

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 1859, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Scott

Scott-DC-FS-Req#4001
3/10/2020 5:45 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 FLOOR SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1859

By: Scott, McCortney and
Bullard of the Senate

and

Townley of the House

6
7
8
9 FLOOR SUBSTITUTE

10 An Act relating to abortion; amending 59 O.S. 2011,
11 Sections 509, as last amended by Section 6, Chapter
12 428, O.S.L. 2019 and 637, as amended by Section 12,
13 Chapter 428, O.S.L. 2019 (59 O.S. Supp. 2019,
14 Sections 509 and 637), which relate to unprofessional
15 conduct of medical doctor and unprofessional conduct
16 of doctor of osteopathy; broadening certain
17 definitions to include certain acts; amending Section
18 4, Chapter 159, O.S.L. 2012 (63 O.S. Supp. 2019,
19 Section 1-745.14), which relates to fetal heartbeat;
20 reducing time period for certain requirements;
21 modifying and deleting procedural provisions related
22 to detection of fetal heartbeat; deleting certain
23 construction; broadening provisions to include fetal
24 brain function; stipulating method of certain
determination; requiring abortion provider to
document certain information; prohibiting abortion
under certain circumstances; amending Section 6,
Chapter 159, O.S.L. 2012 (63 O.S. Supp. 2019, Section
1-745.16), which relates to penalties; prohibiting
issuance or renewal of physician license for certain
acts; requiring State Board of Medical Licensure and
Supervision and State Board of Osteopathic Examiners
to revoke licenses for certain acts; providing for
certain enforcement under certain circumstances;
providing for codification; and providing an
effective date.

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

2 SECTION 1. AMENDATORY 59 O.S. 2011, Section 509, as last
3 amended by Section 6, Chapter 428, O.S.L. 2019 (59 O.S. Supp. 2019,
4 Section 509), is amended to read as follows:

5 Section 509. The words "unprofessional conduct" as used in
6 Sections 481 through 518.1 of this title are hereby declared to
7 include, but shall not be limited to, the following:

8 1. Procuring, aiding or abetting a criminal operation;

9 2. The obtaining of any fee or offering to accept any fee,
10 present or other form of remuneration whatsoever, on the assurance
11 or promise that a manifestly incurable disease can or will be cured;

12 3. Willfully betraying a professional secret to the detriment
13 of the patient;

14 4. Habitual intemperance or the habitual use of habit-forming
15 drugs;

16 5. Conviction of a felony or of any offense involving moral
17 turpitude;

18 6. All advertising of medical business in which statements are
19 made which are grossly untrue or improbable and calculated to
20 mislead the public;

21 7. Conviction or confession of a crime involving violation of:

22 a. the antinarcotic or prohibition laws and regulations
23 of the federal government,

24 b. the laws of this state, or

1 c. State Board of Health rules;

2 8. Dishonorable or immoral conduct which is likely to deceive,
3 defraud, or harm the public;

4 9. The commission of any act which is a violation of the
5 criminal laws of any state when such act is connected with the
6 physician's practice of medicine. A complaint, indictment or
7 confession of a criminal violation shall not be necessary for the
8 enforcement of this provision. Proof of the commission of the act
9 while in the practice of medicine or under the guise of the practice
10 of medicine shall be unprofessional conduct;

11 10. Failure to keep complete and accurate records of purchase
12 and disposal of controlled drugs or of narcotic drugs;

13 11. The writing of false or fictitious prescriptions for any
14 drugs or narcotics declared by the laws of this state to be
15 controlled or narcotic drugs;

16 12. Prescribing or administering a drug or treatment without
17 sufficient examination and the establishment of a valid physician-
18 patient relationship;

19 13. The violation, or attempted violation, direct or indirect,
20 of any of the provisions of the Oklahoma Allopathic Medical and
21 Surgical Licensure and Supervision Act, either as a principal,
22 accessory or accomplice;

1 14. Aiding or abetting, directly or indirectly, the practice of
2 medicine by any person not duly authorized under the laws of this
3 state;

4 15. The inability to practice medicine with reasonable skill
5 and safety to patients by reason of age, illness, drunkenness,
6 excessive use of drugs, narcotics, chemicals, or any other type of
7 material or as a result of any mental or physical condition. In
8 enforcing this subsection the State Board of Medical Licensure and
9 Supervision may, upon probable cause, request a physician to submit
10 to a mental or physical examination by physicians designated by it.
11 If the physician refuses to submit to the examination, the Board
12 shall issue an order requiring the physician to show cause why the
13 physician will not submit to the examination and shall schedule a
14 hearing on the order within thirty (30) days after notice is served
15 on the physician. The physician shall be notified by either
16 personal service or by certified mail with return receipt requested.
17 At the hearing, the physician and the physician's attorney are
18 entitled to present any testimony and other evidence to show why the
19 physician should not be required to submit to the examination.
20 After a complete hearing, the Board shall issue an order either
21 requiring the physician to submit to the examination or withdrawing
22 the request for examination. The medical license of a physician
23 ordered to submit for examination may be suspended until the results
24 of the examination are received and reviewed by the Board;

