ASSEMBLY BILL No. 2512

Introduced by Assembly Member Sharon Runner

February 23, 2006

An act to add Article 2.7 (commencing with Section 123470.10) to Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, relating to abortion.

LEGISLATIVE COUNSEL'S DIGEST

AB 2512, as introduced, Sharon Runner. Fetal pain prevention.

Existing law, the Therapeutic Abortion Act, contains provisions regulating abortions, including a requirement that the procedure be performed by a physician and surgeon.

This bill would enact the Unborn Child Pain Awareness Act of 2006, to require, with an exemption for medical emergency, the physician performing the abortion to offer to the pregnant woman information and counseling on fetal pain.

This bill would require the State Department of Health Services to develop a related brochure and a waiver form, would require the California Medical Board to adopt regulations for revocation or suspension of medical licenses for violation of these provisions, and would authorize the Attorney General and the woman or her family to bring a civil action for damages and penalties for violation of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The California Legislature finds all of the following:

(a) At least 20 weeks after fertilization, an unborn child has the physical structures necessary to experience pain.

(b) There is substantial evidence that by 20 weeks after fertilization, unborn children draw away from certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain.

(c) Anesthesia is routinely administered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery.

(d) There is substantial evidence that the abortion methods most commonly used 20 weeks after fertilization cause substantial pain to an unborn child, whether by dismemberment, poisoning, penetrating, or crushing the skull, or other methods. Examples of abortion methods used 20 weeks after fertilization include, but are not limited to, all of the following:

(1) The dilation and evacuation method of abortion is commonly performed in the second trimester of pregnancy. In a dilation and evacuation abortion, the unborn child's body parts are grasped at random with a long-toothed clamp. The fetal body parts are then torn off of the body and pulled out of the vaginal canal. The remaining body parts are grasped and pulled out until only the head remains. The head is then grasped and crushed in order to remove it from the vaginal canal.

(2) Partial-birth abortion is an abortion in which the abortion practitioner delivers an unborn child's body until only the head remains inside the womb, punctures the back of the child's skull with a sharp instrument, and sucks the child's brains out before completing the delivery of the dead infant.

(e) Expert testimony confirms that by 20 weeks after fertilization an unborn child may experience substantial pain even if the woman herself has received local analgesic or general anesthesia.

(f) Medical science is capable of reducing the pain through the administration of anesthesia or other pain-reducing drugs directly to the unborn child.

(g) There is a valid federal and state government interest in reducing the number of events in which great pain is inflicted on sentient creatures. Examples of this are laws governing the use of laboratory animals and requiring pain-free methods of slaughtering livestock, which include, but are not limited to, the following:

(1) Section 2 of the act commonly known as the Humane Slaughter Act of 1958 (Public Law 85-765; 7 U.S.C. Sec. 1902) states:

"No method of slaughtering or handling... shall be deemed to comply with the public policy of the United States unless it is humane. Either of the following two methods of slaughtering and handling are hereby found to be humane:

"(a) in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or

"(b) by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering."

(2) Section 13(a)(3) of the Animal Welfare Act (Public Law 89-544; 7 U.S.C. Sec. 2143(a)(3)) sets the standards and certification process for the humane handling, care, treatment, and transportation of animals. The standards with respect to animals in research facilities "include requirements-"

"(A) for animal care, treatment, and practices in experimental procedures to ensure that animal pain and distress are minimized, including adequate veterinary care with the appropriate use of anesthetic, analgesic, tranquilizing drugs, or euthanasia;

"(B) that the principal investigator considers alternatives to any procedure likely to produce pain to or distress in an experimental animal;

"(C) in any practice which could cause pain to animals--

"(i) that a doctor of veterinary medicine is consulted in the planning of such procedures;

"(ii) for the use of tranquilizers, analgesics, and anesthetics;

"(iii) for pre-surgical and post-surgical care by laboratory workers, in accordance with established veterinary medical and nursing procedures;

"(iv) against the use of paralytics without anesthesia; and

"(v) that the withholding of tranquilizers, anesthesia, analgesia, or euthanasia when scientifically necessary shall continue for only the necessary period of time;"

(3) Section 495 of the Public Health Service Act (Public Law 99-158; 42 U.S.C. Sec. 289(d)) directs the Secretary of Health and Human Services, acting through the Director of the National Institutes of Health, to establish guidelines for research facilities as to the proper care and treatment of animals, including the appropriate use of tranquilizers, analgesics, and other drugs, except that the guidelines may not prescribe methods of research. Under federal law, entities that conduct biomedical and behavioral research with National Institutes of Health funds are required to establish animal care committees which are required to conduct reviews at least semiannually and report to the Director of the National Institutes of Health at least annually. If the director determines that an entity has not been following the guidelines, the director is required to give the entity an opportunity to take corrective action, and, if the entity does not, the director is required to suspend or revoke the grant or contract involved.

