

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 1888

By: Peterson, Reynolds, Ritze,
Trebilcock, Johnson, Derby,
Hall, Billy, Farley, Kern,
Nollan, Cooksey, Hamilton,
Banz, Tibbs and Brumbaugh
of the House

and

Jolley Brinkley and
Newberry of the Senate

An Act relating to public health and safety; creating
the Pain-Capable Unborn Child Protection Act;
defining terms; making legislative findings;
establishing purpose; prohibiting the performance of
an abortion without certain determination;
prohibiting the performance of an abortion upon
determination of certain age of unborn child;
providing for exceptions; requiring that the manner
in which physicians terminate certain pregnancies
provides the best opportunity for unborn child's
survival; requiring certain report by physician;
including certain information; requiring State
Department of Health to issue certain report; stating
certain penalties for physicians; requiring
Department to promulgate rules; providing penalty;
permitting certain individuals to maintain action
including injunctive relief; providing for attorney
fees; requiring court to rule regarding anonymity;
requiring written findings under certain
circumstance; providing for severability; providing
for certain interpretation; providing for
codification; and providing an effective date.

AUTHORS: Add the following Senate Coauthors: David, Brecheen,
Ford, Allen, Shortey, Treat, Brown, Fields, Justice,
Schulz, Barrington, Simpson, Garrison, Myers, Russell,
Johnson (Rob), Halligan, Sykes and Marlatt

AUTHOR: Add the following House Coauthor: Sullivan

1 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
2 entire bill and insert

3
4 "An Act relating to public health and safety; creating
5 the Pain-Capable Unborn Child Protection Act;
6 providing short title; defining terms; making
7 legislative findings; establishing purpose;
8 prohibiting the performance of an abortion without
9 certain determination; prohibiting the performance of
10 an abortion upon determination of certain age of
11 unborn child; providing for exceptions; requiring
12 that the manner in which physicians terminate certain
13 pregnancies provides the best opportunity for unborn
14 child's survival; requiring certain report by
15 physician; including certain information; requiring
16 State Department of Health to issue certain report;
17 stating certain penalties for physicians; requiring
18 the State Board of Health to promulgate rules;
19 providing date on which certain provisions shall
20 become effective; providing penalty; permitting
21 certain individuals to maintain action including
22 injunctive relief; providing for attorney fees;
23 requiring court to rule regarding anonymity;
24 requiring written findings under certain
circumstance; providing for severability; providing
for certain interpretation; 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 1-745.1 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 "Pain-Capable
Unborn Child Protection Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-745.2 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 As used in the Pain-Capable Unborn Child Protection Act only:

5 1. "Abortion" means the use or prescription of any instrument,
6 medicine, drug, or any other substance or device to terminate the
7 pregnancy of a woman known to be pregnant with an intention other
8 than to increase the probability of a live birth, to preserve the
9 life or health of the child after live birth, or to remove a dead
10 unborn child who died as the result of natural causes in utero,
11 accidental trauma, or a criminal assault on the pregnant woman or
12 her unborn child, and which causes the premature termination of the
13 pregnancy;

14 2. "Attempt to perform or induce an abortion" means an act, or
15 an omission of a statutorily required act, that, under the
16 circumstances as the actor believes them to be, constitutes a
17 substantial step in a course of conduct planned to culminate in the
18 performance or induction of an abortion in this state in violation
19 of the Pain-Capable Unborn Child Protection Act;

20 3. "Postfertilization age" means the age of the unborn child as
21 calculated from the fertilization of the human ovum;

22 4. "Fertilization" means the fusion of a human spermatozoon
23 with a human ovum;
24

1 5. "Medical emergency" means a condition that, in reasonable
2 medical judgment, so complicates the medical condition of the
3 pregnant woman that it necessitates the immediate abortion of her
4 pregnancy without first determining postfertilization age to avert
5 her death or for which the delay necessary to determine
6 postfertilization age will create serious risk of substantial and
7 irreversible physical impairment of a major bodily function, not
8 including psychological or emotional conditions. No condition shall
9 be deemed a medical emergency if based on a claim or diagnosis that
10 the woman will engage in conduct which she intends to result in her
11 death or in substantial and irreversible physical impairment of a
12 major bodily function;

13 6. "Reasonable medical judgment" means a medical judgment that
14 would be made by a reasonably prudent physician, knowledgeable about
15 the case and the treatment possibilities with respect to the medical
16 conditions involved;

