

Oklahoma Abortion Statutes

November 1, 2013



Oklahoma State Department of Health
Health Care Information
1000 NE Tenth Street
Oklahoma City, OK 73117-1299



Introduction/Background

This information has been put together as a convenient reference to Oklahoma Abortion laws and regulations. It has been taken directly from Oklahoma Statutes Title 63 which can be found on the Oklahoma State Courts Network website

<http://www.oscn.net/applications/oscn/index.asp?ftdb=STOKST&level=1>.

For your information, a few definitions

- **Laws/Statutes:** These are the laws which are passed by the legislature and often provide broad overarching guidance to implement programs and address specific items of interest. Often you will find this assigning responsibility for the implementation of a program to a particular group, a mission statement, implementation timelines, and possibly funding sources. Most of OSDH related legislation is found under Title 63 which covers Public Health and Safety.
- **Regulation/Rules:** These have the same effect as law and are passed by the Board of Health and then in turned are reviewed by the legislature. Here you will find the detail on how a program should be implemented, interpreted, enforced or administered. OSDH related regulation can be found under Title 310.

Table of Contents

ABORTION

Statutes (Note: NO Abortion regulations at this time)

ABORTION - RELATED LICENSING

Hospitals and Related Facilities

[63 § 1-701. Definitions](#)

[63 § 1-702. Licenses Required – Practice of Healing Arts or Medicine](#)

[63 § 1-707. Rules and Standards](#)

ABORTION

[63 § 1-730. Definitions](#)

[63 § 1-731. Persons Who May Perform Abortions - Violations - Penalties](#)

[63 § 1-731.2 Abortion Solely on Account of Sex of Unborn Child – Penalties – Civil Action – Anonymity of the Female](#)

[63 § 1-732. Viable Fetus - Grounds to Abort - Procedure](#)

[63 § 1-733. Self-induced Abortions](#)

[63 § 1-734. Live-Born Fetus - Care and Treatment](#)

[63 § 1-735. Sale of Child, Unborn Child or Remains of Child - Experiments](#)

[63 § 1-736. Hospitals - Advertising of Counseling to Pregnant Women](#)

[63 § 1-737. Hospitals Which May Perform Abortions](#)

[63 § 1-737.4 Posting of Signs - Lettering](#)

[63 § 1-737.5. Failure to Post – Civil Penalty-Emotional Damages for Injuries Caused](#)

[63 § 1-737.6. Minors Informed Orally-Records](#)

STATISTICAL REPORTING OF ABORTION ACT

[63 § 1-738i. Short Title](#)

[63 § 1-738j. Definitions-Forms and Laws to be Posted on Website of State Department of Health-Electronic Submission of Forms](#)

[63 § 1-738k. Individual Abortion Form – Department to Post Individual Abortion Forms on Website](#)

[63 § 1-738l. Complications of Induced Abortion Report](#)

[63 § 1-738m. Annual Abortion Report – Annual Judicial Bypass of Abortion parental Consent Summary](#)

[63 § 1-738n. Notice of Act Requirements – Failure to Submit Forms or Reports – Penalties – Compliance - Rules](#)

[63 § 1-738o. Intervention as a Matter of Right by Oklahoma Legislature in Constitutional Law Challenge to Act](#)

[63 § 1-738p. Effect of Judicial Restraining Order or Injunction](#)

[63 § 1-738.1A. Definitions](#)

[63 § 1-738.2. No Abortion Without Voluntary and Informed Consent - Confirmation that Patient has Received Information](#)

[63 § 1-738.3. Publication and Availability of Printed Informational Materials](#)

[63 § 1-738.3a. Department of Health Web Site - Physician Reporting Requirements - Form for Physician - Notice - Rules](#)

[§ 1-738.3d. Ultrasound Required Before Abortion - Written Acknowledgement - Penalties for Violation](#)

[§ 1-738.3e. Violations - Cause of Action - Civil Remedies](#)

[63 § 1-738.4. Abortion Compelled by Medical Emergency](#)

[63 § 1-738.5. Performing or Attempting an Abortion in Violation of Act - No Penalty Assessed Against the Woman - Felony](#)

UNBORN CHILD PAIN AWARENESS/PREVENTION ACT

[63 § 1-738.6. Short Title -- Unborn Child Pain Awareness/Prevention Act](#)

[63 § 1-738.7. Definitions](#)

[63 § 1-738.8. Provision of Information Prior to Abortion - Written Certification of Receipt](#)

[63 § 1-738.9. Information About and Administration of Anesthetic or Analgesic](#)

[63 § 1-738.10. Materials Conveying Accurate, Scientific Information About Fetus at Various Gestational Stages](#)

[63 § 1-738.11. Internet Web Site](#)

[63 § 1-738.12. Information to be Provided When Medical Emergency Compels Performance of Abortion](#)

[63 § 1-738.13. Physicians' Reporting Form](#)

[63 § 1-738.14. Violations - Penalties](#)

[63 § 1-738.15. Civil Actions](#)

[63 § 1-738.16. Ruling Concerning Public Disclosure of Identity of Female - Order](#)

[63 § 1-738.17. Severability](#)

[63 § 1-739. Records](#)

[63 § 1-740. Abortion on Minor Without Parental Consent](#)

[63 § 1-740.1. Definitions](#)

[63 § 1-740.2. Parental Notification](#)

[63 § 1-740.2A. Court Ordered Evaluation and Counseling with a Mental Health Professional – Purpose - Results](#)

