

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2534

By: Walker

COMMITTEE SUBSTITUTE

An Act relating to public health and safety; providing for informed consent for an abortion; defining terms; requiring certain persons to receive specified information; specifying certain requirements; providing exceptions; specifying time limitations; providing restrictions; requiring certification; specifying procedures and contents; making certain acts unlawful; requiring publication; requiring warnings; providing for contents and form; requiring maintenance of a web site; providing for emergency abortions; requiring reporting; requiring notices at certain facilities; providing for contents; requiring the State Department of Health to make certain abortion reports; providing for contents; requiring certain reporting; specifying penalties; providing for publication; providing for confidentiality and anonymity; providing for construction of act; providing for liability; authorizing certain actions; providing for attorney fees; making certain acts unlawful; providing exception; providing for additional remedies; providing 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 1-738.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the 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 for a purpose other than to increase the probability of a live birth, to

preserve the life or health of the child after live birth, or to remove a dead fetus who died as a result of spontaneous miscarriage;

2. "Attempt to perform an abortion" means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in this state in violation of this act;

3. "Unborn child" means a member of the species homo sapiens from fertilization until birth;

4. "Department" means the State Department of Health;

5. "Medical emergency" means any 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 deemed to be irreversible impairment of a major bodily function;

6. "Physician" means a person licensed to practice medicine in this state pursuant to Chapter 11 and Chapter 14 of Title 59 of the Oklahoma Statutes;

7. "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; and

8. "Stable internet web site" means a web site that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the State Department of Health.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.

B. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

1. a. Not less than twenty-four (24) hours prior to the performance of the abortion, the woman is told the following, by telephone or in person, by the physician who is to perform the abortion, or by a referring physician:

(1) the name of the physician who will perform the abortion,

(2) the medical risks associated with the particular abortion procedure to be employed,

(3) the probable gestational age of the unborn child at the time the abortion is to be performed, and

(4) the medical risks associated with carrying her child to term.

b. The information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the woman. If the information is supplied by telephone, the information may be based both on facts supplied to the physician by the woman and on whatever other relevant information is reasonably available to the physician.

c. The information required by this paragraph shall not be provided by a tape recording, but shall be provided during a consultation in which the physician is able to ask questions of the woman and the woman is able to ask questions of the physician.

d. If a physical examination, tests, or other new information subsequently indicates, in the medical judgment of the physician, the need for a revision of the information previously supplied to the woman, that

revised information may be communicated to the woman at any time prior to the performance of the abortion.

- e. Nothing in subparagraph a of this paragraph may be construed to preclude provision of the required information in a language understood by the woman through a translator;

2. Not less than twenty-four (24) hours prior to the abortion, the woman is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician:

- 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,
- c. that:
 - (1) she has the option to review the printed materials described in Section 3 of this act,
 - (2) those materials have been provided by the State of Oklahoma,
 - (3) they describe the unborn child and list agencies that offer alternatives to abortion, and
- d. (1) if the woman chooses to exercise her option to view the materials in a printed form, they shall be mailed to her, by a method chosen by the woman, or
 - (2) if the woman chooses to exercise her option to view the materials via the Internet, the woman shall be informed at least twenty-four (24) hours before the abortion, of the specific address of the Internet website where the material can be accessed;

3. The information required by paragraph 2 of this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to review the printed materials given;

4. The woman certifies in writing, prior to the abortion, that the information described in paragraphs 1 and 2 of this subsection has been furnished her, and that she has been informed of her option to review the information; and

5. Prior to the abortion, the physician who is to perform the abortion or the agent of the physician receives a copy of the written certification prescribed by paragraph 4 of this subsection.

C. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall promulgate rules to ensure that physicians who perform abortions, and referring physicians or agents of either physician comply with all the requirements of this section.

D. Before the abortion procedure is performed the physician shall confirm with the patient that she has received information regarding:

1. The medical risks associated with the particular abortion procedure to be employed;

2. The probable gestational age of the unborn child at the time the abortion is to be performed; and

3. The medical risks associated with carrying the unborn child to term.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Within one hundred twenty (120) days of the effective date of this act, the State Department of Health shall cause to be published, in English and in Spanish, and shall update on an annual

basis, the following printed materials in such a way as to ensure that the information is easily comprehensible:

1. a. geographically indexed materials designed to inform the woman of public and private agencies which have notified the Department of their services, including adoption agencies, that are available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including:
 - (1) a comprehensive list of the agencies available,
 - (2) a description of the services they offer, and
 - (3) a description of the manner, including telephone numbers, in which they might be contacted, or
- b. printed materials including a toll-free, twenty-four-hour-a-day telephone number which may be called to obtain, in a mechanical, automated, or auditory format, a list and description of agencies which have notified the Department of their services in the locality of the caller and of the services they offer; and
2. a. 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:
 - (1) any relevant information on the possibility of the survival of the unborn child, and
 - (2) pictures or drawings representing the development of unborn children at two-week gestational increments; provided, that the pictures or drawings shall describe the dimensions of the unborn child and shall be realistic and appropriate for the stage of pregnancy depicted.

b. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.

c. The material shall also contain objective information describing:

- (1) the methods of abortion procedures commonly employed,
- (2) the medical risks commonly associated with each of those procedures,
- (3) the possible detrimental psychological effects of abortion, and
- (4) the medical risks commonly associated with carrying a child to term.

B. 1. The materials referred to in subsection A of this section shall be printed in a typeface large enough to be clearly legible.

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

C. 1. The Department shall provide on its stable Internet web site the information described under subsection A of this section.

2. The web page provided for in this subsection shall be maintained at a minimum resolution of 72 PPI.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.4 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 female, prior to the abortion if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert her death or that a

delay will create serious risk of substantial and deemed irreversible impairment of a major bodily function.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health shall develop and promulgate rules regarding reporting requirements.

B. The Department shall ensure that all information collected by the Department regarding abortions performed in this state shall be available to the public in printed form and on a twenty-four-hour basis on the web site of the Department, provided that in no case shall the privacy of a patient or doctor be compromised.

C. The information collected by the Department regarding abortions performed in this state shall be updated annually.

D. 1. By June 30 of each year the Department shall issue a public report providing statistics on the number of women provided information and materials pursuant to this act during the previous calendar year.

2. Each report shall also provide the information presently collected by the Department for all previous calendar years, adjusted to reflect any additional information received after the deadline.

3. The Department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual providing or provided information pursuant to the provisions of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any physician who knowingly or recklessly performs or attempts to perform an abortion in violation of the provisions of this act shall be subject to disciplinary action by the State Board

of Medical Licensure and Supervision or the State Board of Osteopathic Examiners, as appropriate.

B. No penalty may be assessed against the woman upon whom the abortion is performed or attempted to be performed.

C. No penalty or civil liability may be assessed for failure to comply with Section 2 of this act unless the State Department of Health has made the printed materials available at the time the physician or the agent of the physician is required to inform the woman of her right to review them.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In every civil or criminal proceeding or action brought pursuant to the provisions of this act, the court shall rule whether the identity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure.

B. If the court rules that her identity should be preserved, the court shall issue orders to the parties, witnesses, and counsel to preserve her identity 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.

C. Each order to preserve the woman's identity shall be accompanied by specific written findings explaining:

1. Why the identity of the woman should be preserved from public disclosure;

2. Why the order is essential to that end;

3. How the order is narrowly tailored to serve that interest;
and

4. Why no reasonable less restrictive alternative exists.

D. 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 pursuant to this act shall do so under a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

SECTION 8. The provisions of this act are severable and if any part or provision shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

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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KSM

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