

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2864

By: Sullivan (John)

AS INTRODUCED

An Act relating to abortion; creating the Informed Consent for Abortion Act; providing for findings of the Legislature; defining terms; prohibiting performance of an abortion without informed consent of woman; providing exception; providing procedures; providing for content of information; providing waiting period; requiring copy; requiring certification; requiring reporting; requiring records retention; providing procedures for emergency; prohibiting certain payment at certain time; providing for certain payment; requiring publication of certain printed material; providing contents; requiring production of a standardized videotape; requiring certain format; requiring no cost; requiring compilation of relevant data; requiring reports; requiring testing of certain tissue; providing for testing of viability; requiring reports; requiring certain information; requiring comprehensive statistical information; providing for public distribution; making certain violations grounds for removal of certain licenses; making certain actions unlawful; providing for penalties; requiring physicians to make certain information available to pregnant woman; providing for certain remedies; providing for pseudonyms; providing for privacy; providing for wrongful death; providing for construction of section; providing for codification; and providing an effective date.

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 1-742.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Informed Consent for Abortion Act."

B. The Oklahoma Legislature of the State of Oklahoma finds that:

1. It is essential to the psychological and physical well-being of a woman considering an abortion that she receive complete and accurate information on her alternatives;

2. The knowledgeable exercise of a woman's decision to have an abortion depends on the extent to which the woman receives sufficient information to make an informed choice between two alternatives: that of giving birth or having an abortion;

3. The decision to abort a child is an important and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences;

4. The medical, emotional and psychological consequences of an abortion are serious and can be lasting; and

5. Often abortion clinics and abortion providers offer only limited and/or impersonal counseling opportunities.

C. It is the purpose of the Informed Consent for Abortion Act to:

1. Ensure that every woman considering an abortion receives complete information on her alternatives;

2. Ensure that every woman submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure;

3. Protect unborn children from a woman's uninformed decision to have an abortion; and

4. Reduce the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-742.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

For purposes of the Informed Consent for Abortion Act and in addition to the terms defined by Section 1-730 of this title:

1. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription or means is not an abortion if done with the intent to:

- a. save the life or preserve the health of an unborn child,
- b. remove a dead unborn child caused by spontaneous abortion; or
- c. remove an ectopic pregnancy;

2. "Complication" means that condition which includes but is not limited to hemorrhage, infection, uterine perforation, cervical laceration, pelvic inflammatory disease, endometritis, and retained products. The State Board of Health may further define complication;

3. "Facility" or "medical facility" means any public or private hospital, clinic, center, medical school, medical training institution, health care facility, physician's office, infirmary, dispensary, ambulatory surgical treatment center or other institution or location wherein medical care is provided to any person;

4. "First trimester" means the first twelve (12) weeks of gestation;

5. "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period;

6. "Hospital" means an institution licensed pursuant to the provisions of the laws of this state;

7. "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 termination 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;

8. "Physician" means any person licensed to practice medicine in this state. The term includes medical doctors and doctors of osteopathy;

9. "Pregnant" or "pregnancy" means that female reproductive condition of having an unborn child in the mother's uterus; and

10. "Qualified person" means an agent of the physician who is a psychologist, licensed social worker, licensed professional counselor, registered nurse, or physician.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-742.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No abortion shall be induced without 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 made pursuant to the requirements provided by this section.

B. At least twenty-four (24) hours before the abortion, the physician who is to perform the abortion or the referring physician has informed the woman, orally and in person, of the following:

1. The name of the physician who will perform the abortion;
2. Medically accurate information that a reasonable patient would consider material to the decision of whether or not to undergo the abortion, including but not limited to:

- a. a description of the proposed abortion method,
- b. the immediate and long-term medical risks associated with the proposed abortion method including, but not limited to, the risks of infection, hemorrhage, cervical or uterine perforation, danger to subsequent pregnancies, and increased risk of breast cancer, and

c. alternatives to the abortion;

3. The probable gestational age of the unborn child at the time the abortion is to be performed. If the unborn child is viable or has reached the gestational age of twenty-four (24) weeks, the physician shall also inform the woman that:

a. the unborn child may be able to survive outside the womb,

b. the woman has the right to request the physician to use the method of abortion that is most likely to preserve the life of the unborn child, and

c. if the unborn child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child so long as such measures do not create any significant danger to her life or health;

4. The probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed;

5. The medical risks associated with carrying her child to term; and

6. Any need for anti-Rh immune globulin therapy if she is Rh negative, the likely consequences of refusing such therapy, and the cost of the therapy.