17 7. "Physician" means any person licensed to practice medicine
18 and surgery or osteopathic medicine and surgery in this state;

19 8. "Probable postfertilization age of the unborn child" means
20 what, in reasonable medical judgment, will with reasonable
21 probability be the postfertilization age of the unborn child at the
22 time the abortion is planned to be performed or induced;

23 9. "Unborn child" or "fetus" each means an individual organism
24 of the species homo sapiens from fertilization until live birth; and

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

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-745.3 of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

6 The Legislature of the State of Oklahoma finds that:

7 1. Pain receptors (nociceptors) are present throughout the
8 unborn child's entire body by no later than sixteen (16) weeks after
9 fertilization and nerves link these receptors to the brain's
10 thalamus and subcortical plate by no later than twenty (20) weeks;

11 2. By eight (8) weeks after fertilization, the unborn child
12 reacts to touch. After twenty (20) weeks, the unborn child reacts
13 to stimuli that would be recognized as painful if applied to an
14 adult human, for example by recoiling;

15 3. In the unborn child, application of such painful stimuli is
16 associated with significant increases in stress hormones known as
17 the stress response;

18 4. Subjection to such painful stimuli is associated with long-
19 term harmful neurodevelopmental effects, such as altered pain
20 sensitivity and, possibly, emotional, behavioral, and learning
21 disabilities later in life;

22 5. For the purposes of surgery on unborn children, fetal
23 anesthesia is routinely administered and is associated with a
24

1 decrease in stress hormones compared to their level when painful
2 stimuli are applied without such anesthesia;

3 6. The position, asserted by some medical experts, that the
4 unborn child is incapable of experiencing pain until a point later
5 in pregnancy than twenty (20) weeks after fertilization
6 predominately rests on the assumption that the ability to experience
7 pain depends on the cerebral cortex and requires nerve connections
8 between the thalamus and the cortex. However, recent medical
9 research and analysis, especially since 2007, provides strong
10 evidence for the conclusion that a functioning cortex is not
11 necessary to experience pain;

12 7. Substantial evidence indicates that children born missing
13 the bulk of the cerebral cortex, those with hydranencephaly,
14 nevertheless experience pain;

15 8. In adults, stimulation or ablation of the cerebral cortex
16 does not alter pain perception, while stimulation or ablation of the
17 thalamus does;

18 9. Substantial evidence indicates that structures used for pain
19 processing in early development differ from those of adults, using
20 different neural elements available at specific times during
21 development, such as the subcortical plate, to fulfill the role of
22 pain processing;

23 10. The position, asserted by some, that the unborn child
24 remains in a coma-like sleep state that precludes the unborn child

1 from experiencing pain is inconsistent with the documented reaction
2 of unborn children to painful stimuli and with the experience of
3 fetal surgeons who have found it necessary to sedate the unborn
4 child with anesthesia to prevent the unborn child from thrashing
5 about in reaction to invasive surgery;

6 11. Consequently, there is substantial medical evidence that an
7 unborn child is capable of experiencing pain by twenty (20) weeks
8 after fertilization;

9 12. It is the purpose of the State of Oklahoma to assert a
10 compelling state interest in protecting the lives of unborn children
11 from the stage at which substantial medical evidence indicates that
12 they are capable of feeling pain; and

13 13. Oklahoma's compelling state interest in protecting the
14 lives of unborn children from the stage at which substantial medical
15 evidence indicates that they are capable of feeling pain is intended
16 to be separate from and independent of Oklahoma's compelling state
17 interest in protecting the lives of unborn children from the stage
18 of viability, and neither state interest is intended to replace the
19 other.

20 SECTION 4. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1-745.4 of Title 63, unless
22 there is created a duplication in numbering, reads as follows:

23 A. Except in the case of a medical emergency, no abortion shall
24 be performed or induced or be attempted to be performed or induced

1 unless the physician performing or inducing it has first made a
2 determination of the probable postfertilization age of the unborn
3 child or relied upon such a determination made by another physician.
4 In making such a determination, the physician shall make such
5 inquiries of the woman and perform or cause to be performed such
6 medical examinations and tests as a reasonably prudent physician,
7 knowledgeable about the case and the medical conditions involved,
8 would consider necessary to perform in making an accurate diagnosis
9 with respect to postfertilization age.

