

ENROLLED HOUSE
BILL NO. 1686

By: Hamilton, Hilliard, Sherrer, Adkins, Armes, Auffet, Balkman, Banz, Benge, Billy, Bingman, Blackwell, Braddock, Brannon, Brown, Calvey, Cargill, Case, Coody, Cooksey, Cox, Dank, Denney, DePue, Deutschendorf, DeWitt, Dorman, Duncan, Hastings, Hickman, Hiett, Hyman, Ingmire, Jackson, Jett, Johnson, Jones, Kern, Liebmann, Liotta, Martin, McMullen, Miller (Doug), Miller (Ken), Morgan (Fred), Nance, Perry, Peters, Peterson (Pam), Peterson (Ron), Piatt, Reynolds, Richardson, Roggow, Smaligo, Smithson, Steele, Sullivan, Terrill, Thompson, Tibbs, Trebilcock, Turner, Walker, Wesselhoft, Wilt, Winchester, Worthen, Wright and Young of the House

and

Lawler, Williamson, Gumm, Garrison, Corn, Leftwich, Easley, Nichols, Reynolds, Laughlin, Ford, Johnson, Barrington, Coffee, Myers, Brogdon, Coates, Branan, Mazzei, Lamb, Anderson, Crain, Pruitt, Wilcoxson, Justice, Jolley, Riley and Aldridge of the Senate

An Act relating to public health and safety; amending 12 O.S. 2001, Section 1053, which relates to wrongful death; making language gender neutral; making section available for death of an unborn child; providing definition; providing exceptions; prohibiting certain finding of liability; providing exception; amending 21 O.S. 2001, Section 652, which relates to certain aggravated assaults and batteries; modifying certain elements of certain crimes; including unborn child in certain crimes; providing definition; providing exceptions; prohibiting certain prosecution; providing exception; amending 21 O.S. 2001, Section 713, which relates to first degree manslaughter; modifying class of unborn children to which certain crime applies; providing exceptions; prohibiting certain prosecution; providing exception; amending 21 O.S. 2001, Section 715, which relates to punishment for first degree manslaughter; providing penalty for certain crime; stating exception to proof required for certain crimes; providing for informed consent for an abortion; defining terms; providing certain persons give certain information to certain persons by certain means at certain times; providing exceptions; requiring certification; requiring State

Board of Medical Licensure and Supervision to promulgate rules ensuring compliance; requiring confirmation of receipt of certain information; requiring State Board of Medical Licensure and Supervision to publish certain printed materials; requiring certain content and form; requiring certain availability of materials; requiring provision and maintenance of a stable Internet web site; providing for emergency abortions; specifying penalties; providing exceptions; providing for parental notification for abortion upon certain persons; defining terms; requiring certain notice be given certain persons at certain time by certain means; providing exceptions; providing certain judicial bypass of notice requirement; providing for certain appointment of guardian ad litem or counsel; providing for confidentiality of proceedings; providing for precedence of proceedings; requiring certain findings of fact and conclusions of law; providing for expedited appeal; providing criminal penalty and civil remedies; providing exceptions; providing for severability; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2001, Section 1053, is amended to read as follows:

Section 1053. A. When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefor against the latter, or his or her personal representative if he or she is also deceased, if the former might have maintained an action, had he or she lived, against the latter, or his or her representative, for an injury for the same act or omission. The action must be commenced within two (2) years.

B. The damages recoverable in actions for wrongful death as provided in this section shall include the following: Medical and burial expenses, which shall be distributed to the person or governmental agency as defined in Section ~~200~~ 5051.1 of Title ~~56~~ 63 of the Oklahoma Statutes, who paid these expenses, or to the decedent's estate if paid by the estate.

The loss of consortium and the grief of the surviving spouse, which shall be distributed to the surviving spouse.

The mental pain and anguish suffered by the decedent, which shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent.

The pecuniary loss to the survivors based upon properly admissible evidence with regard thereto including, but not limited to, the age, occupation, earning capacity, health habits, and probable duration of the decedent's life, which must inure to the

exclusive benefit of the surviving spouse and children, if any, or next of kin, and shall be distributed to them according to their pecuniary loss.

The grief and loss of companionship of the children and parents of the decedent, which shall be distributed to them according to their grief and loss of companionship.

C. In proper cases, as provided by Section ~~9~~ 9.1 of Title 23 of the Oklahoma Statutes, punitive or exemplary damages may also be recovered against the person proximately causing the wrongful death or ~~his~~ the person's representative if such person ~~be~~ is deceased. Such damages, if recovered, shall be distributed to the surviving spouse and children, if any, or next of kin in the same proportion as personal property of the decedent.

D. Where the recovery is to be distributed according to a person's pecuniary loss or loss of companionship, the judge shall determine the proper division.

E. The above-mentioned distributions shall be made after the payment of legal expenses and costs of the action.

F. 1. The provisions of this section shall also be available for the death of an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes.

2. The provisions of this subsection shall not apply to:

- a. acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented, or
- b. acts which are committed pursuant to the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

3. Under no circumstances shall the mother of the unborn child be found liable for causing the death of the unborn child unless the mother has committed a crime that caused the death of the unborn child.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 652, is amended to read as follows:

Section 652. A. Every person who intentionally and wrongfully shoots another with or discharges any kind of firearm, with intent to kill any person, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, shall upon conviction be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding life.

