

House Bill 3048

Sponsored by Representatives BOLES, STARK, Senator LINTHICUM; Representatives BARRETO, BONHAM, BOSHART DAVIS, FINDLEY, LEIF, NEARMAN, POST, RESCHKE, SMITH DB, SMITH G, SPRENGER, WILSON, ZIKA, Senators BAERTSCHIGER JR, BOQUIST, GIROD, HANSELL, KNOPP, THOMSEN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits person from performing or attempting to perform abortion if abortion is because of sex of unborn child. Allows specified persons to bring action for damages or injunctive relief against person who performed or attempted to perform sex-selective abortion. Allows court to impose fines for contempt of court of up to \$100,000 per violation. Allows court to award attorney fees to prevailing party.

A BILL FOR AN ACT

1
2 Relating to sex-selective abortion.

3 Whereas sex-selective abortions are performed solely because of the known or suspected sex of
4 an unborn child; and

5 Whereas sex-selective abortions are often performed because of cultural or personal preferences
6 for male children over female children and not because of any clear or imminent danger to the life
7 of the mother; and

8 Whereas scholarly research has demonstrated that sex-selective abortions are discriminatory
9 because female children are aborted at a disproportionately higher rate than are male children; and

10 Whereas Oregonians strongly believe in gender equality; and

11 Whereas sex-selective abortions deprive unborn children of their natural right to life; now,
12 therefore,

13 **Be It Enacted by the People of the State of Oregon:**

14 **SECTION 1. As used in sections 1 to 6 of this 2019 Act:**

15 **(1) "Abortion" means the use or prescription of a drug, medicine, instrument or other**
16 **substance or device in order to:**

17 **(a) Purposely kill the unborn child of a pregnant person; or**

18 **(b) Terminate a pregnancy with a purpose other than:**

19 **(A) After viability, to produce a live birth and preserve the life and health of the child;**
20 **or**

21 **(B) To remove a dead unborn child.**

22 **(2) "Attempt to perform an abortion" means to do, or omit to do, anything that under**
23 **the circumstances as the actor believes them to be is an act or omission that constitutes a**
24 **substantial step in a course of action intended to result in the performance of an abortion,**
25 **including entering into an agreement with a person to perform an abortion on that person**
26 **or on another person or scheduling a time to perform an abortion, regardless of whether:**

27 **(a) The term "abortion" is used in the agreement; or**

28 **(b) The agreement is contingent upon other factors, including whether the actor receives**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 compensation for an abortion or the person on whom the abortion will be performed is de-
 2 termined to be pregnant.

3 (3) "Perform an abortion" means to carry out an abortion.

4 **SECTION 2.** A person may not intentionally perform or attempt to perform an abortion
 5 if the person knows that the pregnant person seeking the abortion is seeking the abortion
 6 because of the sex of the unborn child.

7 **SECTION 3.** (1) A person upon whom an abortion is performed in violation of section 2
 8 of this 2019 Act, or a parent or a grandparent of the unborn child that was the subject of the
 9 abortion, may bring an action against the person who performed the abortion for statutory
 10 damages in an amount not to exceed \$10,000, and for triple the amount of actual damages
 11 that the party sustained.

12 (2) A person who brings an action under this section may not be barred from recovery
 13 on the grounds that the person on whom the abortion was performed consented to the
 14 abortion.

15 (3) Damages may not be awarded under this section to a person whose criminal conduct
 16 caused the pregnancy terminated by an abortion under section 2 of this 2019 Act.

17 **SECTION 4.** (1) An action for injunctive relief against a person who intentionally per-
 18 formed or attempted to perform an abortion in violation of section 2 of this 2019 Act may
 19 be brought to enjoin the person from performing or attempting to perform further abortions
 20 in violation of section 2 of this 2019 Act.

21 (2) An action described in subsection (1) of this section may be brought by:

22 (a) The person upon whom an abortion was performed or attempted to be performed;

23 (b) The spouse, parent, sibling, legal guardian or current or former licensed health care
 24 provider of the person described in paragraph (a) of this subsection;

25 (c) The district attorney of the county in which the person described in paragraph (a) of
 26 this subsection resides; or

27 (d) The Attorney General.

28 (3) Each abortion or attempt to perform an abortion in violation of section 2 of this 2019
 29 Act is a separate violation.

30 (4) A person who knowingly violates the terms of an injunction described in this section
 31 is in contempt of court and is subject to a fine in the following amounts:

32 (a) \$10,000 for the first violation;

33 (b) \$50,000 for the second violation;

34 (c) \$100,000 for the third violation; and

35 (d) \$100,000 for any succeeding violations.

36 (5) The fines described in subsection (4) of this section:

37 (a) Are the exclusive penalties for violation of an injunction described in this section.

38 (b) Are cumulative.

39 (c) May not be imposed on a person upon whom an abortion was performed or attempted
 40 to be performed in violation of section 2 of this 2019 Act.

41 **SECTION 5.** (1) A court may award attorney fees to a plaintiff who prevails in an action
 42 described in section 3 or 4 of this 2019 Act.

43 (2) A court may award attorney fees to a defendant against whom an action described in
 44 section 3 or 4 of this 2019 Act is brought if the action is not successful and the court deter-
 45 mines that the action was brought in bad faith.

1 **SECTION 6.** (1) The identity, and any personally identifiable information, of the person
2 upon whom an abortion was performed or attempted to be performed in violation of section
3 2 of this 2019 Act is exempt from disclosure unless the person consents in a signed writing
4 to the disclosure of the person's identity or personally identifiable information.

5 (2) The court in which an action is brought shall issue orders, either by the court's own
6 motion or that of a party, to the parties, witnesses and counsel regarding the protection
7 from disclosure described in subsection (1) of this section. The court shall direct that the
8 court record be sealed and that the proceedings be closed to the public.

9 (3) Any actions brought under section 3 or 4 of this 2019 Act shall use a pseudonym to
10 identify a person upon whom an abortion was performed or attempted to be performed in
11 violation of section 2 of this 2019 Act unless the person consents in a signed writing to the
12 use of the person's name.
13