

1 ENGROSSED HOUSE
2 BILL NO. 1549

By: Faught, Lawson, Bennett
(John) and Dunlap of the
House

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4 and

Dahm of the Senate
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8 An Act relating to public health and safety; creating
9 the Prenatal Nondiscrimination Act of 2017; defining
10 certain terms; prohibiting performance of abortion
11 due to diagnosis of Down syndrome or genetic
12 abnormality of unborn child; providing for certain
13 liability; permitting certain civil actions;
14 excluding liability of certain woman; providing for
15 construction; providing for severability; providing
16 for codification; and providing an effective date.

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

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1-731.3 of Title 63, unless
18 there is created a duplication in numbering, reads as follows:

19 This act shall be known and may be cited as the "Prenatal
20 Nondiscrimination Act of 2017".

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1-731.4 of Title 63, unless
23 there is created a duplication in numbering, reads as follows:

24 As used in the Prenatal Nondiscrimination Act of 2017 only:

1 1. "Abortion" means the term as defined in paragraph 1 of
2 subsection A of Section 1-730 of Title 63 of the Oklahoma Statutes;

3 2. "Attempt to perform an abortion" means the term as defined
4 in paragraph 2 of subsection A of Section 1-730 of Title 63 of the
5 Oklahoma Statutes;

6 3. "Down syndrome" refers to a chromosome disorder associated
7 either with an extra chromosome 21 (in whole or in part) or an
8 effective trisomy for chromosome 21. Down syndrome is sometimes
9 referred to as "trisomy 21 syndrome";

10 4. "Genetic abnormality" means any defect, disease or disorder
11 that is inherited genetically. The term genetic abnormality
12 includes, but is not limited to, any physical disability, any mental
13 disability or retardation, any physical disfigurement, scoliosis,
14 dwarfism, Down syndrome, albinism, amylia or any other type of
15 physical or mental abnormality or disease;

16 5. "Incompetent" means any person who has been adjudged a
17 disabled person and has had a guardian appointed for him or her
18 under the Oklahoma Guardianship and Conservatorship Act;

19 6. "Physician" means any person licensed to practice medicine
20 in this state. The term includes allopathic doctors and osteopathic
21 doctors;

22 7. "Pregnant woman" means any female, including those who have
23 not reached the age of eighteen (18), who is in the reproductive
24 condition of having an unborn child in her uterus;

1 8. "Unborn child" means the term as defined in paragraph 4 of
2 subsection A of Section 1-730 of Title 63 of the Oklahoma Statutes;

3 9. "Unemancipated minor" means the term as defined in paragraph
4 5 of subsection A of Section 1-730 of Title 63 of the Oklahoma
5 Statutes; and

6 10. "Viable" means the term as defined in paragraph 6 of
7 subsection A of Section 1-730 of Title 63 of the Oklahoma Statutes.

8 SECTION 3. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1-731.5 of Title 63, unless
10 there is created a duplication in numbering, reads as follows:

11 A. No person may intentionally perform or attempt to perform an
12 abortion with knowledge that the pregnant woman is seeking the
13 abortion solely because the unborn child has been diagnosed with
14 either Down syndrome or a potential for Down syndrome.

15 B. If this section is held invalid as applied to the period of
16 pregnancy prior to being viable, then it shall remain applicable to
17 the period of pregnancy subsequent to being viable. The presumption
18 of being viable as set forth in subsection B of Section 1-732 of
19 Title 63 of the Oklahoma Statutes shall apply.

20 SECTION 4. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1-731.6 of Title 63, unless
22 there is created a duplication in numbering, reads as follows:

23 A. No physician or person may intentionally perform or attempt
24 to perform an abortion with knowledge that the pregnant woman is

1 seeking the abortion solely because the unborn child has been
2 diagnosed with either a viable genetic abnormality or a potential
3 for a viable genetic abnormality.

4 B. If this section is held invalid as applied to the period of
5 pregnancy prior to being viable, then it shall remain applicable to
6 the period of pregnancy subsequent to being viable. The presumption
7 of being viable as set forth in subsection B of Section 1-732 of
8 Title 63 of the Oklahoma Statutes shall apply.

9 SECTION 5. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-731.7 of Title 63, unless
11 there is created a duplication in numbering, reads as follows:

12 A. Any physician or person who intentionally or knowingly
13 violates the Prenatal Nondiscrimination Act of 2017 shall be liable
14 for damages and shall, if applicable, have his or her medical
15 license suspended or revoked. He or she may also be enjoined from
16 such acts as provided in this section.

