Mr./Madame President:

I move to amend Senate Bill No. 1859, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

_______________________
Senator Scott

Scott-DC-FS-Req#4001
3/10/2020 5:45 PM
STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

FLOOR SUBSTITUTE
FOR
SENATE BILL NO. 1859

By: Scott, McCortney and Bullard of the Senate

and

Townley of the House

FLOOR SUBSTITUTE

An Act relating to abortion; amending 59 O.S. 2011, Sections 509, as last amended by Section 6, Chapter 428, O.S.L. 2019 and 637, as amended by Section 12, Chapter 428, O.S.L. 2019 (59 O.S. Supp. 2019, Sections 509 and 637), which relate to unprofessional conduct of medical doctor and unprofessional conduct of doctor of osteopathy; broadening certain definitions to include certain acts; amending Section 4, Chapter 159, O.S.L. 2012 (63 O.S. Supp. 2019, Section 1-745.14), which relates to fetal heartbeat; reducing time period for certain requirements; modifying and deleting procedural provisions related to detection of fetal heartbeat; deleting certain construction; broadening provisions to include fetal brain function; stipulating method of certain determination; requiring abortion provider to document certain information; prohibiting abortion under certain circumstances; amending Section 6, Chapter 159, O.S.L. 2012 (63 O.S. Supp. 2019, Section 1-745.16), which relates to penalties; prohibiting issuance or renewal of physician license for certain acts; requiring State Board of Medical Licensure and Supervision and State Board of Osteopathic Examiners to revoke licenses for certain acts; providing for certain enforcement under certain circumstances; providing for codification; and providing an effective date.
BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY
59 O.S. 2011, Section 509, as last amended by Section 6, Chapter 428, O.S.L. 2019 (59 O.S. Supp. 2019, Section 509), is amended to read as follows:

Section 509. The words “unprofessional conduct” as used in Sections 481 through 518.1 of this title are hereby declared to include, but shall not be limited to, the following:

1. Procuring, aiding or abetting a criminal operation;
2. The obtaining of any fee or offering to accept any fee, present or other form of remuneration whatsoever, on the assurance or promise that a manifestly incurable disease can or will be cured;
3. Willfully betraying a professional secret to the detriment of the patient;
4. Habitual intemperance or the habitual use of habit-forming drugs;
5. Conviction of a felony or of any offense involving moral turpitude;
6. All advertising of medical business in which statements are made which are grossly untrue or improbable and calculated to mislead the public;
7. Conviction or confession of a crime involving violation of:
   a. the antinarcotic or prohibition laws and regulations of the federal government,
   b. the laws of this state, or
c. State Board of Health rules;

8. Dishonorable or immoral conduct which is likely to deceive, defraud, or harm the public;

9. The commission of any act which is a violation of the criminal laws of any state when such act is connected with the physician’s practice of medicine. A complaint, indictment or confession of a criminal violation shall not be necessary for the enforcement of this provision. Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine shall be unprofessional conduct;

10. Failure to keep complete and accurate records of purchase and disposal of controlled drugs or of narcotic drugs;

11. The writing of false or fictitious prescriptions for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs;

12. Prescribing or administering a drug or treatment without sufficient examination and the establishment of a valid physician-patient relationship;

13. The violation, or attempted violation, direct or indirect, of any of the provisions of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, either as a principal, accessory or accomplice;
14. Aiding or abetting, directly or indirectly, the practice of medicine by any person not duly authorized under the laws of this state;

