

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO. 857

By: Standridge

AS INTRODUCED

An Act relating to abortion; providing short title; defining terms; requiring certain license; setting forth provisions related to licensure; directing State Department of Health to set forth policies and procedures related to inspections and investigations; directing State Commissioner of Health to promulgate certain rules; providing criminal penalties; providing civil penalties; providing injunctive remedies; providing certain construction; providing right of intervention; providing severability; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act may be known and cited as the "Women's Health Protection Act."

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-756.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in this act only:

1 1. "Abortion" means the act of using or prescribing any
2 instrument, medicine, drug or other substance, device or means with
3 the intent to terminate the clinically diagnosable pregnancy of a
4 woman with knowledge that the termination by those means will with
5 reasonable likelihood cause the death of the unborn child. Such use
6 is not an abortion if done with the intent to:

7 a. save the life or preserve the health of the unborn
8 child,

9 b. remove a dead unborn child caused by spontaneous
10 abortion, or

11 c. remove an ectopic pregnancy;

12 2. "Abortion clinic" means a facility, other than an accredited
13 hospital, in which five (5) or more first-trimester abortions in any
14 month or any second- or third-trimester abortions are performed;

15 3. "Born alive," with respect to a member of the species homo
16 sapiens, means the complete expulsion or extraction from his or her
17 mother of that member, at any stage of development, who after such
18 expulsion or extraction breathes or has a beating heart, pulsation
19 of the umbilical cord, or definite movement of voluntary muscles,
20 regardless of whether the umbilical cord has been cut, and
21 regardless of whether the expulsion or extraction occurs as a result
22 of natural or induced labor, cesarean section, or induced abortion;

23 4. "Conception" and "fertilization" each means the fusion of
24 the human spermatozoon with a human ovum;

1 5. "Gestation" means the time that has elapsed since the first
2 day of the woman's last menstrual period;

3 6. "Licensee" means an individual, a partnership, an
4 association, a limited liability company, or a corporation operating
5 an abortion clinic;

6 7. "Physician" means a person licensed to practice medicine in
7 this state. This term includes medical doctors and doctors of
8 osteopathy; and

9 8. "Unborn child" means the offspring of human beings from
10 conception until birth.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1-756.3 of Title 63, unless
13 there is created a duplication in numbering, reads as follows:

14 A. Beginning on the effective date of this act, all abortion
15 clinics shall be licensed by the State Department of Health. Any
16 existing abortion clinic, as defined by this act, shall make
17 application for licensure within ninety (90) days of the effective
18 date of this act.

19 B. An application for a license shall be made to the Department
20 on forms provided by it and shall contain such information as the
21 Department reasonably requires, which shall include affirmative
22 evidence of ability to comply with such reasonable standards, rules
23 and regulations as are lawfully prescribed hereunder. Additional
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1 information required by the Department shall be supplied on
2 supplemental forms as needed.

3 C. Following receipt of an application for license and if the
4 applicant and the facility meet the requirements established by this
5 act and the minimum standards, administrative rules and regulations
6 adopted in pursuance thereof, the Department shall issue a license
7 which is valid for a period of one (1) year.

8 D. A temporary or provisional license may be issued to an
9 abortion clinic for a period of six (6) months in cases where
10 sufficient compliance with minimum standards, rules and regulations
11 require an extension of time, if a disapproval has not been received
12 from any other state or local agency otherwise authorized to inspect
13 such facilities. The failure to comply must not be detrimental to
14 the health and safety of the public.

15 E. A license shall apply only to the location and licensee
16 stated on the application and such license, once issued, is not
17 transferable from one place to another or from one licensee to
18 another. If the location of the facility is changed, the license
19 shall be automatically revoked. A new application form shall be
20 completed prior to all license renewals.

21 F. An application for a license or license renewal to operate
22 an abortion clinic shall be accompanied by a fee in an amount
23 determined by the Department, which is hereby levied as the license
24 fee for operation of an abortion clinic for a period of one (1)

1 year. The fees herein levied and collected shall be paid into the
2 General Revenue Fund.

3 G. Each license issued hereunder shall be for a period of one
4 (1) year from the date of issuance unless sooner revoked, shall be
5 on a form prescribed by the Department and may be renewed from year-
6 to-year upon application and payment of the license fee as in the
7 case of procurement of the original license.

8 H. The Department may deny, suspend, revoke or refuse to renew
9 a license in any case in which it finds that there has been a
10 substantial failure of the applicant or licensee to comply with the
11 requirements of this act or the minimum standards, administrative
12 rules and regulations adopted by the Department pursuant to this
13 act. In such case, the Department shall furnish the person,
14 applicant or licensee thirty-days' notice specifying the reason or
15 reasons for the action.

16 I. Any person, applicant or licensee who feels aggrieved by the
17 action of the Department in denying, suspending, revoking or
18 refusing to renew a license may appeal the Department's action in
19 accordance with the delay, notice and other procedures established
20 by the Administrative Procedures Act.

21 J. Any person, applicant or licensee who feels aggrieved by the
22 action of the Department may, within thirty (30) days after
23 notification of such action, appeal to the court of competent
24 jurisdiction. A record of all proceedings before the court shall be
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1 made and kept on file with the court. The Department shall transmit
2 a certified copy of the record to the court. The court shall try
3 the appeal de novo.

4 SECTION 4. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1-756.4 of Title 63, unless
6 there is created a duplication in numbering, reads as follows:

7 A. The State Department of Health shall establish policies and
8 procedures for conducting pre-licensure and re-licensure inspections
9 of abortion clinics. Prior to issuing or reissuing a license, the
10 Department shall conduct an on-site inspection to ensure compliance
11 with this act, with the rules promulgated by the State Commissioner
12 of Health under this act.