17 B. A pregnant woman upon whom an abortion has been performed in
18 violation of this act or the parent or legal guardian of the woman,
19 if she is an unemancipated minor as defined in subsection A of
20 Section 2 of this act, may commence a civil action for any knowing
21 or reckless violation of this act and may seek both actual and
22 punitive damages. Such damages shall include, but are not limited
23 to:

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1 1. Money damages for all injuries, psychological and physical,
2 occasioned by the violation of this act; and

3 2. Statutory damages equal to ten (10) times the cost of the
4 abortion performed in violation of this act.

5 C. Any physician who performs an abortion in violation of this
6 act shall be considered to have engaged in unprofessional conduct
7 for which his or her license to provide health care services in the
8 State of Oklahoma shall be suspended or revoked by the State Board
9 of Medical Licensure and Supervision or the State Board of
10 Osteopathic Examiners.

11 D. A cause of action for injunctive relief against any
12 physician or other person who has knowingly violated this act may be
13 maintained by the woman upon whom the abortion was performed or
14 attempted to be performed in violation of this act; any person who
15 is the spouse, parent, guardian or a current or former licensed
16 health care provider of the woman upon whom an abortion has been
17 performed or attempted to be performed in violation of this act; by
18 the Office of the Attorney General of Oklahoma; or by a district
19 attorney with appropriate jurisdiction. The injunction shall
20 prevent the physician or person from performing further abortions in
21 violation of this act.

22 E. Any person who knowingly violates the terms of an injunction
23 issued in accordance with this section shall be subject to civil
24 contempt and shall be fined Ten Thousand Dollars (\$10,000.00) for

1 the first violation, Fifty Thousand Dollars (\$50,000.00) for the
2 second violation and One Hundred Thousand Dollars (\$100,000.00) for
3 the third violation and for each succeeding violation. The fines
4 shall be the exclusive penalties for civil contempt pursuant to this
5 section. Each performance or attempted performance of an abortion
6 in violation of the terms of an injunction is a separate violation.
7 These fines shall be cumulative. No fine shall be assessed against
8 the female upon whom an abortion is performed or attempted.

9 F. In every proceeding or action brought under this section,
10 the anonymity of any female upon whom an abortion is performed or
11 attempted shall be preserved unless she gives her consent to such
12 disclosure. The court, upon motion or sua sponte, shall issue
13 orders to the parties, witnesses and counsel and shall direct the
14 sealing of the record and exclusion of individuals from courtrooms
15 or hearing rooms to the extent necessary to safeguard the female's
16 identity from public disclosure. In the absence of written consent
17 of the female upon whom an abortion has been performed or attempted,
18 anyone who brings an action under this section shall do so under a
19 pseudonym.

20 SECTION 6. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1-731.8 of Title 63, unless
22 there is created a duplication in numbering, reads as follows:

23 A. Any woman upon whom an abortion in violation of the Prenatal
24 Nondiscrimination Act of 2017 is performed or attempted may not be

1 prosecuted under this act for a conspiracy to violate this act or
2 otherwise held criminally or civilly liable for any violation.

3 B. In any criminal proceeding or action brought under this act,
4 any woman upon whom an abortion in violation of this act is
5 performed or attempted is entitled to all rights, protections and
6 notifications afforded to crime victims under the Oklahoma Victim's
7 Rights Act.

8 SECTION 7. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1-731.9 of Title 63, unless
10 there is created a duplication in numbering, reads as follows:

11 A. Nothing in the Prenatal Nondiscrimination Act of 2017 shall
12 be construed as creating or recognizing a right to abortion.

13 B. It is not the intention of this act to make lawful an
14 abortion that is currently unlawful.

15 SECTION 8. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1-731.10 of Title 63, unless
17 there is created a duplication in numbering, reads as follows:

18 Any provision of the Prenatal Nondiscrimination Act of 2017 held
19 to be invalid or unenforceable by its terms or as applied to any
20 person or circumstance shall be construed so as to give it the
21 maximum effect permitted by law, unless such holding shall be one of
22 utter invalidity or unenforceability, in which event such provision
23 shall be deemed severable herefrom and shall not affect the
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1 remainder hereof or the application of such provision to other
2 persons not similarly situated or to other dissimilar circumstances.

3 SECTION 9. This act shall become effective November 1, 2017.

4 Passed the House of Representatives the 21st day of March, 2017.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ___ day of _____, 2017.

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Presiding Officer of the Senate

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