

THE HOUSE OF REPRESENTATIVES
Wednesday, February 24, 2010

House Bill No. 2780

HOUSE BILL NO. 2780 - By: BILLY, RITZE, REYNOLDS AND SULLIVAN of the House and SYKES of the Senate.

An Act relating to abortion; defining terms; requiring performance of an ultrasound and explanation of the ultrasound prior to a pregnant woman having an abortion; providing for aversion of eyes from ultrasound; excepting compliance with requirement in a medical emergency; providing for certification; requiring retention of records; providing penalty for false certification; providing for damages; authorizing injunctive relief; specifying persons who may bring action for noncompliance with act; providing penalty; providing penalties for noncompliance with injunction; authorizing private right of action; providing for revocation of license or certificate; repealing Section 6, Chapter 200, O.S.L. 2005, as last amended 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.

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

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

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

- 1 1. “Abortion” means the term as defined in Section 1-730 of Title 63 of the
2 Oklahoma Statutes;
- 3 2. “Attempt to perform an abortion” means an act, or an omission of a statutorily
4 required act, that, under the circumstances as the actor believes them to be, constitutes a
5 substantial step in a course of conduct planned to culminate in the performance of an
6 abortion in this state in violation of this act;
- 7 3. “Board” means the State Board of Medical Licensure and Supervision;
- 8 4. “Certified technician” means a Registered Diagnostic Medical Sonographer who
9 is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical
10 Sonography (ARDMS), or a nurse midwife or Advance Practice Nurse Practitioner in
11 obstetrics with certification in obstetrical ultrasonography;
- 12 5. “Medical emergency” means the existence of any physical condition, not
13 including any emotional, psychological, or mental condition, which a reasonably prudent
14 physician, with knowledge of the case and treatment possibilities with respect to the
15 medical conditions involved, would determine necessitates the immediate abortion of the
16 pregnancy of the female to avert her death or to avert substantial and irreversible
17 impairment of a major bodily function arising from continued pregnancy;
- 18 6. “Physician” means a person licensed to practice medicine in this state pursuant
19 to Sections 495 and 633 of Title 59 of the Oklahoma Statutes;
- 20 7. “Probable gestational age of the unborn child” means what, in the judgment of
21 the physician, will with reasonable probability be the gestational age of the unborn child
22 at the time the abortion is planned to be performed;

1 8. “Stable Internet website” means a website that, to the extent reasonably
2 practicable, is safeguarded from having its content altered other than by the State Board
3 of Medical Licensure and Supervision;

4 9. “Unborn child” means the term as is defined in Section 1-730 of Title 63 of the
5 Oklahoma Statutes; and

6 10. “Woman” means a female human being whether or not she has reached the age
7 of majority.

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

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

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

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

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

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

1 4. Provide a medical description of the ultrasound images, which shall include the
2 dimensions of the embryo or fetus, the presence of cardiac activity, if present and
3 viewable, and the presence of external members and internal organs, if present and
4 viewable; and

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

7 6. Retain a copy of the written certification prescribed by paragraph 5 of this
8 subsection. The certification shall be placed in the medical file of the woman and shall be
9 kept by the abortion provider for a period of not less than seven (7) years. If the woman
10 is a minor, then the certification shall be placed in the medical file of the minor and kept
11 for at least seven (7) years or for five (5) years after the minor reaches the age of
12 majority, whichever is greater.

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

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

1 medical file of the minor and kept for at least seven (7) years or for five (5) years after the
2 minor reaches the age of majority, whichever is greater.

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

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

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

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

20 C. Any person who knowingly violates the terms of an injunction issued in
21 accordance with this section shall be subject to civil contempt, and shall be fined Ten
22 Thousand Dollars (\$10,000.00) for the first violation, Fifty Thousand Dollars (\$50,000.00)

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

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

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

18 SECTION 4. REPEALER Section 6, Chapter 200, O.S.L. 2005, as last amended
19 by Section 11, Chapter 36, O.S.L. 2008, Section 12, Chapter 36, O.S.L. 2008, as amended
20 by Section 1, Chapter 173, O.S.L. 2008 and Section 13, Chapter 36, O.S.L. 2008 (63 O.S.
21 Supp. 2009, Sections 1-738.1, 1-738.3b and 1-738.3c), are hereby repealed.

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

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

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-23-10 - DO PASS,
8 As Coauthored.