

1 ENGROSSED SENATE
2 BILL NO. 642

By: Treat of the Senate

3 and

4 Grau of the House

5
6 [abortion - unlawful acts - broadening grounds -
7 civil liability - damages - costs and damages - fetal
8 tissue - standards - punishments - certain policies
9 and procedures - inspections - enter and inspect
10 certain facilities - certain violations - felony -
11 exemption - imposition of fines - legal action -
civil liability - severability - codification -
effective date]

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

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

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

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

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

7 2. The defense does not apply if the physician, or agent of the
8 physician, failed to use due diligence in determining the age of the
9 minor or the identity of the person represented as the parent or
10 guardian of the minor.

11 D. ~~An unemancipated minor, or the parent of the minor, upon~~
12 ~~whom an abortion has been performed, or attempted to be performed,~~
13 ~~without complying with this act may maintain a cause of action~~
14 ~~against the person who performed, or attempted to perform, the~~
15 ~~abortion~~ A person who knowingly or recklessly uses a false
16 governmental record or makes a fraudulent representation or
17 statement in order to obtain an abortion for a minor in violation of
18 this title or intentionally causes, aids, abets or assists an
19 unemancipated minor to obtain an abortion without the consent
20 required by Section 1-740.2 of this title or any physician who
21 intentionally or knowingly performs an abortion on a pregnant
22 unemancipated minor in violation of this title shall be civilly
23 liable to the minor and to the person or persons required to give
24 consent pursuant to the provisions of Section 1-740.2 of this title.

1 A court may award damages to the person or persons adversely
2 affected by a violation of this section including compensation for
3 emotional injury without the need for personal presence at the act
4 or event, and the court may further award attorney fees, litigation
5 costs, and punitive damages. Any adult who engages in or consents
6 to another person engaging in a sexual act with a minor, which
7 results in the minor's pregnancy, shall not be awarded damages under
8 this section.

9 E. A court of competent jurisdiction may enjoin conduct that
10 would be in violation of this section upon petition by the Attorney
11 General, a district attorney or any person adversely affected or who
12 reasonably may be adversely affected by such conduct, upon a showing
13 that such conduct:

- 14 1. Is reasonably anticipated to occur in the future; or
15 2. Has occurred in the past, whether with the same minor or
16 others, and that it is reasonably expected to be repeated.

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

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

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1-749 of Title 63, unless there
23 is created a duplication in numbering, reads as follows:
24

1 A. Any physician who performs an abortion on a minor who is
2 less than fourteen (14) years of age at the time of the abortion
3 shall preserve, in accordance with rules promulgated by the Oklahoma
4 State Bureau of Investigation, fetal tissue extracted during such
5 abortion. The physician shall submit the tissue to the Oklahoma
6 State Bureau of Investigation.

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

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

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

14 3. Procedures for documenting the chain of custody of such
15 tissue for use as evidence;

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

18 5. A uniform reporting form mandated to be utilized by
19 physicians when submitting fetal tissue under this section, which
20 shall include the name and address of the physician submitting the
21 fetal tissue and the name and complete address of residence of the
22 parent or legal guardian of the minor upon whom the abortion was
23 performed; and
24

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

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

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

7 2. Is a felony.

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

11 A. The State Board of Health shall establish policies and
12 procedures for conducting pre-licensure and re-licensure inspections
13 of abortion facilities. Prior to issuing or reissuing a license,
14 the Board shall conduct an on-site inspection to ensure compliance
15 with the rules promulgated by the Board.

16 B. The Board shall promulgate rules for conducting inspections
17 and investigations pursuant to complaints received by the State
18 Department of Health and made against any abortion facility. The
19 Department shall receive, record, and dispose of complaints in
20 accordance with established policies and procedures.

21 C. If the State Commissioner of Health determines that there is
22 reasonable cause to believe a licensee, licensed abortion facility
23 or abortion facility that is required to be licensed in this state
24 is not adhering to the requirements of Section 1-729a et seq. of

1 Title 63 of the Oklahoma Statutes, local fire ordinances or rules or
2 any other law, administrative rule or regulation relating to
3 abortion, the Commissioner and any duly designated employee or agent
4 of the Commissioner including employees of county or city-county
5 health departments and county or municipal fire inspectors,
6 consistent with standard medical practices, may enter on and into
7 the premises of the licensee, licensed abortion facility or abortion
8 facility that is required to be licensed in this state during
9 regular business hours of the licensee or abortion facility to
10 determine compliance with the provisions of Section 1-729a et seq.
11 of Title 63 of the Oklahoma Statutes, local fire ordinances or
12 rules, and any other law, administrative rule or regulation relating
13 to abortion.

