

1 **SENATE FLOOR VERSION**

2 March 23, 2015

3 ENGROSSED HOUSE
4 BILL NO. 1721

5 By: Peterson, Ritze, Christian,
6 Roberts (Sean), Faught,
7 Strohm, Kern, Ownbey,
8 Johnson, **McBride**,
9 **Montgomery, McCall,**
10 **Lockhart, Newell, and**
11 **Bennett** of the House

12 and

13 Brecheen, **Loveless, and**
14 **Griffin** of the Senate

15 An Act relating to public health and safety; creating
16 the Oklahoma Unborn Child Protection from
17 Dismemberment Abortion Act; defining terms;
18 prohibiting certain act; providing certain hearing
19 before State Board of Medical Licensure and
20 Supervision; excluding certain liability; permitting
21 injunctive relief; providing for civil damages;
22 providing for attorney fee; providing for criminal
23 penalty; providing for anonymity of certain
24 individual in court proceedings; providing for
certain construction; providing for severability;
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 1-737.7 of Title 63, unless
there is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Oklahoma Unborn
2 Child Protection from Dismemberment Abortion Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-737.8 of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

6 For the purposes of the Oklahoma Unborn Child Protection from
7 Dismemberment Abortion Act:

8 1. "Abortion" means the use or prescription of any instrument,
9 medicine, drug, or any other substance or device:

10 a. to purposely kill the unborn child of a woman known to
11 be pregnant, or

12 b. to purposely terminate the pregnancy of a woman known
13 to be pregnant, with a purpose other than:

14 (1) after viability to produce a live birth and
15 preserve the life and health of the child born
16 alive, or

17 (2) to remove a dead unborn child;

18 2. "Attempt to perform an abortion" means to do or omit to do
19 anything that, under the circumstances as the actor believes them to
20 be, is an act or omission constituting a substantial step in a
21 course of conduct planned to culminate in the actor performing an
22 abortion. Such substantial steps include, but are not limited to:

23 a. agreeing with an individual to perform an abortion on
24 that individual or on some other person, whether or

1 not the term "abortion" is used in the agreement, and
2 whether or not the agreement is contingent on another
3 factor such as receipt of payment or a determination
4 of pregnancy, or

- 5 b. scheduling or planning a time to perform an abortion
6 on an individual, whether or not the term "abortion"
7 is used, and whether or not the performance is
8 contingent on another factor such as receipt of
9 payment or a determination of pregnancy.

10 This definition shall not be construed to require that an abortion
11 procedure actually must be initiated for an attempt to occur;

12 3. "Dismemberment abortion" means, with the purpose of causing
13 the death of an unborn child, purposely to dismember a living unborn
14 child and extract him or her one piece at a time from the uterus
15 through use of clamps, grasping forceps, tongs, scissors or similar
16 instruments that, through the convergence of two rigid levers,
17 slice, crush, and/or grasp a portion of the unborn child's body to
18 cut or rip it off. This definition does not include an abortion
19 which uses suction to dismember the body of the developing unborn
20 child by sucking fetal parts into a collection container;

21 4. "Physician" means a person licensed to practice medicine and
22 surgery or osteopathic medicine and surgery, or otherwise legally
23 authorized to perform an abortion;

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1 5. "Purposely" means the following: A person acts purposely
2 with respect to a material element of an offense when:

3 a. if the element involves the nature of his or her
4 conduct or a result thereof, it is his or her
5 conscious objective to engage in conduct of that
6 nature or to cause such a result, and

7 b. if the element involves the attendant circumstances,
8 he or she is aware of the existence of such
9 circumstances or he or she believes or hopes that they
10 exist;

11 6. "Serious health risk to the unborn child's mother" means
12 that in reasonable medical judgment she has a condition that so
13 complicates her medical condition that it necessitates the abortion
14 of her pregnancy to avert her death or to avert serious risk of
15 substantial and irreversible physical impairment of a major bodily
16 function, not including psychological or emotional conditions. No
17 such condition may be determined to exist if it is based on a claim
18 or diagnosis that the woman will engage in conduct which she intends
19 to result in her death or in substantial and irreversible physical
20 impairment of a major bodily function; and

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

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1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-737.9 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Notwithstanding any other provision of law, it shall be
5 unlawful for any person to purposely perform or attempt to perform a
6 dismemberment abortion and thereby kill an unborn child unless
7 necessary to prevent serious health risk to the unborn child's
8 mother.

9 B. A person accused in any proceeding of unlawful conduct under
10 subsection A of this section may seek a hearing before the State
11 Board of Medical Licensure and Supervision on whether the
12 dismemberment abortion was necessary to prevent serious health risk
13 to the unborn child's mother. The Board's findings are admissible
14 on that issue at any trial in which such unlawful conduct is
15 alleged. Upon a motion of the person accused, the court shall delay
16 the beginning of the trial for not more than thirty (30) days to
17 permit such a hearing to take place.