[63 § 1-740.3. Judicial Authorization of Abortion Without Parental Notification - Participation by Minor in Court Proceedings - Confidentiality - Appeal](#)

[63 § 1-740.4. Violations - Misdemeanor - Civil Actions](#)

[63 § 1-740.4a. Physicians Reporting Procedures for Abortions Performed on Unemancipated Minors - Department of Health Web Site - Notice - Public Statistical Report](#)

[63 § 1-740.4b. Violations - Penalties - Defenses - Cause of Action](#)

[63 § 1-740.5. Severability - Savings Clause](#)
[63 § 1-740.6. Effect of Court Injunction, Suspension, or Delays of Implementation of Act](#)
[63 § 1-740.11. Funding to Nongovernmental Entities That Provide Alternatives-to-Abortion Services](#)
[63 § 1-740.12. Alternatives-to-Abortion Services Revolving Fund](#)
[63 § 1-741. Abortions - Refusal to Perform or Participate - Exemptions](#)
[63 § 1-741.1. Prohibition Against Use of State Assistance or Resources to Encourage or Perform Abortion - Exceptions](#)
[63 § 1-741.3 Health Plans – Coverage for Abortion – Elective Abortion Coverage - Employers](#)
[63 § 1-741.12 Wrongful Life Action – Wrongful Birth Action – Limitation on Damages](#)
[63 § 1-741.13 Form Used to Obtain Consent of a Minor – Validity – Parental Consent Statement](#)
[63 § 1-741.14 Effect of Temporary or Permanent Judicial Orders](#)
[63 § 1-741. Abortions - Refusal to Perform or Participate – Exemptions](#)
[63 § 1-741.1. Prohibition Against Use of State Assistance or Resources to Encourage or Perform Abortion – Exceptions](#)
[63 § 1-741.3. Health Plans – Coverage for Abortion – Elective Abortion Coverage - Employers](#)
[63 § 1-741.12. Wrongful Life Action - Wrongful Birth Action - Limitation on Damages](#)

PARENTAL NOTIFICATION FOR ABORTION ACT

[63 § 1-744 Short Title](#)
[63 § 1-744.1. Definitions](#)
[63 § 1-744.2. Written Notice Required for Unemancipated Minors Found to be Incompetent](#)
[63 § 1-744.3. Exception for Medical Emergency](#)
[63 § 1-744.4. Exception for Victims of Sexual or Physical Abuse](#)
[63 § 1-744.5. Violations – Misdemeanor – Civil Actions](#)
[63 § 1-744.6. Effect of Restraining Order or Injunction](#)

PAIN-CAPABLE UNBORN CHILD PROTECTION ACT

[63 § 1-745.1 Short Title](#)
[63 § 1-745.2 Definitions](#)
[63 § 1-745.3 Legislative Findings](#)
[63 § 1-745.4 Probably Post fertilization Age of Unborn Child – Unprofessional Conduct](#)
[63 § 1-745.5 Prohibited Abortions – Physician Judgment](#)
[63 § 1-745.6 Physician Reporting Requirements – Department of Health Report - Fines](#)
[63 § 1-745.7 Violation of Act](#)
[63 § 1-745.8 Liability – Cause of Action – Judgment and Attorney Fees - Damages](#)
[63 § 1-745.9 Civil and Criminal Proceedings Brought Under Act](#)
[63 § 1-745.10 Constitutionality and Severability](#)
[63 § 1-745.11 No Right to Abortion by Act](#)

HEARTBEAT INFORMED CONSENT ACT

[63 § 1-745.12. Short Title](#)
[63 § 1-745.13. Definitions](#)
[63 § 1-745.14. Duties of Abortion Providers](#)
[63 § 1-745.15. Exemptions – Averting Mother’s Death – Medical Emergencies](#)
[63 § 1-745.16. Intentional or Reckless Violations of Act – Misdemeanor – Civil Action – Remedies](#)
[63 § 1-745.17. Anonymity of Woman](#)
[63 § 1-745.18. Act Does Not Create or Recognize Right to Abortion](#)
[63 § 1-745.19. Severability](#)

PRIORITIZATION OF PUBLIC FUNDING IN THE PURCHASING OF FAMILY PLANNING AND COUNSELING SERVICES ACT

[63 § 1-747.1. Short Title](#)
[63 § 1-747.1. Definitions](#)
[63 § 1-747.1. Priority of Funding](#)
[63 § 1-747.1. Cause of Action](#)
[63 § 1-747.1. Severability](#)

**ABORTION
RELATED LICENSING
Title 63, Article 7 Hospitals and Related Facilities**

Amended by Laws 1999, HB 1184, c. 93, § 2, eff. November 1, 1999

**LICENSING – HOSPITALS AND RELATED FACILITIES
63 § 1-701. Definitions**

For the purposes of this article:

