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February 23, 2015

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 642

By: Treat of the Senate

and

Grau of the House

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

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

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

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

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

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

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

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

1 unemancipated minor in violation of this title shall be civilly
2 liable to the minor and to the person or persons required to give
3 consent pursuant to the provisions of Section 1-740.2 of this title.
4 A court may award damages to the person or persons adversely
5 affected by a violation of this section including compensation for
6 emotional injury without the need for personal presence at the act
7 or event, and the court may further award attorney fees, litigation
8 costs, and punitive damages. Any adult who engages in or consents
9 to another person engaging in a sexual act with a minor, which
10 results in the minor's pregnancy, shall not be awarded damages under
11 this section.

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

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

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

22 ~~F.~~ G. An unemancipated minor does not have the capacity to
23 consent to any action that violates this ~~act~~ title.
24

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

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

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

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

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

17 3. Procedures for documenting the chain of custody of such
18 tissue for use as evidence;

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

21 5. A uniform reporting form mandated to be utilized by
22 physicians when submitting fetal tissue under this section, which
23 shall include the name and address of the physician submitting the
24 fetal tissue and the name and complete address of residence of the

parent or legal guardian of the minor upon whom the abortion was performed; and

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

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

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

2. Is a felony.

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

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

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

C. If the State Commissioner of Health determines that there is reasonable cause to believe a licensee, licensed abortion facility

1 or abortion facility that is required to be licensed in this state
2 is not adhering to the requirements of Section 1-729a et seq. of
3 Title 63 of the Oklahoma Statutes, local fire ordinances or rules or
4 any other law, administrative rule or regulation relating to
5 abortion, the Commissioner and any duly designated employee or agent
6 of the Commissioner including employees of county or city-county
7 health departments and county or municipal fire inspectors,
8 consistent with standard medical practices, may enter on and into
9 the premises of the licensee, licensed abortion facility or abortion
10 facility that is required to be licensed in this state during
11 regular business hours of the licensee or abortion facility to
12 determine compliance with the provisions of Section 1-729a et seq.
13 of Title 63 of the Oklahoma Statutes, local fire ordinances or
14 rules, and any other law, administrative rule or regulation relating
15 to abortion.

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

22 E. If an inspection or investigation conducted pursuant to this
23 section reveals that an applicant, licensee or licensed abortion
24 facility is not adhering to the requirements of this section, the

1 provisions of Title 1-729a et seq. of Title 63 of the Oklahoma
2 Statutes, local fire ordinances or rules and any other law,
3 administrative rule or regulation relating to abortion, the
4 Commissioner may take action to deny, suspend, revoke or refuse to
5 renew a license to operate an abortion facility.

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

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

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

19 C. Any violation of this act, Section 1-729a et seq. of Title
20 63 of the Oklahoma Statutes or any rule or regulation adopted under
21 Section 1-729a et seq. of Title 63 of the Oklahoma Statutes may be
22 subject to a civil penalty or fine up to One Hundred Thousand
23 Dollars (\$100,000.00).
24

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

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

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

8 2. Size of the population at risk as a consequence of the
9 violation or violations;

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

11 4. Extent to which the provisions of the applicable statutes or
12 regulations were violated;

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

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

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

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

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

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

16 I. If some or all of the newly amended provisions of this Act
17 resulting from the actions taken by the 2015 session of the Oklahoma
18 Legislature are ever temporarily or permanently restrained or
19 enjoined by judicial order, this Act shall be enforced as though
20 such restrained or enjoined provisions had not been adopted;
21 provided, however, that whenever such temporary or permanent
22 restraining order or injunction is stayed or dissolved, or otherwise
23 ceases to have effect, such provisions shall have full force and
24 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 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
6 February 23, 2015 - DO PASS AS AMENDED
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