

1 **SENATE FLOOR VERSION**

2 February 23, 2015

3 COMMITTEE SUBSTITUTE  
4 FOR

5 SENATE BILL NO. 642

6 By: Treat of the Senate

7 and

8 Grau of the House

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

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

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

20 Section 1-740.4b. A. A person who knowingly or recklessly uses  
21 a false governmental record or makes a fraudulent representation or  
22 statement in order to obtain an abortion for a minor in violation of  
23 this act title or intentionally causes, aids, abets or assists an  
24 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

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

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

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

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

9 2. Is a felony.

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

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

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

23 C. If the State Commissioner of Health determines that there is  
24 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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