

1 ENGROSSED HOUSE
2 BILL NO. 2780

By: Billy, Ritze, Reynolds,
Sullivan, Ownbey, Wright
(Harold), Tibbs, Cooksey,
Kern, Thompson, Derby and
Faught of the House

4
5 and

6 Sykes of the Senate
7
8

9 An Act relating to abortion; defining terms;
10 requiring performance of an ultrasound and
11 explanation of the ultrasound prior to a pregnant
12 woman having an abortion; providing for aversion of
13 eyes from ultrasound; excepting compliance with
14 requirement in a medical emergency; providing for
15 certification; requiring retention of records;
16 providing penalty for false certification; providing
17 for damages; authorizing injunctive relief;
18 specifying persons who may bring action for
19 noncompliance with act; providing penalty; providing
20 penalties for noncompliance with injunction;
21 authorizing private right of action; providing for
22 revocation of license or certificate; repealing
23 Section 6, Chapter 200, O.S.L. 2005, as last amended
24 by Section 11, Chapter 36, O.S.L. 2008, Section 12,
Chapter 36, O.S.L. 2008, as amended by Section 1,
Chapter 173, O.S.L. 2008 and Section 13, Chapter 36,
O.S.L. 2008 (63 O.S. Supp. 2009, Sections 1-738.1, 1-
738.3b and 1-738.3c), which relate to requiring an
ultrasound be performed prior to a pregnant woman
having an abortion; providing for codification;
providing for severability; and declaring an
emergency.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-738.1A of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 As used in this section and Sections 1-738.2 through 1-738.5 of
5 Title 63 of the Oklahoma Statutes:

6 1. "Abortion" means the term as defined in Section 1-730 of
7 Title 63 of the Oklahoma Statutes;

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

13 3. "Board" means the State Board of Medical Licensure and
14 Supervision;

15 4. "Certified technician" means a Registered Diagnostic Medical
16 Sonographer who is certified in obstetrics and gynecology by the
17 American Registry for Diagnostic Medical Sonography (ARDMS), or a
18 nurse midwife or Advance Practice Nurse Practitioner in obstetrics
19 with certification in obstetrical ultrasonography;

20 5. "Medical emergency" means the existence of any physical
21 condition, not including any emotional, psychological, or mental
22 condition, which a reasonably prudent physician, with knowledge of
23 the case and treatment possibilities with respect to the medical
24 conditions involved, would determine necessitates the immediate

1 abortion of the pregnancy of the female to avert her death or to
2 avert substantial and irreversible impairment of a major bodily
3 function arising from continued pregnancy;

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

7 7. "Probable gestational age of the unborn child" means what,
8 in the judgment of the physician, will with reasonable probability
9 be the gestational age of the unborn child at the time the abortion
10 is planned to be performed;

11 8. "Stable Internet website" means a website that, to the
12 extent reasonably practicable, is safeguarded from having its
13 content altered other than by the State Board of Medical Licensure
14 and Supervision;

15 9. "Unborn child" means the term as is defined in Section 1-730
16 of Title 63 of the Oklahoma Statutes; and

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

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

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

24

1 B. In order for the woman to make an informed decision, at
2 least one (1) hour prior to a woman having any part of an abortion
3 performed or induced, and prior to the administration of any
4 anesthesia or medication in preparation for the abortion on the
5 woman, the physician who is to perform or induce the abortion, or
6 the certified technician working in conjunction with the physician,
7 shall:

8 1. Perform an obstetric ultrasound on the pregnant woman, using
9 either a vaginal transducer or an abdominal transducer, whichever
10 would display the embryo or fetus more clearly;

11 2. Provide a simultaneous explanation of what the ultrasound is
12 depicting;

13 3. Display the ultrasound images so that the pregnant woman may
14 view them;

15 4. Provide a medical description of the ultrasound images,
16 which shall include the dimensions of the embryo or fetus, the
17 presence of cardiac activity, if present and viewable, and the
18 presence of external members and internal organs, if present and
19 viewable; and

20 5. Obtain a written certification from the woman, prior to the
21 abortion, that the requirements of this subsection have been
22 complied with; and

23 6. Retain a copy of the written certification prescribed by
24 paragraph 5 of this subsection. The certification shall be placed

1 in the medical file of the woman and shall be kept by the abortion
2 provider for a period of not less than seven (7) years. If the
3 woman is a minor, then the certification shall be placed in the
4 medical file of the minor and kept for at least seven (7) years or
5 for five (5) years after the minor reaches the age of majority,
6 whichever is greater.