- 1 16. a. Prescribing, dispensing or administering of controlled
2 substances or narcotic drugs in excess of the amount
3 considered good medical practice,
4 b. prescribing, dispensing or administering controlled
5 substances or narcotic drugs without medical need in
6 accordance with pertinent licensing board standards,
7 or
8 c. prescribing, dispensing or administering opioid drugs
9 in excess of the maximum limits authorized in Section
10 2-309I of Title 63 of the Oklahoma Statutes;

11 17. Engaging in physical conduct with a patient which is sexual
12 in nature, or in any verbal behavior which is seductive or sexually
13 demeaning to a patient;

14 18. Failure to maintain an office record for each patient which
15 accurately reflects the evaluation, treatment, and medical necessity
16 of treatment of the patient;

17 19. Failure to provide necessary ongoing medical treatment when
18 a doctor-patient relationship has been established, which
19 relationship can be severed by either party providing a reasonable
20 period of time is granted; ~~or~~

21 20. Failure to provide a proper and safe medical facility
22 setting and qualified assistive personnel for a recognized medical
23 act, including but not limited to an initial in-person patient
24 examination, office surgery, diagnostic service or any other medical

1 procedure or treatment. Adequate medical records to support
2 diagnosis, procedure, treatment or prescribed medications must be
3 produced and maintained; or

4 21. Violation of the provisions of the Heartbeat Informed
5 Consent Act.

6 SECTION 2. AMENDATORY 59 O.S. 2011, Section 637, as
7 amended by Section 12, Chapter 428, O.S.L. 2019 (59 O.S. Supp. 2019,
8 Section 637), is amended to read as follows:

9 Section 637. A. The State Board of Osteopathic Examiners may
10 refuse to admit a person to an examination or may refuse to issue or
11 reinstate or may suspend or revoke any license issued or reinstated
12 by the Board upon proof that the applicant or holder of such a
13 license:

14 1. Has obtained a license, license renewal or authorization to
15 sit for an examination, as the case may be, through fraud,
16 deception, misrepresentation or bribery; or has been granted a
17 license, license renewal or authorization to sit for an examination
18 based upon a material mistake of fact;

19 2. Has engaged in the use or employment of dishonesty, fraud,
20 misrepresentation, false promise, false pretense, unethical conduct
21 or unprofessional conduct, as may be determined by the Board, in the
22 performance of the functions or duties of an osteopathic physician,
23 including but not limited to the following:

- a. obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation; willfully and continually overcharging or overtreating patients; or charging for visits to the physician's office which did not occur or for services which were not rendered,
- b. using intimidation, coercion or deception to obtain or retain a patient or discourage the use of a second opinion or consultation,
- c. willfully performing inappropriate or unnecessary treatment, diagnostic tests or osteopathic medical or surgical services,
- d. delegating professional responsibilities to a person who is not qualified by training, skill, competency, age, experience or licensure to perform them, noting that delegation may only occur within an appropriate doctor-patient relationship, wherein a proper patient record is maintained including, but not limited to, at the minimum, a current history and physical,
- e. misrepresenting that any disease, ailment, or infirmity can be cured by a method, procedure, treatment, medicine or device,
- f. acting in a manner which results in final disciplinary action by any professional society or association or

1 hospital or medical staff of such hospital in this or
2 any other state, whether agreed to voluntarily or not,
3 if the action was in any way related to professional
4 conduct, professional competence, malpractice or any
5 other violation of the Oklahoma Osteopathic Medicine
6 Act,

- 7 g. signing a blank prescription form; or dispensing,
8 prescribing, administering or otherwise distributing
9 any drug, controlled substance or other treatment
10 without sufficient examination or the establishment of
11 a physician-patient relationship, or for other than
12 medically accepted therapeutic or experimental or
13 investigational purpose duly authorized by a state or
14 federal agency, or not in good faith to relieve pain
15 and suffering, or not to treat an ailment, physical
16 infirmity or disease, or violating any state or
17 federal law on controlled dangerous substances
18 including, but not limited to, prescribing, dispensing
19 or administering opioid drugs in excess of the maximum
20 limits authorized in Section 2-309I of Title 63 of the
21 Oklahoma Statutes,
- 22 h. engaging in any sexual activity within a physician-
23 patient relationship,
24