13 B. The Department shall also establish policies and procedures
14 for conducting inspections and investigations pursuant to complaints
15 received by the Department and made against any abortion clinic.
16 The Department shall receive, record and dispose of complaints in
17 accordance with established policies and procedures.

18 C. If the Commissioner of Health determines that there is
19 reasonable cause to believe a licensee, licensed abortion clinic or
20 abortion clinic that is required to be licensed pursuant to this act
21 is not adhering to the requirements of this act or rules promulgated
22 by the Commissioner under the authority of this act, the
23 Commissioner and any duly-designated employee or agent of the
24 Commissioner including county health representatives and county or

1 municipal fire inspectors, consistent with standard medical
2 practices, may enter on and into the premises of the licensee,
3 licensed abortion clinic or abortion clinic that is required to be
4 licensed, during regular business hours of the licensee or abortion
5 clinic to determine compliance with this act, with the rules
6 promulgated by the Commissioner under this act and local fire
7 ordinances or rules.

8 D. An application for a license pursuant to this act and rules
9 promulgated by the Department under the authority of this act
10 constitutes permission for, and complete acquiescence in, an entry
11 or inspection of the premises during the pendency of the application
12 and, if licensed, during the term of the license.

13 E. If an inspection or investigation conducted pursuant to this
14 section reveals that a licensee or licensed abortion clinic is not
15 adhering to the requirements of this act, with the rules promulgated
16 by the Commissioner under this act or with local fire ordinances or
17 rules, the Commissioner may take action to deny, suspend, revoke or
18 refuse to renew a license to operate an abortion clinic.

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1-756.5 of Title 63, unless
21 there is created a duplication in numbering, reads as follows:

22 A. The State Commissioner of Health shall promulgate rules for
23 the licensing and operation of abortion clinics, and to create
24 minimum standards for physical facilities, abortion equipment and
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1 supply, personnel, medical screening and evaluation, abortion
2 procedures, recovery rooms, follow-up care and incident reporting.

3 B. 1. The Department shall not release personal identifiable
4 patient or physician information.

5 2. The rules adopted by the Commissioner pursuant to this act
6 shall not limit the ability of a physician or other healthcare
7 professional to advise a patient on any health issue.

8 3. The provisions of this act and rules adopted pursuant hereto
9 shall be in addition to any other laws and administrative rules
10 which are applicable to facilities defined as "abortion clinics"
11 under Section 2 of this act.

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-756.6 of Title 63, unless
14 there is created a duplication in numbering, reads as follows:

15 A. Whoever operates an abortion clinic as defined in Section 2
16 of this act without a valid license issued by the State Department
17 of Health is guilty of a misdemeanor.

18 B. Any person who intentionally or knowingly violates this act
19 or any rules adopted pursuant hereto is guilty of a misdemeanor.

20 SECTION 7. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1-756.7 of Title 63, unless
22 there is created a duplication in numbering, reads as follows:
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1 A. Any violation of this act or any rule adopted under this act
2 may be subject to a civil penalty or fine imposed by and in an
3 amount determined by the State Department of Health.

4 B. Each day of violation constitutes a separate violation for
5 purposes of assessing civil penalties or fines.

6 C. In deciding whether and to what extent to impose fines, the
7 Department shall consider the following factors:

8 1. Gravity of the violation including the probability that
9 death or serious physical harm to a patient or individual will
10 result or has resulted;

11 2. Size of the population at risk as a consequence of the
12 violation;

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

14 4. Extent to which the provisions of the applicable statutes
15 and rules were violated;

16 5. Any indications of good faith exercised by the licensee;

17 6. The duration, frequency and relevance of any previous
18 violations committed by the licensee; and

19 7. Financial benefit to the licensee of committing or
20 continuing the violation.

21 D. Both the Office of the Attorney General and the Office of
22 the District Attorney for the county in which the violation occurred
23 may institute a legal action to enforce collection of civil
24 penalties or fines.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-756.8 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 In addition to any other penalty provided by law, whenever in
5 the judgment of the State Commissioner of Health, any person has
6 engaged, or is about to engage, in any acts or practices which
7 constitute, or will constitute, a violation of this act, or any rule
8 adopted under the provision of this act, the Commissioner shall make
9 application to any court of competent jurisdiction for an order
10 enjoining such acts and practices, and upon a showing by the
11 Commissioner that such person has engaged, or is about to engage, in
12 any such acts or practices, an injunction, restraining order or such
13 other order as may be appropriate shall be granted by such court
14 without bond.

15 SECTION 9. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1-756.9 of Title 63, unless
17 there is created a duplication in numbering, reads as follows:

18 A. Nothing in this act shall be construed as creating or
19 recognizing a right to abortion.

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

22 SECTION 10. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1-756.10 of Title 63, unless
24 there is created a duplication in numbering, reads as follows:

1 The Legislature, by joint resolution, may appoint one or more of
2 its members, who sponsored or cosponsored this act in his or her
3 official capacity, to intervene as a matter of right in any case in
4 which the constitutionality of this act, any portion thereof or any
5 rule adopted pursuant hereto is challenged.

6 SECTION 11. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-756.11 of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

9 Any provision of this act held to be invalid or unenforceable by
10 its terms, or as applied to any person or circumstance, shall be
11 construed so as to give it the maximum effect permitted by law,
12 unless such holding shall be one of utter invalidity or
13 unenforceability, in which event such provision shall be deemed
14 severable herefrom and shall not affect the remainder hereof or the
15 application of such provision to other persons not similarly
16 situated or to other, dissimilar circumstances.

17 SECTION 12. This act shall become effective November 1, 2019.

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