

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL 642

By: Treat and Shortey of the
Senate

and

Grau of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to abortion; amending 63 O.S. 2011, Section 1-740.4b, which relates to unlawful acts; broadening grounds for certain unlawful acts; providing for civil liability; permitting awarding of damages for certain violations; specifying grounds for violations; authorizing certain awards for costs and damages; providing certain exclusion; permitting courts to enjoin certain conduct; specifying grounds for certain injunction; requiring physicians to preserve and submit fetal tissue under certain circumstances; providing standards for rules; providing punishments for violations; requiring State Board of Health to establish certain policies and procedures and to promulgate rules; requiring inspections of certain facilities prior to issuance or reissuance of certain license; permitting State Commissioner of Health and designated personnel to enter and inspect certain facilities; providing acquiescence by certain entities for certain purposes; permitting State Commissioner of Health to take certain actions for certain violations; establishing certain felony; providing exemption for certain persons; providing civil penalty; providing that each day of violation constitutes a separate violation; providing certain standards for use by courts in determining imposition of fines; permitting Attorney General and district attorneys to institute legal action for certain purposes; providing for civil liability; stating types of damages that may be

1 awarded; providing for severability; clarifying
2 references; clarifying language; providing for
3 codification; and providing an effective date.
4

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

6 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-740.4b, is
7 amended to read as follows:

8 Section 1-740.4b. A. A person who knowingly or recklessly uses
9 a false governmental record or makes a fraudulent representation or
10 statement in order to obtain an abortion for a minor in violation of
11 this ~~act~~ title or intentionally causes, aids, abets or assists an
12 unemancipated minor to obtain an abortion without the consent
13 required by Section 1-740.2 of this title commits a felony.

14 B. A physician who intentionally or knowingly performs an
15 abortion on a pregnant unemancipated minor in violation of this ~~act~~
16 title commits a felony.

17 C. 1. It is a defense to prosecution under subsection B of
18 this section if the person falsely representing himself or herself
19 as the parent or guardian of the minor displayed an apparently valid
20 governmental record of identification such that a reasonable person,
21 under similar circumstances, would have relied on the
22 representation.

23 2. The defense does not apply if the physician, or agent of the
24 physician, failed to use due diligence in determining the age of the

1 minor or the identity of the person represented as the parent or
2 guardian of the minor.

3 D. ~~An unemancipated minor, or the parent of the minor, upon~~
4 ~~whom an abortion has been performed, or attempted to be performed,~~
5 ~~without complying with this act may maintain a cause of action~~
6 ~~against the person who performed, or attempted to perform, the~~
7 ~~abortion~~ A person who knowingly or recklessly uses a false
8 governmental record or makes a fraudulent representation or
9 statement in order to obtain an abortion for a minor in violation of
10 this title or intentionally causes, aids, abets or assists an
11 unemancipated minor to obtain an abortion without the consent
12 required by Section 1-740.2 of this title or any physician who
13 intentionally or knowingly performs an abortion on a pregnant
14 unemancipated minor in violation of this title shall be civilly
15 liable to the minor and to the person or persons required to give
16 consent pursuant to the provisions of Section 1-740.2 of this title.
17 A court may award damages to the person or persons adversely
18 affected by a violation of this section including compensation for
19 emotional injury without the need for personal presence at the act
20 or event, and the court may further award attorney fees, litigation
21 costs, and punitive damages. Any adult who engages in or consents
22 to another person engaging in a sexual act with a minor, which
23 results in the minor's pregnancy, shall not be awarded damages under
24 this section.

1 E. A court of competent jurisdiction may enjoin conduct that
2 would be in violation of this section upon petition by the Attorney
3 General, a district attorney or any person adversely affected or who
4 reasonably may be adversely affected by such conduct, upon a showing
5 that such conduct:

6 1. Is reasonably anticipated to occur in the future; or

7 2. Has occurred in the past, whether with the same minor or
8 others, and that it is reasonably expected to be repeated.