10 B. Knowing or reckless failure by any physician to conform to
11 any requirement of this section constitutes "unprofessional
12 conduct".

13 SECTION 5. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-745.5 of Title 63, unless
15 there is created a duplication in numbering, reads as follows:

16 A. No person shall perform or induce or attempt to perform or
17 induce an abortion upon a woman when it has been determined, by the
18 physician performing or inducing or attempting to perform or induce
19 the abortion or by another physician upon whose determination that
20 physician relies, that the probable postfertilization age of the
21 woman's unborn child is twenty (20) or more weeks, unless, in
22 reasonable medical judgment, she has a condition which so
23 complicates her medical condition as to necessitate the abortion of
24 her pregnancy to avert her death or to avert serious risk of

1 substantial and irreversible physical impairment of a major bodily
2 function, not including psychological or emotional conditions. No
3 such condition shall be deemed to exist if it is based on a claim or
4 diagnosis that the woman will engage in conduct which she intends to
5 result in her death or in substantial and irreversible physical
6 impairment of a major bodily function.

7 B. When an abortion upon a woman whose unborn child has been
8 determined to have a probable postfertilization age of twenty (20)
9 or more weeks is not prohibited by this section, the physician shall
10 terminate the pregnancy in the manner which, in reasonable medical
11 judgment, provides the best opportunity for the unborn child to
12 survive, unless, in reasonable medical judgment, termination of the
13 pregnancy in that manner would pose a greater risk either of the
14 death of the pregnant woman or of the substantial and irreversible
15 physical impairment of a major bodily function, not including
16 psychological or emotional conditions, of the woman than would other
17 available methods. No such greater risk shall be deemed to exist if
18 it is based on a claim or diagnosis that the woman will engage in
19 conduct which she intends to result in her death or in substantial
20 and irreversible physical impairment of a major bodily function.

21 SECTION 6. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1-745.6 of Title 63, unless
23 there is created a duplication in numbering, reads as follows:
24

1 A. Any physician who performs or induces or attempts to perform
2 or induce an abortion shall report to the State Department of
3 Health, on a schedule and in accordance with forms and rules and
4 regulations adopted and promulgated by the State Board of Health
5 that include:

6 1. If a determination of probable postfertilization age was
7 made, the probable postfertilization age determined and the method
8 and basis of the determination;

9 2. If a determination of probable postfertilization age was not
10 made, the basis of the determination that a medical emergency
11 existed;

12 3. If the probable postfertilization age was determined to be
13 twenty (20) or more weeks, the basis of the determination that the
14 pregnant woman had a condition which so complicated her medical
15 condition as to necessitate the abortion of her pregnancy to avert
16 her death or to avert serious risk of substantial and irreversible
17 physical impairment of a major bodily function, not including
18 psychological or emotional conditions; and

19 4. The method used for the abortion and, in the case of an
20 abortion performed when the probable postfertilization age was
21 determined to be twenty (20) or more weeks:

22 a. whether the method used was one that, in reasonable
23 medical judgment, provided the best opportunity for
24 the unborn child to survive, or

1 b. if such a method was not used, the basis of the
2 determination that termination of the pregnancy in
3 that manner would pose a greater risk either of the
4 death of the pregnant woman or of the substantial and
5 irreversible physical impairment of a major bodily
6 function, not including psychological or emotional
7 conditions, of the woman than would other available
8 methods.

9 B. By June 30 of each year, the State Department of Health
10 shall issue a public report providing statistics for the previous
11 calendar year compiled from all of the reports covering that year
12 submitted in accordance with this section for each of the items
13 listed in subsection A of this section. Each such report shall also
14 provide the statistics for all previous calendar years during which
15 this section was in effect, adjusted to reflect any additional
16 information from late or corrected reports. The State Department of
17 Health shall take care to ensure that none of the information
18 included in the public reports could reasonably lead to the
19 identification of any pregnant woman upon whom an abortion was
20 performed or attempted.

