

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 619

By: Williamson

AS INTRODUCED

An Act relating to public health and safety; creating the Woman's Right to Know/Fetal Pain Prevention Act; citing act; defining terms; prohibiting performance of an abortion without specified consent; specifying requirements for consent; requiring physician to provide certain information to a female and providing exception; providing for publication of specified materials and parameters; construing provisions of section of law; requiring certification by female that she has been provided certain information and informed of certain right; requiring retention of certain information for specified period of time; requiring information about certain anesthetics or analgesics and administration of such with female's consent; requiring the State Department of Health to develop, maintain and daily monitor certain web site; requiring physician to provide information on the necessity of an abortion to preserve the female's life or health; requiring reporting form development; specifying report information and reporting criteria; providing penalty for late or incomplete reports; allowing alteration of specified dates by rule; providing criminal liabilities; prohibiting penalty to female; providing an exception to penalty or civil liability; allowing an action by certain individuals; providing for citizen redress against the State Commissioner of Health for reporting failure; providing for anonymity of female undergoing an abortion and procedures thereto; providing for attorney for construing section of law; 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 1-738.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Woman's Right to Know/Fetal Pain Prevention Act".

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:

As used in the Woman's Right to Know/Fetal Pain Prevention 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 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 fetus;

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 female 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;

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 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. No abortion shall be performed in this state except with the voluntary and informed consent of the female 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 the following requirements are completed:

1. a. The female is told the following, by telephone or in person, by the physician who is to perform the abortion or by a referring physician or an agent of the physician, at least twenty-four (24) hours before the abortion:
  - (1) the name of the physician who will perform the abortion,
  - (2) the particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, infertility and breast cancer,
  - (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 the child to term.
- b. The information required by this paragraph:
  - (1) may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied to the physician by the female and any other relevant information that is reasonably available to the physician,

- (2) may not be provided by a tape recording, and
- (3) must be provided during a consultation in which the physician is able to ask questions of the female and the female is able to ask questions of the physician.

c. If a physical examination, tests, or information available to the physician subsequently indicates, in the medical judgment of the physician, a revision of the information previously supplied to the patient, that revised information may be communicated to the patient at any time prior to the performance of the abortion.

d. Nothing in this section may be construed to preclude provision of required information in a language understood by the patient through a translator;

2. The female 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 at least twenty-four (24) hours before the abortion:

- a. that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care,
- b. that the father of the unborn child is liable to assist in the support of the child, even in instances in which the father has offered to pay for the abortion, and
- c. that she has the right to review the printed materials described in Section 5 of this act, and that these materials are available on a state-sponsored web site. The informing entity shall provide the female with the state web site address. The physician or the agent of the physician shall orally inform the female that the printed materials are provided by the state, that they

describe the unborn child, that they list agencies which offer alternatives to abortion, and that they contain information on fetal pain. If the female chooses to view such materials by any means other than the web site, the materials shall either be given to her at least twenty-four (24) hours before the abortion, or mailed to her at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to addressee, which means only a postal employee can deliver the mail to the addressee.

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 female chooses or does not choose to have the printed materials given or mailed to her;

3. The female certifies in writing, prior to the abortion, that she has been provided the information described in paragraphs 1 and 2 of this section, and that she has been informed of her right to review the information referred to in subparagraph c of paragraph 2 of this section; and

4. Prior to the performance of the abortion, the physician who is to perform the abortion or the agent of the physician shall obtain a copy of the written certification prescribed by paragraph 3 of this section and retain it on file with the medical record of the female for at least three (3) years following the date of receipt.

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:

Except in the case of a medical emergency, before an abortion is performed on an unborn child who is twenty (20) weeks gestational age or older, the physician performing the abortion or the agent of the physician shall inform the female if an anesthetic or analgesic would eliminate or alleviate organic pain to the unborn child caused

by the particular method of abortion to be employed, and shall inform her of the particular medical risks associated with the particular anesthetic or analgesic. With her consent, the physician shall administer such anesthetic or analgesic.

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. Within ninety (90) days of the effective date of this act, the State Department of Health shall cause to be published, in English and in each language which is the primary language of two percent (2%) or more of the population of the state, and shall cause to be available on the state web site provided for in Section 6 of this act, the following printed materials in such a way as to ensure that the information is easily comprehensible:

1. Geographically indexed materials designed to inform the female of public and private agencies and services available to assist a female through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers, in which they might be contacted or, at the option of the Department, printed materials including a toll-free, twenty-four-hour-a-day telephone number which may be called to obtain, orally or by a tape-recorded message tailored to a zip code entered by the caller, such a list and description of agencies in the locality of the caller and the services they offer;

2. Materials designed to inform the female of the probable anatomical and physiological characteristics of an unborn child at two-week gestational increments from the time that a female can be known to be pregnant to full term, including any relevant information on the possibility of the survival of the unborn child and pictures or drawings representing the development of an unborn

child at two-week gestational increments; provided, that any such pictures or drawings must contain the dimensions of the fetus and must be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about an unborn child at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion, and the medical risks commonly associated with carrying a child to term; and

3. Materials with the following information concerning an unborn child of twenty (20) weeks gestational age and at two-week gestational increments thereafter in such a way as to ensure that the information is easily comprehensible:

- a. the development of the nervous system of an unborn child,
- b. fetal responsiveness to adverse stimuli, and other indications of capacity to experience organic pain, and
- c. the impact on fetal organic pain of each of the methods of abortion procedures commonly employed at this stage of pregnancy.