B. Every person who uses any vehicle to facilitate the intentional discharge of any kind of firearm, crossbow or other weapon in conscious disregard for the safety of any other person or persons, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, shall upon conviction be guilty of a felony punishable by imprisonment in the State Penitentiary for a term of not less than two (2) years nor more than twenty (20) years.

C. Any person who commits any assault and battery upon another, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, by means of any deadly weapon, or by such other means or force as is likely to produce death, or in any manner attempts to kill another, including an unborn child as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, or in resisting the execution of any legal process, shall upon conviction be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding twenty (20) years.

D. The provisions of this section shall not apply to:

1. Acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented; or

2. Acts which are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

E. Under no circumstances shall the mother of the unborn child be prosecuted for causing the death of the unborn child unless the mother has committed a crime that caused the death of the unborn child.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 713, is amended to read as follows:

Section 713. ~~The willful killing of A. Except as otherwise provided by law, any person who willfully kills an unborn quick child by any injury committed upon the person of the mother of such child, and not prohibited in the next following section is, manslaughter in the first degree, as defined in Section 1-730 of Title 63 of the Oklahoma Statutes, shall, upon conviction, be guilty of a felony and, upon conviction, shall be punished pursuant to the provisions of Section 715 of this title.~~

B. The provisions of this section shall not apply to:

1. Acts which cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented; or

2. Acts which are committed pursuant to the usual and customary standards of medical practice during diagnostic testing or therapeutic treatment.

C. Under no circumstances shall the mother of the unborn child be prosecuted for causing the death of the unborn child unless the mother has committed a crime that caused the death of the unborn child.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 715, is amended to read as follows:

Section 715. ~~Any~~ A. Except as provided in subsection B of this section, any person guilty of manslaughter in the first degree shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than four (4) years.

B. Any person guilty of violating the provisions of Section 713 of this title shall be guilty of a felony punishable by imprisonment in the State Penitentiary for no more than life.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 723 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any offense committed pursuant to the provisions of Sections 652 and 713 of Title 21 of the Oklahoma Statutes does not require proof that the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant or that the offender intended to cause the death or bodily injury to the unborn child.

SECTION 6. 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 Sections 6 through 10 of this act:

1. "Abortion" means the term as is defined in Section 1-730 of Title 63 of the Oklahoma Statutes;

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. "Board" means the State Board of Medical Licensure and Supervision;

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 irreversible impairment of a major bodily function;

5. "Physician" means a person licensed to practice medicine in this state pursuant to Chapters 11 and 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 Board of Medical Licensure and Supervision; and

8. "Unborn child" means the term as is defined in Section 1-730 of Title 63 of the Oklahoma Statutes.

SECTION 7. 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, or by an agent of either 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 shall be based on facts supplied 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, and
- 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 8 of this act,
 - (2) those materials have been provided by the State Board of Medical Licensure and Supervision, 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 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;

3. The woman certifies in writing, prior to the abortion, that she has been told the information described in subparagraph a of paragraph 1 of this subsection and in subparagraphs a, b and c of paragraph 2 of this subsection and that she has been informed of her option to review or reject the printed information described in Section 8 of this act; 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 8. 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 Board of Medical Licensure and Supervision 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, including adoption agencies and services 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. at the option of the Board 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 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, and
- 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 of carrying a child to term, 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 Board of Medical Licensure and Supervision and shall be distributed upon request in appropriate numbers to any person, facility, or hospital.

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

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

SECTION 9. 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 irreversible impairment of a major bodily function.

SECTION 10. 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. 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 7 of this act unless the State Board of Medical Licensure and Supervision 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 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in Sections 11 through 15 of this act:

1. "Abortion" means the term as is defined in Section 1-730 of Title 63 of the Oklahoma Statutes;

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 the person's parent or parents, guardian or juvenile court of competent jurisdiction.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740.2 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 abortion 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 noon on the next day on which regular mail delivery takes place, subsequent to mailing; or

3. The person entitled to notice certifies in a notarized statement that he or she has been notified.

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

1. The attending physician certifies in the pregnant unemancipated minor's medical records that the abortion is necessary to prevent the death of the minor and there is insufficient time to provide the required notice; or

2. The attending physician certifies that a medical emergency exists and that a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740.3 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, 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 the judge determines that the pregnant unemancipated minor is mature and capable of giving informed consent to the proposed abortion. If the 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 would be in her best interest and shall authorize a physician to perform the abortion without notification if the 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 advise the pregnant unemancipated minor that she has a right to court-appointed counsel and, upon her request, shall provide her with counsel.

C. Proceedings in the court under this section shall be confidential and shall be given 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 findings and conclusions of the court.

D. An expedited confidential appeal shall be available to any 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 pregnant unemancipated minor at either the trial or the appellate level. Access to the trial court for the purpose of a petition or motion, and access to the appellate courts for the purpose of making an appeal from the denial of same, shall be afforded a pregnant unemancipated minor twenty-four (24) hours a day, seven (7) days a week.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

Performance of an abortion in knowing or reckless violation of Sections 11 through 15 of this 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 this 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 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740.5 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 this 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 shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed 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 16. 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 12th day of May, 2005.

Presiding Officer of the House
of Representatives

Passed the Senate the 27th day of April, 2005.

Presiding Officer of the Senate