

OKLAHOMA BILL TEXT

An Act relating to public health and safety; creating the Freedom of Conscience Act; providing short title; defining terms; prohibiting employers from discriminating against certain persons for refusing to perform specified acts based on certain beliefs; making certain provisions inapplicable under certain circumstances; providing defense; prohibiting forced participation in specified acts by certain persons under certain circumstances; providing immunity from liability; providing for equitable relief and damages; providing statute of limitations; defining terms; prohibiting the sale or distribution of mifepristone except by a physician in certain circumstances; requiring compliance with certain federal laws; requiring the preparation of written report in certain circumstances; providing for inspection of certain reports; providing for confidentiality of certain persons; specifying exceptions; providing for civil action; authorizing attorney fees; providing for certain punishment; authorizing sanctions by certain licensing boards; mandating certain sign posting for facilities that perform, induce, or prescribe for abortions or where the means for an abortion are provided; specifying wording of sign; specifying typeface of sign; specifying areas of sign posting; establishing penalty for noncompliance; providing for certain disclosure to minors; providing for certain certification by minors; authorizing certain civil actions; amending Section 6, Chapter 200, O.S.L. 2005, as amended by Section 2, Chapter 161, O.S.L. 2007 (63 O.S. Supp. 2007, Section 1- 738.1), which relates to definitions; defining term; requiring performance of an ultrasound and explanation of the ultrasound prior to a pregnant woman having an abortion; providing for aversion of eyes from ultrasound; excepting compliance with requirement in a medical emergency; providing for certification; requiring retention of records; providing penalty for false certification; providing for damages; authorizing injunctive relief; specifying persons who may bring action for noncompliance with act; providing penalty; providing penalties for noncompliance with injunction; authorizing private right of action; providing for revocation of license or certificate; stating legislative intent; defining terms; prohibiting recovery of damages in certain circumstances for wrongful birth and wrongful life actions; excepting specific circumstances; providing for codification; and providing an effective date.

TEXT:

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-728 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 'Freedom of Conscience Act'.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-728.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Freedom of Conscience Act:

1. 'Health care facility' means any public or private organization, corporation, authority, partnership, sole proprietorship, association, agency, network, joint venture, or other entity that is involved in providing health care services, including a hospital, clinic, medical center, ambulatory surgical center, private physician's office, pharmacy, nursing home, university hospital, medical school, nursing school, medical training facility, inpatient health care facility, or other place where health care services are provided;

2. 'Human embryo' means a human organism that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells;

3. 'In vitro human embryo' means a human embryo, whether cryopreserved or not, living outside of a woman's body;

4. 'Participate in' means to perform, practice, engage in, assist in, recommend, counsel in favor of, make referrals for, prescribe, dispense, or administer drugs or devices or otherwise promote or encourage; and

5. 'Person' means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-728.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

An employer shall not discriminate against an employee or prospective employee by refusing to reasonably accommodate the religious observance or practice of the employee or prospective employee, unless the employer can demonstrate that the accommodation would pose an undue hardship on the program, enterprise, or business of the employer, in the following circumstances:

1. An abortion as defined in Section 1-730 of Title 63 of the Oklahoma Statutes. The provisions of this section shall not apply if the pregnant woman suffers from a physical disorder, physical injury, or physical illness which, as certified by a physician, causes the woman to be in imminent danger of death unless an abortion is immediately performed or induced and there are no other competent personnel available to attend to the woman. As used in this act, the term 'abortion' shall not include the prescription of contraceptives;

2. An experiment or medical procedure that destroys an in vitro human embryo or uses cells or tissue derived from the destruction of an in vitro human embryo;

3. An experiment or medical procedure on an in vitro human embryo that is not related to the beneficial treatment of the in vitro human embryo;

4. An experiment or medical procedure on a developing child in an artificial womb, at any stage of development, that is not related to the beneficial treatment of the developing child;

5. A procedure, including a transplant procedure, that uses fetal tissue or organs that come from a source other than a stillbirth or miscarriage; or

6. An act that intentionally causes or assists in causing the death of an individual by assisted suicide, euthanasia, or mercy killing.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-728.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No health care facility is required to admit any patient or to allow the use of the health care facility for the purpose of performing any of the acts specified in Section 3 of this act.

