STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 872 By: Pruitt

AS INTRODUCED

An Act relating to public health and safety; stating legislative intent and findings; prohibiting physician from performing abortions, with exceptions; stating contents of certain statement; providing for specified statement in lieu of certain statement; stating factors one must certify to in lieu of statement; requiring the State Department of Health to develop specified forms and requiring distribution; providing penalties; providing for codification; providing an effective date; and declaring an emergency.

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 1-731.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. It is the intent of the Legislature to act to preserve and maintain the due process rights and interests of fathers with respect to the property interest such fathers possess in a fetus. Specifically, the courts of the United States have routinely determined that the fetus is considered property under the United States Constitution. Moreover, such fetus, as property, was jointly created by both father and mother and as such the courts have consistently acknowledged the property interest of the father in such jointly created property. Therefore, it is the responsibility of the state to ensure that no person shall be deprived of life, liberty, or property, without due process of law.

B. In order to satisfy such due process obligation, the Legislature hereby intends to provide the most basic of the due process rights to fathers, namely notice.

C. The Legislature finds, as fact, that the rights and interests of fathers are not secure in the context in which abortion is presently performed.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-731.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other provisions of law and in order to further the state's interest in preserving the due process rights of the father, no physician shall perform an abortion, except as provided in subsections B and C of this section, unless such physician has received from the woman upon whom the abortion is to be performed a signed statement that she has notified the father of the unborn child that she is about to undergo an abortion. The statement need not be notarized. Further, the statement shall bear a notice that any false statement made therein is punishable by law.

B. The statement certifying that the notice required by subsection A of this section has been given need not be furnished where the woman provides the physician with a signed statement certifying at least one of the following:

1. The father, after diligent effort, could not be located or is unknown; or

2. The pregnancy is the result of sexual assault, as defined in Title 21 of the Oklahoma Statutes, and such assault has been reported to a law enforcement agency having the requisite jurisdiction.

C. The requirements of subsection A of this section shall not apply in the case of a medical emergency.

D. The State Department of Health shall develop forms which may be utilized for purposes of providing the signed statements required

by subsections A and B of this section. The Department shall distribute an adequate supply of such forms to all abortion facilities in this state.

E. Any physician violating the provisions of this section shall be guilty of unprofessional conduct, and his or her license to practice shall be subject to suspension or revocation in accordance with the procedures of the State Board of Medical Licensure and Supervision. In addition, any physician who knowingly violates the provisions of this section shall be civilly liable to the father of the aborted child for any damages caused thereby, and for punitive damages in the amount of Five Thousand Dollars ($5,000.00). The court shall award a prevailing plaintiff a reasonable attorney fee as part of costs.

SECTION 3. This act shall become effective July 1, 2005.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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