

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1402

By: Wesselhoft

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; creating
8 the Women's Health Defense Act; making legislative
9 findings; establishing purpose; defining terms;
10 prohibiting abortion without certain determination;
11 prohibiting physician from performing abortion when
12 certain gestational age has been determined;
13 providing for exception; requiring certain report by
14 physician; making certain violation a felony;
15 providing certain penalties; providing for certain
16 relief in civil action; providing certain review of
17 physician's conduct by State Board of Medical
18 Licensure and Supervision; providing for
19 admissibility of findings in civil and criminal
20 trials; providing for revocation of medical facility
21 license under certain conditions; providing for loss
22 of state funds; providing exclusion from prosecution;
23 providing for interpretation; providing for certain
24 intervention in litigation; 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 1-745.1 of Title 63, unless
there is created a duplication in numbering, reads as follows:

This Act may be known and cited as the "Women's Health Defense
Act."

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-745.2 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 A. The Legislature of the State of Oklahoma finds that:

5 1. Abortion can cause both serious physical and psychological
6 short- and long-term complications for women, including but not
7 limited to: uterine perforation, uterine scarring, cervical
8 perforation or other injury, infection, bleeding, hemorrhage, blood
9 clots, failure to actually terminate the pregnancy, incomplete
10 abortion, retained tissue, pelvic inflammatory disease,
11 endometritis, missed ectopic pregnancies, cardiac arrest,
12 respiratory arrest, renal failure, metabolic disorder, shock,
13 embolism, coma, placenta previa in subsequent pregnancies, preterm
14 delivery in subsequent pregnancies, free fluid in the abdomen, organ
15 damage, adverse reactions to anesthesia and other drugs,
16 psychological or emotional complications such as depression,
17 anxiety, sleeping disorders, and death;

18 2. Abortion has a higher medical risk when the procedure is
19 performed later in pregnancy. Compared to an abortion at eight (8)
20 weeks gestation or earlier, the relative risk increases
21 exponentially at higher gestations;

22 3. In fact, the incidence of major complications is highest
23 after twenty (20) weeks of gestation;

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1 4. According to the Alan Guttmacher Institute, the risk of
2 death associated with abortion increases with the length of
3 pregnancy, from one death for every one million abortions at or
4 before eight (8) weeks gestation to one per 29,000 abortions at
5 sixteen (16) to twenty (20) weeks and one per 11,000 abortions at
6 twenty-one (21) or more weeks;

7 5. After the first trimester, the risk of hemorrhage from an
8 abortion, in particular, is greater, and the resultant complications
9 may require a hysterectomy, other reparative surgery, or a blood
10 transfusion;

11 6. The State of Oklahoma has a legitimate concern for the
12 public's health and safety.

13 7. The State of Oklahoma has legitimate interests from the
14 outset of pregnancy in protecting the health of women. More
15 specifically, the State of Oklahoma has a legitimate concern with
16 the health of women who undergo abortions; and

17 8. Finally, there is substantial and well-documented medical
18 evidence that an unborn child by at least twenty (20) weeks
19 gestation has the capacity to feel pain during an abortion.

20 B. For these reasons, the Legislature purposes in promulgating
21 this act are to:

22 1. Based on the documented risks to women's health, prohibit
23 abortions at or after twenty (20) weeks gestation except in cases of
24 a medical emergency;

1 2. Prohibit abortions at or after twenty (20) weeks gestation,
2 in part, because of the pain felt by an unborn child; and

3 3. Define "medical emergency" to encompass "significant health
4 risks," namely only those circumstances in which a pregnant woman's
5 life or a major, physical bodily function is threatened.