1 i. terminating the care of a patient without adequate
2 notice or without making other arrangements for the
3 continued care of the patient,

4 j. failing to furnish a copy of a patient's medical
5 records upon a proper request from the patient or
6 legal agent of the patient or another physician; or
7 failing to comply with any other law relating to
8 medical records,

9 k. failing to comply with any subpoena issued by the
10 Board,

11 l. violating a probation agreement or order with this
12 Board or any other agency, and

13 m. failing to keep complete and accurate records of
14 purchase and disposal of controlled drugs or narcotic
15 drugs;

16 3. Has engaged in gross negligence, gross malpractice or gross
17 incompetence;

18 4. Has engaged in repeated acts of negligence, malpractice or
19 incompetence;

20 5. Has been finally adjudicated and found guilty, or entered a
21 plea of guilty or nolo contendere in a criminal prosecution, for any
22 offense reasonably related to the qualifications, functions or
23 duties of an osteopathic physician, or for any offense involving
24

1 moral turpitude, whether or not sentence is imposed, and regardless
2 of the pendency of an appeal;

3 6. Has had the authority to engage in the activities regulated
4 by the Board revoked, suspended, restricted, modified or limited, or
5 has been reprimanded, warned or censured, probated or otherwise
6 disciplined by any other state or federal agency whether or not
7 voluntarily agreed to by the physician including, but not limited
8 to, the denial of licensure, surrender of the license, permit or
9 authority, allowing the license, permit or authority to expire or
10 lapse, or discontinuing or limiting the practice of osteopathic
11 medicine pending disposition of a complaint or completion of an
12 investigation;

13 7. Has violated, or failed to comply with provisions of any act
14 or regulation administered by the Board;

15 8. Is incapable, for medical or psychiatric or any other good
16 cause, of discharging the functions of an osteopathic physician in a
17 manner consistent with the public's health, safety and welfare;

18 9. Has been guilty of advertising by means of knowingly false
19 or deceptive statements;

20 10. Has been guilty of advertising, practicing, or attempting
21 to practice under a name other than one's own;

22 11. Has violated or refused to comply with a lawful order of
23 the Board;

24

1 12. Has been guilty of habitual drunkenness, or habitual
2 addiction to the use of morphine, cocaine or other habit-forming
3 drugs;

4 13. Has been guilty of personal offensive behavior, which would
5 include, but not be limited to obscenity, lewdness, molestation and
6 other acts of moral turpitude; ~~and~~

7 14. Has been adjudicated to be insane, or incompetent, or
8 admitted to an institution for the treatment of psychiatric
9 disorders; and

10 15. Has violated the provisions of the Heartbeat Informed
11 Consent Act.

12 B. The State Board of Osteopathic Examiners shall neither
13 refuse to renew, nor suspend, nor revoke any license, however, for
14 any of these causes, unless the person accused has been given at
15 least twenty (20) days' notice in writing of the charge against him
16 or her and a public hearing by the Board provided, three-fourths
17 (3/4) of a quorum present at a meeting may vote to suspend a license
18 in an emergency situation if the licensee affected is provided a
19 public hearing within thirty (30) days of the emergency suspension.

20 C. The State Board of Osteopathic Examiners shall have the
21 power to order or subpoena the attendance of witnesses, the
22 inspection of records and premises and the production of relevant
23 books and papers for the investigation of matters that may come
24 before them. The presiding officer of the Board shall have the

1 authority to compel the giving of testimony as is conferred on
2 courts of justice.

3 D. Any osteopathic physician in the State of Oklahoma whose
4 license to practice osteopathic medicine is revoked or suspended
5 under this section shall have the right to seek judicial review of a
6 ruling of the Board pursuant to the Administrative Procedures Act.

7 E. The Board may enact rules and regulations pursuant to the
8 Administrative Procedures Act setting out additional acts of
9 unprofessional conduct; which acts shall be grounds for refusal to
10 issue or reinstate, or for action to condition, suspend or revoke a
11 license.

12 SECTION 3. AMENDATORY Section 4, Chapter 159, O.S.L.
13 2012 (63 O.S. Supp. 2019, Section 1-745.14), is amended to read as
14 follows:

15 Section 1-745.14. A. Any abortion provider who knowingly
16 performs or induces any abortion shall comply with the requirements
17 of the Heartbeat Informed Consent Act.

