

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1159

BY: MITCHELL

AS INTRODUCED

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; DEFINING TERMS; REQUIRING NOTIFICATION OF CERTAIN PERSONS PRIOR TO PERFORMANCE OF AN ABORTION UPON CERTAIN PREGNANT FEMALES; SPECIFYING EXCEPTIONS; PROVIDING FOR JUDICIAL PROCEEDINGS IN CERTAIN CASES; SPECIFYING PENALTIES; PROVIDING FOR LIABILITY OF CERTAIN PERSONS; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

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 2625.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

For purposes of this act:

1. "Parent" means:

- a. one parent of the pregnant minor, or
- b. the guardian or conservator if the pregnant female has one;

2. "Abortion" means the use of any means to terminate the pregnancy of a female known to be pregnant with knowledge that the

termination with those means will, with reasonable likelihood, cause the death of the fetus;

3. "Fetus" means any individual human organism from fertilization until birth;

4. "Minor" means any child under the age of eighteen (18) years of age;

5. "Unemancipated" means a minor who is not or has not been married or has not judicially obtained rights of majority; and

6. "Pregnant female" means an unemancipated minor or a woman for whom a guardian or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act because of a finding of incapacity.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian or conservator has been appointed pursuant to the "Oklahoma Guardianship and Conservatorship Act" because of a finding of incompetency, until at least forty-eight (48) hours after written notice of the pending abortion has been delivered in the manner specified in this section.

1. The notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.

2. In lieu of the delivery required by paragraph 1 of this section, notice shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and with restricted delivery to the addressee, which means a postal employee can only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

No notice shall be required under this section if:

1. The attending physician certifies in the pregnant female's medical record that the abortion is necessary to prevent the female's death and there is insufficient time to provide the required notice; or

2. The person who is entitled to notice certifies in writing that he or she has been notified; or

3. The pregnant female declares that she is a victim of abuse and neglect as such term is defined by Section 845 of Title 21 of the Oklahoma Statutes and the attending physician has notified the county office of the Department of Human Services in the county wherein the suspected injury occurred about the alleged abuse or neglect.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

Performance of an abortion in violation of this act shall be a misdemeanor and shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable under this act if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant female regarding information necessary to comply with this act are bona fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

If Section 2 of this act is ever temporarily or permanently restrained or enjoined by judicial order, Section 2 shall be enforced as though the following paragraph were incorporated as paragraph 3 of that section; provided, however, that if such temporary or permanent restraining order or injunction is ever stayed or dissolved, or otherwise ceases to have effect, Section 2 of this act shall have full force and effect, without being modified by the addition of the following substitute paragraph which shall have no force or effect until or unless an injunction or restraining order is again in effect.

"3. a. If such a pregnant female elects not to allow the notification of one or both of her parents or guardian or conservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize a physician to perform the abortion if said judge determines that the pregnant female is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the pregnant female is not mature, or if the pregnant female does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parent, guardian, or conservator would be in her best interests and shall authorize a physician to perform the abortion without such notification if said judge concludes that the pregnant female's best interests would be served thereby.

b. Such a pregnant female may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel, and shall, upon her request, provide her with such counsel.

c. Proceedings in the court under this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without

delay so as to serve the best interests of the pregnant female. A judge of the court who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

d. An expedited confidential appeal shall be available to any such pregnant female for whom the court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification shall not be subject to appeal. No filing fees shall be required of any such pregnant female at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant female twenty-four (24) hours a day, seven (7) days a week."

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

If any provision, word, phrase or clause of this act or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions, words, phrases, clauses or application of this section which can be given effect without the invalid provision, word, phrase, clause, or application, and to this end the provisions, words, phrases, and clauses of this act are declared to be severable.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

