

3 Senate Bill No. 1891

4 SENATE BILL NO. 1891 - By: Lamb and Jolley of the Senate and
5 Peterson and Reynolds of the House.

6 An Act relating to public health and safety; creating the
7 Freedom of Conscience Act; providing short title; defining
8 terms; prohibiting employers from discriminating against
9 certain persons for refusing to perform specified acts based
10 on certain beliefs; making certain provisions inapplicable
11 under certain circumstances; providing defense; prohibiting
12 forced participation in specified acts by certain persons
13 under certain circumstances; providing immunity from
14 liability; providing for equitable relief and damages;
15 providing statute of limitations; repealing Sections 1, 2,
16 3, 4, 5 and 6, Chapter 36, O.S.L. 2008 (63 O.S. Supp. 2009,
17 Sections 1-728, 1-728.1, 1-728.2, 1-728.3, 1-728.3, 1-728.4
18 and 1-728.5), which relate to the Freedom of Conscience Act;
19 providing for codification; and declaring an emergency.

20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1-728a of Title 63, unless there
23 is created a duplication in numbering, reads as follows:

24 This act shall be known and may be cited as the "Freedom of
25 Conscience Act".

26 SECTION 2. NEW LAW A new section of law to be codified
27 in the Oklahoma Statutes as Section 1-728b of Title 63, unless there
28 is created a duplication in numbering, reads as follows:

29 As used in the Freedom of Conscience Act:

1 1. "Health care facility" means any public or private
2 organization, corporation, authority, partnership, sole
3 proprietorship, association, agency, network, joint venture, or
4 other entity that is involved in providing health care services,
5 including a hospital, clinic, medical center, ambulatory surgical
6 center, private physician's office, pharmacy, nursing home,
7 university hospital, medical school, nursing school, medical
8 training facility, inpatient health care facility, or other place
9 where health care services are provided;

10 2. "Human embryo" means a human organism that is derived by
11 fertilization, parthenogenesis, cloning, or any other means from one
12 or more human gametes or human diploid cells;

13 3. "In vitro human embryo" means a human embryo, whether
14 cryopreserved or not, living outside of a woman's body;

15 4. "Participate in" means to perform, practice, engage in,
16 assist in, recommend, counsel in favor of, make referrals for,
17 prescribe, dispense, or administer drugs or devices or otherwise
18 promote or encourage; and

19 5. "Person" means any individual, corporation, industry, firm,
20 partnership, association, venture, trust, institution, federal,
21 state or local governmental instrumentality, agency or body or any
22 other legal entity however organized.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-728c of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 An employer shall not discriminate against an employee or
5 prospective employee by refusing to reasonably accommodate the
6 religious observance or practice of the employee or prospective
7 employee, unless the employer can demonstrate that the accommodation
8 would pose an undue hardship on the program, enterprise, or business
9 of the employer, in the following circumstances:

10 1. An abortion as defined in Section 1-730 of Title 63 of the
11 Oklahoma Statutes. The provisions of this section shall not apply
12 if the pregnant woman suffers from a physical disorder, physical
13 injury, or physical illness which, as certified by a physician,
14 causes the woman to be in imminent danger of death unless an
15 abortion is immediately performed or induced and there are no other
16 competent personnel available to attend to the woman. As used in
17 this act, the term "abortion" shall not include the prescription of
18 contraceptives;

19 2. An experiment or medical procedure that destroys an in vitro
20 human embryo or uses cells or tissue derived from the destruction of
21 an in vitro human embryo;

1 3. An experiment or medical procedure on an in vitro human
2 embryo that is not related to the beneficial treatment of the in
3 vitro human embryo;

4 4. An experiment or medical procedure on a developing child in
5 an artificial womb, at any stage of development, that is not related
6 to the beneficial treatment of the developing child;

7 5. A procedure, including a transplant procedure, that uses
8 fetal tissue or organs that come from a source other than a
9 stillbirth or miscarriage; or

10 6. An act that intentionally causes or assists in causing the
11 death of an individual by assisted suicide, euthanasia, or mercy
12 killing.

13 SECTION 4. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-728d of Title 63, unless there
15 is created a duplication in numbering, reads as follows:

16 A. No health care facility is required to admit any patient or
17 to allow the use of the health care facility for the purpose of
18 performing any of the acts specified in Section 3 of this act.

19 B. A physician, physician's assistant, registered nurse,
20 practical nurse, pharmacist, or any employee thereof, or any other
21 person who is an employee of, member of, or associated with the
22 staff of a health care facility in which the performance of an
23 activity specified in Section 3 of this act has been authorized, who

1 in writing, refuses or states an intention to refuse to participate
2 in the activity on moral or religious grounds shall not be required
3 to participate in the activity and shall not be disciplined by the
4 respective licensing board or authorized regulatory department for
5 refusing or stating an intention to refuse to participate in the
6 practice with respect to the activity.

7 C. A physician, physician's assistant, registered nurse,
8 practical nurse, pharmacist, or any employee thereof, or any other
9 person who is an employee of, member of, or associated with the
10 staff of a health care facility is immune from liability for any
11 damage caused by the refusal of the person to participate in an
12 activity specified in Section 3 of this act on moral or religious
13 grounds.

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1-728e of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

17 A. No health care facility, school, or employer shall
18 discriminate against any person with regard to admission, hiring or
19 firing, tenure, term, condition, or privilege of employment, student
20 status, or staff status on the ground that the person refuses or
21 states an intention to refuse, whether or not in writing, to
22 participate in an activity specified in Section 3 of this act, if
23 the refusal is based on religious or moral precepts.

- 1 B. No person shall be required to:
- 2 1. Participate in an activity specified in Section 3 of this
- 3 act if the individual's participation in the activity is contrary to
- 4 the person's religious beliefs or moral convictions;
- 5 2. Make facilities available for an individual to participate
- 6 in an activity specified in Section 3 of this act if the person
- 7 prohibits the activity from taking place in the facilities on the
- 8 basis of religious beliefs or moral convictions; or
- 9 3. Provide any personnel to participate in an activity
- 10 specified in Section 3 of this act if the activity is contrary to
- 11 the religious beliefs or moral convictions of the personnel.

12 SECTION 6. NEW LAW A new section of law to be codified

13 in the Oklahoma Statutes as Section 1-728f of Title 63, unless there

14 is created a duplication in numbering, reads as follows:

15 A. For the purposes of this section, "damages" do not include

16 noneconomic damages, as defined in Section 1-1708.1C of Title 63 of

17 the Oklahoma Statutes.

18 B. A person who is adversely affected by conduct that is in

19 violation of the Freedom of Conscience Act may bring a civil action

20 for equitable relief, including reinstatement or damages, or both

21 reinstatement and damages. An action under this subsection may be

22 commenced against the state and any office, department, independent

23 agency, authority, institution, association, or other body in state

1 government created or authorized to be created by the state
2 constitution or any law. In an action under this subsection, the
3 court shall award reasonable attorney fees to a person who obtains
4 equitable relief, damages, or both. An action under this subsection
5 shall be commenced within one (1) year after the cause of action
6 accrues or be barred.

7 SECTION 7. REPEALER Sections 1, 2, 3, 4, 5 and 6,
8 Chapter 36, O.S.L. 2008 (63 O.S. Supp. 2009, Sections 1-728, 1-
9 728.1, 1-728.2, 1-728.3, 1-728.3, 1-728.4 and 1-728.5), are hereby
10 repealed.

11 SECTION 8. It being immediately necessary for the preservation
12 of the public peace, health and safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

15 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN SERVICES, dated
16 2-11-10 - DO PASS, As Coauthored.