21 C. Any physician who fails to submit a report by the end of
22 thirty (30) days following the due date shall be subject to a late
23 fee of Five Hundred Dollars (\$500.00) for each additional thirty-day
24 period or portion of a thirty-day period the report is overdue. Any

1 physician required to report in accordance with this act who has not
2 submitted a report, or has submitted only an incomplete report, more
3 than one (1) year following the due date, may, in an action brought
4 by the State Department of Health or by the State Board of Medical
5 Licensure and Supervision, be directed by a court of competent
6 jurisdiction to submit a complete report within a period stated by
7 court order or be subject to civil contempt. Knowing or reckless
8 failure by any physician to conform to any requirement of this
9 section, other than late filing of a report, constitutes
10 "unprofessional conduct" pursuant to Section 509 of Title 59 of the
11 Oklahoma Statutes. Knowing or reckless failure by any physician to
12 submit a complete report in accordance with a court order
13 constitutes "unprofessional conduct" pursuant to Section 509 of
14 Title 59 of the Oklahoma Statutes. Knowing or reckless
15 falsification of any report required under this section is a
16 misdemeanor.

17 D. By February 1, 2012, the State Board of Health shall adopt
18 and promulgate rules and regulations to assist in compliance with
19 this section. Subsection A of this section shall take effect so as
20 to require reports regarding all abortions performed or induced on
21 and after the first day of the first calendar month following the
22 effective date of such rules.

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-745.7 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 Any person who knowingly or recklessly performs or induces or
5 attempts to perform or induce an abortion in violation of the Pain-
6 Capable Unborn Child Protection Act shall be guilty of a felony. No
7 penalty may be assessed against the woman upon whom the abortion is
8 performed or induced or attempted to be performed or induced.

9 SECTION 8. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-745.8 of Title 63, unless
11 there is created a duplication in numbering, reads as follows:

12 A. Any woman upon whom an abortion has been performed in
13 violation of the Pain-Capable Unborn Child Protection Act, or the
14 father of the unborn child who was the subject of such an abortion,
15 may maintain an action against the person who performed or induced
16 the abortion in knowing or reckless violation of the Pain-Capable
17 Unborn Child Protection Act for actual and punitive damages. Any
18 woman upon whom an abortion has been attempted in violation of the
19 Pain-Capable Unborn Child Protection Act may maintain an action
20 against the person who attempted to perform or induce the abortion
21 in knowing or reckless violation of the Pain-Capable Unborn Child
22 Protection Act for actual and punitive damages.

23 B. A cause of action for injunctive relief against any person
24 who has knowingly or recklessly violated the Pain-Capable Unborn

1 Child Protection Act may be maintained by the woman upon whom an
2 abortion was performed or induced or attempted to be performed or
3 induced in violation of the Pain-Capable Unborn Child Protection
4 Act; by any person who is the spouse, parent, sibling or guardian
5 of, or a current or former licensed health care provider of, the
6 woman upon whom an abortion has been performed or induced or
7 attempted to be performed or induced in violation of the Pain-
8 Capable Unborn Child Protection Act; by a district attorney with
9 appropriate jurisdiction; or by the Attorney General. The
10 injunction shall prevent the abortion provider from performing or
11 inducing or attempting to perform or induce further abortions in
12 violation of the Pain-Capable Unborn Child Protection Act in the
13 State of Oklahoma.

14 C. If judgment is rendered in favor of the plaintiff in an
15 action described in this section, the court shall also render
16 judgment for a reasonable attorney fee in favor of the plaintiff
17 against the defendant.

18 D. If judgment is rendered in favor of the defendant and the
19 court finds that the plaintiff's suit was frivolous and brought in
20 bad faith, the court shall also render judgment for a reasonable
21 attorney fee in favor of the defendant against the plaintiff.

22 E. No damages or attorney fee may be assessed against the woman
23 upon whom an abortion was performed or attempted to be performed
24 except in accordance with subsection D of this section.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-745.9 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

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

1 construed to conceal the identity of the plaintiff or of witnesses
2 from the defendant or from attorneys for the defendant.

3 SECTION 10. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-745.10 of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

6 A. If any one or more provisions, sections, subsections,
7 sentences, clauses, phrases or words of the Pain-Capable Unborn
8 Child Protection Act or the application thereof to any person or
9 circumstance is found to be unconstitutional, the same is hereby
10 declared to be severable and the balance of the Pain-Capable Unborn
11 Child Protection Act shall remain effective notwithstanding such
12 unconstitutionality. The Legislature hereby declares that it would
13 have passed the Pain-Capable Unborn Child Protection Act, and each
14 provision, section, subsection, sentence, clause, phrase, or word
15 thereof, irrespective of the fact that any one or more provisions,
16 sections, subsections, sentences, clauses, phrases, or words of the
17 Pain-Capable Unborn Child Protection Act, or the application of the
18 Pain-Capable Unborn Child Protection Act, would be declared
19 unconstitutional.