14 D. An application for a license to operate a private office,
15 freestanding outpatient clinic or other facility or clinic in which
16 abortions are performed constitutes permission for, and complete
17 acquiescence in, an entry or inspection of the premises during the
18 pendency of the application and, if licensed, during the term of the
19 license.

20 E. If an inspection or investigation conducted pursuant to this
21 section reveals that an applicant, licensee or licensed abortion
22 facility is not adhering to the requirements of this section, the
23 provisions of Title 1-729a et seq. of Title 63 of the Oklahoma
24 Statutes, local fire ordinances or rules and any other law,

1 administrative rule or regulation relating to abortion, the
2 Commissioner may take action to deny, suspend, revoke or refuse to
3 renew a license to operate an abortion facility.

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

7 A. A person who intentionally, knowingly or recklessly violates
8 any provision or requirement of this act, Section 1-729a et seq. of
9 Title 63 of the Oklahoma Statutes or any rule or regulation adopted
10 under Section 1-729a et seq. of Title 63 of the Oklahoma Statutes is
11 guilty of a felony.

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

17 C. Any violation of this act, Section 1-729a et seq. of Title
18 63 of the Oklahoma Statutes or any rule or regulation adopted under
19 Section 1-729a et seq. of Title 63 of the Oklahoma Statutes may be
20 subject to a civil penalty or fine up to One Hundred Thousand
21 Dollars (\$100,000.00).

22 D. Each day of violation shall constitute a separate violation
23 for purposes of assessing civil penalties or fines.
24

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

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

6 2. Size of the population at risk as a consequence of the
7 violation or violations;

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

9 4. Extent to which the provisions of the applicable statutes or
10 regulations were violated;

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

13 6. Duration, frequency, and relevance of any previous
14 violations committed by the licensee, abortion facility or person
15 performing the abortion; and

16 7. Financial benefit to the abortion facility or person
17 performing the abortion from committing or continuing the violation
18 or violations.

19 F. The Office of the Attorney General and a district attorney
20 for the county in which the violation or violations occurred may
21 institute a legal action to enforce collection of civil penalties or
22 fines.

23 G. Any person who violates this act, Section 1-729a et seq. of
24 Title 63 of the Oklahoma Statutes or any rule or regulation adopted

1 under Section 1-729a et seq. of Title 63 of the Oklahoma Statutes
2 shall be civilly liable to the person or persons adversely affected
3 by the violation or violations. A court may award damages to the
4 person or persons adversely affected by any violation of this act,
5 Section 1-729a et seq. of Title 63 of the Oklahoma Statutes or any
6 rule or regulation adopted under Section 1-729a et seq. of Title 63
7 of the Oklahoma Statutes including compensation for emotional,
8 physical, and psychological harm; attorney fees, litigation costs,
9 and punitive damages.

10 H. The provisions of this act are severable, and if any part or
11 provision shall be held void, the decision of the court so holding
12 shall not affect or impair any of the remaining parts or provisions
13 of this act.

14 I. If some or all of the newly amended provisions of this act
15 resulting from the actions taken by the 2015 Session of the Oklahoma
16 Legislature are ever temporarily or permanently restrained or
17 enjoined by judicial order, this act shall be enforced as though
18 such restrained or enjoined provisions had not been adopted;
19 provided, however, that whenever such temporary or permanent
20 restraining order or injunction is stayed or dissolved, or otherwise
21 ceases to have effect, such provisions shall have full force and
22 effect.

1 J. The Oklahoma State Bureau of Investigation and the State
2 Board of Health shall promulgate rules to implement the provisions
3 of this act.

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

5 Passed the Senate the 3rd day of March, 2015.

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7 _____
8 Presiding Officer of the Senate

9 Passed the House of Representatives the ____ day of _____,
10 2015.

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12 _____
13 Presiding Officer of the House
14 of Representatives
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