B. A physician, physician's assistant, registered nurse, practical nurse, pharmacist, or any employee thereof, or any other person who is an employee of, member of, or associated with the staff of a health care facility in which the performance of an activity specified in Section 3 of this act has been authorized, who in writing, refuses or states an intention to refuse to participate in the activity on moral or religious grounds shall not be required to participate in the activity and shall not be disciplined by the respective licensing board or authorized regulatory department for refusing or stating an intention to refuse to participate in the practice with respect to the activity.

C. A physician, physician's assistant, registered nurse, practical nurse, pharmacist, or any employee thereof, or any other person who is an employee of, member of, or associated with the staff of a health care facility is immune from liability for any damage caused by the refusal of the person to participate in an activity specified in Section 3 of this act on moral or religious grounds.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-728.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No health care facility, school, or employer shall discriminate against any person with regard to admission, hiring or firing, tenure, term, condition, or privilege of employment, student status, or staff status on the ground that the person refuses or states an intention to refuse, whether or not in writing, to participate in an activity specified in Section 3 of this act, if the refusal is based on religious or moral precepts.

B. No person shall be required to:

1. Participate in an activity specified in Section 3 of this act if the individual's participation in the activity is contrary to the person's religious beliefs or moral convictions;

2. Make facilities available for an individual to participate in an activity specified in Section 3 of this act if the person prohibits the activity from taking

place in the facilities on the basis of religious beliefs or moral convictions; or

3. Provide any personnel to participate in an activity specified in Section 3 of this act if the activity is contrary to the religious beliefs or moral convictions of the personnel.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-728.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of this section, 'damages' do not include noneconomic damages, as defined in Section 1-1708.1 C of Title 63 of the Oklahoma Statutes.

B. A person who is adversely affected by conduct that is in violation of the Freedom of Conscience Act may bring a civil action for equitable relief, including reinstatement or damages, or both reinstatement and damages. An action under this subsection may be commenced against the state and any office, department, independent agency, authority, institution, association, or other body in state government created or authorized to be created by the state constitution or any law. In an action under this subsection, the court shall award reasonable attorney fees to a person who obtains equitable relief, damages, or both. An action under this subsection shall be commenced within one (1) year after the cause of action accrues or be barred.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-729 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. 'Federal law' means any law, rule, or regulation of the United States or any drug approval letter of the United States Food and Drug Administration that governs or regulates the use of RU-486, mifepristone, for the purpose of inducing abortions;

2. 'Personal identifying information' means any information designed, commonly used or capable of being used, alone or in conjunction with any other information, to identify a person; and

3. 'Physician' means a doctor of medicine or osteopathy legally authorized to practice medicine in this state.

B. No person shall knowingly give, sell, dispense, administer, prescribe or otherwise provide RU-486, also known as mifepristone, for the purpose of inducing an abortion in a pregnant female, unless the person who gives, sells, dispenses, administers, prescribes or otherwise provides the RU-486, mifepristone, is a physician who satisfies all the criteria established by federal law that a physician must satisfy in order to provide RU-486, mifepristone, for inducing abortions.

C. No physician who provides RU-486, mifepristone, for the purpose of inducing an abortion shall knowingly fail to comply with the applicable requirements of any federal law that pertain to follow-up examinations or care for any female for whom RU-486, mifepristone, is provided for the purpose of inducing an abortion.