20 B. The Pain-Capable Unborn Child Protection Act shall not be
21 construed to repeal, by implication or otherwise, Section 1-732 of
22 Title 63 of the Oklahoma Statutes, or any otherwise applicable
23 provision of Oklahoma's laws regulating or restricting abortion. An
24 abortion that complies with this act but violates the provisions of

1 Section 1-732 of Title 63 of the Oklahoma Statutes, or any otherwise
2 applicable provision of Oklahoma's laws shall be deemed unlawful as
3 provided in such provision. An abortion that complies with the
4 provisions of Section 1-732 of Title 63 of the Oklahoma Statutes, or
5 any otherwise applicable provision of Oklahoma's laws regulating or
6 restricting abortion but violates this act shall be deemed unlawful
7 as provided in this act.

8 SECTION 11. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1-745.11 of Title 63, unless
10 there is created a duplication in numbering, reads as follows:

11 Nothing in the Pain-Capable Unborn Child Protection Act shall be
12 construed as creating or recognizing a right to abortion."

13 SECTION 12. This act shall become effective November 1, 2011.

14 Passed the Senate the 5th day of April, 2011.

15

16

Presiding Officer of the Senate

17

18 Passed the House of Representatives the ____ day of _____,
19 2011.

20

21

Presiding Officer of the House
of Representatives

22

23

24

1 ENGROSSED HOUSE
2 BILL NO. 1888

By: Peterson, Reynolds, Ritze,
Trebilcock, Johnson, Derby,
Hall, Billy, Farley, Kern,
Nollan, Cooksey, Hamilton,
Banz, Tibbs and Brumbaugh
of the House

5 and

6 Jolley of the Senate

7
8
9 An Act relating to public health and safety; creating
10 the Pain-Capable Unborn Child Protection Act;
11 defining terms; making legislative findings;
12 establishing purpose; prohibiting the performance of
13 an abortion without certain determination;
14 prohibiting the performance of an abortion upon
15 determination of certain age of unborn child;
16 providing for exceptions; requiring that the manner
17 in which physicians terminate certain pregnancies
18 provides the best opportunity for unborn child's
19 survival; requiring certain report by physician;
20 including certain information; requiring State
21 Department of Health to issue certain report; stating
22 certain penalties for physicians; requiring
23 Department to promulgate rules; providing penalty;
24 permitting certain individuals to maintain action
including injunctive relief; providing for attorney
fees; requiring court to rule regarding anonymity;
requiring written findings under certain
circumstance; providing for severability; providing
for certain interpretation; providing for
codification; and providing an effective date.

22 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 13. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-745.1 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Pain-Capable
5 Unborn Child Protection Act".

6 SECTION 14. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-745.2 of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

9 As used in the Pain-Capable Unborn Child Protection Act only:

10 1. "Abortion" means the use or prescription of any instrument,
11 medicine, drug, or any other substance or device to terminate the
12 pregnancy of a woman known to be pregnant with an intention other
13 than to increase the probability of a live birth, to preserve the
14 life or health of the child after live birth, or to remove a dead
15 unborn child who died as the result of natural causes in utero,
16 accidental trauma, or a criminal assault on the pregnant woman or
17 her unborn child, and which causes the premature termination of the
18 pregnancy;

19 2. "Attempt to perform or induce an abortion" means an act, or
20 an omission of a statutorily required act, that, under the
21 circumstances as the actor believes them to be, constitutes a
22 substantial step in a course of conduct planned to culminate in the
23 performance or induction of an abortion in this state in violation
24 of the Pain-Capable Unborn Child Protection Act;

1 3. "Postfertilization age" means the age of the unborn child as
2 calculated from the fertilization of the human ovum;

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

5 5. "Medical emergency" means a condition that, in reasonable
6 medical judgment, so complicates the medical condition of the
7 pregnant woman that it necessitates the immediate abortion of her
8 pregnancy without first determining postfertilization age to avert
9 her death or for which the delay necessary to determine
10 postfertilization age will create serious risk of substantial and
11 irreversible physical impairment of a major bodily function, not
12 including psychological or emotional conditions. No condition shall
13 be deemed a medical emergency if based on a claim or diagnosis that
14 the woman will engage in conduct which would result in her death or
15 in substantial and irreversible physical impairment of a major
16 bodily function;