15. The inability to practice medicine with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this subsection the State Board of Medical Licensure and Supervision may, upon probable cause, request a physician to submit to a mental or physical examination by physicians designated by it. If the physician refuses to submit to the examination, the Board shall issue an order requiring the physician to show cause why the physician will not submit to the examination and shall schedule a hearing on the order within thirty (30) days after notice is served on the physician. The physician shall be notified by either personal service or by certified mail with return receipt requested. At the hearing, the physician and the physician’s attorney are entitled to present any testimony and other evidence to show why the physician should not be required to submit to the examination. After a complete hearing, the Board shall issue an order either requiring the physician to submit to the examination or withdrawing the request for examination. The medical license of a physician ordered to submit for examination may be suspended until the results of the examination are received and reviewed by the Board;
16. a. Prescribing, dispensing or administering of controlled substances or narcotic drugs in excess of the amount considered good medical practice, 

b. prescribing, dispensing or administering controlled substances or narcotic drugs without medical need in accordance with pertinent licensing board standards, or 

c. prescribing, dispensing or administering opioid drugs in excess of the maximum limits authorized in Section 2-309I of Title 63 of the Oklahoma Statutes; 

17. Engaging in physical conduct with a patient which is sexual in nature, or in any verbal behavior which is seductive or sexually demeaning to a patient; 

18. Failure to maintain an office record for each patient which accurately reflects the evaluation, treatment, and medical necessity of treatment of the patient; 

19. Failure to provide necessary ongoing medical treatment when a doctor-patient relationship has been established, which relationship can be severed by either party providing a reasonable period of time is granted; 

20. Failure to provide a proper and safe medical facility setting and qualified assistive personnel for a recognized medical act, including but not limited to an initial in-person patient examination, office surgery, diagnostic service or any other medical
procedure or treatment. Adequate medical records to support diagnosis, procedure, treatment or prescribed medications must be produced and maintained; or


SECTION 2. AMENDATORY 59 O.S. 2011, Section 637, as amended by Section 12, Chapter 428, O.S.L. 2019 (59 O.S. Supp. 2019, Section 637), is amended to read as follows:

Section 637. A. The State Board of Osteopathic Examiners may refuse to admit a person to an examination or may refuse to issue or reinstate or may suspend or revoke any license issued or reinstated by the Board upon proof that the applicant or holder of such a license:

1. Has obtained a license, license renewal or authorization to sit for an examination, as the case may be, through fraud, deception, misrepresentation or bribery; or has been granted a license, license renewal or authorization to sit for an examination based upon a material mistake of fact;

2. Has engaged in the use or employment of dishonesty, fraud, misrepresentation, false promise, false pretense, unethical conduct or unprofessional conduct, as may be determined by the Board, in the performance of the functions or duties of an osteopathic physician, including but not limited to the following:
a. obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation; willfully and continually overcharging or overtreating patients; or charging for visits to the physician’s office which did not occur or for services which were not rendered,
b. using intimidation, coercion or deception to obtain or retain a patient or discourage the use of a second opinion or consultation,
c. willfully performing inappropriate or unnecessary treatment, diagnostic tests or osteopathic medical or surgical services,
d. delegating professional responsibilities to a person who is not qualified by training, skill, competency, age, experience or licensure to perform them, noting that delegation may only occur within an appropriate doctor-patient relationship, wherein a proper patient record is maintained including, but not limited to, at the minimum, a current history and physical,
e. misrepresenting that any disease, ailment, or infirmity can be cured by a method, procedure, treatment, medicine or device,
f. acting in a manner which results in final disciplinary action by any professional society or association or
hospital or medical staff of such hospital in this or any other state, whether agreed to voluntarily or not, if the action was in any way related to professional conduct, professional competence, malpractice or any other violation of the Oklahoma Osteopathic Medicine Act,
g. signing a blank prescription form; or dispensing, prescribing, administering or otherwise distributing any drug, controlled substance or other treatment without sufficient examination or the establishment of a physician-patient relationship, or for other than medically accepted therapeutic or experimental or investigational purpose duly authorized by a state or federal agency, or not in good faith to relieve pain and suffering, or not to treat an ailment, physical infirmity or disease, or violating any state or federal law on controlled dangerous substances including, but not limited to, prescribing, dispensing or administering opioid drugs in excess of the maximum limits authorized in Section 2-309I of Title 63 of the Oklahoma Statutes,
h. engaging in any sexual activity within a physician-patient relationship,
i. terminating the care of a patient without adequate notice or without making other arrangements for the continued care of the patient,

j. failing to furnish a copy of a patient’s medical records upon a proper request from the patient or legal agent of the patient or another physician; or failing to comply with any other law relating to medical records,

k. failing to comply with any subpoena issued by the Board,

l. violating a probation agreement or order with this Board or any other agency, and

m. failing to keep complete and accurate records of purchase and disposal of controlled drugs or narcotic drugs;

