

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1430

By: Dahm

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5  
6 AS INTRODUCED

7 An Act relating to public health and safety; creating  
8 the Prenatal Nondiscrimination Act of 2018; defining  
9 certain terms; prohibiting performance of abortion  
10 due to diagnosis of Down syndrome or genetic  
11 abnormality of unborn child; providing certain  
12 penalties; excluding liability of certain woman;  
13 providing for construction; providing for  
14 severability; permitting certain individuals to  
15 intervene if constitutionality is challenged;  
16 providing for codification; and providing an  
17 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 2018".

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:

As used in the Prenatal Nondiscrimination Act of 2018 only:

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

- 8           a. save the life or preserve the health of the unborn  
9           child,
- 10          b. remove a dead unborn child caused by spontaneous  
11          abortion, or
- 12          c. remove an ectopic pregnancy;

13          2. "Down syndrome" refers to a chromosome disorder associated  
14 either with an extra chromosome 21 (in whole or in part) or an  
15 effective trisomy for chromosome 21. Down syndrome is sometimes  
16 referred to as "trisomy 21 syndrome";

17          3. "Genetic abnormality" means any defect, disease or disorder  
18 that is inherited genetically. The term genetic abnormality  
19 includes, but is not limited to: any physical disability, any mental  
20 disability or retardation, any physical disfigurement, scoliosis,  
21 dwarfism, Down syndrome, albinism, amelia or any other type of  
22 physical or mental abnormality or disease;

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

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

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

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

13 8. "Unborn child" means the offspring of human beings from  
14 conception until birth.

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

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

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

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 person may intentionally perform or attempt to perform an  
5 abortion with knowledge that the pregnant woman is seeking the  
6 abortion solely because the unborn child has been diagnosed with  
7 either a genetic abnormality or a potential for a genetic  
8 abnormality.

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

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

15 Any physician or other person who intentionally or knowingly  
16 performs or attempts to perform an abortion prohibited by the  
17 Prenatal Nondiscrimination Act of 2018 shall be guilty of a  
18 misdemeanor and shall be fined not less than Ten Thousand Dollars  
19 (\$10,000.00).

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

23 A. Any physician or person who intentionally or knowingly  
24 violates the Prenatal Nondiscrimination Act of 2018 shall be liable

1 for damages and shall, if applicable, have his or her medical  
2 license suspended or revoked. He or she may also be enjoined from  
3 such acts as provided in this section.

4 B. A pregnant woman upon whom an abortion has been performed in  
5 violation of this act, or the parent or legal guardian of the woman  
6 if she is an unemancipated minor as defined in subsection A of  
7 Section 1-731.4 of Title 63 of the Oklahoma Statutes, may commence a  
8 civil action for any knowing or reckless violation of this act and  
9 may seek both actual and punitive damages. Such damages shall  
10 include, but are not limited to:

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

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

15 C. Any physician who performs an abortion in violation of this  
16 act shall be considered to have engaged in unprofessional conduct  
17 for which his or her license to provide healthcare services in the  
18 State of Oklahoma shall be suspended or revoked by the State Board  
19 of Medical Licensure and Supervision or the State Board of  
20 Osteopathic Examiners.

21 D. A cause of action for injunctive relief against any  
22 physician or other person who has knowingly violated this act may be  
23 maintained by the woman upon whom the abortion was performed or  
24 attempted to be performed in violation of this act; any person who

1 is the spouse, parent, guardian or a current or former licensed  
2 healthcare provider of the woman upon whom an abortion has been  
3 performed or attempted to be performed in violation of this act; by  
4 the Office of the Attorney General of Oklahoma; or by a district  
5 attorney with appropriate jurisdiction. The injunction shall  
6 prevent the physician or person from performing further abortions in  
7 violation of this act.

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

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

15 A. Any woman upon whom an abortion in violation of the Prenatal  
16 Nondiscrimination Act of 2018 is performed or attempted may not be  
17 prosecuted under this act for a conspiracy to violate this act or  
18 otherwise held criminally or civilly liable for any violation.

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

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

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

16 A. Nothing in the Prenatal Nondiscrimination Act of 2018 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 9. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 1-731.11 of Title 63, unless  
22 there is created a duplication in numbering, reads as follows:

23 Any provision of the Prenatal Nondiscrimination Act of 2018 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 10. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 1-731.12 of Title 63, unless  
9 there is created a duplication in numbering, reads as follows:

10 The Oklahoma Legislature, by joint resolution, may appoint one  
11 or more of its members who sponsored or cosponsored the Prenatal  
12 Nondiscrimination Act of 2018 in his or her official capacity to  
13 intervene as a matter of right in any case in which the  
14 constitutionality of this law is challenged.

15 SECTION 11. This act shall become effective November 1, 2018.

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