1. "Hospital" means any institution, place, building or agency, public or private, whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care of patients admitted for overnight stay or longer in order to obtain medical care, surgical care, obstetrical care, or nursing care for illness, disease, injury, infirmity, or deformity. Except as otherwise provided by paragraph 5 of this subsection, places where pregnant females are admitted and receive care incident to pregnancy, **abortion** or delivery shall be considered to be a "hospital" within the meaning of this article, regardless of the number of patients received or the duration of their stay. The term "hospital" includes general medical surgical hospitals, critical access and emergency hospitals, and birthing centers;
2. "General medical surgical hospital" means a hospital maintained for the purpose of providing hospital care in a broad category of illness and injury;
3. "Specialized hospital" means a hospital maintained for the purpose of providing hospital care in a certain category, or categories, of illness and injury.
4. "Critical access hospital" means a hospital determined by the State Department of Health to be a necessary provider of health care services to residents of a rural community;
5. "Emergency hospital" means a hospital that provides emergency treatment and stabilization services on a 24-hour basis that has the ability to admit and treat patients for short periods of time;
6. "Birthing center" means any facility, place or institution, which is maintained or established primarily for the purpose of providing services of a certified midwife or licensed medical doctor to assist or attend a woman in delivery and birth, and where a woman is scheduled in advance to give birth following a normal, uncomplicated, low-risk pregnancy. Provided, however, licensure for a birthing center shall not be compulsory; and
7. "Day treatment program" means nonresidential, partial hospitalization programs, day treatment programs, and day hospital programs as defined by subsection A of Section 175.20 of Title 10 of the Oklahoma Statutes.

Added by Laws 1963, c. 325, art. 7, § 701.
Amended by Laws 1978, c. 207, § 1, eff. Oct. 1, 1978;
Laws 1991, c. 306, § 7, emerg. eff. June 4, 1991;
Laws 1995, c. 231, § 5, eff. Nov. 1, 1995;
Amended by Laws 1999, HB 1184, c. 93, § 1, eff. November 1, 1999

**63 § 1-702. Licenses Required – Practice of Healing
Arts or Medicine**

- A. It shall be unlawful for any person to establish, operate or maintain in the State of Oklahoma a hospital without first obtaining a license therefor in the manner hereinafter provided. Hospitals operated by the federal government, state mental hospitals, and community-based structured crisis centers, as defined in Section 3-317 of Title 43A of the Oklahoma Statutes, shall be exempt from the provisions of this article.
- B. A hospital may be licensed as a general medical surgical hospital with one or more specialty services or combination of specialty services in a single license.
- C. Nothing in this article shall authorize any person to engage, in any manner, in the practice of the healing arts.

Added by Laws 1963, c. 325, art. 7, § 702, operative July 1, 1963.
Amended by Laws 1996, c. 354, § 49, eff. Nov. 1, 1996;

63 § 1-707. Rules and Standards

A. The State Board of Health, upon the recommendation of the State Commissioner of Health and with the advice of the Oklahoma Hospital Advisory Council, **shall promulgate rules and standards as it deems to be in the public interest for hospitals**, on the following:

1. Construction plans and location, including fees not to exceed Two Thousand Dollars (\$2,000.00) for submission or resubmission of architectural and building plans, and procedures to ensure the timely review of such plans by the State Department of Health. Said assessed fee shall be used solely for the purposes of processing approval of construction plans and location by the State Department of Health;
2. Physical plant and facilities;
3. Fire protection and safety;
4. Food service;
5. Reports and records;
6. Staffing and personal service;
7. Surgical facilities and equipment;
8. Maternity facilities and equipment;
9. Control of communicable disease;
10. Sanitation;
11. Laboratory services;
12. Nursing facilities and equipment; and
13. Other items as may be deemed necessary to carry out the purposes of this article.

B. 1. The State Board of Health, upon the recommendation of the State Commissioner of Health and with the advice of the Oklahoma Hospital Advisory Council and the State Board of Pharmacy, shall promulgate rules and standards as it deems to be in the public interest with respect to the storage and dispensing of drugs and medications for hospital patients.

2. The State Board of Pharmacy shall be empowered to inspect drug facilities in licensed hospitals and shall report violations of applicable statutes and rules to the State Department of Health for action and reply.

C. 1. The Commissioner shall appoint an Oklahoma Hospital Advisory Council to advise the Board, the Commissioner and the Department regarding hospital operations and to recommend actions to improve patient care.

2. The Advisory Council shall have the duty and authority to:
 - a. review and approve in its advisory capacity rules and standards for hospital licensure,
 - b. evaluate, review and make recommendations regarding Department licensure activities, provided however, the Advisory Council shall not make recommendations regarding scope of practice for any health care providers or practitioners regulated pursuant to Title 59 of the Oklahoma Statutes, and
 - c. recommend and approve:

(1) quality indicators and data submission requirements for hospitals, to include:

(a) Agency for Healthcare Research and Quality (AHRQ) Patient Safety Indicators Available as part of the standard inpatient discharge data set, and

(b) for acute care intensive care unit patients, ventilator-associated pneumonia and device-related blood stream infections, and

(2) the indicators and data to be used by the Department to monitor compliance with licensure requirements, and

d. to publish an annual report of hospital performance to include the facility specific quality indicators required by this section.

D. 1. The Advisory Council shall be composed of nine (9) members appointed by the Commissioner with the advice and consent of the Board. The membership of the Advisory Council shall be as follows:

a. two members shall be hospital administrators of licensed hospitals,

b. two members shall be licensed physicians or practitioners who have current privileges to provide services in hospitals,

c. two members shall be hospital employees, and

d. three members shall be citizens representing the public who:

(1) are not hospital employees,

(2) do not hold hospital staff appointments, and

(3) are not members of hospital governing boards.

2. a. Advisory Council members shall be appointed for three-year terms except the initial terms after November 1, 1999, of one hospital administrator, one licensed physician or practitioner, one hospital employee, and one public member shall be one (1) year. The initial terms after the effective date of this act of one hospital administrator, one licensed physician or practitioner, one hospital employee, and one public member shall be two (2) years. The initial terms of all other members shall be three (3) years. After initial appointments to the Council, members shall be appointed to three-year terms.

b. Members of the Advisory Council may be removed by the Commissioner for cause.