C. At least twenty-four (24) hours before the abortion, the physician who is to perform the abortion, the referring physician, or a qualified person has informed the woman, orally and in person, that:

1. Medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials and informational video given to her and described in Section 4 of this act;

2. The printed materials and informational video in Section 4 of this act describe the unborn child and list agencies that offer alternatives to abortion;

3. The father of the unborn child is liable to assist in the support of this child, even in instances where he has offered to pay for the abortion. In the case of rape or incest, this information may be omitted; and

4. She is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.

D. The information to be provided pursuant to subsection A of this section is to be provided to the woman individually and in a private room:

1. To protect her privacy and maintain the confidentiality of her decision;

2. To ensure that the information focuses on her individual circumstances; and

3. That she has an adequate opportunity to ask questions.

E. At least twenty-four (24) hours before the abortion, the physician performing the abortion, the referring physician or the qualified person shall give to the woman a copy of the printed materials and a viewing of, or a copy of, the informational video described in Section 4 of this act. If the woman is unable to read the materials, they shall be read to her by the physician performing the abortion, the referring physician or the qualified person. If the woman asks questions concerning any of the information or materials, answers shall be provided to her by the physician performing the abortion, the referring physician or the qualified person in a language she can understand.

F. Prior to the abortion, the woman shall certify, in writing, on a checklist form provided or approved by the State Department of

Health that the information required to be provided by this section has been provided. All physicians who perform abortions shall report the total number of certifications received monthly to the Department. The Department shall make the number of certifications received available to the public on an annual basis.

G. Except in the case of a medical emergency, the physician who is to perform the abortion shall receive and sign a copy of the written certification prescribed in subsection E of this section prior to performing the abortion. The physician shall retain a copy of the checklist certification form in the woman's medical record.

H. In the event of a medical emergency requiring an immediate termination of pregnancy, the physician who performed the abortion shall clearly certify in writing the nature of the medical emergency and the circumstances which necessitated the waiving of the informed consent requirements of this section. This certification shall be signed by the physician who performed the emergency abortion, and shall be permanently filed in both the records of the physician performing the abortion and the records of the facility where the abortion took place.

I. A physician shall not require or obtain payment for a service provided to a patient who has inquired about an abortion or scheduled an abortion until the expiration of the twenty-four-hour reflection period required by this section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-742.4 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 printed materials and an informational video in English and Spanish, within one hundred eighty (180) days after the effective date of this act.

B. The printed material shall contain:

1. Geographically indexed materials that inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while her child is dependent, including, but not limited to, adoption agencies. The materials shall include a comprehensive list of the agencies, a description of the services they offer, and the telephone numbers and addresses of the agencies. The materials shall inform the woman about available medical assistance benefits for prenatal care, childbirth, and neonatal care; provided the Department shall ensure that the materials described in this paragraph are comprehensive and do not directly or indirectly promote, exclude, or discourage the use of any agency or service described in this paragraph;

2. A toll-free twenty-four-hour a day telephone number which may be called to obtain information about the agencies in the locality of the caller and of the services they offer;

3. A statement that:

- a. it is unlawful for any individual to coerce a woman to undergo an abortion,
- b. if the pregnant woman is a minor and she is denied financial support by the minor's parents, guardian, or custodian due to the minor's refusal to have an abortion performed, the minor shall be deemed emancipated for the purposes of eligibility for public-assistance benefits, except that such benefits cannot be used to obtain an abortion, and
- c. any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages in a civil action at law and that the law permits adoptive parents to pay the costs of prenatal care, childbirth, and neonatal care;

4. The following statement: "There are many public and private agencies willing and able to help you to carry your child to term,



and to assist you and your child after your child is born, whether you choose to keep your child or to place her or him for adoption. The State of Oklahoma strongly urges you to contact one or more of these agencies before making a final decision about abortion. The law requires that your physician or his agent give you the opportunity to call agencies like these before you undergo an abortion”;

5. Information on the support obligations of the father of a child who is born alive, including, but not limited to, the father's legal duty to support his child, which may include child support payments and health insurance, and the fact that paternity may be established by the father's signature on a birth certificate or statement of paternity, or by court action. The printed material shall also state that more information concerning paternity establishment and child support services and enforcement may be obtained by calling state or county public assistance agencies;

6. Information which will inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including color photographs of the developing unborn child at two-week gestational increments. The descriptions shall include information about brain and heart function, the presence of external members and internal organs during the applicable stages of development and any relevant information on the possibility of the unborn child's survival. If a photograph is not available, a picture must contain the dimensions of the unborn child and must be realistic. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages;

7. Objective information describing the various surgical and drug-induced methods of abortion, as well as the immediate and long-term medical risks commonly associated with each abortion method

including, but not limited to, the risk of infection, hemorrhage, cervical or uterine perforation or rupture, danger to subsequent pregnancies, increased risk of breast cancer, the possible adverse psychological effects associated with an abortion, and the medical risks associated with carrying a child to term; and

8. A checklist certification form to be used by the physician or a qualified person pursuant to Section 3 of this act, which will list all the items of information which are to be given to the woman by a physician or the agent required by the provisions of the Informed Consent for Abortion Act.