SEC. 2. Article 2.7 (commencing with Section 123470.10) is added to Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, to read:

Article 2.7. Unborn Child Pain Awareness Act of 2006

123470.10. This article may be cited as the "Unborn Child Pain Awareness Act of 2006."

123470.15. As used in this article, the following terms have the following meanings:

(a) "Abortion" means the intentional use or prescription of any instrument, medicine, drug, or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

(b) “Abortion provider” means any person legally qualified to perform an abortion under applicable federal and state laws.

(c) “Pain-capable unborn child” means an unborn child who has reached a probable stage of development of 20 weeks after fertilization. This subdivision shall not be construed as a determination or finding by the Legislature that pain may not in fact be experienced by an unborn child at stages of development prior to 20 weeks after fertilization.

(d) “Probable age of development” means the duration of development after fertilization of the unborn child at the time an abortion is performed, as determined in the good faith judgment of the abortion provider on the basis of examination of the unborn child using ultrasound or other imaging technology, in addition to information obtained by interviewing the pregnant woman.

(e) “Unborn child” means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

(f) “Woman” means a female human being who is of childbearing age, whether or not she has reached the age of majority.

(g) “Medical emergency” means a condition which, in the reasonable medical judgment of the abortion provider, so complicates the medical condition of the pregnant woman that a delay in commencing an abortion procedure would impose a serious risk of causing grave and irreversible physical health damage entailing substantial impairment of a major bodily function.

(h) “Reasonable medical judgment” means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(i) “The brochure” means the Unborn Child Pain Awareness Brochure developed by the State Department of Health Services pursuant to Section 123470.25.

123470.20. (a) An abortion provider performing any abortion, of a pain-capable unborn child, shall comply with the requirements of this article.

(b) Before any part of an abortion involving a pain-capable unborn child begins, the abortion provider or his or her agent

shall provide the pregnant woman involved, by telephone or in person, with all of the following information:

(1) An abortion provider or the provider's agent shall make the following oral statement to the pregnant woman, or in the case of a deaf or non-English speaking woman, provide the statement in a manner that she can easily understand:

"You are considering having an abortion of an unborn child who will have developed, at the time of the abortion, approximately ___ weeks after fertilization. The California Legislature has determined that at this stage of development, an unborn child has the physical structures necessary to experience pain. There is substantial evidence that by this point, unborn children draw away from surgical instruments in a manner which in an infant or an adult would be interpreted as a response to pain. The Legislature finds that there is substantial evidence that the process of being killed in an abortion will cause the unborn child pain, even though you receive a pain-reducing drug or drugs. Under the Unborn Child Pain Awareness Act of 2006, you have the option of choosing to have anesthesia or other pain-reducing drug or drugs administered directly to the pain-capable unborn child if you so desire. The purpose of administering the drug or drugs would be to reduce or eliminate the capacity of the unborn child to experience pain during the abortion procedure. In some cases, there may be some additional risk to you associated with administering the drug."

(2) After making the statement required under paragraph (1), the abortion provider may provide the woman involved with his or her best medical judgment on the risks of administering the anesthesia or analgesic, if any, and the associated costs.

(3) If the abortion provider is not qualified or willing to administer the anesthesia or other pain-reducing drug in response to the request of a pregnant women after making the statement required under paragraph (1), the provider shall do either of the following:

(A) Arrange for a qualified specialist to administer the anesthesia or drug.

(B) Advise the pregnant woman of either of the following:

(i) Where she may obtain the anesthesia or other pain-reducing drugs for the unborn child in the course of an abortion.

(ii) That the abortion provider is unable to perform the abortion if the woman elects to receive anesthesia or other pain-reducing drug for her unborn child.

(4) An abortion provider shall provide the pregnant woman with the Unborn Child Pain Awareness Brochure developed by the department pursuant to Section 123470.25 and shall provide information on accessing the brochure on the department's Web site as set forth in subdivision (d) of Section 123470.25.

(5) An abortion provider shall provide the pregnant woman with the Unborn Child Pain Awareness Decision Form developed by the department pursuant to Section 123470.27, and shall obtain the appropriate signature of the woman on the form.