3. Has engaged in gross negligence, gross malpractice or gross incompetence;

4. Has engaged in repeated acts of negligence, malpractice or incompetence;

5. Has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere in a criminal prosecution, for any offense reasonably related to the qualifications, functions or duties of an osteopathic physician, or for any offense involving
moral turpitude, whether or not sentence is imposed, and regardless of the pendency of an appeal;

6. Has had the authority to engage in the activities regulated by the Board revoked, suspended, restricted, modified or limited, or has been reprimanded, warned or censured, probated or otherwise disciplined by any other state or federal agency whether or not voluntarily agreed to by the physician including, but not limited to, the denial of licensure, surrender of the license, permit or authority, allowing the license, permit or authority to expire or lapse, or discontinuing or limiting the practice of osteopathic medicine pending disposition of a complaint or completion of an investigation;

7. Has violated, or failed to comply with provisions of any act or regulation administered by the Board;

8. Is incapable, for medical or psychiatric or any other good cause, of discharging the functions of an osteopathic physician in a manner consistent with the public’s health, safety and welfare;

9. Has been guilty of advertising by means of knowingly false or deceptive statements;

10. Has been guilty of advertising, practicing, or attempting to practice under a name other than one’s own;

11. Has violated or refused to comply with a lawful order of the Board;
12. Has been guilty of habitual drunkenness, or habitual
drug addiction to the use of morphine, cocaine or other habit-forming

drugs;

13. Has been guilty of personal offensive behavior, which would
include, but not be limited to obscenity, lewdness, molestation and
other acts of moral turpitude; and

14. Has been adjudicated to be insane, or incompetent, or
admitted to an institution for the treatment of psychiatric
disorders; and

15. Has violated the provisions of the Heartbeat Informed
Consent Act.

B. The State Board of Osteopathic Examiners shall neither
refuse to renew, nor suspend, nor revoke any license, however, for
any of these causes, unless the person accused has been given at
least twenty (20) days’ notice in writing of the charge against him
or her and a public hearing by the Board provided, three-fourths
(3/4) of a quorum present at a meeting may vote to suspend a license
in an emergency situation if the licensee affected is provided a
public hearing within thirty (30) days of the emergency suspension.

C. The State Board of Osteopathic Examiners shall have the
power to order or subpoena the attendance of witnesses, the
inspection of records and premises and the production of relevant
books and papers for the investigation of matters that may come
before them. The presiding officer of the Board shall have the
authority to compel the giving of testimony as is conferred on

courts of justice.

D. Any osteopathic physician in the State of Oklahoma whose
license to practice osteopathic medicine is revoked or suspended
under this section shall have the right to seek judicial review of a
ruling of the Board pursuant to the Administrative Procedures Act.

E. The Board may enact rules and regulations pursuant to the
Administrative Procedures Act setting out additional acts of
unprofessional conduct; which acts shall be grounds for refusal to
issue or reinstate, or for action to condition, suspend or revoke a
license.

SECTION 3. AMENDATORY Section 4, Chapter 159, O.S.L.
2012 (63 O.S. Supp. 2019, Section 1-745.14), is amended to read as
follows:

Section 1-745.14. A. Any abortion provider who knowingly
performs or induces any abortion shall comply with the requirements
of the Heartbeat Informed Consent Act.