C. On an annual basis, the Department shall review and update, if necessary, the easily comprehensible printed materials and informational video.

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

E. The Department shall produce a standardized videotape that may be used statewide, presenting the information described in paragraphs 1 through 7 of subsection B of this section, in accordance with the requirements of those subsections. In preparing the video, the Department may summarize and make reference to the printed comprehensive list of geographically indexed names and services described in paragraph 1 of subsection B of this section. The videotape shall, in addition to the information described in paragraphs 1 through 7 of subsection B of this section, show an ultrasound of the heartbeat of an unborn child at four to five weeks gestational age, at six to eight weeks gestational age, and each month thereafter, until viability. That information shall be presented in an objective unbiased manner designed to convey only accurate scientific information.

F. The printed materials and videotapes required pursuant to this section shall be available at no cost from the Department upon

request and in appropriate number to any person, facility or hospital.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-742.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of promotion of maternal health and life through the compilation of relevant data, and to promote the state's interest in protection of the unborn children, a report of each abortion performed shall be made to the State Department of Health on forms prescribed by it. The reports shall be completed by the hospital or other licensed facility in which the abortion occurred, signed by the physician who performed the abortion, and transmitted to the Department within fifteen (15) days after each reporting month. The report forms shall not identify the individual patient by name and shall include the following information:

1. Identification of the physician who performed the abortion and the facility where the abortion was performed and identification of the referring physician, agency or service, if any. The Department shall ensure that the identification of any physician or other health care provide reporting under this section shall not be released or otherwise made available to the general public;

2. The county and state in which the woman resides;

3. The woman's age;

4. The number of prior pregnancies and prior abortions of the woman;

5. The probable gestational age of the unborn child;

6. The type of procedure performed or prescribed and the date of the abortion;

7. Any pre-existing medical condition of the woman which would complicate pregnancy, if any, and, if known, medical complications which resulted from the abortion;

8. The length and weight of the aborted child for any abortion performed pursuant to a medical emergency; and

9. The basis for any medical judgment that a medical emergency existed which excused the physician from compliance with any provision of the Informed Consent for Abortion Act.

B. 1. When there is an abortion performed during the first trimester of pregnancy, the tissue that is removed shall be subjected to a gross or microscopic examination, as needed, by the physician or a qualified person designated by the physician to determine if a pregnancy existed and was terminated. If the examination indicates no fetal remains, that information shall immediately be made known to the physician and sent to the Department within fifteen (15) days of the analysis.

2. When there is an abortion performed after the first trimester of pregnancy, the physician must certify whether or not the child is viable, and the dead unborn child and all tissue removed at the time of the abortion shall be submitted for tissue analysis to a board-eligible or certified pathologist. If the report reveals evidence of viability or live birth, the pathologist shall report such findings to the Department within fifteen (15) days, and a copy of the report sent to the physician performing the abortion. The Department shall prescribe a form on which pathologists may report any evidence of live birth, viability, or absence of pregnancy.

C. Every facility in which an abortion is performed within this state during any quarter year shall file with the Department a report showing the total number of abortions performed within the hospital or other facility during that quarter year. This report shall also show the total abortions performed in each trimester of pregnancy. These reports shall be submitted on a form prescribed by the Department that will enable a facility to indicate whether or not it is receiving state-appropriated funds. The reports shall be

available for public inspection and copying only if the facility receives state-appropriated funds within the twelve-calendar-month period immediately preceding the filing of the report. If the facility indicates on the form that it is not receiving state-appropriated funds, the Department shall regard that facility's report as confidential unless it receives other evidence that causes it to conclude that the facility receives state-appropriated funds.

D. Within thirty (30) days following the enactment of this act, the Department shall require that all reports of maternal deaths occurring within the state arising from pregnancy, childbirth, or intentional abortion state the cause of death, the duration of the woman's pregnancy, when her death occurred and whether or not the woman was under the care of a physician during her pregnancy prior to her death. The State Board of Health shall promulgate any necessary rules to assure that information is reported, and conduct its own investigation, if necessary, to ascertain such data.

Known incidents of maternal mortality of nonresident women arising from an induced abortion performed in this state shall be included in the report as incidents of maternal mortality arising from induced abortions.

Incidents of maternal mortality arising from continued pregnancy or childbirth and occurring after induced abortion has been attempted but not completed, including deaths occurring after an induced abortion has been attempted but not completed as a result of ectopic pregnancy, shall be included as incidents of maternal mortality arising from induced abortion.

