

ENGROSSED HOUSE  
BILL NO. 1543

By: Calvey, Wesselhoft, Balkman,  
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Cooksey, Covey, Dank, DeWitt,  
Hamilton, Harrison, Hickman,  
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McMullen, Miller (Ken), Morgan  
(Fred), Nance, Newport, Perry,  
Peterson (Pam), Peterson (Ron),  
Reynolds, Rousselot, Sherrer,  
Smaligo, Steele, Tibbs,  
Trebilcock, Walker and Winchester  
of the House

and

Williamson of the Senate

An Act relating to public health and safety; defining terms; requiring certain persons to receive specified information; providing exceptions; specifying time limitations; requiring certification; requiring State Department of Health to publish and update certain materials; requiring maintenance of a web site; providing for emergency abortions; requiring reporting; requiring the State Department of Health to prepare certain abortion reports; providing for confidentiality and anonymity; providing for liability; authorizing certain actions; making certain acts subject to certain disciplinary action; providing exception; providing for additional remedies; providing for construction of act; enacting the Family Protection Act; providing short title; defining terms; prohibiting abortions on certain persons without certain notice; providing procedures related to the notice; specifying penalties; authorizing actual and punitive damages; 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 1-738.1 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. "Department" means the State Department of Health;

4. "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;

5. "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;

6. "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;

7. "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; and

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

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, and
  - (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 web site where the material can be accessed.

The information required by this paragraph 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;

3. 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

4. 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 3 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.

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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1738.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 9 through 13 of this act shall be known and may be cited as the "Family Protection Act".

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Family Protection Act:

1. "Abortion", for purposes of the Family Protection Act, is defined in paragraph 1 of Section 1 of this act and means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female 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 live birth, or to remove a dead unborn child who died as the result of a spontaneous abortion;

2. "Parent" means one parent of the pregnant unemancipated minor or guardian if the pregnant unemancipated minor has one; and

3. "Unemancipated minor" means any person under eighteen (18) years of age who is not or has not been married or who is under the care, custody, and control of such person's parent or parents, guardian, or juvenile court of competent jurisdiction.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian has been appointed pursuant to Section 1-113 of Title 30 of the Oklahoma Statutes because of a finding of incompetency, until at least forty-eight (48) hours after written notice of the pending operation has been delivered in the manner specified in this subsection.

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 subsection, 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 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.

B. No notice shall be required under this section if one of the following conditions are met:

1. The attending physician certifies in the pregnant unemancipated minor's medical record that the abortion is necessary to prevent the minor'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 she or he has been notified.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If a pregnant unemancipated minor elects not to allow the notification of her parent or guardian, 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 unemancipated minor is mature and capable of giving informed consent to the proposed abortion. If said judge determines that the pregnant unemancipated minor is not mature, or if the pregnant unemancipated minor does not claim to be mature, the judge shall determine whether the performance of an abortion upon her without notification of her parent or guardian would be in her best interest and shall authorize a physician to perform the abortion without such notification if said judge concludes that the pregnant unemancipated minor's best interests would be served thereby.

B. A pregnant unemancipated minor 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 the pregnant unemancipated minor 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 unemancipated minor. 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 unemancipated minor 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 unemancipated minor 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 unemancipated minor twenty-four (24) hours a day, seven (7) days a week.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

Performance of an abortion in knowing or reckless violation of the Family Protection Act shall be a misdemeanor, and shall be grounds for actual and punitive damages in a civil action by a person wrongfully denied notification. A person shall not be held liable under the Family Protection 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 unemancipated minor regarding information necessary to comply with this section 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 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

If any one or more provision, section, subsection, sentence, clause, phrase or word of the Family Protection Act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of the Family Protection Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed the Family Protection Act, and each provision, section, subsection, sentence, clause, phrase or

word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

SECTION 14. 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.

Passed the House of Representatives the 2nd day of March, 2005.

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Presiding Officer of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2005.

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Presiding Officer of the Senate