E. The Advisory Council shall meet on a quarterly basis and shall annually elect from among its members a chairperson. Members of the Council shall serve without compensation but shall be reimbursed by the Department for travel expenses related to their service as authorized by the State Travel Reimbursement Act.

Laws 1963, SB 26, c. 325, art. 7, § 707, emerg. eff. July 1, 1963
Amended by Laws 1968, SB 346, c. 86, § 1, emerg. eff. April 1, 1968
Amended by Laws 1999, HB 1184, c. 93, § 6, eff. November 1, 1999

Amended by Laws 1999, HB 1188, c. 213, § 2, emerg. eff. July 1, 1999 Amended by Laws 2006, HB 2842, c. 315, § 16, emerg. eff. June 9, 2006

ABORTION

63 § 1-730. Definitions

A. As used in this article:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous miscarriage, accidental trauma, or a criminal assault on the pregnant female or her unborn child;

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;

3. "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;

4. "Unborn child" means the unborn offspring of human beings from the moment of conception, through pregnancy, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus;

5. "Unemancipated minor" means any person less than eighteen (18) years of age who is not or has not been married or who is under the care, custody, and control of the person's parent or parents, guardian, or juvenile court of competent jurisdiction;

6. "Viable" means potentially able to live outside of the womb of the mother upon premature birth, whether resulting from natural causes or an abortion;

7. "Conception" means the fertilization of the ovum of a female individual by the sperm of a male individual;

8. "Health" means physical or mental health;

9. "Department" means the State Department of Health; and

10. "Inducing an abortion" means the administration by any person, including the pregnant woman, of any substance designed or intended to cause an expulsion of the unborn child, effecting an abortion as defined above.

B. Nothing contained herein shall be construed in any manner to include any birth control device or medication or sterilization procedure.

Added by Laws 1978, HB 1813, c. 207, § 2, eff. October 1, 1978;
Amended by Laws 2007, SB 139, c. 161, § 1, eff. November 1, 2007;
Amended by Laws 2009, HB 1595, c. 227, § 1, eff. November 1, 2009.

63 § 1-731. Persons Who May Perform Abortions - Violations - Penalties

A. No person shall perform or induce an abortion upon a pregnant woman unless that person is a physician licensed to practice medicine in the State of Oklahoma. Any person violating this section shall be guilty of a felony punishable by imprisonment for not less than one (1) year nor more than three (3) years in the State Penitentiary.

B. No person shall perform or induce an abortion upon a pregnant woman subsequent to the end of the first trimester of her pregnancy, unless such abortion is performed or induced in a general hospital.

Laws 1978, c. 207, § 3, eff. Oct. 1, 1978;
Amended by Laws 1997, c. 133, § 523, Effective Date Amended to July 1, 1999 by Laws 1998, c. 2 (First Extraordinary Session), §§ 23-26, effective June 19, 1998;
Amended by H.B. 1009X (1st Ex. Sess. 1999), § 379, emerg. eff. July 1, 1999.

63 § 1-731.2. Abortion Solely on Account of Sex of Unborn Child – Penalties – Civil Action – Anonymity of the Female

A. As used in this section:

1. "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; and

2. "Unemancipated minor" means any person less than eighteen (18) years of age who is not or has not been married or who is under the care, custody, and control of the person's parent or parents, guardian, or juvenile court of competent jurisdiction.

B. No person shall knowingly or recklessly perform or attempt to perform an abortion with knowledge that the pregnant female is seeking the abortion solely on account of the sex of the unborn child. Nothing in this section shall be construed to proscribe the performance of an abortion because the unborn child has a genetic disorder that is sex-linked.

C. Any person who knowingly or recklessly violates a provision of this section shall be liable for damages as provided in this subsection and may be enjoined from such acts in accordance with this section in an appropriate court.

1. A cause of action for injunctive relief against any person who has knowingly or recklessly violated a provision of this section may be maintained by:

- a. the female upon whom an abortion was performed or attempted to be performed in violation of this section,
- b. any person who is the spouse, parent, sibling, or guardian of, or current or former licensed health care provider of, the female upon whom an abortion has been performed in violation of this section,
- c. a district attorney with appropriate jurisdiction, or
- d. the Attorney General.

2. The injunction shall prevent the abortion provider from performing further abortions in violation of this section in this state.

3. 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, and One Hundred Thousand Dollars (\$100,000.00) for the third violation and for each succeeding violation. The fines shall be the exclusive penalties for civil contempt pursuant to this paragraph. 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 female upon whom an abortion is performed or attempted.

4. A pregnant female upon whom an abortion has been performed in violation of this section, or the parent or legal guardian of the female if she is an unemancipated minor, may commence a civil action against the abortion provider for any knowing or reckless violation of this section for actual and punitive damages.

D. An abortion provider who knowingly or recklessly performed an abortion in violation of this section shall be considered to have engaged in unprofessional conduct for which the certificate or license of the provider to provide health care services in this state shall be suspended or revoked by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.

E. In every proceeding or action brought under this section, the anonymity of any female upon whom an abortion is performed or attempted shall be preserved unless she gives her consent to such disclosure. The court, upon motion or sua sponte, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the female's identity from public disclosure. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone who brings an action under subsection B of this section shall do so under a pseudonym.

