

THE STATE SENATE
Wednesday, April 13, 2005

Committee Substitute for
ENGROSSED

House Bill No. 1686

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1686 - By:
DEUTSCHENDORF, HILLIARD and SHERRER of the House and LAWLER of the
Senate.

[civil procedure, crimes and punishments and public health
and safety - wrongful death - unborn child - effective
date]

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~~ a person is caused by
the wrongful act or omission of another person, the personal
representative of the former may maintain an action ~~therefore~~
therefor against the latter, or his or her personal representative
if ~~he~~ the latter 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 a wrongful death as
provided in this section shall include the following:

1 1. Medical and burial expenses, ~~which.~~ Such expenses shall be
2 distributed to the person or governmental agency as defined in
3 Section ~~200~~ 5051.1 of Title ~~56~~ 63 of the Oklahoma Statutes, who paid
4 these expenses, or to the decedent's estate if paid by the estate;;

5 2. The loss of consortium and the grief of the surviving
6 spouse, ~~which.~~ Such damages shall be distributed to the surviving
7 spouse;;

8 3. The mental pain and anguish suffered by the decedent, ~~which.~~
9 Such damages shall be distributed to the surviving spouse and
10 children, if any, or next of kin in the same proportion as personal
11 property of the decedent;;

12 4. The pecuniary loss to the survivors based upon properly
13 admissible evidence with regard thereto including, but not limited
14 to, the age, occupation, earning capacity, health habits, and
15 probable duration of the decedent's life, ~~which must.~~ Such
16 pecuniary loss shall inure to the exclusive benefit of the surviving
17 spouse and children, if any, or next of kin, and shall be
18 distributed to them according to their pecuniary loss;; and

19 5. The grief and loss of companionship of the children and
20 parents of the decedent, ~~which.~~ Such damages shall be distributed
21 to them according to their grief and loss of companionship.

22 C. In proper cases, as provided by Section ~~9~~ 9.1 of Title 23 of
23 the Oklahoma Statutes, punitive or exemplary damages may also be

1 recovered against the person proximately causing the wrongful death
2 or his or her representative if such person ~~be~~ is deceased. ~~Such~~
3 The damages, if recovered, shall be distributed to the surviving
4 spouse and children, if any, or next of kin in the same proportion
5 as personal property of the decedent.

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

9 E. The ~~above-mentioned~~ distributions specified by this section
10 shall be made after the payment of legal expenses and costs of the
11 action.

12 F. 1. The provisions of this section shall also be available
13 for the death of an unborn child that is presumed viable, as such
14 term is defined in Section 1-732 of Title 63 of the Oklahoma
15 Statutes, due to prenatal injuries caused by the willful wrongful
16 act with the intent to cause the death of the unborn child.

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

18 a. acts which cause the death of an unborn child if those
19 acts were committed during a legal abortion to which
20 the pregnant woman consented, or

21 b. acts which are committed pursuant to the usual and
22 customary standards of medical practice during
23 diagnostic testing or therapeutic treatment.

1 3. Under no circumstances shall the mother of an unborn child
2 that is presumed viable be prosecuted or found liable for causing
3 the death of such unborn child unless the mother has committed a
4 crime that causes the death of such child.

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

7 Section 652. A. Every person who intentionally and wrongfully
8 shoots another with or discharges any kind of firearm, with intent
9 to kill any person including an unborn child that is presumed
10 viable, as such term is defined in Section 1-732 of Title 63 of the
11 Oklahoma Statutes, shall upon conviction thereof be guilty of a
12 felony punishable by imprisonment in the State Penitentiary not
13 exceeding life.

14 B. Every person who uses any vehicle to facilitate the
15 intentional discharge of any kind of firearm, crossbow or other
16 weapon in conscious disregard for the safety of any other person or
17 persons including an unborn child that is presumed viable, as such
18 term is defined in Section 1-732 of Title 63 of the Oklahoma
19 Statutes shall upon conviction thereof be guilty of a felony
20 punishable by imprisonment in the State Penitentiary for a term of
21 not less than two (2) years nor more than twenty (20) years.

