

House Bill 3275

Sponsored by Representative CAMERON; Representatives BOQUIST, BRUUN, BUTLER, DALLUM, ESQUIVEL, FLORES, GARRARD, GILLIAM, GIROD, HANNA, KRIEGER, KRUMMEL, MAURER, MINNIS, NELSON, OLSON, RICHARDSON, SCOTT, G SMITH, THATCHER, WHISNANT, Senators BEYER, L GEORGE, KRUSE, WINTERS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires physicians to inform pregnant females considering abortion about fetal pain and to report on abortions performed. Requires Department of Human Services to publish information about fetal pain. Authorizes Center for Health Statistics to adopt rules to facilitate physician reporting. Authorizes private action for damages for violation of information requirements of Act. Requires physicians to report to center on compliance with Act. Requires reporting of induced terminations of pregnancies as fetal deaths. Permits Speaker of House of Representatives and President of Senate to appoint sponsor of Act to intervene in action challenging validity of Act.

Creates crime of unlawful abortion reporting. Punishes by maximum imprisonment of 30 days, \$1,250 fine, or both.

A BILL FOR AN ACT

1
2 Relating to prevention of fetal pain; creating new provisions; and amending ORS 432.333 and 435.496.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1 to 10 of this 2007 Act:**

5 (1) "Abortion" has the meaning given the term "induced termination of pregnancy" in
6 **ORS 432.005.**

7 (2) "Attempt to perform an abortion" means an act or omission that, under the circum-
8 stances as the actor believes them to be, constitutes a substantial step in a course of con-
9 duct planned to culminate in an abortion.

10 (3) "Medical emergency" means any medical condition that, on the basis of a physician's
11 good faith clinical judgment, necessitates an immediate abortion to avert the female's death
12 or avoid a serious risk of substantial and irreversible impairment of a major bodily function
13 of the female.

14 (4) "Physician" has the meaning given that term in ORS 677.010.

15 (5) "Probable gestational age" means a physician's reasonable estimate of the gestational
16 age of the unborn child at the time the physician plans to perform the abortion.

17 (6) "Unborn child" means a member of the species *Homo sapiens* from fertilization until
18 birth.

19 **SECTION 2. (1) At least 24 hours before performing an abortion on an unborn child**
20 **whose probable gestational age is 20 weeks or more, the physician performing the abortion**
21 **or the physician's agent must inform the pregnant female, by telephone or in person, that:**

22 (a) **The female has the right to review the printed materials described in section 4 of this**
23 **2007 Act;**

24 (b) **The State of Oregon has provided the materials;**

25 (c) **The materials are available for review on a state-sponsored website and that the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 physician or the physician's agent will provide the website address to the female; and

2 (d) The materials contain information on fetal pain.

3 (2) Except as provided in subsection (3) of this section, if a female chooses to review the
4 materials in a manner other than on the website, the physician or the physician's agent
5 must:

6 (a) Give the materials to the female in person at least 24 hours before the abortion; or

7 (b) Mail the materials to the female at least 72 hours before the abortion, by certified
8 mail, restricted delivery to the female.

9 (3) If a female chooses to receive the information in the materials by audiotape record-
10 ing, the physician or the physician's agent must keep a record that the female chose not to
11 receive the materials in person or by mail.

12 (4) Before performing an abortion, the physician who is to perform the abortion or the
13 physician's agent must obtain the female's certification in writing that she received the in-
14 formation required by this section. The physician or the physician's agent must retain a copy
15 of the written certification in the female's medical record for at least three years.

16 (5) This section does not apply in a medical emergency.

17 **SECTION 3.** (1) Before performing an abortion on an unborn child whose probable
18 gestational age is 20 weeks or more, the physician performing the abortion or the physician's
19 agent must:

20 (a) Inform the pregnant female that an anesthetic or analgesic may eliminate or alleviate
21 organic pain that the abortion may cause the unborn child; and

22 (b) Inform the female of the medical risks associated with the anesthetic or analgesic.

23 (2) The physician must administer the anesthetic or analgesic at the female's request.

24 (3) This section does not apply in a medical emergency.