D. 1. If a physician provides RU-486, mifepristone, for the purpose of inducing an abortion and if the physician knows that the female who uses the RU-486, mifepristone, for the purpose of inducing an abortion experiences during or after the use of RU-486, mifepristone, an incomplete abortion, severe bleeding, or an adverse reaction to the RU-486, mifepristone, or is hospitalized, receives a transfusion, or experiences any other serious event, the physician shall promptly provide a written report of the incomplete abortion, severe bleeding, adverse reaction, hospitalization, transfusion, or serious event to the State Board of Medical Licensure and Supervision or State Board of Osteopathic Examiners. The Board shall compile and retain all reports it receives pursuant to this subsection. Except as otherwise provided in this subsection, all reports the Board receives under this subsection are public records open to inspection pursuant to the Oklahoma Open Records Act; however, the Board shall not release the name or any other personal identifying information regarding a person who uses or provides RU-486, mifepristone, for the purpose of inducing an abortion and who is the subject of a report the Board receives under this subsection.

2. No physician who provides RU-486, mifepristone, to a pregnant female for the purpose of inducing an abortion as authorized under subsection B of this section shall knowingly fail to file a report required under paragraph 1 of this subsection.

E. Subsection B of this section shall not apply to any of the following:

1. A pregnant female who obtains or possesses RU-486, mifepristone, for the purpose of inducing an abortion to terminate her own pregnancy;

2. The legal transport of RU-486, mifepristone, by any person or entity and the legal delivery of the RU-486, mifepristone, by any person to the recipient. This paragraph shall not apply to any conduct related to the RU-486, mifepristone, other than its transport and delivery to the recipient; or

3. The distribution, provision, or sale of RU-486, mifepristone, by any legal manufacturer or distributor of RU-486, mifepristone, provided the manufacturer or distributor made a good-faith effort to comply with any applicable requirements of federal law regarding the distribution, provision, or sale.

F. Any female upon whom an abortion has been performed without this section having been complied with, the father of the unborn child who was the subject of the abortion, if the father was married to the woman who received the abortion at the time the abortion was performed, or the maternal grandparent of the unborn child, may maintain an action against the person who performed the abortion in knowing or reckless violation of this section for actual and punitive damages. Any female upon whom an abortion has been attempted in knowing or reckless violation of this section may maintain an action against the person who attempted to perform the abortion for actual and punitive damages.

G. If judgment is rendered in favor of the plaintiff in any action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

H. Any person who violates this section, upon conviction, shall be guilty of a felony. If the offender is a professionally licensed health care provider, in addition to any other sanction imposed by law for the offense, the offender is subject to sanctioning as provided by law by the licensing board having administrative authority over that professionally licensed person.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any private office, freestanding outpatient clinic, or other facility or clinic in which abortions, other than abortions necessary to prevent the death of the pregnant female, are performed, induced, prescribed for, or where the means for an abortion are provided shall conspicuously post a sign in a location defined in subsection C of this section so as to be clearly visible to patients, which reads:

Notice: It is against the law for anyone, regardless of his or her relationship to you, to force you to have an abortion. By law, we cannot perform, induce, prescribe for, or provide you with the means for an abortion unless we have your freely given and voluntary consent. It is against the law to perform, induce, prescribe for, or provide you with the means for an abortion against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence.

B. The sign required pursuant to subsection A of this section shall be printed with lettering that is legible and shall be at least three-quarters-of-an-inch boldfaced type.

C. A facility in which abortions are performed, induced, prescribed for, or where the means for an abortion are provided that is a private office or a freestanding outpatient clinic shall post the required sign in each patient waiting room and patient consultation room used by patients on whom abortions are performed, induced, prescribed for, or who are provided with the means for an abortion. A hospital or any other facility in which abortions are performed, induced, prescribed for, or where the means for an abortion are provided that is not a private office or freestanding outpatient clinic shall post the required sign in each patient admission area used by patients on whom abortions are performed, induced, prescribed for, or by patients who are provided with the means for an abortion.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any private office, freestanding outpatient clinic or other facility or clinic that fails to post a required sign in knowing, reckless, or negligent violation of this act shall be assessed an administrative fine of Ten Thousand Dollars (\$10,000.00). Each day on which an abortion, other than an abortion necessary to prevent the death of the pregnant female, is performed, induced, prescribed for, or where the means for an abortion are provided in a private office, freestanding outpatient clinic or other facility or clinic in which the required sign is not posted during any portion of business hours when patients or prospective patients are present is a separate violation.