18 B. Prior to a woman giving informed consent to having any part
19 of an abortion performed or induced, if the pregnancy is at least
20 ~~eight (8)~~ six (6) weeks after fertilization, the abortion provider
21 who is to perform or induce the abortion or an agent of the abortion
22 provider shall ~~tell the woman that it may be possible to make the~~
23 determine whether there is a detectable embryonic or fetal heartbeat
24 of the unborn child ~~audible for the pregnant woman to hear and ask~~

~~the woman if she would like to hear the heartbeat. If the woman would like to hear the heartbeat, the abortion provider shall, using a Doppler fetal heart rate monitor, make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear. An abortion provider or an agent of the abortion provider shall not be in violation of the requirements of this subsection if:~~

~~1. The provider or agent has attempted, consistent with standard medical practice, to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear using a Doppler fetal heart rate monitor;~~

~~2. That attempt does not result in the heartbeat being made audible; and~~

~~3. The provider has offered to attempt to make the heartbeat audible at a subsequent date.~~

~~C. Nothing in this section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the Doppler fetal heart rate monitor pursuant to the requirements of subsection B of this section and whether there is detectable brain function of the unborn child. The method of determining the presence of a fetal heartbeat or brain function shall be consistent with the provider's good faith understanding of standard medical practice. The provider shall record in the pregnant woman's medical record the estimated gestational age of the unborn child, the method used to test for the presence or absence of a fetal heartbeat or~~

1 brain function, the date and time of the test and the results of the
2 test. The provider shall not perform or induce the abortion if the
3 provider detects an embryonic or fetal heartbeat of the unborn child
4 or brain function of the unborn child.

5 SECTION 4. AMENDATORY Section 6, Chapter 159, O.S.L.
6 2012 (63 O.S. Supp. 2019, Section 1-745.16), is amended to read as
7 follows:

8 Section 1-745.16. A. Any person who intentionally or
9 recklessly performs or induces an abortion in violation of the
10 Heartbeat Informed Consent Act shall be guilty of a misdemeanor. No
11 penalty shall be assessed against the woman upon whom the abortion
12 is performed or induced or attempted to be performed or induced.

13 B. Any woman upon whom an abortion has been performed or
14 induced in violation of this act, or the father of the unborn child
15 who was the subject of such an abortion, may maintain an action
16 against the person who performed or induced the abortion in
17 intentional or reckless violation of this act for actual and
18 punitive damages. Any woman upon whom an abortion has been
19 attempted in violation of this act may maintain an action against
20 the person who attempted to perform or induce the abortion in an
21 intentional or reckless violation of this act for actual and
22 punitive damages.

23 C. A cause of action for injunctive relief against any person
24 who has intentionally or recklessly violated this act may be

1 maintained by the woman upon whom an abortion was performed or
2 induced in violation of this act; by any person who is the spouse,
3 parent, sibling, or guardian of, or a current or former licensed
4 health care provider of, the woman upon whom an abortion has been
5 performed or induced in violation of this act; by a district
6 attorney with appropriate jurisdiction; or by the Attorney General.
7 The injunction shall prevent the abortion provider from performing
8 or inducing further abortions in violation of this act in the state.

9 D. If judgment is rendered in favor of the plaintiff in an
10 action described in this section, the court shall also render
11 judgment for a reasonable attorney fee in favor of the plaintiff
12 against the defendant.

13 E. If judgment is rendered in favor of the defendant and the
14 court finds that the plaintiff's suit was frivolous and brought in
15 bad faith, the court shall also render judgment for a reasonable
16 attorney fee in favor of the defendant against the plaintiff.

17 F. No damages or attorney fee may be assessed against the woman
18 upon whom an abortion was performed or attempted to be performed or
19 induced except in accordance with subsection E of this section.

20 G. In addition to all other penalties prescribed by this
21 section, a physician who intentionally or recklessly performs or
22 induces an abortion in violation of the Heartbeat Informed Consent
23 Act shall be prohibited from obtaining or renewing a license to
24 practice medicine in this state. The State Board of Medical

Licensure and Supervision shall revoke the license of a medical
doctor who intentionally or recklessly performs or induces an
abortion in violation of the Heartbeat Informed Consent Act. The
State Board of Osteopathic Examiners shall revoke the license of a
doctor of osteopathy who intentionally or recklessly performs or
induces an abortion in violation of the Heartbeat Informed Consent
Act.

SECTION 5. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1-745.20 of Title 63, unless
there is created a duplication in numbering, reads as follows:

If some or all of the provisions of Section 1, 2, 3 or 4 of this
act are ever temporarily or permanently restrained or enjoined by
court order, the remaining provisions of such section shall be
enforced as though the restrained or enjoined provisions had not
been adopted; provided, however, if such temporary or permanent
restraining order or injunction is stayed or dissolved, or otherwise
ceases to have effect, such provisions shall have full force and
effect.

SECTION 6. This act shall become effective November 1, 2020.

57-2-4001 DC 3/10/2020 5:45:27 PM