

1 **SENATE FLOOR VERSION**

2 April 4, 2016

3 ENGROSSED HOUSE  
4 BILL NO. 3128

By: Cockroft and Faught of the  
House

5 and

6 Treat of the Senate

7  
8  
9 An Act relating to public health and safety; creating  
10 the Prenatal Nondiscrimination Act of 2016; defining  
11 certain terms; prohibiting performance of abortion  
12 due to diagnosis of Down syndrome or genetic  
13 abnormality of unborn child; providing certain  
14 penalties; excluding liability of certain woman;  
15 providing for construction; providing for  
16 severability; permitting certain individuals to  
17 intervene if constitutionality is challenged;  
18 providing for codification; and providing an  
19 effective date.

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21  
22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

This act shall be known and may be cited as the "Prenatal  
Nondiscrimination Act of 2016".

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

4 As used in the Prenatal Nondiscrimination Act of 2016 only:

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

12 a. save the life or preserve the health of the unborn  
13 child,

14 b. remove a dead unborn child caused by spontaneous  
15 abortion, or

16 c. remove an ectopic pregnancy;

17 2. "Down syndrome" refers to a chromosome disorder associated  
18 either with an extra chromosome 21 (in whole or in part) or an  
19 effective trisomy for chromosome 21. Down syndrome is sometimes  
20 referred to as "trisomy 21 syndrome";

21 3. "Genetic abnormality" means any defect, disease or disorder  
22 that is inherited genetically. The term genetic abnormality  
23 includes, but is not limited to: any physical disability, any mental  
24 disability or retardation, any physical disfigurement, scoliosis,

1 dwarfism, Down syndrome, albinism, Amelia or any other type of  
2 physical or mental abnormality or disease;

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

6 5. "Minor" means any person under the age of eighteen (18) who  
7 is not and has not been married and has not been legally  
8 emancipated;

9 6. "Physician" means any person licensed to practice medicine  
10 in this state. The term includes allopathic doctors and osteopathic  
11 doctors;

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

15 8. "Unborn child" means the offspring of human beings from  
16 conception until birth.

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

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

24

1 B. If this section is held invalid as applied to the period of  
2 pregnancy prior to viability, then it shall remain applicable to the  
3 period of pregnancy subsequent to viability.

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

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

12 B. If this section is held invalid as applied to the period of  
13 pregnancy prior to viability, then it shall remain applicable to the  
14 period of pregnancy subsequent to viability.

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

18 Any physician or other person who intentionally or knowingly  
19 performs or attempts to perform an abortion prohibited by the  
20 Prenatal Nondiscrimination Act of 2016 shall be guilty of a  
21 misdemeanor and shall be fined not less than Ten Thousand Dollars  
22 (\$10,000.00).

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 physician or person who intentionally or knowingly  
5 violates the Prenatal Nondiscrimination Act of 2016 shall be liable  
6 for damages and shall, if applicable, have his or her medical  
7 license suspended or revoked. He or she may also be enjoined from  
8 such acts as provided in this section.

9 B. A pregnant woman upon whom an abortion has been performed in  
10 violation of this act, or the parent or legal guardian of the woman  
11 if she is an unemancipated minor as defined in subsection A of  
12 Section 1-731.2 of Title 63 of the Oklahoma Statutes, may commence a  
13 civil action for any knowing or reckless violation of this act, and  
14 may seek both actual and punitive damages. Such damages shall  
15 include, but are not limited to:

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

18 2. Statutory damages equal to ten times the cost of the  
19 abortion performed in violation of this act.

20 C. Any physician who performs an abortion in violation of this  
21 act shall be considered to have engaged in unprofessional conduct  
22 for which his or her license to provide healthcare services in the  
23 State of Oklahoma shall be suspended or revoked by the State Board  
24

1 of Medical Licensure and Supervision or the State Board of  
2 Osteopathic Examiners.

3 D. A cause of action for injunctive relief against any  
4 physician or other person who has knowingly violated this act may be  
5 maintained by the woman upon whom the abortion was performed or  
6 attempted to be performed in violation of this act; any person who  
7 is the spouse, parent, guardian or a current or former licensed  
8 healthcare provider of the woman upon whom an abortion has been  
9 performed or attempted to be performed in violation of this act; by  
10 the Office of the Attorney General of Oklahoma; or by a district  
11 attorney with appropriate jurisdiction. The injunction shall  
12 prevent the physician or person from performing further abortions in  
13 violation of this act.

14 E. Any physician or other person who knowingly violates the  
15 terms of an injunction issued in accordance with this act shall be  
16 subject to civil contempt and shall be fined not less than Fifty  
17 Thousand Dollars (\$50,000.00).

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

21 A. Any woman upon whom an abortion in violation of the Prenatal  
22 Nondiscrimination Act of 2016 is performed or attempted may not be  
23 prosecuted under this act for a conspiracy to violate this act or  
24 otherwise held criminally or civilly liable for any violation.

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

6 C. In every civil proceeding or action brought under this act,  
7 the anonymity of the woman upon whom an abortion is performed or  
8 attempted shall be preserved from public disclosure unless she gives  
9 her consent to such disclosure. A court of competent jurisdiction,  
10 upon motion or sua sponte, shall issue orders to the parties,  
11 witnesses and counsel and shall direct the sealing of the record and  
12 exclusion of individuals from courtrooms or hearing rooms, to the  
13 extent necessary to safeguard her identity from public disclosure.  
14 In the absence of written consent of the woman upon whom an abortion  
15 has been performed or attempted, anyone who initiates a proceeding  
16 or action under subsection B or D of Section 6 of this act shall do  
17 so under a pseudonym.

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

21 A. Nothing in the Prenatal Nondiscrimination Act of 2016 shall  
22 be construed as creating or recognizing a right to abortion.

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

1 SECTION 9. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-731.11 of Title 63, unless  
3 there is created a duplication in numbering, reads as follows:

4 Any provision of the Prenatal Nondiscrimination Act of 2016 held  
5 to be invalid or unenforceable by its terms, or as applied to any  
6 person or circumstance, shall be construed so as to give it the  
7 maximum effect permitted by law, unless such holding shall be one of  
8 utter invalidity or unenforceability, in which event such provision  
9 shall be deemed severable herefrom and shall not affect the  
10 remainder hereof or the application of such provision to other  
11 persons not similarly situated or to other dissimilar circumstances.

12 SECTION 10. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1-731.12 of Title 63, unless  
14 there is created a duplication in numbering, reads as follows:

15 The Oklahoma Legislature, by joint resolution, may appoint one  
16 or more of its members who sponsored or cosponsored the Prenatal  
17 Nondiscrimination Act of 2016 in his or her official capacity to  
18 intervene as a matter of right in any case in which the  
19 constitutionality of this law is challenged.

20 SECTION 11. This act shall become effective November 1, 2016.

21 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES  
22 April 4, 2016 - DO PASS  
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