B. An action may be brought by or on behalf of an individual injured by the failure to post the required sign. A plaintiff in an action under this subsection may recover damages for emotional distress and any other damages allowed by law.

C. The sanctions and actions provided in this section shall not displace any sanction applicable under other law.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If the pregnant female is a minor, the attending physician shall orally inform the female that no one can force her to have an abortion and that an abortion cannot be performed, induced, prescribed for, or that the means for an abortion cannot be provided unless she provides her freely given, voluntary, and informed consent.

B. The minor female shall certify in writing, prior to the performance of, induction of, receiving the prescription for, or provision of the means for the abortion, that she was informed by the attending physician of the required information in subsection A of this section. A copy of the written certification shall be placed in the minor's file and kept for at least seven (7) years or for five (5) years after the minor reaches the age of majority, whichever is greater.

SECTION 11. AMENDATORY Section 6, Chapter 200, O.S.L. 2005, as amended by Section 2, Chapter 161, O.S.L. 2007 (63 O.S. Supp. 2007, Section 1- 738.1), is amended to read as follows:

Section 1-738.1 As used in Sections 1-738.1 through 1-738.5 of this title:

1. 'Abortion' means the term as is defined in Section 1-730 of this title;
2. 'Attempt to perform an abortion' means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in this state in violation of this act;
3. 'Board' means the State Board of Medical Licensure and Supervision;

4. 'Medical emergency' means the existence of any physical condition, not including any emotional, psychological, or mental condition, which a reasonably prudent physician, with knowledge of the case and treatment possibilities with respect to the medical conditions involved, would determine necessitates the immediate abortion of the pregnancy of the female to avert her death or to avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy;

5. 'Physician' means a person licensed to practice medicine in this state pursuant to Sections 495 and 633 of Title 59 of the Oklahoma Statutes;

6. 'Probable gestational age of the unborn child' means what, in the judgment of the physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed;

7. 'Stable Internet web site' means a web site that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the State Board of Medical Licensure and Supervision; ~~and~~

8. 'Unborn child' means the term as is defined in Section 1-730 of this title ; and

9. 'Woman' means a female human being whether or not she has reached the age of majority .

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.3 b of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any abortion provider who knowingly performs any abortion shall comply with the requirements of this section.

B. In order for the woman to make an informed decision, at least one (1) hour prior to a woman having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the woman, the physician who is to perform or induce the abortion, or the certified technician working in conjunction with the physician, shall:

1. Perform an obstetric ultrasound on the pregnant woman, using either a vaginal transducer or an abdominal transducer, whichever would display the embryo or fetus more clearly;

2. Provide a simultaneous explanation of what the ultrasound is depicting;

3. Display the ultrasound images so that the pregnant woman may view them;

4. Provide a medical description of the ultrasound images, which shall include the dimensions of the embryo or fetus, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable; and

5. Obtain a written certification from the woman, prior to the abortion, that the requirements of subsection B have been complied with; and

6. Retain a copy of the written certification prescribed by paragraph 5 of this subsection. The certification shall be placed in the medical file of the woman and shall be kept by the abortion provider for a period of not less than seven (7) years. If the woman is a minor, then the certification shall be placed in the medical file of the minor and kept for at least seven (7) years or for five (5) years after the minor reaches the age of majority, whichever is greater.

C. Nothing in this section shall be construed to prevent a pregnant woman from averting her eyes from the ultrasound images required to be provided to and reviewed with her. Neither the physician nor the pregnant woman shall be subject to any penalty if she refuses to look at the presented ultrasound images.