9 ~~E.~~ F. It is not a defense to a claim brought pursuant to this
10 section that the minor gave informed and voluntary consent.

11 ~~F.~~ G. An unemancipated minor does not have the capacity to
12 consent to any action that violates this ~~act~~ title.

13 SECTION 2. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-749 of Title 63, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Any physician who performs an abortion on a minor who is
17 less than fourteen (14) years of age at the time of the abortion
18 shall preserve, in accordance with rules promulgated by the Oklahoma
19 State Bureau of Investigation, fetal tissue extracted during such
20 abortion. The physician shall submit the tissue to the Oklahoma
21 State Bureau of Investigation.

22 B. The Oklahoma State Bureau of Investigation shall adopt rules
23 to implement the provisions of this section. Such rules shall
24 contain, at a minimum:

1 1. The amount and type of fetal tissue to be preserved and
2 submitted by a physician pursuant to the provisions of this section;

3 2. Procedures for the proper preservation of such tissue for
4 the purposes of DNA testing and examination;

5 3. Procedures for documenting the chain of custody of such
6 tissue for use as evidence;

7 4. Procedures for the proper disposal of fetal tissue preserved
8 pursuant to this section;

9 5. A uniform reporting form mandated to be utilized by
10 physicians when submitting fetal tissue under this section, which
11 shall include the name and address of the physician submitting the
12 fetal tissue and the name and complete address of residence of the
13 parent or legal guardian of the minor upon whom the abortion was
14 performed; and

15 6. Procedures for communication with law enforcement regarding
16 evidence and information obtained pursuant to this section.

17 C. Failure of a physician to comply with any requirement of
18 this section or any rule adopted thereunder:

19 1. Shall constitute unprofessional conduct pursuant to the
20 provisions of Section 509 of Title 59 of the Oklahoma Statutes; and

21 2. Is a felony.

22 SECTION 3. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1-749.1 of Title 63, unless
24 there is created a duplication in numbering, reads as follows:

1 A. The State Board of Health shall establish policies and
2 procedures for conducting pre-licensure and re-licensure inspections
3 of abortion facilities. Prior to issuing or reissuing a license,
4 the Department shall conduct an on-site inspection to ensure
5 compliance with the rules promulgated by the Board.

6 B. The Board shall promulgate rules for conducting inspections
7 and investigations pursuant to complaints received by the State
8 Department of Health and made against any abortion facility. The
9 Department shall receive, record, and dispose of complaints in
10 accordance with established policies and procedures.

11 C. If the State Commissioner of Health determines that there is
12 reasonable cause to believe a licensee, licensed abortion facility
13 or abortion facility that is required to be licensed in this state
14 is not adhering to the requirements of Section 1-729a et seq. of
15 Title 63 of the Oklahoma Statutes, local fire ordinances or rules or
16 any other law, administrative rule or regulation relating to
17 abortion, the Commissioner and any duly designated employee or agent
18 of the Commissioner including employees of county or city-county
19 health departments and county or municipal fire inspectors,
20 consistent with standard medical practices, may enter on and into
21 the premises of the licensee, licensed abortion facility or abortion
22 facility that is required to be licensed in this state during
23 regular business hours of the licensee or abortion facility to
24 determine compliance with the provisions of Section 1-729a et seq.

1 of Title 63 of the Oklahoma Statutes, local fire ordinances or
2 rules, and any other law, administrative rule or regulation relating
3 to abortion.

4 D. An application for a license to operate a private office,
5 freestanding outpatient clinic or other facility or clinic in which
6 abortions are performed constitutes permission for, and complete
7 acquiescence in, an entry or inspection of the premises during the
8 pendency of the application and, if licensed, during the term of the
9 license.

