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ABORTION BILL STIFFENS PENALTY

*By ELIZABETH CALDWELL, Democrat-Gazette Capitol Bureau March 8, 1995 Publication:
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Caption: Photos by RICK MCFARLAND, Arkansas Democrat-Gazette

SPONSOR'S ADVICE -- Rep. Gunner DeLay (left), R-Fort Smith, offers some

advice to Rep. Randy Bryant, R-Rogers, a member of the House Public

Health, Welfare and Labor Committee, during testimony Tuesday on

DeLay's bill to increase the penalty for performing unlawful abortions

and to clarify language regarding medically necessary abortions.

OIL PRODUCTION INCENTIVES BILL -- Rep. Courtney Sheppard, D-El Dorado,

explains his bill, designed to provide economic incentives to spur oil

production in the state, Tuesday before the House Revenue and Taxation

Committee. The bill was pulled down for amendment.

The abortion of a "viable fetus" in all but a medical emergency would become a felony under a bill approved Tuesday by the House Public Health, Welfare and Labor Committee.

House Bill 1733 by freshman Rep. Gunner DeLay, R-Fort Smith, was approved by a vote of 13-6. It needed 11 votes to go to the House floor for consideration.

Arkansas law states that an abortion of a "viable fetus" can be performed only to protect the "life or health of the woman." Violations are classified as Class A misdemeanors, which are punishable by up to a year in jail and fines of up to \$1,000.

DeLay's bill would make the offense a Class D felony, punishable by up to six years in prison and fines of up to \$10,000.

"Viable" means the fetus can live outside the mother's womb, and law says that condition exists after the 25th week of pregnancy.

The bill also would change the conditions by which viable fetuses could be legally aborted. It would change the term "life or health of the woman" to "unless a medical emergency exists."

The bill defines "medical emergency" as a "condition which on the basis of the physician's good-faith clinical judgment so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function."

When he filed the bill last month, DeLay said he was concerned about a 1992 state Department of Health report showing that 60 third-trimester abortions had been performed that year. Before the committee meeting Tuesday, DeLay admitted he had been wrong. He said the number was closer to 18. He later told committee members that he had "no idea" how many third-trimester abortions were performed in Arkansas.

Carol Nokes, head of the Arkansas Coalition for Choice, testified that Health Department officials told her that only two such abortions were performed during the 1991-92 reporting period.

Nokes said DeLay's bill is unnecessary. She said it serves only to threaten physicians and cloud their judgment with the fear of becoming felons.

Nokes read a statement from Little Rock lawyer Bettina Brownstein in which Brownstein stated that the bill would place unconstitutional restrictions on a woman's right to an abortion. Brownstein wrote that if the bill becomes law, she is ready to pursue the case to the U.S.

Supreme Court.

DeLay said the bill's language already has been upheld in a 1992 Supreme Court ruling in a Pennsylvania case.

"We're not here to say whether we're pro-life or pro-choice or whether we're going to have abortions in this country," he said. "This is simply aimed at correcting a loophole."

He said courts have liberally construed the meaning of "life and health of the woman" and that the term could include varicose veins, high blood pressure and being emotionally unable to deal with a baby.

Rep. Judy Smith, D-Camden, told DeLay she resented him minimizing the health effects of varicose veins. DeLay said he was not being sarcastic, adding that the fetus's "right to life might outweigh the medical consequences of varicose veins."

Several legislators questioned whether the penalties called for in DeLay's bill would apply to mothers and fathers involved in abortion decisions. DeLay, a lawyer, said that would be up to prosecutors.

Dr. Orman Simmons, a Little Rock gynecologist, said the measure is designed to stop late-pregnancy abortions performed for "convenience." He conceded that some doctors might stop performing medically necessary abortions because of the threat of felony charges.

Carolyn Izard, a nurse who works at a Little Rock abortion clinic, testified that women and their doctors already are acting responsibly. She said if a woman reaches the seventh month of pregnancy, it is because she wants the baby.

"How sick does she have to be" before a doctor would be allowed under DeLay's bill to perform an abortion, Izard asked.

DeLay said opponents of the bill were trying to create hysteria by mentioning pregnancy complications such as blindness and the loss of limbs.

