

1 **SENATE FLOOR VERSION**

2 April 9, 2014

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 2685

6 By: Grau, Ritze, Biggs,
7 Christian, Cooksey, Bennett
8 and Shannon of the House

9 and

10 Stanislawski and Loveless
11 of the Senate

12 [**public health and safety - certification - State**
13 **Board of Medical Licensure and Supervision -**
14 **severability - codification - effective date]**

15 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1-746.1 of Title 63, unless
18 there is created a duplication in numbering, reads as follows:

19 As used in this act, the term:

20 1. "Abortion" means the use or prescription of any instrument,
21 medicine, drug, or any other substance or device intentionally to
22 terminate the pregnancy of a female known to be pregnant with an
23 intention other than to increase the probability of a live birth, to
24 preserve the life or health of the child after live birth, to remove
an ectopic pregnancy or to remove a dead unborn child who died as a

1 result of a spontaneous abortion, accidental trauma or a criminal
2 assault on the pregnant female or her unborn child;

3 2. "Attempt to perform or induce an abortion" means an act, or
4 an omission of a statutorily required act, that, under the
5 circumstances as the actor believes them to be, constitutes a
6 substantial step in a course of conduct planned to culminate in the
7 performance of an abortion in Oklahoma in violation of this act;

8 3. "Fetal anomaly incompatible with life" means a profound and
9 irremediable congenital or chromosomal anomaly that is incompatible
10 with sustaining life after birth. Fetal anomaly incompatible with
11 life does not include conditions which can be treated;

12 4. "Medical emergency" means any condition which, on the basis
13 of the physician's good-faith clinical judgment, so complicates the
14 medical condition of a pregnant female as to necessitate the
15 immediate abortion of her pregnancy to avert her death or for which
16 a delay will create serious risk of substantial and irreversible
17 impairment of a major bodily function;

18 5. "Perinatal hospice" means comprehensive support that
19 includes support from the time of diagnosis through the time of
20 birth and death of the infant and through the postpartum period.
21 Supportive care may include maternal-fetal medical specialists,
22 obstetricians, neonatologists, anesthesia specialists,
23 psychiatrists, psychologists, or other mental health professionals,
24 clergy, social workers, and specialty nurses; and

1 6. "Physician" means a person licensed to practice medicine in
2 this state pursuant to Sections 495 and 633 of Title 59 of the
3 Oklahoma Statutes.

4 SECTION 2. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1-746.2 of Title 63, unless
6 there is created a duplication in numbering, reads as follows:

7 No abortion shall be performed or induced or attempted to be
8 performed or induced without the voluntary and informed consent of
9 the female upon whom the abortion is to be performed or induced or
10 attempted to be performed or induced. Except in the case of a
11 medical emergency, consent to an abortion is voluntary and informed
12 if and only if, at least twenty-four (24) hours before the abortion:

13 1. In the case of a female seeking an abortion of her unborn
14 child diagnosed with a fetal anomaly incompatible with life, the
15 female is informed, by telephone or in person, by the physician who
16 is to perform the abortion or the physician's agent:

- 17 a. that perinatal hospice services are available,
- 18 b. this service is an alternative to abortion,
- 19 c. that she has the right to review the printed materials
20 described in this section,
- 21 d. that these materials are available on a state-
22 sponsored website, and
- 23 e. what the website address is where she can access this
24 information.

1 The information required by this paragraph may be provided by a tape
2 recording if provision is made to record or otherwise register
3 specifically whether the female does or does not choose to have the
4 printed materials given or mailed to her;

5 2. The physician or the physician's agent shall orally inform
6 the female that the materials have been provided by the State of
7 Oklahoma and that they list the places which offer perinatal hospice
8 services both in her state and nationally. If the female chooses to
9 view the materials other than on the website, they shall either be
10 given to her at least twenty-four (24) hours before the abortion, or
11 mailed to her at least seventy-two (72) hours before the abortion by
12 certified mail, restricted delivery to addressee, which means the
13 postal employee can only deliver the mail to the addressee;

14 3. The female certifies in writing, prior to the abortion, that
15 the information described in paragraphs 1 and 2 of this section has
16 been furnished her, and that she has been informed of her
17 opportunity to review the information referred to in paragraph 2 of
18 this section; and

19 4. Prior to the performance of the abortion, the physician who
20 is to perform the abortion or the physician's agent receives a copy
21 of the written certification prescribed by paragraph 3 of this
22 section. This certification shall be maintained in the female
23 patient's file for not less than five (5) years.