18 C. No woman upon whom an abortion is performed or attempted to
19 be performed shall be thereby liable for performing or attempting to
20 perform a dismemberment abortion. No nurse, technician, secretary,
21 receptionist or other employee or agent who is not a physician but
22 who acts at the direction of a physician and no pharmacist or other
23 individual who is not a physician but who fills a prescription or
24 provides instruments or materials used in an abortion at the

1 direction of or to a physician shall be thereby liable for
2 performing or attempting to perform a dismemberment abortion.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-737.10 of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

6 A. A cause of action for injunctive relief against a person who
7 has performed or attempted to perform a dismemberment abortion in
8 violation of Section 3 of this act may be maintained by:

9 1. A woman upon whom such a dismemberment abortion was
10 performed or attempted to be performed;

11 2. A person who is the spouse, parent or guardian of, or a
12 current or former licensed health care provider of, a woman upon
13 whom such a dismemberment abortion was performed or attempted to be
14 performed; or

15 3. A prosecuting attorney with appropriate jurisdiction.

16 B. The injunction shall prevent the defendant from performing
17 or attempting to perform further dismemberment abortions in
18 violation of Section 3 of this act.

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1-737.11 of Title 63, unless
21 there is created a duplication in numbering, reads as follows:

22 A. A cause of action for civil damages against a person who has
23 performed a dismemberment abortion in violation of Section 3 of this
24 act may be maintained by:

1 1. Any woman upon whom a dismemberment abortion has been
2 performed in violation of Section 3 of this act; or

3 2. If the woman had not attained the age of eighteen (18) years
4 at the time of the dismemberment abortion or has died as a result of
5 the abortion, the maternal grandparents of the unborn child.

6 B. No damages may be awarded a plaintiff if the pregnancy
7 resulted from the plaintiff's criminal conduct.

8 C. Damages awarded in such an action shall include:

9 1. Money damages for all injuries, psychological and physical,
10 occasioned by the dismemberment abortion; and

11 2. Statutory damages equal to three times the cost of the
12 dismemberment abortion.

13 SECTION 6. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-737.12 of Title 63, unless
15 there is created a duplication in numbering, reads as follows:

16 A. If judgment is rendered in favor of the plaintiff in an
17 action described in Section 4 or 5 of this act, the court shall also
18 render judgment for a reasonable attorney fee in favor of the
19 plaintiff against the defendant.

20 B. If judgment is rendered in favor of the defendant in an
21 action described in Section 4 or 5 of this act and the court finds
22 that the plaintiff's suit was frivolous and brought in bad faith,
23 the court shall render judgment for a reasonable attorney fee in
24 favor of the defendant against the plaintiff.

1 C. No attorney fee may be assessed against the woman upon whom
2 an abortion was performed or attempted to be performed except in
3 accordance with subsection B of this section.

4 SECTION 7. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1-737.13 of Title 63, unless
6 there is created a duplication in numbering, reads as follows:

7 Whoever violates Section 3 of this act shall be fined Ten
8 Thousand Dollars (\$10,000.00) or imprisoned for not more than two
9 (2) years or both.

10 SECTION 8. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1-737.14 of Title 63, unless
12 there is created a duplication in numbering, reads as follows:

13 In every civil, criminal, or administrative proceeding or action
14 brought under the Oklahoma Unborn Child Protection from
15 Dismemberment Abortion Act, the court shall rule whether the
16 identity of any woman upon whom an abortion has been performed or
17 attempted to be performed shall be preserved from public disclosure
18 if she does not give her consent to such disclosure. The court,
19 upon motion or sua sponte, shall make such a ruling and, upon
20 determining that her anonymity should be preserved, shall issue
21 orders to the parties, witnesses, and counsel and shall direct the
22 sealing of the record and exclusion of individuals from courtrooms
23 or hearing rooms to the extent necessary to safeguard her identity
24 from public disclosure. Each such order shall be accompanied by

1 specific written findings explaining why the anonymity of the woman
2 should be preserved, why the order is essential to that end, how the
3 order is narrowly tailored to serve that interest, and why no
4 reasonable less-restrictive alternative exists. In the absence of
5 written consent of the woman upon whom an abortion has been
6 performed or attempted to be performed, anyone other than a public
7 official who brings an action under Section 4 or 5 of this act shall
8 do so under a pseudonym. This section may not be construed to
9 conceal the identity of the plaintiff or of witnesses from the
10 defendant or from attorneys for the defendant.

11 SECTION 9. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1-737.15 of Title 63, unless
13 there is created a duplication in numbering, reads as follows:

14 Nothing in the Oklahoma Unborn Child Protection from
15 Dismemberment Abortion Act shall be construed as creating or
16 recognizing a right to abortion, nor a right to a particular method
17 of abortion.

18 SECTION 10. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1-737.16 of Title 63, unless
20 there is created a duplication in numbering, reads as follows:

21 If any one or more provisions, sections, subsections, sentences,
22 clauses, phrases or words of this act or the application thereof to
23 any person or circumstance is found to be unconstitutional, the same
24 is hereby declared to be severable and the balance of this act shall

1 remain effective notwithstanding such unconstitutionality. The
2 Legislature hereby declares that it would have passed this act, and
3 each provision, section, subsection, sentence, clause, phrase or
4 word thereof, irrespective of the fact that any one or more
5 provisions, sections, subsections, sentences, clauses, phrases or
6 words be declared unconstitutional.

7 SECTION 11. This act shall become effective November 1, 2015.

8 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
9 March 23, 2015 - DO PASS

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