

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 HOUSE BILL NO. 1549

6 By: Faught

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8 COMMITTEE SUBSTITUTE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 9. "Unemancipated minor" means the term as defined in paragraph  
7 5 of subsection A of Section 1-730 of Title 63 of the Oklahoma  
8 Statutes; and

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

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

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

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

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

4 A. No physician or person may intentionally perform or attempt  
5 to perform an abortion with knowledge that the pregnant woman is  
6 seeking the abortion solely because the unborn child has been  
7 diagnosed with either a viable genetic abnormality or a potential  
8 for a viable genetic abnormality.

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

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

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

22 B. A pregnant woman upon whom an abortion has been performed in  
23 violation of this act or the parent or legal guardian of the woman,  
24 if she is an unemancipated minor as defined in subsection A of

1 Section 2 of this act, may commence a civil action for any knowing  
2 or reckless violation of this act and may seek both actual and  
3 punitive damages. Such damages shall include, but are not limited  
4 to:

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

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

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

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

3 E. Any person who knowingly violates the terms of an injunction  
4 issued in accordance with this section shall be subject to civil  
5 contempt and shall be fined Ten Thousand Dollars (\$10,000.00) for  
6 the first violation, Fifty Thousand Dollars (\$50,000.00) for the  
7 second violation and One Hundred Thousand Dollars (\$100,000.00) for  
8 the third violation and for each succeeding violation. The fines  
9 shall be the exclusive penalties for civil contempt pursuant to this  
10 section. Each performance or attempted performance of an abortion  
11 in violation of the terms of an injunction is a separate violation.  
12 These fines shall be cumulative. No fine shall be assessed against  
13 the female upon whom an abortion is performed or attempted.

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

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

4 A. Any woman upon whom an abortion in violation of the Prenatal  
5 Nondiscrimination Act of 2017 is performed or attempted may not be  
6 prosecuted under this act for a conspiracy to violate this act or  
7 otherwise held criminally or civilly liable for any violation.

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

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

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

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

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

23 Any provision of the Prenatal Nondiscrimination Act of 2017 held  
24 to be invalid or unenforceable by its terms or as applied to any

1 person or circumstance shall be construed so as to give it the  
2 maximum effect permitted by law, unless such holding shall be one of  
3 utter invalidity or unenforceability, in which event such provision  
4 shall be deemed severable herefrom and shall not affect the  
5 remainder hereof or the application of such provision to other  
6 persons not similarly situated or to other dissimilar circumstances.

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

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