony and shall,
180 upon conviction, be imprisoned in the custody of the Department of
181 Corrections not less than one (1) nor more than ten (10) years.

182 (2) A woman upon whom an abortion is performed, induced, or
183 attempted in violation of this Section 6 of this act shall not be
184 prosecuted for conspiracy to commit any violation of this Section
185 6 of this act.

186 **SECTION 7. Professional sanction and civil penalties.** (1)
187 A physician who intentionally or knowingly violates the
188 prohibitions in Section 4(1) and/or (2) of this act commits an act
189 of unprofessional conduct and his or her license to practice
190 medicine in the State of Mississippi shall be suspended or revoked
191 pursuant to action by the Mississippi State Board of Medical
192 Licensure.

193 (2) A physician who knowingly or intentionally delivers to
194 the Department any report required by Section 4 of this act and
195 known by him or her to be false shall be subject to a civil
196 penalty or fine up to Five Hundred Dollars (\$500.00) per violation
197 imposed by the department.



198 **SECTION 8. Additional enforcement.** The Attorney General
199 shall have authority to bring an action in law or equity to
200 enforce the provisions of this act on behalf of the Director of
201 the Mississippi State Department of Health or the Mississippi
202 State Board of Medical Licensure. The Mississippi State Board of
203 Medical Licensure shall also have authority to bring such action
204 on its own behalf.

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

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

219 (2) In the event that any provision of this act shall be
220 held invalid or unenforceable by a court of competent
221 jurisdiction, the other sections shall remain in effect. If some
222 or all of the provisions of this act are ever temporarily or



223 permanently restrained or enjoined by judicial order, all other
224 provisions of Mississippi law regulating or restricting abortion
225 shall be enforced as though the restrained or enjoined provisions
226 had not been adopted; however, whenever the temporary or permanent
227 restraining order or injunction is stayed or dissolved, or
228 otherwise ceases to have effect, the provisions of this act shall
229 have full force and effect.

230 (3) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996),
231 regarding the context of determining the severability of a state
232 section of law regulating abortion, the United States Supreme
233 Court held that an explicit statement of legislative intent is
234 controlling. Accordingly, it is the intent of the Legislature
235 that every provision, section, subsection, paragraph, sentence,
236 clause, phrase or word in this act and every application of the
237 provisions in this act is severable from each other. If any
238 application of any provision in this act to any person, group of
239 persons, or circumstances is found by a competent court to be
240 invalid, the remaining applications of that provision to all other
241 persons and circumstances shall be severed and may not be
242 affected. All constitutionally valid applications of this act
243 shall be severed from any applications that a court finds to be
244 invalid, leaving the valid applications in force, because it is
245 the Legislature's intent and priority that the valid applications
246 be allowed to stand alone. Even if a reviewing court finds a
247 provision of this statute to impose an undue burden in a large or



248 substantial fraction of relevant cases, the applications that do
249 not represent an undue burden shall be severed from the remaining
250 provisions and shall remain in force, and shall be treated as if
251 the Legislature had enacted a section limited to the persons,
252 group of persons, or circumstances for which the section's
253 application does not present an undue burden. The Legislature
254 further declares that it would have passed this act and each
255 provision, section, subsection, paragraph, sentence, clause,
256 phrase or word, and all constitutional applications of this act,
257 without regard to the fact that any provision, section,
258 subsection, paragraph, sentence, clause, phrase or word, or
259 applications of this act, were to be declared unconstitutional or
260 to represent an undue burden.

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

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

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

