

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 339

BY: HENDRICK

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 WOMEN; SPECIFYING EXCEPTIONS; PROVIDING FOR JUDICIAL PROCEEDINGS IN CERTAIN CASES; SPECIFYING CRIMINAL PENALTIES; PROVIDING FOR CAUSE OF ACTION AND 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 person having custody of a minor pregnant woman or the guardian or conservator of the minor pregnant woman, if one has been appointed;

2. "Abortion" means the purposeful termination of a human pregnancy, by any person with an intention other than to produce a live birth or to remove a dead unborn child;

3. "Fetus" means any individual human organism from fertilization of an ovum until live 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 woman" means a pregnant unemancipated minor or a pregnant woman for whom a guardian or conservator has been appointed 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:

A. Except as otherwise provided in Section 3 of this act, no abortion shall be performed upon an unemancipated minor, or upon a woman for whom a guardian or conservator has been appointed because of a finding of incapacity, until at least forty-eight (48) hours after written notice of the pending abortion has been delivered in the manner specified in this act to a parent designated by the pregnant woman or, if the pregnant woman refuses to designate a parent, to any parent for whom an address can be located.

B. The notice shall be addressed to the parent at the usual last-known place of residence of the parent and delivered:

1. Personally to the parent by the physician or an agent of the physician; or

2. By certified mail, return receipt requested, restricted delivery, addressed to the parent at the last-known place of residence of the parent with postage prepaid thereon. Time of delivery of the certified mail shall be deemed to occur at twelve

o'clock noon on the next day on which regular mail delivery takes place, subsequent to the certified 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:

A. No notice shall be required under this act if:

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

2. The person or persons who are entitled to notice certify in writing that they have been notified;

3. The pregnant woman 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 appropriate office of the Department of Human Services of the alleged abuse or neglect; or

4. A court has determined that parental notification is not necessary pursuant to subsection B of this section.

B. 1. A pregnant woman may elect not to allow the notification of a parent and a physician shall be authorized to perform an abortion if a judge of a district court of this state determines that the pregnant woman:

a. is sufficiently mature that she could be judicially determined to be emancipated, if the pregnant woman so requested and capable of giving informed consent to the proposed abortion including comprehension of the long-term medical and psychological risks associated therewith, or

b. is not mature, or does not claim to be mature, and the judge determines that the performance of an abortion upon her without notification of her parent would be

in her best interests and that good cause has been shown that to give notice to her parents would result in physical harm or abuse to the pregnant woman.

2. Proceedings pursuant to this subsection shall be by application to the district court of the county in which the pregnant woman resides or in which the abortion is to be performed on forms prescribed by the Administrative Office of the Courts which shall be furnished by the court clerk upon request without charge. A judge of the district court may enter an order authorizing an abortion without notification prior to the filing of the application with the court clerk. Every district court shall, by rule, provide for hearing applications before filing twenty-four (24) hours a day, seven (7) days a week. No filing fee shall be required for such application. The application and the proceedings shall be confidential, shall be held in chambers or in a suitable private place and shall be given precedence over other pending matters. In no event shall the court delay a hearing on the application for more than twenty-four (24) hours after filing.

3. If the court denies the application or refuses to hear the application, the pregnant woman may appeal to the Supreme Court by filing a petition in error as in other civil cases. No filing fee shall be required for an appeal pursuant to this paragraph. The proceedings on appeal shall be given precedence over other pending matters, shall be confidential and any reported or otherwise released decision shall refer to the appellant by pseudonym.

The pregnant woman may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her.

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:

A. Any person convicted of performing an abortion in violation of this act shall be guilty of a misdemeanor.

B. In addition to the criminal penalty prescribed by subsection A of this section, the performance of an abortion in violation of this act shall be grounds for a civil action by a person wrongfully denied notification. A person shall not be held liable pursuant to this section if the person establishes by competent evidence that the person relied upon evidence sufficient to convince a reasonably prudent person that the representations of the pregnant woman regarding information necessary to comply with this section were true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

SECTION 5. 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.

43-1-513

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