

SHORT TITLE: Public health and safety; prohibiting abortion without voluntary and informed consent; requiring publication and free distribution of certain information; setting penalty; providing for damages; emergency.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 547

By: Hendrick

AS INTRODUCED

An Act relating to public health and safety; defining terms; prohibiting abortion without certain conditions; defining certain conditions; requiring certification; requiring receipt of certification; requiring publication of certain information; specifying format; requiring free distribution; requiring physician to inform of reasoning in certain circumstances and providing exception; setting penalty; providing for damages; allowing for privacy; providing for severability; 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 1-742 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in Sections 1 through 8 of this act:

1. "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after birth or to remove a dead fetus;

2. "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function; and

3. "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.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-743 of Title 63, unless there is created a duplication in numbering, reads as follows:

No abortion shall be performed except with the voluntary and informed consent of the woman upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

1. The woman is told the following by the physician who is to perform the abortion or by the referring physician, at least twenty-four (24) hours before the abortion:

- a. the name of the physician who will perform the abortion,
- b. the particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies and infertility,
- c. the probable gestational age of the unborn child at the time the abortion is to be performed, and
- d. the medical risks associated with carrying her child to term;

2. The woman is informed by the physician or his agent at least twenty-four (24) hours before the abortion:

- a. that medical assistance benefits may be available for prenatal care, childbirth and neonatal care,
- b. that the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion, and
- c. that she has the right to review the printed materials described in Section 3 of this act. The physician or his agent shall orally inform the woman the materials have been provided by the State of Oklahoma and that they describe the unborn child and list agencies which offer alternatives to abortion. If the woman chooses to view the materials, copies of them shall be furnished to her;

3. The woman certifies in writing, prior to the abortion, that the information described in paragraphs 1 and 2 of this section have been furnished to her, and that she has been informed of her opportunity to review the information referred to in subparagraph c of paragraph 2 of this section; and

4. Prior to the performance of the abortion, the physician who is to perform the abortion or his agent receives a copy of the written certification prescribed by paragraph 3 of this section.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-744 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health shall cause to be published in English and Spanish, within sixty (60) days after this act becomes law, the following printed materials in such a way to ensure that the information is easily comprehensible:

1. Geographically indexed materials designed to inform the woman of public and private agencies and services available to

assist a woman through pregnancy, upon childbirth and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the State Department of Health, printed materials including a toll-free, twenty-four-hour a day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer; and

2. Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any pictures or drawings representing the development of unborn children at two-week gestational increments, provided that any such pictures or drawings must contain the dimensions of the fetus and must be realistic and appropriate for the stage of pregnancy depicted, and any relevant information on the possibility of the unborn child's survival. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion and the medical risks commonly associated with carrying a child to term.

B. The materials shall be printed in a typeface large enough to be clearly legible.

C. The materials required under this section shall be available at no cost from the State Department of Health upon request and in appropriate number to any person, facility or hospital.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745 of Title 63, unless there is created a duplication in numbering, reads as follows:

When a medical emergency compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical indications supporting his judgment that an abortion is necessary to avert her death or that a delay will create serious risk of substantial and irrevocable impairment of a major bodily function.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-746 of Title 63, unless there is created a duplication in numbering, reads as follows:

Anyone who intentionally performs or attempts to perform an abortion without obtaining the voluntary and informed consent of the woman as required by this section shall be guilty of a misdemeanor. No penalty may be assessed against the woman upon whom the abortion is performed or attempted to be performed. No criminal penalty or civil liability for failure to comply with subparagraph c of paragraph 2 of Section 2 of this act or that portion of paragraph 3 of Section 2 of this act requiring a written certification that the woman has been referred to in subparagraph c of paragraph 2 of Section 2 of this act may be assessed unless the State Department of Health has made the printed material available at the time the physician or his agent is required to inform the woman of her right to review them.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-747 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any person upon whom an abortion has been performed without complying with this act, the father of the unborn child who was the subject of such an abortion, or the grandparent of such an unborn child may maintain an action against the person who performed the

abortion for Ten Thousand Dollars (\$10,000.00) in punitive damages and treble whatever actual damages the plaintiff may have sustained. Any person upon whom an abortion has been attempted without complying with this act may maintain an action against the person who attempted to perform the abortion for Five Thousand Dollars (\$5,000.00) in punitive damages and treble whatever actual damages the plaintiff may have sustained.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-748 of Title 63, unless there is created a duplication in numbering, reads as follows:

In every civil or criminal proceeding or action brought under this act, the court shall rule whether the anonymity of any woman upon whom an abortion is performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel, and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms, to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under Section 6 of this act shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-749 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 circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses or applications of this act 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 9. 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.

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