B. Prior to a woman giving informed consent to having any part
of an abortion performed or induced, if the pregnancy is at least
eight (8) six (6) weeks after fertilization, the abortion provider
who is to perform or induce the abortion or an agent of the abortion
provider shall tell the woman that it may be possible to make the
determine whether there is a detectable embryonic or fetal heartbeat
of the unborn child audible for the pregnant woman to hear and ask
the woman if she would like to hear the heartbeat. If the woman
would like to hear the heartbeat, the abortion provider shall, using
a Doppler fetal heart rate monitor, make the embryonic or fetal
heartbeat of the unborn child audible for the pregnant woman to
hear. An abortion provider or an agent of the abortion provider
shall not be in violation of the requirements of this subsection if:

1. The provider or agent has attempted, consistent with
standard medical practice, to make the embryonic or fetal heartbeat
of the unborn child audible for the pregnant woman to hear using a
Doppler fetal heart rate monitor;

2. That attempt does not result in the heartbeat being made
audible; and

3. The provider has offered to attempt to make the heartbeat
audible at a subsequent date.

C. Nothing in this section shall be construed to prevent the
pregnant woman from not listening to the sounds detected by the
Doppler fetal heart rate monitor pursuant to the requirements of
subsection B of this section and whether there is detectable brain
function of the unborn child. The method of determining the
presence of a fetal heartbeat or brain function shall be consistent
with the provider’s good faith understanding of standard medical
practice. The provider shall record in the pregnant woman’s medical
record the estimated gestational age of the unborn child, the method
used to test for the presence or absence of a fetal heartbeat or
brain function, the date and time of the test and the results of the test. The provider shall not perform or induce the abortion if the provider detects an embryonic or fetal heartbeat of the unborn child or brain function of the unborn child.

SECTION 4. AMENDATORY Section 6, Chapter 159, O.S.L. 2012 (63 O.S. Supp. 2019, Section 1-745.16), is amended to read as follows:

Section 1-745.16. A. Any person who intentionally or recklessly performs or induces an abortion in violation of the Heartbeat Informed Consent Act shall be guilty of a misdemeanor. No penalty shall be assessed against the woman upon whom the abortion is performed or induced or attempted to be performed or induced.

B. Any woman upon whom an abortion has been performed or induced in violation of this act, or the father of the unborn child who was the subject of such an abortion, may maintain an action against the person who performed or induced the abortion in intentional or reckless violation of this act for actual and punitive damages. Any woman upon whom an abortion has been attempted in violation of this act may maintain an action against the person who attempted to perform or induce the abortion in an intentional or reckless violation of this act for actual and punitive damages.

C. A cause of action for injunctive relief against any person who has intentionally or recklessly violated this act may be
maintained by the woman upon whom an abortion was performed or
induced in violation of this act; by any person who is the spouse,
parent, sibling, or guardian of, or a current or former licensed
health care provider of, the woman upon whom an abortion has been
performed or induced 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
or inducing further abortions in violation of this act in the state.

D. If judgment is rendered in favor of the plaintiff in an
action described in this section, the court shall also render
judgment for a reasonable attorney fee in favor of the plaintiff
against the defendant.

E. 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.

F. No damages or attorney fee may be assessed against the woman
upon whom an abortion was performed or attempted to be performed or
induced except in accordance with subsection E of this section.

G. In addition to all other penalties prescribed by this
section, a physician who intentionally or recklessly performs or
induces an abortion in violation of the Heartbeat Informed Consent
Act shall be prohibited from obtaining or renewing a license to
practice medicine in this state. The State Board of Medical
Licensure and Supervision shall revoke the license of a medical doctor who intentionally or recklessly performs or induces an abortion in violation of the Heartbeat Informed Consent Act. The State Board of Osteopathic Examiners shall revoke the license of a doctor of osteopathy who intentionally or recklessly performs or induces an abortion in violation of the Heartbeat Informed Consent Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.20 of Title 63, unless there is created a duplication in numbering, reads as follows:

If some or all of the provisions of Section 1, 2, 3 or 4 of this act are ever temporarily or permanently restrained or enjoined by court order, the remaining provisions of such section shall be enforced as though the restrained or enjoined provisions had not been adopted; provided, however, if such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

SECTION 6. This act shall become effective November 1, 2020.