Added by Laws 2010, SB 1890, c. 46, § 1, emerg. eff. April 2, 2010.

63 § 1-732. Viable Fetus – Grounds to Abort - Procedure

A. No person shall perform or induce an abortion upon a pregnant woman after such time as her unborn child has become viable unless such abortion is necessary to prevent the death of the pregnant woman or to prevent impairment to her health.

B. An unborn child shall be presumed to be viable if more than twenty-four (24) weeks have elapsed since the probable beginning of the last menstrual period of the pregnant woman, based upon either information provided by her or by an examination by her attending physician. If it is the judgment of the attending physician that a particular unborn child is not viable where the presumption of viability exists as to that particular unborn child, then he shall certify in writing the precise medical criteria

upon which he has determined that the particular unborn child is not viable before an abortion may be performed or induced.

C. No abortion of a viable unborn child shall be performed or induced except after written certification by the attending physician that in his best medical judgment the abortion is necessary to prevent the death of the pregnant woman or to prevent an impairment to her health. The physician shall further certify in writing the medical indications for such abortion and the probable health consequences if the abortion is not performed or induced.

D. The physician who shall perform or induce an abortion upon a pregnant woman after such time as her unborn child has become viable shall utilize the available method or technique of abortion most likely to preserve the life and health of the unborn child, unless he shall first certify in writing that in his best medical judgment such method or technique shall present a significantly greater danger to the life or health of the pregnant woman than another available method or technique.

E. An abortion of a viable unborn child shall be performed or induced only when there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for the child. During the performance or inducing of the abortion, the physician performing it, and subsequent to it, the physician required by this section to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the child, in the same manner as if the child had been born naturally or spontaneously. The requirement of the attendance of a second physician may be waived when in the best judgment of the attending physician a medical emergency exists and further delay would result in a serious threat to the life or physical health of the pregnant woman. Provided that, under such emergency circumstances and waiver, the attending physician shall have the duty to take all reasonable steps to preserve the life and health of the child before, during and after the abortion procedure, unless such steps shall, in the best medical judgment of the physician, present a significantly greater danger to the life or health of the pregnant woman.

F. Any person violating subsection A of this section shall be guilty of homicide.

63 § 1-733. Self-induced Abortions

No woman shall perform or induce an abortion upon herself except under the supervision of a duly licensed physician. Any physician who supervises a woman in performing or inducing an abortion upon herself shall fulfill all the requirements of this article which apply to a physician performing or inducing an abortion.

Laws 1978, c. 207, § 5, eff. Oct. 1, 1978;
Amended by Laws 1997, c. 133, § 525, Effective Date Amended to July 1, 1999 by Laws 1998, c. 2 (First Extraordinary Session), §§ 23-26, effective June 19, 1998.

63 § 1-734. Live-Born Fetus - Care and Treatment

A. No person shall purposely take the life of a child born as a result of an abortion or attempted abortion which is alive when partially or totally removed from the uterus of the pregnant woman.

B. No person shall purposely take the life of a viable child who is alive while inside the uterus of the pregnant woman and may be removed alive therefrom without creating any significant danger to her life or health.

C. Any person who performs, induces, or participates in the performance or inducing of an abortion shall take all reasonable measures to preserve the life of a child who is alive when partially or totally removed from the uterus of the pregnant woman, so long as the measures do not create any significant danger to her life or health.

D. Any person violating this section shall be guilty of homicide.

Laws 1978, c. 207, § 6, eff. Oct. 1, 1978;
Amended by Laws 1998, c. 133, § 526, Effective Date Amended to July 1, 1999 by Laws 1998, c. 2 (First Extraordinary Session), §§ 23-26, effective June 19, 1998.

63 § 1-735. Sale of Child, Unborn Child or Remains of Child - Experiments

A. No person shall sell a child, an unborn child or the remains of a child or an unborn child resulting from an abortion. No person shall experiment upon a child or an unborn child resulting from an abortion or which is intended to be aborted unless the experimentation is therapeutic to the child or unborn child.

B. No person shall experiment upon the remains of a child or an unborn child resulting from an abortion. The term "experiment" does not include autopsies performed according to law.

Laws 1978, c. 207, § 7, eff. Oct. 1, 1978.

63 § 1-736. Hospitals - Advertising of Counseling to Pregnant Women

No hospital in which abortions are performed or induced shall advertise or hold itself out as also providing counseling to pregnant women, unless:

1. The counseling is done by a licensed physician, a licensed registered nurse or by a person holding at least a bachelor's degree from an accredited college or university in psychology or some similarly appropriate field;
2. The counseling includes factual information, including explicit discussion of the development of the unborn child; and
3. The counseling includes a thorough discussion of the alternatives to abortion and the availability of agencies and services to assist her if she chooses not to have an abortion.

Laws 1978, c. 207, § 8, eff. Oct. 1, 1978.

63 § 1-737. Hospitals Which May Perform Abortions

An abortion otherwise permitted by law shall be performed only in a hospital, as defined in this article, which meets standards set by the Department. **The Department shall develop and promulgate reasonable standards relating to abortions.**

Laws 1978, c. 207, § 9, eff. Oct. 1, 1978.