The material shall be objective, nonjudgmental, and designed to convey only accurate scientific information.

B. The materials referred to in subsection A of this section shall be printed in a typeface large enough to be clearly legible. The web site provided for in Section 6 of this act shall be maintained at a minimum resolution of 70 dots per inch (DPI). All pictures appearing on the web site shall be a minimum of 200 x 300 pixels. All letters on the web site shall be a minimum of 11-point

font. All information and pictures shall be accessible with an industry standard browser, requiring no additional plug-ins.

C. The written materials required under this section shall be available at no cost from the Department, upon request, and in appropriate number to any person, facility or hospital.

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:

The State Department of Health shall develop and maintain a stable Internet web site to provide the information described under Section 5 of this act. No information regarding who uses the web site shall be collected or maintained. The Department shall monitor the web site on a daily basis to prevent and correct tampering.

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:

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 twenty-four-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days after the effective date of this act, the State Department of Health shall prepare a reporting form for physicians containing a reprint of this act and requiring a report of:

1. The number of females to whom the physician provided the information described in paragraph 1 of Section 3 of this act; of that number, the number provided by telephone and the number

provided in person; and of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion;

2. The number of females to whom the physician or an agent of the physician provided the information described in paragraph 2 of Section 3 of this act; of that number, the number provided by telephone and the number provided in person; of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion; and of each of those numbers, the number provided by the physician and the number provided by an agent of the physician;

3. The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Section 5 of this act other than on the web site, and the number who did not; and of each of those numbers, the number who, to the best of the reporting physician's information and belief, went on to obtain the abortion; and

4. The number of abortions performed by the physician in which information otherwise required to be provided at least twenty-four (24) hours before the abortion was not so provided because an immediate abortion was necessary to avert the female's death, and the number of abortions in which such information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function.

B. The Department shall ensure that copies of the reporting forms described in subsection A of this section are provided:

1. Within one hundred twenty (120) days after the effective date of this act, to all physicians licensed to practice in this state;

2. To each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

3. By December 1 of each year, other than the calendar year in which forms are distributed in accordance with the provisions of paragraph 1 of this subsection, to all physicians licensed to practice in this state.

C. By February 28 of each year following a calendar year in any part of which the Woman's Right to Know/Fetal Pain Prevention Act was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with the provisions of Section 3 of this act during the previous calendar year shall submit to the Department a copy of the reporting form described in subsection A of this section, with the requested data entered accurately and completely.

D. Reports that are not submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period in which the reports are overdue. Any physician required to report in accordance with this section who has not submitted a report, or has submitted an incomplete report, more than one (1) year following the due date, may, in an action brought by the Department, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

E. By June 30 of each year the Department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection A of this section. Each such report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional

information from late or corrected reports. 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 the Woman's Right to Know/Fetal Pain Prevention Act.

F. The Department may by rule alter the dates established by paragraph 3 of subsection B of this section and subsections C and E of this section or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements, so long as reporting forms are sent to all licensed physicians in the state at least once every year and the report described in subsection E of this section is issued at least once every year.

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:

A. Any person who knowingly or recklessly performs or attempts to perform an abortion in violation of the Woman's Right to Know/Fetal Pain Prevention Act shall be deemed guilty of a felony. Any physician who knowingly or recklessly submits a false report under subsection C of Section 8 of this act shall be deemed guilty of a misdemeanor.

B. No penalty may be assessed against the female 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 the provisions of subparagraph c of paragraph 2 of Section 3 of this act or that portion of paragraph 3 of Section 3 of this act requiring a written certification that the female has been informed of her opportunity to review the information referred to in subparagraph c of paragraph 2 of Section 3 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 female of her right to review them.

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. In the case of any person upon whom an abortion has been performed in contravention of the Woman's Right to Know/Fetal Pain Prevention Act, the father of the unborn child who was the subject of such an abortion, or the grandparent of such an unborn child may maintain an action against the person who performed the abortion in knowing or reckless violation of the Woman's Right to Know/Fetal Pain Prevention Act for actual and punitive damages. Any person upon whom an abortion has been attempted in contravention of the Woman's Right to Know/Fetal Pain Prevention Act may maintain an action against the person who attempted to perform the abortion in knowing or reckless violation of this act for actual and punitive damages.

B. If the State Department of Health fails to issue the public report required by subsection E of Section 8 of this act, any group of ten or more citizens of this state may seek legal redress in a court of competent jurisdiction against the State Commissioner of Health requiring that a complete report be issued within a period stated by court order. Failure to abide by any court order pursuant to this subsection shall subject the Commissioner to sanctions for civil contempt.

C. If judgment is rendered in favor of the plaintiff in any action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render

judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

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. In every civil or criminal proceeding or action brought pursuant to the Woman's Right to Know/Fetal Pain Prevention Act, the court shall rule whether the anonymity of any female 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. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the identity of the female from public disclosure.

C. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists.

D. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under subsection A of Section 10 of this act shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

SECTION 12. This act shall become effective November 1, 2005.