10 E. If an inspection or investigation conducted pursuant to this
11 section reveals that an applicant, licensee or licensed abortion
12 facility is not adhering to the requirements of this section, the
13 provisions of Title 1-729a et seq. of Title 63 of the Oklahoma
14 Statutes, local fire ordinances or rules and any other law,
15 administrative rule or regulation relating to abortion, the
16 Commissioner may take action to deny, suspend, revoke or refuse to
17 renew a license to operate an abortion facility.

18 SECTION 4. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1-750 of Title 63, unless there
20 is created a duplication in numbering, reads as follows:

21 A. A person who intentionally, knowingly or recklessly violates
22 any provision or requirement of this act, Section 1-729a et seq. of
23 Title 63 of the Oklahoma Statutes or any rule or regulation adopted
24

1 under Section 1-729a et seq. of Title 63 of the Oklahoma Statutes is
2 guilty of a felony.

3 B. No criminal penalty may be assessed against the pregnant
4 woman upon whom the abortion is performed for a violation of any
5 provision or requirement of this act, Section 1-729a et seq. of
6 Title 63 of the Oklahoma Statutes or any rule or regulation adopted
7 under Section 1-729a et seq. of Title 63 of the Oklahoma Statutes.

8 C. Any violation of this act, Section 1-729a et seq. of Title
9 63 of the Oklahoma Statutes or any rule or regulation adopted under
10 Section 1-729a et seq. of Title 63 of the Oklahoma Statutes may be
11 subject to a civil penalty or a fine up to One Hundred Thousand
12 Dollars (\$100,000.00).

13 D. Each day of violation shall constitute a separate violation
14 for purposes of assessing civil penalties or fines.

15 E. In deciding whether and to what extent to impose fines, a
16 court shall consider the:

17 1. Gravity of the violation or violations including the
18 probability that death or serious physical harm to a patient or
19 individual will result or has resulted;

20 2. Size of the population at risk as a consequence of the
21 violation or violations;

22 3. Severity and scope of the actual or potential harm;

23 4. Extent to which the provisions of the applicable statutes or
24 regulations were violated;

1 5. Indications of good faith exercised by the licensee,
2 abortion facility or the person performing the abortion;

3 6. Duration, frequency, and relevance of any previous
4 violations committed by the licensee, abortion facility or person
5 performing the abortion; and

6 7. Financial benefit to the abortion facility or person
7 performing the abortion from committing or continuing the violation
8 or violations.

9 F. The Office of the Attorney General and a district attorney
10 for the county in which the violation or violations occurred may
11 institute a legal action to enforce collection of civil penalties or
12 fines.

13 G. Any person who violates this act, Section 1-729a et seq. of
14 Title 63 of the Oklahoma Statutes or any rule or regulation adopted
15 under Section 1-729a et seq. of Title 63 of the Oklahoma Statutes
16 shall be civilly liable to the person or persons adversely affected
17 by the violation or violations. A court may award damages to the
18 person or persons adversely affected by any violation of this act,
19 Section 1-729a et seq. of Title 63 of the Oklahoma Statutes or any
20 rule or regulation adopted under Section 1-729a et seq. of Title 63
21 of the Oklahoma Statutes including compensation for emotional,
22 physical, and psychological harm; attorney fees, litigation costs,
23 and punitive damages.
24

1 H. The provisions of this act are severable, and if any part or
2 provision shall be held void, the decision of the court so holding
3 shall not affect or impair any of the remaining parts or provisions
4 of this act.

5 I. If some or all of the newly amended provisions of this act
6 resulting from the actions taken by the 2015 Session of the Oklahoma
7 Legislature are ever temporarily or permanently restrained or
8 enjoined by judicial order, this act shall be enforced as though
9 such restrained or enjoined provisions had not been adopted;
10 provided, however, that whenever such temporary or permanent
11 restraining order or injunction is stayed or dissolved, or otherwise
12 ceases to have effect, such provisions shall have full force and
13 effect.

14 J. The Oklahoma State Bureau of Investigation and the State
15 Board of Health shall promulgate rules to implement the provisions
16 of this act.

17 SECTION 5. This act shall become effective November 1, 2015.

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