25 **SECTION 4.** (1) The Department of Human Services shall publish materials with the fol-
26 lowing information about unborn children at 20 weeks' gestational age and at subsequent
27 two-week gestational increments from 22 weeks until birth:

28 (a) Development of the nervous system;

29 (b) Responsiveness to adverse stimuli or other indicators of capacity to experience or-
30 ganic pain; and

31 (c) The methods of abortion procedures commonly employed at that stage of pregnancy.

32 (2) The information must be objective, nonjudgmental and convey only accurate scientific
33 information.

34 (3) The department must present the information in a manner that is easily comprehen-
35 sible to a person without medical training.

36 (4) The department must publish the information:

37 (a) In writing and on the state website required by section 5 of this 2007 Act; and

38 (b) In English and in each language that is the primary language of two percent or more
39 of the state's population.

40 (5)(a) The printed materials must be in a typeface large enough to be clearly legible.

41 (b) The website required by section 5 of this 2007 Act must maintain a minimum resolu-
42 tion of 70 dots per inch. All pictures appearing on the website must contain at least 200 by
43 300 pixels. Letters on the website must be at least 11-point font. Text and pictures must be
44 accessible with an industry standard browser, requiring no additional plug-ins.

45 (6) Upon request, the department shall provide the printed materials to any person free

1 of charge.

2 **SECTION 5.** (1) The Department of Human Services shall develop and maintain a stable
3 Internet website to provide the information described in section 4 of this 2007 Act.

4 (2) The department may not collect or retain information about a person who uses the
5 website.

6 (3) To prevent tampering with the website, the department shall monitor use of the
7 website each day.

8 **SECTION 6.** When a medical emergency compels a physician to perform an abortion, the
9 physician shall inform the female, prior to the abortion if possible, of the indications sup-
10 porting the medical emergency.

11 **SECTION 7.** (1) The Department of Human Services may adopt rules to implement
12 sections 2 to 6 of this 2007 Act.

13 (2) The State Registrar of the Center for Health Statistics, under the supervision of the
14 Director of Human Services, may adopt rules to consolidate reporting forms or reports under
15 ORS 435.496 with other forms or reports when consolidation will achieve administrative
16 convenience or fiscal savings or reduce the burden of reporting on physicians.

17 **SECTION 8.** (1) Any person upon whom a physician has performed or attempted to per-
18 form an abortion in violation of section 2 of this 2007 Act may bring an action to recover
19 actual and punitive damages from the physician.

20 (2) The court shall award reasonable attorney fees to a plaintiff who prevails in an action
21 under this section. The court may award reasonable attorney fees incurred by a defendant
22 who prevails in the action if the court determines that the plaintiff had no objectively rea-
23 sonable basis for bringing the action.

24 **SECTION 9.** (1) If a female upon whom a physician performed an abortion or attempted
25 to perform an abortion does not consent to the disclosure of her identity in a proceeding or
26 action involving sections 1 to 10 of this 2007 Act, the court shall determine whether to pro-
27 tect the female's identity from public disclosure. If the court determines to protect the fe-
28 male's identity, the court shall order parties, witnesses and counsel not to disclose the
29 female's identity and shall seal the record and exclude witnesses from courtrooms or hearing
30 rooms to the extent necessary to protect the female's identity from public disclosure.

31 (2) An order protecting a female's identity from public disclosure must include specific
32 written findings explaining:

33 (a) The reasons that the female's identity should be protected from public disclosure;

34 (b) The reasons that the order is essential to protect the female's identity;

35 (c) How the terms of the order are narrowly tailored to serve only the interest of pro-
36 tecting the female's identity; and

37 (d) The reasons that no less restrictive alternative to the order will protect the female's
38 interests.

39 (3)(a) A female who brings an action under section 8 of this 2007 Act may commence the
40 action under a pseudonym.

41 (b) Notwithstanding paragraph (a) of this subsection, a plaintiff may not conceal the
42 plaintiff's identity from the defendant.

43 **SECTION 10.** (1) A person commits the crime of unlawful abortion reporting if the person
44 is a physician and intentionally, knowingly or recklessly submits false information in or
45 omits information from a report required by ORS 435.496.

(2) Unlawful abortion reporting is a Class C misdemeanor.