17 6. "Reasonable medical judgment" means a medical judgment that
18 would be made by a reasonably prudent physician, knowledgeable about
19 the case and the treatment possibilities with respect to the medical
20 conditions involved;

21 7. "Physician" means any person licensed to practice medicine
22 and surgery or osteopathic medicine and surgery in this state;

23 8. "Probable postfertilization age of the unborn child" means
24 what, in reasonable medical judgment, will with reasonable

1 probability be the postfertilization age of the unborn child at the
2 time the abortion is planned to be performed or induced;

3 9. "Unborn child" or "fetus" each means an individual organism
4 of the species homo sapiens from fertilization until live birth; and

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

7 SECTION 15. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1-745.3 of Title 63, unless
9 there is created a duplication in numbering, reads as follows:

10 The Legislature of the State of Oklahoma finds that:

11 1. Pain receptors (nociceptors) are present throughout the
12 unborn child's entire body by no later than sixteen (16) weeks after
13 fertilization and nerves link these receptors to the brain's
14 thalamus and subcortical plate by no later than twenty (20) weeks;

15 2. By eight (8) weeks after fertilization, the unborn child
16 reacts to stimuli that would be recognized as painful if applied to
17 an adult human, for example by recoiling;

18 3. In the unborn child, application of such painful stimuli is
19 associated with significant increases in stress hormones known as
20 the stress response;

21 4. Subjection to such painful stimuli is associated with long-
22 term harmful neurodevelopmental effects, such as altered pain
23 sensitivity and, possibly, emotional, behavioral, and learning
24 disabilities later in life;

1 5. For the purposes of surgery on unborn children, fetal
2 anesthesia is routinely administered and is associated with a
3 decrease in stress hormones compared to their level when painful
4 stimuli are applied without such anesthesia;

5 6. The position, asserted by some medical experts, that the
6 unborn child is incapable of experiencing pain until a point later
7 in pregnancy than twenty (20) weeks after fertilization
8 predominately rests on the assumption that the ability to experience
9 pain depends on the cerebral cortex and requires nerve connections
10 between the thalamus and the cortex. However, recent medical
11 research and analysis, especially since 2007, provides strong
12 evidence for the conclusion that a functioning cortex is not
13 necessary to experience pain;

14 7. Substantial evidence indicates that children born missing
15 the bulk of the cerebral cortex, those with hydranencephaly,
16 nevertheless experience pain;

17 8. In adults, stimulation or ablation of the cerebral cortex
18 does not alter pain perception, while stimulation or ablation of the
19 thalamus does;

20 9. Substantial evidence indicates that structures used for pain
21 processing in early development differ from those of adults, using
22 different neural elements available at specific times during
23 development, such as the subcortical plate, to fulfill the role of
24 pain processing;

1 10. Consequently, there is substantial medical evidence that an
2 unborn child is capable of experiencing pain by twenty (20) weeks
3 after fertilization; and

4 11. It is the purpose of the State of Oklahoma to assert a
5 compelling state interest in protecting the lives of unborn children
6 from the stage at which substantial medical evidence indicates that
7 they are capable of feeling pain.

8 SECTION 16. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1-745.4 of Title 63, unless
10 there is created a duplication in numbering, reads as follows:

11 A. Except in the case of a medical emergency, no abortion shall
12 be performed or induced or be attempted to be performed or induced
13 unless the physician performing or inducing it has first made a
14 determination of the probable postfertilization age of the unborn
15 child or relied upon such a determination made by another physician.
16 In making such a determination, the physician shall make such
17 inquiries of the woman and perform or cause to be performed such
18 medical examinations and tests as a reasonably prudent physician,
19 knowledgeable about the case and the medical conditions involved,
20 would consider necessary to perform in making an accurate diagnosis
21 with respect to postfertilization age.

