STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

HOUSE BILL 1721 By: Peterson of the House

and

Brecheen of the Senate

AS INTRODUCED

An Act relating to public health and safety; creating the Oklahoma Unborn Child Protection from Dismemberment Abortion Act; defining terms; prohibiting certain act; providing certain hearing before State Board of Medical Licensure and Supervision; excluding certain liability; permitting injunctive relief; providing for civil damages; providing for attorney fee; providing for criminal penalty; providing for anonymity of certain 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:

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

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

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

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

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

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

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

(2) to remove a dead unborn child;

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

a. agreeing with an individual to perform an abortion on that individual or on some other person, whether or not the term "abortion" is used in the agreement, and whether or not the agreement is contingent on another

factor such as receipt of payment or a determination of pregnancy, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. A prosecuting attorney with appropriate jurisdiction.

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

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

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

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

2. The father of the unborn child, if married to the woman at the time the dismemberment abortion was performed; or

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

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

C. Damages awarded in such an action shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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