22 C. Any person who commits any assault and battery upon another
23 person including an unborn child that is presumed viable, as such

1 term is defined in Section 1-732 of Title 63 of the Oklahoma
2 Statutes, by means of any deadly weapon, or by such other means or
3 force as is likely to produce death, or in any manner attempts to
4 kill another person including an unborn child that is presumed
5 viable, as such term is defined in Section 1-732 of Title 63 of the
6 Oklahoma Statutes, or in resisting the execution of any legal
7 process, shall upon conviction thereof be guilty of a felony
8 punishable by imprisonment in the State Penitentiary not exceeding
9 twenty (20) years.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1-738.1 of Title 63, unless
12 there is created a duplication in numbering, reads as follows:

13 As used in this act:

14 1. "Abortion" means the purposeful termination of a human
15 pregnancy by any person with an intention other than to produce a
16 live birth or to remove a dead, unborn child;

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

22 3. "Unborn child" shall have the same meaning as defined in
23 Section 1-730 of Title 63 of the Oklahoma Statutes;

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

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

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

11 7. "Stable Internet website" means a website that, to the
12 extent reasonably practicable, is safeguarded from having its
13 content altered other than by the State Department of Health.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1-738.2 of Title 63, unless
16 there is created a duplication in numbering, reads as follows:

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

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

22 1. a. not less than twenty-four (24) hours prior to the
23 performance of the abortion, the woman is told the

1 following, by telephone or in person, by the physician
2 who is to perform the abortion, by a referring
3 physician or by an agent of either physician:

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

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

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

10 (4) the medical risks associated with carrying her
11 child to term,

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

19 c. the information required by this paragraph is not
20 provided by a tape recording, but is provided during a
21 consultation in which the physician is able to ask
22 questions of the woman and the woman is able to ask
23 questions of the physician, or

1 d. a physical examination, tests, or other new
2 information subsequently indicates, in the medical
3 judgment of the physician, the need for a revision of
4 the information previously supplied to the woman;
5 provided, however, such revised information may be
6 communicated to the woman at any time prior to the
7 performance of the abortion; or

8 Nothing in this paragraph may be construed to preclude provision
9 of required information in a language understood by the woman
10 through a translator in a language understood by the woman;

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

15 a. that medical assistance benefits may be available for
16 prenatal care, childbirth and neonatal care,

17 b. that the father is liable to assist in the support of
18 her child, even in instances in which the father has
19 offered to pay for the abortion; provided, however,
20 such requirement shall not apply in the case of rape,
21 and

22 c. about agencies that offer alternatives to abortion;

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

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

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

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

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

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

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

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1-738.3 of Title 63, unless
23 there is created a duplication in numbering, reads as follows:

1 A. Within sixty (60) days of the effective date of this act,
2 the State Department of Health shall cause to be published, in
3 English and in each language which is the primary language of two
4 percent (2%) or more of the population of the state, and shall
5 update on an annual basis, the following printed materials in such a
6 way as to ensure that the information is easily comprehensible:

7 1. Geographically indexed materials designed to inform the
8 woman of public and private agencies including adoption agencies and
9 services available to assist a woman through pregnancy, upon
10 childbirth, and while the child is dependent, including:

- 11 a. a comprehensive list of the agencies available,
- 12 b. a description of the services they offer, and
- 13 c. a description of the manner, including telephone
14 numbers, in which they might be contacted; or

15 2. At the option of the Department, printed materials including
16 a toll-free, twenty-four-hour-a-day telephone number which may be
17 called to obtain, orally, a list and description of agencies in the
18 locality of the caller and of the services they offer.

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

22 2. The materials required under this section shall be available
23 at no cost from the State Department of Health and shall be

1 distributed upon request in appropriate numbers to any person,
2 facility, or hospital.

3 C. The Department shall develop and maintain a stable Internet
4 website to provide the information described in subsection A of this
5 section.

6 SECTION 6. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-738.4 of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

9 When a medical emergency compels the performance of an abortion,
10 the physician shall inform the female, prior to the abortion if
11 possible, of the medical indications supporting the physician's
12 judgment that an abortion is necessary to avert her death or that a
13 delay will create serious risk of substantial and deemed
14 irreversible impairment of a major bodily function.

15 SECTION 7. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1-738.6 of Title 63, unless
17 there is created a duplication in numbering, reads as follows:

18 A. Any physician who knowingly or recklessly performs or
19 attempts to perform an abortion in violation of the provisions of
20 this act shall be subject to disciplinary action by the State
21 Medical Board of Licensure and Supervision or the State Board of
22 Osteopathic Examiners, as appropriate.

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

3 SECTION 8. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

7 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN RESOURCES, dated
8 4-7-05 - DO PASS, As Amended.