22 B. Failure by any physician to conform to any requirement of
23 this section constitutes "unprofessional conduct".
24

1 SECTION 17. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 1-745.5 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 A. No person shall perform or induce or attempt to perform or
5 induce an abortion upon a woman when it has been determined, by the
6 physician performing or inducing or attempting to perform or induce
7 the abortion or by another physician upon whose determination that
8 physician relies, that the probable postfertilization age of the
9 woman's unborn child is twenty (20) or more weeks, unless, in
10 reasonable medical judgment, she has a condition which so
11 complicates her medical condition as to necessitate the abortion of
12 her pregnancy to avert her death or to avert serious risk of
13 substantial and irreversible physical impairment of a major bodily
14 function, not including psychological or emotional conditions. No
15 such condition shall be deemed to exist if it is based on a claim or
16 diagnosis that the woman will engage in conduct which would result
17 in her death or in substantial and irreversible physical impairment
18 of a major bodily function.

19 B. When an abortion upon a woman whose unborn child has been
20 determined to have a probable postfertilization age of twenty (20)
21 or more weeks is not prohibited by this section, the physician shall
22 terminate the pregnancy in the manner which, in reasonable medical
23 judgment, provides the best opportunity for the unborn child to
24 survive, unless, in reasonable medical judgment, termination of the

1 pregnancy in that manner would pose a greater risk either of the
2 death of the pregnant woman or of the substantial and irreversible
3 physical impairment of a major bodily function, not including
4 psychological or emotional conditions, of the woman than would other
5 available methods. No such greater risk shall be deemed to exist if
6 it is based on a claim or diagnosis that the woman will engage in
7 conduct which would result in her death or in substantial and
8 irreversible physical impairment of a major bodily function.

9 SECTION 18. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-745.6 of Title 63, unless
11 there is created a duplication in numbering, reads as follows:

12 A. Any physician who performs or induces or attempts to perform
13 or induce an abortion shall report to the State Department of
14 Health, on a schedule and in accordance with forms and rules and
15 regulations adopted and promulgated by the State Department of
16 Health that include:

17 1. If a determination of probable postfertilization age was
18 made, the probable postfertilization age determined and the method
19 and basis of the determination;

20 2. If a determination of probable postfertilization age was not
21 made, the basis of the determination that a medical emergency
22 existed;

23 3. If the probable postfertilization age was determined to be
24 twenty (20) or more weeks, the basis of the determination that the

1 pregnant woman had a condition which so complicated her medical
2 condition as to necessitate the abortion of her pregnancy to avert
3 her death or to avert serious risk of substantial and irreversible
4 physical impairment of a major bodily function, not including
5 psychological or emotional conditions; and

6 4. The method used for the abortion and, in the case of an
7 abortion performed when the probable postfertilization age was
8 determined to be twenty (20) or more weeks:

9 a. whether the method used was one that, in reasonable
10 medical judgment, provided the best opportunity for
11 the unborn child to survive, or

12 b. if such a method was not used, the basis of the
13 determination that termination of the pregnancy in
14 that manner would pose a greater risk either of the
15 death of the pregnant woman or of the substantial and
16 irreversible physical impairment of a major bodily
17 function not including psychological or emotional
18 conditions of the woman than would other available
19 methods.

20 B. By June 30 of each year, the State Department of Health
21 shall issue a public report providing statistics for the previous
22 calendar year compiled from all of the reports covering that year
23 submitted in accordance with this section for each of the items
24 listed in subsection A of this section. Each such report shall also

1 provide the statistics for all previous calendar years during which
2 this section was in effect, adjusted to reflect any additional
3 information from late or corrected reports. The State Department of
4 Health shall take care to ensure that none of the information
5 included in the public reports could reasonably lead to the
6 identification of any pregnant woman upon whom an abortion was
7 performed or attempted.

8 C. Any physician who fails to submit a report by the end of
9 thirty (30) days following the due date shall be subject to a late
10 fee of Five Hundred Dollars (\$500.00) for each additional thirty-day
11 period or portion of a thirty-day period the report is overdue. Any
12 physician required to report in accordance with this act who has not
13 submitted a report, or has submitted only an incomplete report, more
14 than one (1) year following the due date, may, in an action brought
15 in the manner in which actions are brought by the State Department
16 of Health, be directed by a court of competent jurisdiction to
17 submit a complete report within a period stated by court order or be
18 subject to civil contempt. Failure by any physician to conform to
19 any requirement of this section, other than late filing of a report,
20 constitutes "unprofessional conduct" pursuant to Section 509 of
21 Title 59 of the Oklahoma Statutes. Failure by any physician to
22 submit a complete report in accordance with a court order
23 constitutes "unprofessional conduct" pursuant to Section 509 of
24 Title 59 of the Oklahoma Statutes. Intentional or reckless

1 falsification of any report required under this section is a
2 misdemeanor.

