

1 **SENATE FLOOR VERSION**

2 February 28, 2012

3 SENATE BILL NO. 1274

By: Newberry of the Senate

4 and

5 Peterson of the House

6
7
8 An Act relating to abortion; creating the Heartbeat
9 Informed Consent Act; providing short title;
10 providing legislative findings; defining terms;
11 requiring certain compliance; requiring certain
12 providers to make the embryonic or fetal heartbeat
13 audible in certain circumstances; providing for
14 exceptions; prohibiting certain interpretation;
15 requiring certification; providing for penalties;
16 permitting certain actions; permitting certain causes
17 of action for injunctive relief; directing payment of
18 attorney fees in certain circumstances; prohibiting
19 the assessment of certain damages and attorney fees;
20 providing for certain anonymity; specifying
21 construction of act; providing for severability;
22 providing for codification; providing for
23 noncodification; and providing an effective date.
24

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

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1-745.12 of Title 63, unless
21 there is created a duplication in numbering, reads as follows:

22 This act shall be known and may be cited as the "Heartbeat
23 Informed Consent Act".
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1 SECTION 2. NEW LAW A new section of law not to be
2 codified in the Oklahoma Statutes reads as follows:

3 The Oklahoma Legislature finds that:

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

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

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

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

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

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

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

4 8. Ensuring full informed consent for an abortion is imperative
5 because of the profound physical and psychological risks of an
6 abortion. As the Supreme Court has observed, "The medical,
7 emotional, and psychological consequences of an abortion are serious
8 and can be lasting" (H.L. v. Matheson, 450 U.S. 398, 411). The
9 woman's decision whether to abort "is an important, and often a
10 stressful one, and it is desirable and imperative that it be made
11 with full knowledge of its nature and consequences" (Planned
12 Parenthood v. Danforth, 428 U.S. 52, 67). "Whether to have an
13 abortion requires a difficult and painful moral decision" in which
14 "some women come to regret their choice to abort the infant life
15 they once created and sustained" and "[s]evere depression and loss
16 of esteem can follow... The State has an interest in ensuring so
17 grave a choice is well informed. It is self-evident that a mother
18 who comes to regret her choice to abort must struggle with grief
19 more anguished and sorrow more profound when she learns, only after
20 the event, what she once did not know" (Gonzales v. Carhart, 550
21 U.S. 124, 159-160);

22 9. Requiring providers to give a woman an opportunity to
23 observe her unborn child's heartbeat is constitutionally permissible
24 and the ultrasound image of an unborn child is truthful,

1 nonmisleading information. "In attempting to ensure that a woman
2 apprehend the full consequences of her decision, the State furthers
3 the legitimate purpose of reducing the risk that a woman may elect
4 an abortion, only to discover later, with devastating psychological
5 consequences, that her decision was not fully informed. If the
6 information the State requires to be made available to the woman is
7 truthful and not misleading, the requirement may be permissible"
8 (Planned Parenthood vs. Casey, 505 U.S. 833, 882); and

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

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

19 As used in the Heartbeat Informed Consent Act:

20 1. "Abortion" means the use or prescription of any instrument,
21 medicine, drug, or any other substance or device to cause the
22 premature termination of the pregnancy of a woman known to be
23 pregnant with an intention other than to increase the probability of
24 a live birth, to preserve the life or health of the child after live

1 birth, or to remove a dead unborn child who died as the result of
2 natural causes in utero, accidental trauma, or a criminal assault on
3 the pregnant woman or her unborn child;

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

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

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

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

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

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

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

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

7 B. Prior to a woman giving informed consent to having any part
8 of an abortion performed or induced, if the pregnancy is at least
9 eight (8) weeks after fertilization, the abortion provider who is to
10 perform or induce the abortion or an agent of the abortion provider
11 shall, using a Doppler fetal heart rate monitor, make the embryonic
12 or fetal heartbeat of the unborn child audible for the pregnant
13 woman to hear. An abortion provider or an agent of the abortion
14 provider shall not be in violation of the requirements of this
15 subsection if:

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

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

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

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

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

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

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

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

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

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

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

16 C. A cause of action for injunctive relief against any person
17 who has intentionally or recklessly violated this act may be
18 maintained by the woman upon whom an abortion was performed or
19 induced in violation of this act; by any person who is the spouse,
20 parent, sibling, or guardian of, or a current or former licensed
21 health care provider of, the woman upon whom an abortion has been
22 performed or induced in violation of this act; by a district
23 attorney with appropriate jurisdiction; or by the Attorney General.

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1 The injunction shall prevent the abortion provider from performing
2 or inducing further abortions in violation of this act in the state.

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

7 E. If judgment is rendered in favor of the defendant and the
8 court finds that the plaintiff's suit was frivolous and brought in
9 bad faith, the court shall also render judgment for a reasonable
10 attorney fee in favor of the defendant against the plaintiff.

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

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

17 In every civil or criminal proceeding or action brought under
18 the Heartbeat Informed Consent Act, the court shall rule whether the
19 identity of any woman upon whom an abortion has been performed or
20 induced or attempted to be performed or induced shall be preserved
21 from public disclosure if she does not give her consent to such
22 disclosure. The court, upon motion or sua sponte, shall make such a
23 ruling and, upon determining that her identity should be preserved
24 from public disclosure, shall issue orders to the parties,

1 witnesses, and counsel and shall direct the sealing of the record
2 and exclusion of individuals from courtrooms or hearing rooms to the
3 extent necessary to safeguard her identity from public disclosure.
4 Such an order shall be accompanied by specific written findings
5 explaining why the identity of the woman should be preserved from
6 public disclosure, why the order is essential to that end, how the
7 order is narrowly tailored to serve that interest, and why no
8 reasonable, less restrictive alternative exists. In the absence of
9 written consent of the woman upon whom an abortion has been
10 performed or induced or attempted to be performed or induced,
11 anyone, other than a public official, who brings an action under
12 Section 6 of this act shall do so under a pseudonym. This section
13 shall not be construed to conceal the identity of the plaintiff or
14 of witnesses from the defendant or from attorneys for the defendant.

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

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

20 SECTION 9. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1-745.19 of Title 63, unless
22 there is created a duplication in numbering, reads as follows:

23 If any one or more provision, section, subsection, sentence,
24 clause, phrase, or word of this act or the application thereof to

1 any person or circumstance is found to be unconstitutional, the same
2 is hereby declared to be severable and the balance of this act shall
3 remain effective notwithstanding such unconstitutionality. The
4 Oklahoma Legislature hereby declares that it would have passed this
5 act, and each provision, section, subsection, sentence, clause,
6 phrase, or word thereof, irrespective of the fact that any one or
7 more provision, section, subsection, sentence, clause, phrase, or
8 word be declared unconstitutional.

9 SECTION 10. This act shall become effective November 1, 2012.

10 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN SERVICES, dated
11 2-27-12 - DO PASS, As Coauthored.

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