SECTION 11. ORS 432.333 is amended to read:

432.333. (1) Each fetal death of 350 grams or more, or, if weight is unknown, of 20 completed weeks gestation or more, calculated from the date last normal menstrual period began to the date of delivery, that occurs in this state shall be reported within five days after delivery to the county registrar of the county in which the fetal death occurred or to the Center for Health Statistics or as otherwise directed by the State Registrar of the Center for Health Statistics. *[All induced terminations of pregnancy shall be reported in the manner prescribed in ORS 435.496 and shall not be reported as fetal deaths.]*

(2) When a fetus is delivered in an institution, the person in charge of the institution or a designated representative shall prepare and file the report.

(3) When a fetus is delivered outside an institution, the physician in attendance at or immediately after delivery shall prepare and file the report.

(4) When a fetal death required to be reported by this section occurs without attendance by a physician at or immediately after the delivery or when inquiry is required by ORS 146.003 to 146.165 and 146.710 to 146.992, the medical examiner shall investigate the cause of fetal death and shall prepare and file the report.

(5) When a fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this state or when a fetus is found in this state and the place of fetal death is unknown, the fetal death shall be reported in this state. The place where the fetus was first removed from the conveyance or the fetus was found shall be considered the place of fetal death.

(6) All information regarding the father shall be entered on the fetal death report if the father is identified.

SECTION 12. ORS 435.496 is amended to read:

435.496. (1) Each induced termination of pregnancy *[which]* **that** occurs in this state, regardless of the length of gestation, shall be reported to the Center for Health Statistics within 30 days by the person in charge of the institution in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution, the attending physician shall prepare and file the report.

(2) If the person who is required to file the report under subsection (1) of this section has knowledge that the *[person]* **female** who underwent the induced termination of pregnancy also underwent a follow-up visit or had follow-up contact with a health care provider, the person shall include the fact of the follow-up visit or contact, and whether any complications were noted, in the report. If the person filing the report is not personally aware of the follow-up visit or contact but was informed of the visit or contact, the person shall include the source of that information in the report.

(3) A person required to file the report under subsection (1) of this section shall include in the report for each induced termination of pregnancy:

(a) Whether the person who provided the information required by section 2 (1) of this 2007 Act provided the information as the physician who performed the induced termination of pregnancy or as the referring physician;

(b) Whether the person who provided the information required by section 2 (1) of this 2007 Act provided the information in person or by telephone;

(c) Whether the female obtained the printed materials described in section 4 of this 2007 Act;

1 (d) The number of terminations the physician performed without providing the informa-
2 tion required by section 2 (1) of this 2007 Act because an immediate termination was neces-
3 sary to avert the female's death; and

4 (e) The number of terminations the physician performed without providing the informa-
5 tion required by section 2 (1) of this 2007 Act because an immediate termination was neces-
6 sary to avoid serious risk of substantial and irreversible impairment of a major bodily
7 function of the female.

8 [(3)] (4)(a) Reports submitted under this section shall not disclose the names or identities of the
9 parents.

10 (b) The center may not, without the female's consent, disclose the name of a female upon
11 whom a physician performed or attempted to perform an induced termination of pregnancy.

12 (c) The center may not, without the consent of the physician, disclose the identity of a
13 physician who performed or attempted to perform an induced termination of pregnancy.

14 (d) The center may not, without the consent of the physician, make information available
15 in a manner that permits a person to identify a reporting physician.

16 **SECTION 13.** Sections 1 to 10 of this 2007 Act and ORS 435.496 (3) may be cited as the
17 Fetal Pain Prevention Act.

18 **SECTION 14.** The Speaker of the House of Representatives and the President of the
19 Senate may each appoint one or more sponsors of this 2007 Act to intervene as a matter of
20 right in an action that challenges the validity of this 2007 Act.

21 **SECTION 15.** (1) Within 90 days after the effective date of this 2007 Act, the Department
22 of Human Services shall:

23 (a) Publish the printed materials described in section 4 of this 2007 Act.

24 (b) Develop and maintain the website required by section 5 of this 2007 Act.

25 (2) No penalty may be assessed or liability imposed for failure to comply with section 2
26 (1) of this 2007 Act until the department has published the printed materials described in
27 section 4 of this 2007 Act.

28 **SECTION 16.** Sections 1 to 10 of this 2007 Act and the amendments to ORS 432.333 and
29 435.496 by sections 11 and 12 of this 2007 Act apply to abortions and induced terminations of
30 pregnancies performed on or after the effective date of this 2007 Act.

31