3 D. By February 1, 2012, the State Department of Health shall
4 adopt and promulgate rules and regulations to assist in compliance
5 with this section.

6 SECTION 19. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-745.7 of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

9 Any person who intentionally or recklessly performs or induces
10 or attempts to perform or induce an abortion in violation of the
11 Pain-Capable Unborn Child Protection Act shall be guilty of a
12 felony. No penalty may be assessed against the woman upon whom the
13 abortion is performed or induced or attempted to be performed or
14 induced.

15 SECTION 20. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1-745.8 of Title 63, unless
17 there is created a duplication in numbering, reads as follows:

18 A. Any woman upon whom an abortion has been performed in
19 violation of the Pain-Capable Unborn Child Protection Act, or the
20 father of the unborn child who was the subject of such an abortion,
21 may maintain an action against the person who performed or induced
22 the abortion in intentional or reckless violation of the Pain-
23 Capable Unborn Child Protection Act for actual and punitive damages.
24 Any woman upon whom an abortion has been attempted in violation of

1 the Pain-Capable Unborn Child Protection Act may maintain an action
2 against the person who attempted to perform or induce the abortion
3 in an intentional or reckless violation of the Pain-Capable Unborn
4 Child Protection Act for actual and punitive damages.

5 B. A cause of action for injunctive relief against any person
6 who has intentionally violated the Pain-Capable Unborn Child
7 Protection Act may be maintained by the woman upon whom an abortion
8 was performed or induced or attempted to be performed or induced in
9 violation of the Pain-Capable Unborn Child Protection Act; by any
10 person who is the spouse, parent, sibling or guardian of, or a
11 current or former licensed health care provider of, the woman upon
12 whom an abortion has been performed or induced or attempted to be
13 performed or induced in violation of the Pain-Capable Unborn Child
14 Protection Act; by a district attorney with appropriate
15 jurisdiction; or by the Attorney General. The injunction shall
16 prevent the abortion provider from performing or inducing further
17 abortions in violation of the Pain-Capable Unborn Child Protection
18 Act in the State of Oklahoma.

19 C. If judgment is rendered in favor of the plaintiff in an
20 action described in this section, the court shall also render
21 judgment for a reasonable attorney fee in favor of the plaintiff
22 against the defendant.

23 D. If judgment is rendered in favor of the defendant and the
24 court finds that the plaintiff's suit was frivolous and brought in

1 bad faith, the court shall also render judgment for a reasonable
2 attorney fee in favor of the defendant against the plaintiff.

3 E. No damages or attorney fee may be assessed against the woman
4 upon whom an abortion was performed or attempted to be performed
5 except in accordance with subsection D of this section.

6 SECTION 21. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-745.9 of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

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

1 of the woman upon whom an abortion has been performed or induced or
2 attempted to be performed or induced, anyone, other than a public
3 official, who brings an action under subsection A of Section 8 of
4 this act shall do so under a pseudonym. This section may not be
5 construed to conceal the identity of the plaintiff or of witnesses
6 from the defendant or from attorneys for the defendant.

7 SECTION 22. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1-745.10 of Title 63, unless
9 there is created a duplication in numbering, reads as follows:

10 If any one or more provisions, sections, subsections, sentences,
11 clauses, phrases or words of the Pain-Capable Unborn Child
12 Protection Act or the application thereof to any person or
13 circumstance is found to be unconstitutional, the same is hereby
14 declared to be severable and the balance of the Pain-Capable Unborn
15 Child Protection Act shall remain effective notwithstanding such
16 unconstitutionality. The Legislature hereby declares that it would
17 have passed the Pain-Capable Unborn Child Protection Act, and each
18 provision, section, subsection, sentence, clause, phrase, or word
19 thereof, irrespective of the fact that any one or more provisions,
20 sections, subsections, sentences, clauses, phrases, or words of the
21 Pain-Capable Unborn Child Protection Act, or the application of the
22 Pain-Capable Unborn Child Protection Act, would be declared
23 unconstitutional.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-745.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

Nothing in the Pain-Capable Unborn Child Protection Act shall be construed as creating or recognizing a right to abortion.

SECTION 24. This act shall become effective November 1, 2011.

Passed the House of Representatives the 9th day of March, 2011.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2011.

Presiding Officer of the Senate