D. Upon a determination by an abortion provider that a medical emergency, as defined in Section 1-738.1 of Title 63 of the Oklahoma Statutes, exists with respect to a pregnant woman, the provider shall certify in writing the specific medical conditions that constitute the emergency. The certification shall be placed in the medical file of the woman and shall be kept by the abortion provider for a period of not less than seven (7) years. If the woman is a minor, then the certification shall be placed in the medical file of the minor and kept for at least seven (7) years or for five (5) years after the minor reaches the age of majority, whichever is greater.

E. An abortion provider who willfully falsifies a certification under subsection D of this section shall be subject to all penalties provided for under Section 13 of this act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.3 c of Title 63, unless there is created a duplication in numbering, reads as follows:

A. An abortion provider who knowingly violates a provision of Section 12 of this act shall be liable for damages as provided in this section and may be enjoined from such acts in accordance with this section in an appropriate court.

B. A cause of action for injunctive relief against any person who has knowingly violated a provision of Section 12 of this act may be maintained by the woman upon whom an abortion was performed or attempted to be performed in violation of this act; any person who is the spouse, parent, sibling or guardian of, or a current or former licensed health care provider of, the female upon whom an abortion has been performed or attempted to be performed in violation of this act; by a district attorney with appropriate jurisdiction; or by the Attorney General. The injunction shall prevent the abortion provider from performing further abortions in violation of this act in the State of Oklahoma.

C. Any person who knowingly violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt, and shall be fined Ten Thousand Dollars (\$10,000.00) for the first violation, Fifty Thousand Dollars

(\$50,000.00) for the second violation, One Hundred Thousand Dollars (\$100,000.00) for the third violation, and for each succeeding violation an amount in excess of One Hundred Thousand Dollars (\$100,000.00) that is sufficient to deter future violations. The fines shall be the exclusive penalties for such contempt. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. These fines shall be cumulative. No fine shall be assessed against the woman on whom an abortion is performed or attempted.

D. A pregnant woman upon whom an abortion has been performed in violation of Section 12 of this act, or the parent or legal guardian of the woman if she is an unemancipated minor, as defined in Section 1-740.1 of Title 63 of the Oklahoma Statutes, may commence a civil action against the abortion provider for any knowing or reckless violation of this act for actual and punitive damages.

E. An abortion provider who performed an abortion in violation of Section 12 of this act shall be considered to have engaged in unprofessional conduct for which the provider's certificate or license to provide health care services in this state may be suspended or revoked by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-741.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. It is the intent of the Legislature that the birth of a child does not constitute a legally recognizable injury and that it is contrary to public policy to award damages because of the birth of a child or for the rearing of that child.

B. For the purposes of this section:

1. 'Abortion' means the term as is defined in Section 1-730 of Title 63 of the Oklahoma Statutes;

2. 'Wrongful life action' means a cause of action that is brought by or on behalf of a child, which seeks economic or noneconomic damages for the child because of a condition of the child that existed at the time of the child's birth, and which is based on a claim that a person's act or omission contributed to the mother's not having obtained an abortion; and

3. 'Wrongful birth action' means a cause of action that is brought by a parent or other person who is legally required to provide for the support of a child, which seeks economic or noneconomic damages because of a condition of the child that existed at the time of the child's birth, and which is based on a claim that a person's act or omission contributed to the mother's not having obtained an abortion.

C. In a wrongful life action or a wrongful birth action, no damages may be recovered for any condition that existed at the time of a child's birth if the claim is that the defendant's act or omission contributed to the mother's not having obtained an abortion.

D. This section shall not preclude causes of action based on claims that, but for a wrongful act or omission, maternal death or injury would not have occurred, or handicap, disease, or disability of an individual prior to birth would have been prevented, cured, or ameliorated in a manner that preserved the health and life of the affected individual.

SECTION 15. This act shall become effective November 1, 2008.

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