E. Every physician who is called upon to provide medical care or treatment to a woman who is in need of medical care because of a complication or complications, resulting in the good faith judgment of the physician, from having undergone an abortion or attempted abortion, shall prepare a report. The report must be filed with the Department within thirty (30) days of the date of the physician's

first examination of the woman. The report shall be on forms prescribed by the Department. The forms shall contain the following information, as received, and such other information except the name of the patient, as the Department may from time to time require:

1. Age of patient;
2. Number of pregnancies the patient may have had prior to the abortion;
3. Number and type of abortions the patient may have had prior to this abortion;
4. Name and address of the facility where the abortion was performed;
5. Gestational age of the unborn child at the time of the abortion, if known;
6. Type of abortion performed, if known;
7. Nature of complication or complications;
8. Medical treatment given; and
9. The nature and extent, if known, of any permanent condition caused by the complication.

F. Reports filed pursuant to subsection A or E of this section shall not be deemed public records and shall remain confidential, except that disclosure may be made to law enforcement officials upon an order of a court after application showing good cause. The court may condition disclosure of the information upon any appropriate safeguards it may impose.

G. The Department shall prepare a comprehensive annual statistical report for the Legislature based upon the data gathered from reports under subsection A or E of this section. The statistical report shall not lend to the disclosure of the identity of any physician or person filing a report under subsection A or E of this section nor of any patient about whom a report is filed. The statistical report shall be available for public inspection and copying.

H. Original copies of all reports filed under subsections A, C and E of this section shall be available to the State Medical Board for use in the performance of its official duties.

I. The following penalties shall apply:

1. Any physician required under this section to file a report, keep any records, or supply any information, who is found to have willfully failed to file such report, keep such records, or supply such information at the time or times required by law or rule, shall be guilty of unprofessional conduct, and his or her license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with applicable procedures provided in Title 59 of the Oklahoma Statutes;

2. Any person who willfully delivers or discloses to the Department any report, record or information known by him or her to be false shall be guilty of a misdemeanor;

3. Any person who is convicted of willfully disclosing any information contained from reports filed pursuant to subsection A or E of this section, other than that disclosure authorized under subsection F of this section or as otherwise authorized by law, shall be guilty of a felony;

4. Intentional, knowing, reckless, or negligent failure of the physician to submit an unborn child or tissue remains to a pathologist as required by subsection B of this section, or intentional, knowing, or reckless failure of the pathologist to report any evidence of live birth or viability to the Department in the manner and within the time prescribed in subsection B is a misdemeanor; and

5. In addition to the penalties specified in this subsection, any person, organization, or facility who willfully violates any of the provisions of this section requiring reporting shall, upon conviction:

- a. for the first time, have its license suspended for a period of six (6) months,
- b. for a second time, have its license suspended for a period of one (1) year, and
- c. for the third time, have its license revoked.

J. The Department shall create the forms required by the Informed Consent for Abortion Act within sixty (60) days after the effective date of this act and shall cause to be published, within ninety (90) days after the effective date of this act, the printed materials described in the Informed Consent for Abortion Act.

No provision the Informed Consent for Abortion Act requiring the reporting of information on forms published by the Department, or requiring the distribution of printed materials published by the Department pursuant to the Informed Consent for Abortion Act shall be applicable until ten (10) days after the requisite forms are first created and printed materials are first published by the Department or until the effective date of this act, whichever is later.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-742.6 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, before the abortion if possible, of the medical indications supporting the physician's judgment that an immediate abortion is necessary to avert her death or that a twenty-four-hour delay will cause substantial and irreversible impairment of a major bodily function.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-742.7 of Title 63, unless there is created a duplication in numbering, reads as follows:



A. Any person who is convicted of intentionally, knowingly, or recklessly violating the provisions of the Informed Consent for Abortion Act shall be guilty of a felony.

B. In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of the Informed Consent for Abortion Act shall:

1. Provide a basis for a civil malpractice action. Any intentional violation of the Informed Consent for Abortion Act shall be admissible in a civil suit as prima facie evidence of a failure to obtain informed consent. When requested, the court shall allow a woman to proceed using solely her initials or a pseudonym and may close any proceedings in the case and enter other protective orders to preserve the privacy of the woman upon whom the abortion was performed;

2. Provide a basis for professional disciplinary action; and

3. Provide a basis for recovery for the woman for the wrongful death of her unborn child, whether or not the unborn child was born alive or was viable at the time the abortion was performed.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-742.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Nothing in this act shall be construed as creating or recognizing a right to abortion.

B. It is not the intention of the Informed Consent for Abortion Act to make lawful an abortion that is currently unlawful.

SECTION 9. This act shall become effective November 1, 2002.

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