63 § 1-737.4. Posting of Signs - Lettering

A. Any private office, freestanding outpatient clinic, or other facility or clinic in which abortions, other than abortions necessary to prevent the death of the pregnant female, are performed, induced, prescribed for, or where the means for an abortion are provided shall conspicuously post a sign in a location defined in subsection C of this section so as to be clearly visible to patients, which reads:

Notice: It is against the law for anyone, regardless of his or her relationship to you, to force you to have an abortion. By law, we cannot perform, induce, prescribe for, or provide you with the means for an abortion unless we have your freely given and voluntary consent. It is against the law to perform, induce, prescribe for, or provide you with the means for an abortion against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence.

B. The sign required pursuant to subsection A of this section shall be printed with lettering that is legible and shall be at least three-quarters-of-an-inch boldfaced type.

C. A facility in which abortions are performed, induced, prescribed for, or where the means for an abortion are provided that is a private office or a freestanding outpatient clinic shall post the required sign in each patient waiting room and patient consultation room used by patients on whom abortions are performed, induced, prescribed for, or who are provided with the means for an abortion. A hospital or any other facility in which abortions are performed, induced, prescribed for, or where the means for an abortion are provided that is not a private office or freestanding outpatient clinic shall post the required sign in each patient admission

area used by patients on whom abortions are performed, induced, prescribed for, or by patients who are provided with the means for an abortion.

Added by Laws 2010, HB 3075, c. 163, § 1, emerg. eff. April 22, 2010.

63 § 1-737.5. Failure to Post – Civil Penalty-Emotional Damages for Injuries Caused

A. Any private office, freestanding outpatient clinic or other facility or clinic that fails to post a required sign in knowing, reckless, or negligent violation of this act shall be assessed an administrative fine of Ten Thousand Dollars (\$10,000.00). Each day on which an abortion, other than an abortion necessary to prevent the death of the pregnant female, is performed, induced, prescribed for, or where the means for an abortion are provided in a private office, freestanding outpatient clinic or other facility or clinic in which the required sign is not posted during any portion of business hours when patients or prospective patients are present is a separate violation.

B. An action may be brought by or on behalf of an individual injured by the failure to post the required sign. A plaintiff in an action under this subsection may recover damages for emotional distress and any other damages allowed by law.

C. The sanctions and actions provided in this section shall not displace any sanction applicable under other law.

Added by Laws 2010, HB 3075, c. 163, § 2, emerg. eff. April 22, 2010.

63 § 1-737.6. Minors Informed Orally-Records

A. If the pregnant female is a minor, the attending physician shall orally inform the female that no one can force her to have an abortion and that an abortion cannot be performed, induced, prescribed for, or that the means for an abortion cannot be provided unless she provides her freely given, voluntary, and informed consent.

B. The minor female shall certify in writing, prior to the performance of, induction of, receiving the prescription for, or provision of the means for the abortion, that she was informed by the attending physician of the required information in subsection A of this section. A copy of the written certification shall be placed in the minor's file and kept for at least seven (7) years or for five (5) years after the minor reaches the age of majority, whichever is greater.

Added by Laws 2010, HB 3075, c. 163, § 3, emerg. eff. April 22, 2010.

STATISTICAL REPORTING OF ABORTION ACT

63 § 1-738i. Short Title

This act shall be known and may be cited as the "Statistical Abortion Reporting Act".

Added by Laws 2010, HB 3284, c. 276, § 1, eff. November 1, 2010.

63 § 1-738j. Definitions-Forms and Laws to be Posted on Website of State Department of Health-Electronic Submission of Forms

A. As used in the Statistical Abortion Reporting Act:

1. "Abortion" means the term as defined in Section 1-730 of Title 63 of the Oklahoma Statutes;
2. "Complication" means any adverse physical or psychological condition arising from the performance of an abortion, which includes but is not limited to: uterine perforation, cervical perforation, infection, bleeding, hemorrhage, blood clots, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa, preterm delivery in subsequent pregnancies, free fluid in abdomen, adverse reaction to anesthesia and other drugs, and mental and psychological complications such as depression,

anxiety, sleeping disorders, psychiatric hospitalization, and emotional problems; and

3. "Stable Internet website" means a website that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the State Department of Health.

B. By March 1, 2012, the State Department of Health shall make available, on its stable Internet website, an **Individual Abortion Form** as required by Section 3 of this act, and a form for a **Complications of Induced Abortion Report** as required by Section 4 of this act.

C. As required by Section 5 of this act, information from a completed Individual Abortion Form or a completed Complications of Induced Abortion Report shall be combined with information from all other such completed forms and reports submitted for the year. An **Annual Abortion Report** providing statistics for the previous calendar year compiled from all of that year's completed forms and reports submitted in accordance with the Statistical Abortion Reporting Act shall be published annually by the Department on its stable Internet website.

D. No Individual Abortion Forms or Complications of Induced Abortion Reports that have been completed and submitted to the Department by any physician pursuant to subsection B of Section 3 of this act or subsection C of Section 4 of this act shall be posted online.

E. By March 1, 2012, the State Department of Health shall, on its stable Internet website, **provide the language of all Oklahoma Statutes and regulations directly relating to abortion**, and shall promptly update its website to reflect subsequent statutory and regulatory changes. The Department shall also, by March 1, 2012, provide, on its stable Internet website, the **means by which physicians may electronically submit the reports required by the Statistical Abortion Reporting Act**. The Department shall include **instructions** on its stable Internet website regarding electronic submission. The Department shall take all necessary precautions to ensure the **security** of the electronically submitted reports so that the submitted data is able to be accessed only by **specialty authorized departmental personnel during and following the process of transmission**.

