

EHB 2780

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THE STATE SENATE
Tuesday, March 30, 2010

ENGROSSED

House Bill No. 2780

ENGROSSED HOUSE BILL NO. 2780 - By: Billy, Ritze, Reynolds, Sullivan, Ownbey, Wright (Harold), Tibbs, Cooksey, Kern, Thompson, Derby, Faught and Jones 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:

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

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

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

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

8 3. "Board" means the State Board of Medical Licensure and
9 Supervision;

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

15 5. "Medical emergency" means the existence of any physical
16 condition, not including any emotional, psychological, or mental
17 condition, which a reasonably prudent physician, with knowledge of
18 the case and treatment possibilities with respect to the medical
19 conditions involved, would determine necessitates the immediate
20 abortion of the pregnancy of the female to avert her death or to
21 avert substantial and irreversible impairment of a major bodily
22 function arising from continued pregnancy;

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

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

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

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

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

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

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

21 B. In order for the woman to make an informed decision, at
22 least one (1) hour prior to a woman having any part of an abortion
23 performed or induced, and prior to the administration of any

1 anesthesia or medication in preparation for the abortion on the
2 woman, the physician who is to perform or induce the abortion, or
3 the certified technician working in conjunction with the physician,
4 shall:

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

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

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

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

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

20 6. Retain a copy of the written certification prescribed by
21 paragraph 5 of this subsection. The certification shall be placed
22 in the medical file of the woman and shall be kept by the abortion
23 provider for a period of not less than seven (7) years. If the

1 woman is a minor, then the certification shall be placed in the
2 medical file of the minor and kept for at least seven (7) years or
3 for five (5) years after the minor reaches the age of majority,
4 whichever is greater.

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

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

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

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

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

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

19 C. Any person who knowingly violates the terms of an injunction
20 issued in accordance with this section shall be subject to civil
21 contempt, and shall be fined Ten Thousand Dollars (\$10,000.00) for
22 the first violation, Fifty Thousand Dollars (\$50,000.00) for the
23 second violation, One Hundred Thousand Dollars (\$100,000.00) for the

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

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

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

21 SECTION 4. REPEALER Section 6, Chapter 200, O.S.L. 2005,
22 as last amended by Section 11, Chapter 36, O.S.L. 2008, Section 12,
23 Chapter 36, O.S.L. 2008, as amended by Section 1, Chapter 173,

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

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

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

11 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN SERVICES, dated
12 3-25-10 - DO PASS, As Coauthored.