HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3216

By: West (Kevin) of the House
and

Bullard of the Senate

AS INTRODUCED

An Act relating to abortion; creating the Oklahoma Life is a Human Right Act; defining terms; prohibiting the prescription or selling of medication with the intent to cause an abortion; civil liability; providing for a certain procedure; providing for informed consent from parents or guardians for refusal of treatment; requiring physician to record certain information; directing the State Department of Health to create forms; providing for refusal of treatment; requiring physician to record certain information; directing the State Department of Health to create forms; providing for the use of contraceptives as long as the purpose is not abortion; prohibiting emergency contraception; defining certain conduct as unprofessional; requiring revocation of license or certificate; allowing certain civil action; authorizing Attorney General to bring enforcement actions; providing for the right to intervene; 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 1-758.1 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 "Oklahoma Life is a Human Right Act".

SECTION 2. NEW LAW     A new section of law to be codified in the Oklahoma Statutes as Section 1-758.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in this section:

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

   a. save the life or preserve the health of the unborn human being,

   b. remove a dead unborn human being caused by miscarriage,

   c. remove an ectopic pregnancy, or

   d. perform a pre-viability separation procedure when such procedure is necessary to preserve the life of the pregnant woman;
2. "Born alive" means the complete expulsion or extraction from the pregnant woman of a human infant, at any stage of development, who, after such expulsion or extraction, breathes, has a beating heart, or has definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, Cesarean section, pre-viability separation procedure, or other method;

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

4. "Department" means the State Department of Health;

5. "Ectopic pregnancy" means the state of carrying an unborn human being outside of the uterine cavity;

6. "Health care provider" means any individual who may be asked to participate in any way in a health care service or procedure, including, but not limited to, the following: a physician, physician's assistant, nurse, nurse's aide, medical assistant, hospital employee, medical facility employee, or medical clinic employee;

7. "Gestational age" or "probable gestation age" means the age of an unborn human being as calculated from the first day of the last menstrual period of the pregnant woman;

8. "Miscarriage" means a spontaneous loss of embryo or fetal life;
9. "Necessary to preserve the life of a pregnant woman" means that, at any point in pregnancy, a pregnant woman's physician has determined to a reasonable degree of medical certainty or probability that the continuation of the pregnancy will endanger the woman's life due to the pregnancy itself or due to a medical condition that the woman is either currently suffering or likely to suffer during the pregnancy. In making this determination, absolute certainty is not required; however, a mere possibility or speculation shall be insufficient;

10. "Pregnant" means the human female reproductive condition of having a living unborn human being within her body throughout every stage of the unborn human being's life and development, from fertilization to full gestation and childbirth;

11. "Unborn child" or "unborn human being" means an individual living member of the species Homo sapien from conception to full gestation and childbirth;

12. "Pre-viability" means before that stage of fetal development when, in the reasonable medical judgment of the physician based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available to him or her, there is a reasonable likelihood of sustained survival of the unborn human being outside the body of his or her mother, with or without artificial support;
13. "Physician" means a person licensed to practice medicine in Oklahoma;

14. "Separation procedure" means a medical procedure performed by a physician to remove an unborn human being from his or her mother's uterus. The term does not include an abortion as defined by this act;

15. "Woman" means any person whose biological sex is female based upon the person's genetics and reproductive anatomy.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-758.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No person may knowingly administer to, prescribe for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting an abortion.

B. No person may knowingly use or employ any instrument, device, means, or procedure upon a pregnant woman with the specific intent of causing or abetting an abortion.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-758.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. When performing a pre-viability separation procedure as permitted under this act, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of
the pregnant woman and the life of her unborn child in a manner consistent with reasonable medical practice.

B. If the child is born alive following a pre-viability separation procedure, any health care provider present shall exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious health care provider would render to any other child born alive at the same gestational age.

C. The requirements of this section shall not be construed to prevent a child's parents or guardian from refusing to give consent to medical treatment or surgical care which is not medically necessary or reasonable, including care or treatment which:

1. Is not necessary to save the life of the child;

2. Has a potential risk to the child's life or health that outweighs the potential benefit to the child with the treatment or care; or

3. Will do no more than temporarily prolong the act of dying when death is imminent.

SECTION 5. NEW LAW   A new section of law to be codified in the Oklahoma Statutes as Section 1-758.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In every case in which a physician performs a pre-viability separation procedure as permitted under this act, the physician shall, within fifteen (15) days, cause to be filed with the State
Department of Health, on a form supplied by the Department, a report containing the following information:

1. A unique patient identifier provided by the Department that would, if legally required, allow the Department to identify the woman upon whom the pre-viability separation procedure was performed;

2. Date the pre-viability separation procedure was performed;

3. The probable gestational age of the unborn human being and the method used to calculate gestational age;

4. A statement declaring that the pre-viability separation procedure was necessary to preserve the life of the pregnant woman; and

5. Specific medical indications supporting the determination that pre-viability separation procedure was necessary to preserve the life of the pregnant woman.

B. The physician shall sign the form as his or her attestation under oath that the information stated thereon is true and correct to the best of his or her knowledge.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-758.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health shall create the forms required by this act within thirty (30) days after the effective date of this act. No provision of this act requiring the reporting
of information on forms published by the Department shall be applicable until ten (10) days after the requisite forms have been made available or the effective date of this act, whichever is later.

B. The Department shall establish a confidential system of creating and distributing unique patient identifiers to be used for the reporting requirements of this act. It shall create this system within thirty (30) days after the effective date of this act.

C. Unless required by a court order, the Department shall not release personally identifiable patient or physician information obtained under this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-758.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Medical treatment provided to the pregnant woman by a physician which results in the accidental or unintentional injury to or the death of her unborn child is not a violation of Section 3 of this act.

B. Nothing in this act may be construed to prohibit the use, sale, prescription, or administration of a contraceptive measure, drug, chemical, or device if the contraceptive measure, drug, chemical, or device is used, sold, prescribed, or administered in accordance with manufacturer instructions and is not used, sold, prescribed, or administered with the specific intent to cause or
induce an abortion or to prevent the implantation of a fertilized egg.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-758.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A physician who intentionally or knowingly violates the prohibition in Section 3 of this act commits an act of unprofessional conduct and his or her license to practice medicine in Oklahoma shall be suspended or revoked for a minimum of one (1) year pursuant to Title 435 of the Oklahoma Administrative Code.

B. In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of this act shall provide a basis for a civil malpractice action for actual and punitive damages.

C. No civil penalty may be assessed against a pregnant woman.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-758.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Attorney General shall have authority to bring an action in law or equity to enforce the provisions of this act on behalf of the State Commissioner of Health.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-758.10 of Title 63, unless there is created a duplication in numbering, reads as follows:
The Speaker of the Oklahoma House of Representatives may appoint one or more of its members to intervene as a matter of right in any case in which the constitutionality or enforceability of this act is challenged pursuant to Section 2024 of Title 12 of the Oklahoma Statutes.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-758.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Oklahoma Legislature that every provision of this act shall operate with equal force and shall be severable one from the other and that, in the event that any provision of this act shall be held invalid or unenforceable by a court of competent jurisdiction, said provision shall be deemed severable and the remaining provisions of this act deemed fully enforceable.

SECTION 12. This act shall become effective November 1, 2024.

COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02/15/2024 - DO PASS, As Coauthored.