

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 2709

By: Billy

4  
5  
6 AS INTRODUCED

7 An Act relating to abortion; amending Section 6,  
8 Chapter 200, O.S.L. 2005, as amended by Section 2,  
9 Chapter 161, O.S.L. 2007 (63 O.S. Supp. 2007, Section  
10 1-738.1), which relates to definitions; defining  
11 term; requiring performance of an ultrasound and  
12 explanation of the ultrasound prior to a pregnant  
13 woman having an abortion; providing for aversion of  
14 eyes from ultrasound; excepting compliance with  
15 requirement in a medical emergency; providing for  
16 certification; requiring retention of records;  
17 providing penalty for false certification; providing  
18 penalty for noncompliance with act; providing penalty  
19 for multiple noncompliances; authorizing private  
20 right of action; providing for codification; and  
21 providing an effective date.

22  
23  
24 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 6, Chapter 200, O.S.L.  
2005, as amended by Section 2, Chapter 161, O.S.L. 2007 (63 O.S.  
Supp. 2007, Section 1-738.1), is amended to read as follows:

Section 1-738.1 As used in Sections 1-738.1 through 1-738.5 of  
this title:

1. "Abortion" means the term as is defined in Section 1-730 of  
this title;

1           2. "Attempt to perform an abortion" means an act, or an  
2 omission of a statutorily required act, that, under the  
3 circumstances as the actor believes them to be, constitutes a  
4 substantial step in a course of conduct planned to culminate in the  
5 performance of an abortion in this state in violation of this act;

6           3. "Board" means the State Board of Medical Licensure and  
7 Supervision;

8           4. "Medical emergency" means the existence of any physical  
9 condition, not including any emotional, psychological, or mental  
10 condition, which a reasonably prudent physician, with knowledge of  
11 the case and treatment possibilities with respect to the medical  
12 conditions involved, would determine necessitates the immediate  
13 abortion of the pregnancy of the female to avert her death or to  
14 avert substantial and irreversible impairment of a major bodily  
15 function arising from continued pregnancy;

16           5. "Physician" means a person licensed to practice medicine in  
17 this state pursuant to Sections 495 and 633 of Title 59 of the  
18 Oklahoma Statutes;

19           6. "Probable gestational age of the unborn child" means what,  
20 in the judgment of the physician, will with reasonable probability  
21 be the gestational age of the unborn child at the time the abortion  
22 is planned to be performed;

23           7. "Stable Internet web site" means a web site that, to the  
24 extent reasonably practicable, is safeguarded from having its

1 content altered other than by the State Board of Medical Licensure  
2 and Supervision; ~~and~~

3 8. "Unborn child" means the term as is defined in Section 1-730  
4 of this title; and

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

7 SECTION 2. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 1-738.3b of Title 63, unless  
9 there is created a duplication in numbering, reads as follows:

10 A. Any abortion provider who knowingly performs any abortion  
11 shall comply with the requirements of this section.

12 B. At least one (1) hour prior to a woman having any part of an  
13 abortion performed or induced, and prior to the administration of  
14 any anesthesia or medication in preparation for the abortion on the  
15 woman, the physician who is to perform or induce the abortion, or  
16 the certified technician working in conjunction with the physician,  
17 shall:

18 1. Perform an obstetric ultrasound on the pregnant woman;

19 2. Provide a simultaneous explanation of what the ultrasound is  
20 depicting;

21 3. Display the ultrasound images so that the pregnant woman may  
22 view them; and

23 4. Provide a medical description of the ultrasound images,  
24 which shall include the dimensions of the embryo or fetus and the

1 presence of external members and internal organs, if present and  
2 viewable.

3 C. Nothing in this section shall be construed to prevent a  
4 pregnant woman from averting her eyes from the ultrasound images  
5 required to be provided to and reviewed with her. Neither the  
6 physician nor the pregnant woman shall be subject to any penalty if  
7 she refuses to look at the presented ultrasound images.

8 D. Upon a determination by an abortion provider that a medical  
9 emergency, as defined in Section 1-738.1 of Title 63 of the Oklahoma  
10 Statutes, exists with respect to a pregnant woman, the provider  
11 shall certify in writing the specific medical conditions that  
12 constitute the emergency. The certification shall be placed in the  
13 medical file of the woman and shall be kept by the abortion provider  
14 for a period of not less than seven (7) years. If the woman is a  
15 minor, then the certification shall be placed in the medical file of  
16 the minor and kept for at least seven (7) years or for two (2) years  
17 after the minor reaches the age of majority, whichever is greater.

18 E. An abortion provider who willfully falsifies a certification  
19 under subsection C of this section shall be subject to all penalties  
20 provided for under Section 3 of this act for failure to comply with  
21 Title 63 of the Oklahoma Statutes.

22 SECTION 3. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 1-738.3c of Title 63, unless  
24 there is created a duplication in numbering, reads as follows:

1       A. An abortion provider who willfully fails to comply with the  
2 provisions of Section 2 of this act shall be subject to civil  
3 penalties in accordance with this section in an appropriate court.  
4 Upon a finding by a court that the respondent in an action commenced  
5 under this subsection has knowingly violated a provision of Title 63  
6 of the Oklahoma Statutes, the court shall:

7       1. Notify the State Medical Board of Licensure and Supervision  
8 or the State Board of Osteopathic Examiners; and

9       2. Assess a civil penalty against the respondent in an amount  
10 not to exceed One Hundred Thousand Dollars (\$100,000.00).

11       B. Upon a finding by a court that the respondent in an action  
12 commenced under this section has knowingly violated a provision of  
13 Section 2 of this act and the respondent has been found to have  
14 knowingly violated a provision of Section 2 of this act on a prior  
15 occasion, the court shall:

16       1. Notify the State Medical Board of Licensure and Supervision  
17 or the State Board of Osteopathic Examiners; and

18       2. Assess a civil penalty against the respondent in an amount  
19 not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00).

20       C. A pregnant woman upon whom an abortion has been performed in  
21 violation of Section 2 of this act, or the parent or legal guardian  
22 of the woman if she is an unemancipated minor, as defined in Section  
23 1-740.1 of Title 63 of the Oklahoma Statutes, may commence a civil  
24

1 action against the abortion provider for any knowing or reckless  
2 violation of Section 2 of this act for actual and punitive damages.

3 SECTION 4. This act shall become effective November 1, 2008.

4

5 51-2-9184 SAB 01/16/08

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24