An Act

ENROLLED SENATE
BILL NO. 642

By: Treat, Shortey, Newberry, and Sharp of the Senate

and

Grau and Ritze of the House

An Act relating to abortion; amending 63 O.S. 2011, Section 1-740.4b, which relates to unlawful acts; broadening grounds for certain unlawful acts; providing for civil liability; permitting awarding of damages for certain violations; specifying grounds for violations; authorizing certain awards for costs and damages; providing certain exclusion; permitting courts to enjoin certain conduct; specifying grounds for certain injunction; requiring physicians to preserve and submit fetal tissue under certain circumstances; providing standards for rules; providing punishments for violations; requiring State Board of Health to establish certain policies and procedures and to promulgate rules; requiring inspections of certain facilities prior to issuance or reissuance of certain license; permitting State Commissioner of Health and designated personnel to enter and inspect certain facilities; providing acquiescence by certain entities for certain purposes; permitting State Commissioner of Health to take certain actions for certain violations; establishing certain felony; providing exemption for certain persons; providing civil penalty; providing that each day of violation constitutes a separate violation; providing certain standards for use by courts in determining imposition of fines; permitting Attorney General and district attorneys to institute legal action for certain purposes; providing for civil liability; stating types of damages that may be awarded; providing for severability; clarifying

references; clarifying language; providing for codification; and providing an effective date.

SUBJECT: Abortion procedure compliance requirements

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.

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

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

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

D. ~~An unemancipated minor, or the parent of the minor, upon whom an abortion has been performed, or attempted to be performed, without complying with this act may maintain a cause of action against the person who performed, or attempted to perform, the abortion~~ 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 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 or any physician who intentionally or knowingly performs an abortion on a pregnant unemancipated minor in violation of this title shall be civilly liable to the minor and to the person or persons required to give consent pursuant to the provisions of Section 1-740.2 of this title. A court may award damages to the person or persons adversely affected by a violation of this section including compensation for emotional injury without the need for personal presence at the act or event, and the court may further award attorney fees, litigation costs, and punitive damages. Any adult who engages in or consents to another person engaging in a sexual act with a minor, which results in the minor's pregnancy, shall not be awarded damages under this section.

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

1. Is reasonably anticipated to occur in the future; or

2. Has occurred in the past, whether with the same minor or others, and that it is reasonably expected to be repeated.

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

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

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

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

abortion. The physician shall submit the tissue to the Oklahoma State Bureau of Investigation.

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

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

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

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

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

5. A uniform reporting form mandated to be utilized by physicians when submitting fetal tissue under this section, which shall include the name and address of the physician submitting the 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 Department 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 or abortion facility that is required to be licensed in this state is not adhering to the requirements of Section 1-729a et seq. of Title 63 of the Oklahoma Statutes, local fire ordinances or rules or any other law, administrative rule or regulation relating to abortion, the Commissioner and any duly designated employee or agent of the Commissioner including employees of county or city-county health departments and county or municipal fire inspectors, consistent with standard medical practices, may enter on and into the premises of the licensee, licensed abortion facility or abortion facility that is required to be licensed in this state during regular business hours of the licensee or abortion facility to determine compliance with the provisions of Section 1-729a et seq. of Title 63 of the Oklahoma Statutes, local fire ordinances or rules, and any other law, administrative rule or regulation relating to abortion.

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

E. If an inspection or investigation conducted pursuant to this section reveals that an applicant, licensee or licensed abortion facility is not adhering to the requirements of this section, the provisions of Title 1-729a et seq. of Title 63 of the Oklahoma Statutes, local fire ordinances or rules and any other law,

administrative rule or regulation relating to abortion, the Commissioner may take action to deny, suspend, revoke or refuse to renew a license to operate an abortion facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. If some or all of the newly amended provisions of this act resulting from the actions taken by the 2015 Session of the Oklahoma Legislature are ever temporarily or permanently restrained or enjoined by judicial order, this act shall be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever 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.

J. The Oklahoma State Bureau of Investigation and the State Board of Health shall promulgate rules to implement the provisions of this act.

SECTION 5. This act shall become effective November 1, 2015.

Passed the Senate the 22nd day of May, 2015.

Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of May, 2015.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 22nd day of May, 2015, at 8:08 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 4th day of June, 2015, at 3:04 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 4th day of June, 2015, at 5:19 o'clock P. M.

By: Chris Mecum