

MESSAGE
FROM THE
HOUSE OF REPRESENTATIVES

4/27/2010

THE HONORABLE
SECRETARY OF STATE

Sirs:

By order of the House of Representatives of the State of Oklahoma, this
Message is sent:

Transmitting herewith enrolled HB 2780 and advising that under the provisions
of Article V, Section 58, of the Constitution of the State of Oklahoma, the
House of Representatives and the Senate have reconsidered and passed said
bill, over the Governor's veto, by a three-fourths vote of each House.

Respectfully,

JOEL G. KINTSEL

Chief Clerk

f

15:03:00
HM50-8

Received by Paul Ziriaux
Secretary of State Senate

Date: _____

By: _____

RECEIVED

APR 27 2010

OKLAHOMA SECRETARY
OF STATE

3:10 pm KES



OFFICE OF

No. HB 2780

THE GOVERNOR
STATE OF OKLAHOMA

OKLAHOMA CITY, OKLA., April 22, 2010

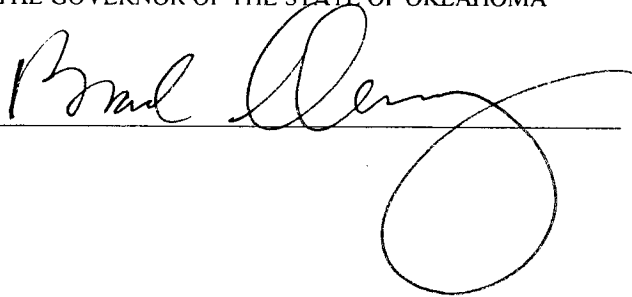
TIME SIGNED: 5:02 pm

TO THE HONORABLE SPEAKER OF THE HOUSE
AND MEMBERS OF THE HOUSE OF REPRESENTATIVES
SECOND SESSION OF THE
FIFTY SECOND OKLAHOMA LEGISLATURE

ENROLLED HOUSE BILL NO. 2780:

This is to advise you that on this date, pursuant to the authority vested in me by Section 11 and 12 of Article VI of the Oklahoma Constitution to approve or object to legislation presented to me, I have VETOED House Bill 2780. While I support reasonable restrictions on abortion, this legislation has numerous flaws. First and foremost, HB 2780 lacks an essential exemption for victims of rape and incest. By forcing the victims of such horrific acts to undergo an ultrasound and listen to a detailed description of the procedure after they have faced the unspeakable trauma of rape or incest, the state victimizes the victim for a second time. It would be unconscionable to subject rape and incest victims to such treatment. Second, because a similar provision of law has already been struck down by the courts, this legislation will be challenged again, resulting in a costly and potentially futile legal battle for the state. Finally, HB 2780 represents an unconstitutional attempt by the Oklahoma Legislature to insert government into the private lives and decisions of its citizens. State policymakers should never mandate that a citizen be forced to undergo any medical procedure against his or her will, especially when such a procedure could cause physical or mental trauma. To do so amounts to an unconstitutional invasion of privacy.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA



By Cecilia H. Hauch

Date/Time 4/23/10 2:05 pm

An Act

ENROLLED 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, Marlatt, Schulz,
Brogdon, Newberry, Brown,
Reynolds, Barrington,
Crain, Stanislowski, Lamb,
Coffee, Justice and Ford 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. "Abortion" means the term as defined in Section 1-730 of Title 63 of the Oklahoma Statutes;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Provide a medical description of the ultrasound images, which shall include the dimensions of the embryo or fetus, the presence of cardiac activity, if present and viewable, and the

presence of external members and internal organs, if present and viewable; and

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

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

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

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

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

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

A. An abortion provider who knowingly violates a provision of Section 2 of this act shall be liable for damages as provided in

this section and may be enjoined from such acts in accordance with this section in an appropriate court.

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

C. Any person who knowingly violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt, and shall be fined Ten Thousand Dollars (\$10,000.00) for the first violation, Fifty Thousand Dollars (\$50,000.00) for the second violation, One Hundred Thousand Dollars (\$100,000.00) for the third violation, and for each succeeding violation an amount in excess of One Hundred Thousand Dollars (\$100,000.00) that is sufficient to deter future violations. The fines shall be the exclusive penalties for such contempt. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. These fines shall be cumulative. No fine shall be assessed against the woman on whom an abortion is performed or attempted.

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

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

SECTION 4. REPEALER 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), are hereby repealed.

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

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

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

Chris Steele
Presiding Officer of the House of
Representatives

Passed the Senate the 19th day of April, 2010.

Greg Allen
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 20th
day of April, 2010,
at 2:40 o'clock P M.

By: *[Signature]*

Approved by the Governor of the State of Oklahoma the _____ day of
_____, 20____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this _____
27th day of April, 2010,
at 3:10 o'clock P M.

By: *M. Susan Lovejoy*