Added by Laws 2010, HB 3284, c. 276, § 2, eff. November 1, 2010

63 § 1-738k. Individual Abortion Form – Department to Post Individual Abortion Forms on Website

A. Subsections B and C of this section shall become operative on the later of:

1. April 1, 2012; or

2. Thirty (30) calendar days following the date on which the State Department of Health posts on its website the Individual Abortion Form and instructions concerning its electronic submission referenced in this section.

B. The Department shall post the Individual Abortion Form and instructions concerning its electronic submission on its stable Internet website. Nothing in the Individual Abortion Form shall contain the name, address, hometown, county of residence, or any other information specifically identifying any patient. The Department's Individual Abortion Form shall be substantially similar to, but need not be in the specific format, provided in subsection F of this section.

C. Any physician performing abortions shall fully complete and submit, electronically, an Individual Abortion Form to the State Department of Health by the last business day of the calendar month following the month in which the physician performs an abortion, for each abortion the physician performs.

D. In cases in which a physician or the agent of a physician:

1. Mails the printed materials described in Section 1-738.3 of this title to a female specifically to comply with division (1) of subparagraph d of paragraph 2 of subsection B of Section 1-738.2 of this title;

2. Gives or mails the printed materials described in Section 1-738.10 of this title to a female specifically to comply with subsection A of Section 1-738.8 of this title; or

3. Provides notice to a parent in compliance with Section 1-740.2 of this title, but does not subsequently perform an abortion on the female or minor, the physician shall electronically submit a completed Individual Abortion Form to the State Department of Health, and shall mark as "not applicable" those items of information that may accurately be provided only when an abortion is performed. The physician shall not submit such a form if the physician knows that an abortion was subsequently performed on the female or minor by another physician. Individual Abortion Forms required by this subsection shall be submitted by the last business day of the second calendar month following the calendar month in which the physician mails the printed materials or provides notice to a parent.

E. The Individual Abortion Form shall contain a notice containing an assurance that, in accordance with subsection F of Section 1-738m of this title, public reports based on the form submitted will not contain the name, address, hometown, county of residence, or any other identifying information of any individual female, that the State Department of Health will take care to ensure that none of the information included in its public reports could reasonably lead to the identification of any individual female about whom information is reported in accordance with the Statistical Abortion Reporting Act or of any physician providing information in accordance with the Statistical Abortion Reporting Act, and that such information is not subject to the Oklahoma Open Records Act.

F. Individual Abortion Form. The Department's Individual Abortion Form shall be substantially similar to, but need not be in the specific format of, the following form:

Individual Abortion Form

(TO BE COMPLETED FOR EACH ABORTION PERFORMED)

1. Date of abortion: _____

2. County in which the abortion was performed: _____

3. Age of mother: _____

4. Marital status of mother: _____

(specify married, divorced, separated, widowed, or never married)

5. Race of mother: _____

6. Years of education of mother: _____

(specify highest year completed)

7. State or foreign country of residence of mother: _____

8. Total number of previous pregnancies of the mother: _____

Live Births: _____

Miscarriages: _____

Induced Abortions: _____

9. Approximate gestational age in weeks, as measured from the last menstrual period of the mother, of the unborn child subject to abortion: _____

10. Method of abortion used:

Suction Aspiration: _____

Dilation and Curettage: _____

RU 486: _____

Methotrexate: _____

Other drug/chemical/medicine (specify): _____

Dilation and Evacuation: _____

Saline: _____

Urea: _____

Prostaglandins: _____

Partial Birth Abortion: _____

Hysterotomy: _____

Other (specify): _____

11. Was there an infant born alive as a result of the abortion? _____

If yes:

Were life-sustaining measures undertaken? _____

How long did the infant survive? _____

12. Was anesthesia administered to mother? _____

If yes, what type? _____

13. Was anesthesia administered to the fetus? _____

If yes:

What type? _____

How was it administered? _____

14. Method of fetal tissue disposal: _____

15. Unless a medical emergency, as defined in Section 1-738.1A, or as applicable, Section 1-745.2 of Title 63 of the Oklahoma Statutes, exists,

the abortion provider or agent shall ask the pregnant female to provide, orally or in writing, the reason(s) she is seeking the abortion. If such a medical emergency exists, the abortion provider or agent shall specify on the form the condition which necessitated the immediate abortion: _____

REASON GIVEN FOR ABORTION (check all applicable):

Having a baby:

Would dramatically change the life of the mother: _____

Would interfere with the education of the mother: _____

Would interfere with the job/employment/career of the mother: _____

Mother has other children or dependents: _____

Mother cannot afford the child: _____

Mother is unmarried: _____

Mother is a student or planning to be a student: _____

Mother cannot afford child care: _____

Mother cannot afford the basic needs of life: _____

Mother is unemployed: _____

Mother cannot leave job to care for a baby: _____

Mother would have to find a new place to live: _____

Mother does not have enough support from a husband or partner: _____

Husband or partner is unemployed: _____

Mother is currently or temporarily on welfare or public assistance: _____

Mother does not want to be a single mother: _____

Mother is having relationship problems: _____

Mother is not certain of relationship with the father of the child: _____

Partner and mother are unable to or do not want to get married: _____

Mother is not currently in a relationship: _____

The relationship or marriage of the mother may soon break up: _____

Husband or partner is abusive to the mother or her children: _____

Mother has completed her childbearing: _____

Other (specify): _____

Mother is not ready for a, or another, child: _____

18. Sum of fee(s) collected: _____

Mother does not want people to know that she had sex or became pregnant: _____

19. Time of fee collection (check one):

Mother does not feel mature enough to raise a, or another, child: _____

Full fee for abortion collected prior to or at the time the patient was provided the information required under subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes: _____

Husband or partner wants mother to have an abortion: _____

Partial fee for abortion collected prior to or at the time the patient was provided the information required under subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes: _____

There may be possible problem affecting the health of the fetus: _____

Full fee for abortion collected at time the abortion was performed: _____

Physical health of the mother is at risk: _____

Other (specify): _____

Parents want mother to have an abortion: _____

20. Specialty area of medicine of the physician: _____

Emotional health of the mother is at risk: _____

At which hospital(s) did the physician have hospital privileges at the time of the abortion?