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-745.3 of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

9 For purposes of the Women's Health Defense Act only:

10 1. "Abortion" means the act of using or prescribing any
11 instrument, medicine, drug, or any other substance, device, or means
12 with the intent to terminate the clinically diagnosable pregnancy of
13 a woman with knowledge that the termination by those means will with
14 reasonable likelihood cause the death of the unborn child. Such
15 use, prescription, or means is not an abortion if done with the
16 intent to:

17 a. save the life or preserve the health of an unborn
18 child,

19 b. remove a dead unborn child caused by spontaneous
20 abortion, or

21 c. remove an ectopic pregnancy;

22 2. "Attempt to perform" means an act or omission of a
23 statutorily required act, that, under the circumstances as the actor
24 believes them to be, constitutes a substantial step in a course of

1 | conduct planned to culminate in the performance or induction of an
2 | abortion;

3 | 3. "Conception" means the fusion of a human spermatozoon with a
4 | human ovum;

5 | 4. "Gestational age" means the time that has elapsed since the
6 | first day of the woman's last menstrual period;

7 | 5. "Major bodily function" includes but is not limited to,
8 | functions of the immune system, normal cell growth, and digestive,
9 | bowel, bladder, neurological, brain, respiratory, circulatory,
10 | endocrine, and reproductive functions;

11 | 6. "Medical facility" means any public or private hospital,
12 | clinic, center, medical school, medical training institution, health
13 | care facility, physician's office, infirmary, dispensary, ambulatory
14 | surgical treatment center, or other institution or location wherein
15 | medical care is provided to any person;

16 | 7. "Physician" means any person licensed to practice medicine
17 | in this state. The term includes medical doctors and doctors of
18 | osteopathy;

19 | 8. "Pregnant" or "pregnancy" means that female reproductive
20 | condition of having an unborn child in the woman's uterus;

21 | 9. "Probable gestational age" means what, in reasonable medical
22 | judgment, will with reasonable probability be the gestational age of
23 | the unborn child at the time the abortion is considered, performed,
24 | or attempted;

1 10. "Reasonable medical judgment" means that medical judgment
2 that would be made by a reasonably prudent physician, knowledgeable
3 about the case and the treatment possibilities with respect to the
4 medical condition or conditions involved; and

5 11. "Unborn child" means the offspring of human beings from
6 conception until birth.

7 SECTION 4. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1-745.4 of Title 63, unless
9 there is created a duplication in numbering, reads as follows:

10 A. Except in the case of a medical emergency as specifically
11 defined in subsection C of this section, no abortion shall be
12 performed, induced, or attempted unless the physician has first made
13 a determination of the probable gestational age of the unborn child.
14 In making such a determination, the physician shall make inquiries
15 of the pregnant woman and perform or cause to be performed all such
16 medical examinations, imaging studies, and tests as a reasonably
17 prudent physician, knowledgeable about the medical facts and
18 conditions of both the woman and the unborn child involved, would
19 consider necessary to perform and consider in making an accurate
20 diagnosis with respect to gestational age.

21 B. Except in a medical emergency as specifically defined in
22 subsection C of this section, no physician or person shall knowingly
23 perform, induce, or attempt to perform an abortion upon a pregnant
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1 woman when the probable gestational age of her unborn child has been
2 determined to be at least twenty (20) weeks.

3 C. For the purposes of the Women's Health Defense Act, "medical
4 emergency" means necessary to preserve the life of the pregnant
5 woman whose life is endangered by a physical disorder, physical
6 illness, or physical injury, including a life-endangering physical
7 condition caused by or arising from the pregnancy itself, or when
8 continuation of the pregnancy will create a serious risk of
9 substantial and irreversible impairment of a major bodily function
10 of the pregnant woman as specifically defined in paragraph 5 of
11 Section 3 of this act.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-745.5 of Title 63, unless
14 there is created a duplication in numbering, reads as follows:

15 A. Any physician who performs an abortion pursuant to
16 subsection C of Section 4 of this act shall report, in writing, to
17 the medical facility in which the abortion is performed the reason
18 or reasons for the determination that a medical emergency existed.
19 The physician's written report shall be included in a written report
20 from the medical facility to the State Department of Health. If the
21 abortion is not performed in a medical facility, the physician shall
22 report, in writing, the reason or reasons for the determination that
23 a medical emergency existed to the State Department of Health as
24 part of the written report made by the physician to the State

1 Department of Health. The physician and the medical facility shall
2 retain copies of the written reports required under this section for
3 not less than five (5) years.

4 B. Failure to report under this section does not subject
5 physician to criminal or civil penalties under Sections 6 and 7 of
6 this act.

