

ENROLLED SENATE
BILL NO. 1274

By: Newberry and Shortey of the
Senate

and

Peterson, Christian, Ritze,
Bennett, Kern, Cockroft,
Brumbaugh, Faught,
McCullough and Hall of the
House

An Act relating to abortion; creating the Heartbeat Informed Consent Act; providing short title; providing legislative findings; defining terms; requiring certain compliance; requiring certain providers to make the embryonic or fetal heartbeat audible in certain circumstances; providing for exceptions; prohibiting certain interpretation; requiring certification; providing for penalties; permitting certain actions; permitting certain causes of action for injunctive relief; directing payment of attorney fees in certain circumstances; prohibiting the assessment of certain damages and attorney fees; providing for certain anonymity; specifying construction of act; providing for severability; providing for codification; providing for noncodification; and providing an effective date.

SUBJECT: The Heartbeat Informed Consent Act

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 1-745.12 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 "Heartbeat Informed Consent Act".

SECTION 2. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Oklahoma Legislature finds that:

1. The presence of a heartbeat in a woman's unborn child may be a material consideration to many women contemplating abortion;

2. The presence of a heartbeat in a woman's unborn child is a developmental fact that illustrates to the woman that her baby is alive;

3. On about the twenty-first or twenty-second day after fertilization, the heart of an unborn child begins to beat;

4. The heartbeat of an unborn child can be visually detected at an early stage of pregnancy using an ultrasound machine at four (4) to four and one-half (4.5) weeks after fertilization on transvaginal ultrasound and about five and one-half (5.5) to six (6) weeks after fertilization on transabdominal ultrasound;

5. The heartbeat of an unborn child can be made audible at later stages, including by use of a handheld Doppler fetal heart rate monitor;

6. Less than five percent (5%) of all natural pregnancies end in spontaneous miscarriage after detection of cardiac activity. A fetal heartbeat is therefore a key medical indicator that an unborn child is likely to achieve the capacity for live birth;

7. The observation of a heartbeat in a woman's unborn child when a heartbeat has been detected is an important component of full informed consent;

8. Ensuring full informed consent for an abortion is imperative because of the profound physical and psychological risks of an abortion. As the Supreme Court has observed, "The medical, emotional, and psychological consequences of an abortion are serious and can be lasting" (H.L. v. Matheson, 450 U.S. 398, 411). The woman's decision whether to abort "is an important, and often a stressful one, and it is desirable and imperative that it be made

with full knowledge of its nature and consequences" (Planned Parenthood v. Danforth, 428 U.S. 52, 67). "Whether to have an abortion requires a difficult and painful moral decision" in which "some women come to regret their choice to abort the infant life they once created and sustained" and "[s]evere depression and loss of esteem can follow... The State has an interest in ensuring so grave a choice is well informed. It is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know" (Gonzales v. Carhart, 550 U.S. 124, 159-160);

9. Requiring providers to give a woman an opportunity to observe her unborn child's heartbeat is constitutionally permissible and the ultrasound image of an unborn child is truthful, nonmisleading information. "In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed. If the information the State requires to be made available to the woman is truthful and not misleading, the requirement may be permissible" (Planned Parenthood vs. Casey, 505 U.S. 833, 882); and

10. Recent research taking into account twenty-two (22) studies with control groups and more than eight hundred seventy-seven thousand (877,000) women over a fourteen-year period finds that women who have had an abortion have an eighty-one-percent increased risk for mental health problems and that ten percent (10%) of the mental health problems of women who have had an abortion are directly attributed to abortion.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Heartbeat Informed Consent Act:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device to cause the premature termination of the pregnancy of a woman 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 natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child;

2. "Abortion provider" means any person legally qualified to perform an abortion under state law;

3. "Embryonic or fetal heartbeat" means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the embryonic or fetal heart;

4. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the immediate abortion of her pregnancy to avert her death or for which the delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function;

5. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician;

6. "Unborn child" means a member of the species Homo sapiens from fertilization until live birth; and

7. "Woman" means a female human being, whether or not she has reached the age of majority.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any abortion provider who knowingly performs or induces any abortion shall comply with the requirements of the Heartbeat Informed Consent Act.