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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-746.3 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Within ninety (90) days after this act is enacted, the State
5 Board of Medical Licensure and Supervision shall cause to be
6 published, in English and in each language which is the primary
7 language of two percent (2%) or more of the state's population, and
8 shall cause to be available on the state website provided for in
9 Section 4 of this act, the following printed materials in such a way
10 as to ensure that the information is easily comprehensible:

11 geographically indexed materials designed to inform the female who
12 has been told her unborn child has a fetal anomaly incompatible with
13 life of public and private agencies and services available to her
14 which offer perinatal hospice and palliative care if she chooses to
15 continue her pregnancy. The material shall include a comprehensive
16 list of the agencies available, a description of the services they
17 offer, and a description of the manner, including telephone numbers,
18 in which they might be contacted or, at the option of the Board
19 printed materials including a toll-free, twenty-four-hour-a-day
20 telephone number which may be called to obtain, orally, such a list
21 and description of agencies in the locality of the caller and of the
22 services they offer.

23 B. The materials referred to in subsection A of this section
24 shall be printed in a typeface large enough to be clearly legible.

1 The website provided for in Section 4 of this act shall be
2 maintained at a minimum resolution of 70 DPI (dots per inch). All
3 letters on the website shall be a minimum of 11-point font. All
4 information shall be accessible with an industry standard browser,
5 requiring no additional plug-ins.

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

9 SECTION 4. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-746.4 of Title 63, unless
11 there is created a duplication in numbering, reads as follows:

12 A. The State Board of Medical Licensure and Supervision shall
13 develop and maintain a stable Internet website to provide the
14 information described under Section 2 of this act. No information
15 regarding who uses the website shall be collected or maintained.
16 The State Board of Medical Licensure and Supervision shall monitor
17 the website on a daily basis to prevent and correct tampering and
18 shall immediately notify abortion providers of any change in the
19 location of the material on its website.

20 B. The website:

21 1. Must use enhanced, user-friendly search capabilities to
22 ensure that the information described in Section 2 of this act is
23 easily accessible and must be searchable by keywords and phrases,
24 specifically to ensure that entering the terms "abortion" and "fetal

1 anomaly" yield the materials described in Section 2 of this act,
2 regardless of how the materials are labeled;

3 2. Must ensure that the materials described in Section 2 of
4 this act are printable;

5 3. Must give clear prominent instructions on how to receive the
6 information in printed form; and

7 4. Must be accessible to the public without requiring
8 registration or use of a user name, a password or another user
9 identification.

10 SECTION 5. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1-746.5 of Title 63, unless
12 there is created a duplication in numbering, reads as follows:

13 When a medical emergency compels the performance of an abortion,
14 the physician shall inform the female, prior to the abortion if
15 possible, of the medical indications supporting the physician's
16 judgment that an abortion is necessary to avert her death or that a
17 twenty-four-hour delay will create serious risk of substantial and
18 irreversible impairment of a major bodily function.

19 SECTION 6. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1-746.6 of Title 63, unless
21 there is created a duplication in numbering, reads as follows:

22 A. Within ninety (90) days after this act is enacted, the State
23 Board of Medical Licensure and Supervision shall prepare a reporting
24 form for physicians containing a reprint of this act and listing:

1 1. The number of females to whom the physician or an agent of
2 the physician provided the information described in paragraph 1 of
3 Section 2 of this act; of that number, the number provided by
4 telephone and the number provided in person; of each of those
5 numbers, the number provided in the capacity of a referring
6 physician and the number provided in the capacity of a physician who
7 is to perform the abortion; and of each of those numbers, the number
8 provided by the physician and the number provided by an agent of the
9 physician;

10 2. The number of females who availed themselves of the
11 opportunity to obtain a copy of the printed information described in
12 Section 3 of this act other than on the website, and the number who
13 did not; and of each of those numbers, the number who, to the best
14 of the reporting physician's information and belief, went on to
15 obtain the abortion; and

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

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

1 1. Within one hundred twenty (120) days after this act is
2 enacted, to all physicians licensed to practice in this state;

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

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

9 C. By February 28 of each year following a calendar year in any
10 part of which this act was in effect, each physician who provided,
11 or whose agent provided, information to one or more females in
12 accordance with Section 2 of this act during the previous calendar
13 year shall submit to the Board a copy of the form described in
14 subsection A of this section, with the requested data entered
15 accurately and completely.