7 C. Subsection B of Section 4 of this act does not preclude
8 sanctions, disciplinary action, or any other appropriate action by
9 the State Board of Medical Licensure and Supervision.

10 SECTION 6. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1-745.6 of Title 63, unless
12 there is created a duplication in numbering, reads as follows:

13 A. Any person who intentionally or knowingly violates the
14 Women's Health Defense Act is guilty of a felony.

15 B. Any physician who intentionally or knowingly performs or
16 induces an abortion in violation of the Women's Health Defense Act
17 and thereby kills an unborn child shall be fined not less than Ten
18 Thousand Dollars (\$10,000.00) nor more than One Hundred Thousand
19 Dollars (\$100,000.00), or be imprisoned not less than one (1) year
20 nor more than ten (10) years, or both.

21 SECTION 7. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1-745.7 of Title 63, unless
23 there is created a duplication in numbering, reads as follows:

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1 A. The father of the unborn child, if married to the mother at
2 the time she receives an abortion in violation of the Women's Health
3 Defense Act, and, if the mother has not attained the age of eighteen
4 (18) years at the time of the abortion, the maternal grandparents of
5 the unborn child may in a civil action obtain appropriate relief,
6 unless the pregnancy resulted from the plaintiff's criminal conduct
7 or the plaintiff consented to the abortion.

8 B. Such relief shall include:

9 1. Money damages for all injuries, psychological and physical,
10 occasioned by the violation of the Women's Health Defense Act; and

11 2. Statutory damages equal to ten times the cost of the
12 abortion performed in violation of the Women's Health Defense Act.

13 SECTION 8. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-745.8 of Title 63, unless
15 there is created a duplication in numbering, reads as follows:

16 A. A physician-defendant accused of an offense under the
17 Women's Health Defense Act may seek a hearing before the State Board
18 of Medical Licensure and Supervision as to whether the physician's
19 conduct was necessary to save the life of the mother whose life was
20 endangered by a physical disorder, physical illness, or physical
21 injury, including a life-endangering physical condition caused by or
22 arising from the pregnancy itself; and/or as to whether the
23 continuation of the pregnancy would have created a serious risk of
24 substantial and irreversible impairment of a major bodily function

1 of the pregnant woman as specifically defined in paragraph 5 of
2 Section 3 of this act.

3 B. The findings on this issue are admissible on this issue at
4 the civil and criminal trials of the physician-defendant. Upon a
5 motion of the physician-defendant, the court shall delay the
6 beginning of any such trial for not more than thirty (30) days to
7 permit such a hearing to take place.

8 SECTION 9. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1-745.9 of Title 63, unless
10 there is created a duplication in numbering, reads as follows:

11 A. A licensed medical facility in which an abortion is
12 performed or induced in violation of the Women's Health Defense Act
13 shall be subject to immediate revocation of its license by the State
14 Department of Health.

15 B. A licensed medical facility licensed in which an abortion is
16 performed or induced in violation of the Women's Health Defense Act
17 shall lose all state funding for ten (10) years and will be required
18 to reimburse the state for funds from the fiscal year in which the
19 abortion in violation of the Women's Health Defense Act was
20 performed.

21 SECTION 10. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1-745.10 of Title 63, unless
23 there is created a duplication in numbering, reads as follows:

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1 A woman upon whom an abortion in violation of the Women's Health
2 Defense Act is performed or induced may not be prosecuted under the
3 Women's Health Defense Act for a conspiracy to violate Section 4 of
4 this act.

5 SECTION 11. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-745.11 of Title 63, unless
7 there is created a duplication in numbering, reads as follows:

8 A. Nothing in the Women's Health Defense Act shall be construed
9 as creating or recognizing a right to abortion.

10 B. It is not the intention of the Women's Health Defense Act to
11 make lawful an abortion that is currently unlawful.

12 SECTION 12. The Legislature, by joint resolution, may appoint
13 one or more of its members, who sponsored or cosponsored the Women's
14 Health Defense Act in his or her official capacity, to intervene as
15 a matter of right in any case in which the constitutionality of this
16 law is challenged.

17 SECTION 13. This act shall become effective November 1, 2011.

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