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

12 D. Upon a determination by an abortion provider that a medical
13 emergency, as defined in Section 1 of this act, exists with respect
14 to a pregnant woman, subsection B of this section shall not apply
15 and the provider shall certify in writing the specific medical
16 conditions that constitute the emergency. The certification shall
17 be placed in the medical file of the woman and shall be kept by the
18 abortion provider for a period of not less than seven (7) years. If
19 the woman is a minor, then the certification shall be placed in the
20 medical file of the minor and kept for at least seven (7) years or
21 for five (5) years after the minor reaches the age of majority,
22 whichever is greater.

23

24

1 E. An abortion provider who willfully falsifies a certification
2 under subsection D of this section shall be subject to all penalties
3 provided for under Section 3 of this act.

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

7 A. An abortion provider who knowingly violates a provision of
8 Section 2 of this act shall be liable for damages as provided in
9 this section and may be enjoined from such acts in accordance with
10 this section in an appropriate court.

11 B. A cause of action for injunctive relief against any person
12 who has knowingly violated a provision of Section 2 of this act may
13 be maintained by the woman upon whom an abortion was performed or
14 attempted to be performed in violation of this act; any person who
15 is the spouse, parent, sibling or guardian of, or a current or
16 former licensed health care provider of, the female upon whom an
17 abortion has been performed or attempted to be performed in
18 violation of this act; by a district attorney with appropriate
19 jurisdiction; or by the Attorney General. The injunction shall
20 prevent the abortion provider from performing further abortions in
21 violation of this act in the State of Oklahoma.

22 C. Any person who knowingly violates the terms of an injunction
23 issued in accordance with this section shall be subject to civil
24 contempt, and shall be fined Ten Thousand Dollars (\$10,000.00) for

1 the first violation, Fifty Thousand Dollars (\$50,000.00) for the
2 second violation, One Hundred Thousand Dollars (\$100,000.00) for the
3 third violation, and for each succeeding violation an amount in
4 excess of One Hundred Thousand Dollars (\$100,000.00) that is
5 sufficient to deter future violations. The fines shall be the
6 exclusive penalties for such contempt. Each performance or
7 attempted performance of an abortion in violation of the terms of an
8 injunction is a separate violation. These fines shall be
9 cumulative. No fine shall be assessed against the woman on whom an
10 abortion is performed or attempted.

11 D. A pregnant woman upon whom an abortion has been performed in
12 violation of Section 2 of this act, or the parent or legal guardian
13 of the woman if she is an unemancipated minor, as defined in Section
14 1-740.1 of Title 63 of the Oklahoma Statutes, may commence a civil
15 action against the abortion provider for any knowing or reckless
16 violation of this act for actual and punitive damages.

17 E. An abortion provider who performed an abortion in violation
18 of Section 2 of this act shall be considered to have engaged in
19 unprofessional conduct for which the provider's certificate or
20 license to provide health care services in this state may be
21 suspended or revoked by the State Board of Medical Licensure and
22 Supervision or the State Board of Osteopathic Examiners.

23 SECTION 4. REPEALER Section 6, Chapter 200, O.S.L. 2005,
24 as last amended by Section 11, Chapter 36, O.S.L. 2008, Section 12,

1 Chapter 36, O.S.L. 2008, as amended by Section 1, Chapter 173,
2 O.S.L. 2008 and Section 13, Chapter 36, O.S.L. 2008 (63 O.S. Supp.
3 2009, Sections 1-738.1, 1-738.3b and 1-738.3c), are hereby repealed.

4 SECTION 5. The provisions of this act are severable and if any
5 part or provision shall be held void the decision of the court so
6 holding shall not affect or impair any of the remaining parts or
7 provisions of this act.

8 SECTION 6. It being immediately necessary for the preservation
9 of the public peace, health and safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

12 Passed the House of Representatives the 2nd day of March, 2010.

13

14

15

Presiding Officer of the House of
Representatives

16

17

Passed the Senate the ____ day of _____, 2010.

18

19

20

Presiding Officer of the Senate

21

22

23

24