B. Prior to a woman giving informed consent to having any part of an abortion performed or induced, if the pregnancy is at least

eight (8) weeks after fertilization, the abortion provider who is to perform or induce the abortion or an agent of the abortion provider shall tell the woman that it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear and ask the woman if she would like to hear the heartbeat. If the woman would like to hear the heartbeat, the abortion provider shall, using a Doppler fetal heart rate monitor, make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear. An abortion provider or an agent of the abortion provider shall not be in violation of the requirements of this subsection if:

1. The provider or agent has attempted, consistent with standard medical practice, to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear using a Doppler fetal heart rate monitor;

2. That attempt does not result in the heartbeat being made audible; and

3. The provider has offered to attempt to make the heartbeat audible at a subsequent date.

C. Nothing in this section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the Doppler fetal heart rate monitor pursuant to the requirements of subsection B of this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.15 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The provisions of Section 4 of this act shall not apply to an abortion provider in the case that the abortion is necessary to avert the mother's death or in the case of a medical emergency.

B. Upon a determination by an abortion provider under subsection A of this section that an abortion is necessary to avert the death of the mother or that there is a medical emergency, such provider shall certify the specific medical conditions that support such determination and include such certification in the medical file of the pregnant woman.

C. An abortion provider who knowingly or recklessly falsifies a certification made pursuant to subsection B of this section shall be deemed to have knowingly or recklessly failed to comply with this act for purposes of Section 6 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.16 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any person who intentionally or recklessly performs or induces an abortion in violation of the Heartbeat Informed Consent Act shall be guilty of a misdemeanor. No penalty shall be assessed against the woman upon whom the abortion is performed or induced or attempted to be performed or induced.

B. Any woman upon whom an abortion has been performed or induced in violation of this act, or the father of the unborn child who was the subject of such an abortion, may maintain an action against the person who performed or induced the abortion in intentional or reckless violation of this act for actual and punitive damages. Any woman upon whom an abortion has been attempted in violation of this act may maintain an action against the person who attempted to perform or induce the abortion in an intentional or reckless violation of this act for actual and punitive damages.

C. A cause of action for injunctive relief against any person who has intentionally or recklessly violated this act may be maintained by the woman upon whom an abortion was performed or induced in violation of this act; by any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or induced in violation of this act; by a district attorney with appropriate jurisdiction; or by the Attorney General. The injunction shall prevent the abortion provider from performing or inducing further abortions in violation of this act in the state.

D. If judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant.

E. 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.

F. No damages or attorney fee may be assessed against the woman upon whom an abortion was performed or attempted to be performed or induced except in accordance with subsection E of this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.17 of Title 63, unless there is created a duplication in numbering, reads as follows:

In every civil or criminal proceeding or action brought under the Heartbeat Informed Consent Act, the court shall rule whether the identity of any woman upon whom an abortion has been performed or induced or attempted to be performed or induced shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her identity should be preserved from public disclosure, 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 her identity from public disclosure. Such an order shall be accompanied by specific written findings explaining why the identity of the woman 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. In the absence of written consent of the woman upon whom an abortion has been performed or induced or attempted to be performed or induced, anyone, other than a public official, who brings an action under Section 6 of 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 or from attorneys for the defendant.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.18 of Title 63, unless there is created a duplication in numbering, reads as follows:

Nothing in the Heartbeat Informed Consent Act shall be construed as creating or recognizing a right to abortion.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.19 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 of this act shall remain effective notwithstanding such unconstitutionality. The Oklahoma Legislature hereby declares that it would have passed this 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 10. This act shall become effective November 1, 2012.

Passed the Senate the 6th day of March, 2012.

Presiding Officer of the Senate

Passed the House of Representatives the 19th day of April, 2012.

Presiding Officer of the House
of Representatives