123470.25. (a) By April 1, 2007, the department shall develop an Unborn Child Pain Awareness Brochure.

(b) The brochure shall be written in English and Spanish and shall contain the same information as required under the statement under paragraph (1) of subdivision (b) of Section 123470.20, including greater detail on her option of having a pain-reducing drug or drugs administered to the unborn child to reduce the experience of pain by the unborn child during the abortion.

(c) The information shall be written in an objective and nonjudgmental manner and be printed in a typeface large enough to be clearly legible. The brochure shall be made available by the department at no cost to any abortion provider.

(d) The brochure shall be available on the Web site of the department at a minimum resolution of 70 DPI (dots per inch). All pictures appearing on the Web site shall be a minimum of 200x300 pixels. All letters on the Web site shall be a minimum of 12 point font. All the information and pictures shall be accessible with an industry standard browser, requiring no additional plug-ins.

(e) An abortion provider or his or her agent shall offer to provide a pregnant woman with the brochure, before any part of an abortion of a pain-capable unborn child begins through any of the following methods:

(1) Through an in-person visit by the pregnant woman.

(2) Through an e-mail attachment, from the abortion provider or his or her agent.

(3) Through a request to have the brochure mailed, by certified mail, to the woman at least 72 hours before any part of the abortion begins.

123470.27. (a) By March 2, 2007, the department shall develop an Unborn Child Pain Awareness Decision Form.

(b) After the abortion provider or his or her agent offers to provide a pregnant woman the brochure, a pregnant woman may waive receipt of the brochure under this subdivision by signing the waiver form contained in the Unborn Child Pain Awareness Decision Form.

(c) To be valid, the form shall comply with all of the following requirements:

(1) With respect to the pregnant woman, it shall comply with all of the following requirements:

(A) It shall contain a statement that affirms that the woman has received or been offered all of the information required in this article.

(B) It shall require the woman to explicitly either request or refuse the administration of pain-reducing drugs to the unborn child.

(C) It shall be signed by a pregnant woman prior to the performance of an abortion involving a pain-capable unborn child.

(2) With respect to the abortion provider it shall comply with all of the following requirements:

(A) It shall contain a statement that the provider has provided the woman with all of the information required under this article.

(B) If applicable, it shall contain a certification by the provider that an exception described in subdivision (b) of Section 123470.30 applies and the detailed reasons for the certification.

(C) It shall be signed by the provider prior to the performance of the abortion procedure.

(d) The department shall adopt regulations relating to the period of time during which copies of the forms under this subdivision shall be maintained by abortion providers.

123470.30. (a) Nothing in this article shall be construed to impede an abortion provider or the abortion provider's agent from offering their own evaluation on the capacity of the unborn child to experience pain, the advisability of administering pain-reducing drugs to the unborn child, or any other matter, as

long as the provider or agent provides the required information, obtains the woman's signature on the decision form, and otherwise complies with the affirmative requirements of the law.

(b) The notice and advisement requirements of this article shall not apply to an abortion provider in the case of a medical emergency.

(c) Upon a determination by an abortion provider that a medical emergency exists with respect to a pregnant woman, the provider shall certify the specific medical conditions that constitute the emergency.

(d) An abortion provider who willfully falsifies a certification of emergency shall be subject to all the penalties for violation of this article.

123470.35. (a) An abortion provider who willfully violates this article shall be subject to civil penalties in a civil action commenced by the Attorney General in accordance with this article in an appropriate court.

(b) The Attorney General may commence a civil action under this article.

(c) At the time of the commencement of an action under this article, the Attorney General shall certify to the court involved that, at least 30 calendar days prior to the filing of the action, the Attorney General has complied with all of the following:

(1) He or she has provided notice of the alleged violation of this article, in writing, to the district attorney who has jurisdiction, the California Medical Board, and the department.

(2) He or she believes that the action by the State of California is in the public interest and necessary to secure substantial justice.

(d) With respect to an action under this article, the appropriate California Medical Board may be heard at a hearing to determine the penalty to be imposed under this article.

123470.40. A woman upon whom an abortion has been performed in violation of this article, or the parent or legal guardian of the woman if she is an unemancipated minor, may commence a civil action against the abortion provider for any knowing or reckless violation of this article for actual and punitive damages.

123470.45. The California Medical Board, in consultation with the department, shall adopt regulations and procedures for

the revocation or suspension of the medical license of an abortion provider upon a finding by a court that the provider has violated this article.

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