16 D. Reports that are not submitted by the end of a grace period
17 of thirty (30) days following the due date shall be subject to a
18 late fee of Five Hundred Dollars (\$500.00) for each additional
19 thirty-day-period or portion of a thirty-day-period they are
20 overdue. Any physician required to report in accordance with this
21 section who has not submitted a report, or has submitted only an
22 incomplete report, more than one (1) year following the due date,
23 may, in an action brought by the Board, be directed by a court of
24

1 competent jurisdiction to submit a complete report within a period
2 stated by court order or be subject to sanctions for civil contempt.

3 E. By June 30 of each year the State Board of Medical Licensure
4 and Supervision shall issue a public report providing statistics for
5 the previous calendar year compiled from all of the reports covering
6 that year submitted in accordance with this section for each of the
7 items listed in subsection A of this section. Each such report
8 shall also provide the statistics for all previous calendar years,
9 adjusted to reflect any additional information from late or
10 corrected reports. The Board shall take care to ensure that none of
11 the information included in the public reports could reasonably lead
12 to the identification of any individual provided information in
13 accordance with paragraph 1 of Section 2 of this act.

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

22 SECTION 7. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1-746.7 of Title 63, unless
24 there is created a duplication in numbering, reads as follows:

1 Any person who knowingly or recklessly performs or attempts to
2 perform an abortion in violation of this act shall be guilty of a
3 felony. No penalty may be assessed against the female upon whom the
4 abortion is performed or attempted to be performed.

5 No penalty or civil liability may be assessed for failure to
6 comply with paragraph 1 or 2 of Section 2 of this act or that
7 portion of paragraph 3 of Section 2 of this act requiring a written
8 certification that the female has been informed of her opportunity
9 to review the information referred to in paragraph 1 of Section 2 of
10 this act unless the Board has made the printed materials available
11 at the time the physician or the physician's agent is required to
12 inform the female of her right to review them.

13 SECTION 8. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-746.8 of Title 63, unless
15 there is created a duplication in numbering, reads as follows:

16 Any person upon whom an abortion has been performed or induced
17 without this act being complied with, the father of the unborn child
18 who was the subject of such an abortion, or the grandparent of such
19 an unborn child may maintain an action pursuant to Sections 1-738.3f
20 through 1-738.3k of Title 63 of the Oklahoma Statutes against any
21 person or entity which performed or induced or attempted to perform
22 or induce the abortion in violation of this act, or against any
23 person or entity which made a referral as defined in Sections 1-
24 738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes

1 regarding this particular abortion. The procedure and remedy in a
2 civil action brought pursuant to this section shall be the same as
3 the procedure and remedy in other suits brought pursuant to Sections
4 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes.

5 SECTION 9. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-746.9 of Title 63, unless
7 there is created a duplication in numbering, reads as follows:

8 In every civil or criminal proceeding or action brought under
9 this act, the court shall rule whether the anonymity of any female
10 upon whom an abortion has been performed or attempted shall be
11 preserved from public disclosure if she does not give her consent to
12 such disclosure. The court, upon motion or sua sponte, shall make
13 such a ruling and, upon determining that her anonymity should be
14 preserved, shall issue orders to the parties, witnesses, and counsel
15 and shall direct the sealing of the record and exclusion of
16 individuals from courtrooms or hearing rooms to the extent necessary
17 to safeguard her identity from public disclosure. Each such order
18 shall be accompanied by specific written findings explaining why the
19 anonymity of the female should be preserved from public disclosure,
20 why the order is essential to that end, how the order is narrowly
21 tailored to serve that interest, and why no reasonable less-
22 restrictive alternative exists. In the absence of written consent
23 of the female upon whom an abortion has been performed or attempted,
24 anyone, other than a public official, who brings an action under

1 Section 8 of this act shall do so under a pseudonym. This section
2 may not be construed to conceal the identity of the plaintiff or of
3 witnesses from the defendant.

4 SECTION 10. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1-746.10 of Title 63, unless
6 there is created a duplication in numbering, reads as follows:

7 If any one or more provision, section, subsection, sentence,
8 clause, phrase or word of this act or the application thereof to any
9 person or circumstance is found to be unconstitutional, the same is
10 hereby declared to be severable and the balance of this act shall
11 remain effective notwithstanding such unconstitutionality. The
12 Legislature hereby declares that it would have passed this act, and
13 each provision, section, subsection, sentence, clause, phrase or
14 word thereof, irrespective of the fact that any one or more
15 provision, section, subsection, sentence, clause, phrase or word be
16 declared unconstitutional.

17 SECTION 11. This act shall become effective November 1, 2014.

18 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
19 April 9, 2014 - DO PASS AS AMENDED
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