Mother suffered from a medical emergency as defined in Section 1-738.1A of Title 63 of the Oklahoma Statutes: _____

-

Mother suffered from a medical emergency as defined in Section 1-745.2 of Title 63 of the Oklahoma Statutes: _____

21. Was ultrasound equipment used before, during, or after the performance of this abortion?

Mother wanted a child of a different sex: _____

Before? ___ Vaginal, abdominal, or both? ___

Abortion is necessary to avert the death of the mother: _____

How long prior to the abortion was the ultrasound performed?

Pregnancy was a result of forcible rape: _____

Was the mother under the effect of anesthesia at the time of the ultrasound? _____

Pregnancy was a result of incest: _____

During? ___ Vaginal, abdominal, or both? ___

Other (specify): _____

After? ___ Vaginal, abdominal, or both? ___

Patient was asked why she is seeking an abortion, but she declined to give a reason: _____

If an ultrasound was performed, what was the gestational age of the fetus at the time of the abortion, as determined by the ultrasound?

16. Method of payment (check one):

Private insurance: _____

Public health plan: _____

Medicaid: _____

Private pay: _____

Other (specify): _____

Attach to this form a copy or screenshot of the ultrasound, intact with the date on which the ultrasound was performed, and with the name of the mother redacted; provided, however, such ultrasound shall not be subject to an open records request and shall be subject to HIPAA regulations governing confidentiality and release of private medical records.

17. Type of private medical health insurance coverage, if any (check one):

Fee-for-service insurance company: _____

Managed care company: _____

21A. If an ultrasound was not performed prior to the abortion, was the reason for not performing an ultrasound a medical emergency necessitating an immediate abortion:

To avert death: _____

To avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy: _____

Other reason: _____

22. If ultrasound equipment was used, was the ultrasound performed by: _____

The physician performing the abortion: _____

A physician other than the physician performing the abortion: _____

Other (specify): _____

23. Was the information required by paragraph 1 of subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes provided to the mother? _____

a. If yes, was it provided:

In person: _____

By telephone: _____

b. Was it provided by:

A referring physician: _____

The physician performing the abortion: _____

An agent of a referring physician: _____

An agent of the physician performing the abortion: _____

24. Was the information required by paragraph 2 of subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes provided to the mother? _____

a. If yes, was it provided:

In person: _____

By telephone: _____

b. Was it provided by:

A referring physician: _____

An agent of a referring physician: _____

The physician performing the abortion: _____

An agent of the physician performing the abortion: _____

25. Did the mother avail herself of the opportunity to have the printed materials described in Section 1738.3 of Title 63 of the Oklahoma Statutes mailed to her? _____

26. Were the informed consent requirements of subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes dispensed with because of a medical emergency necessitating an immediate abortion:

To avert death: _____

To avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy: _____

27. Was a determination of probable postfertilization age made as required by Section 1-745.5 of Title 63 of the Oklahoma Statutes? _____

a. If no, was the determination of probable postfertilization age dispensed with:

To avert death: _____

To avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy: _____

b. If yes, what was the probable postfertilization age? _____

What was the method and basis of the determination? _____

What was the basis for the determination to perform the abortion:

To avert death: _____

To avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy: _____

Was the method of abortion used one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive? _____

If yes, was there an infant born alive as a result of the abortion? _____

If no, what was the basis of the determination? _____

28. Was the abortion performed within the scope of employment of an Oklahoma state employee or an employee of an agency or political subdivision of the state? _____

29. Was the abortion performed with the use of any public institution, public facility, public equipment, or other physical asset owned, leased, or controlled by this state, its agencies, or political subdivisions? _____

30. If the answer to question 28 or 29 is yes:

a. Was the abortion necessary to save the life of the mother? _____

If yes, what was the life-endangering condition? _____

b. Did the pregnancy result from an act of forcible rape? _____

If yes, list the law enforcement authority to which the rape was reported: _____

List the date of the report: _____

c. Did the pregnancy result from an act of incest committed against a minor? _____

If yes, list the law enforcement authority to which the perpetrator was reported: _____

List the date of the report: _____

THIS PORTION TO BE COMPLETED IN CASE OF MINOR

31. Minor's age at the time the abortion was performed: _____

32. Was a parent of the minor provided notice prior to the abortion as described in Section 1740.2 of Title 63 of the Oklahoma Statutes?

a. If yes, how was the notice provided?

In person: _____

By mail: _____

b. If yes, to the best of the reporting physician's knowledge and belief, did the minor go on to obtain the abortion? _____

33. Was informed written consent of one parent obtained as described in Section 1-740.2 of Title 63 of the Oklahoma Statutes? _____

If yes, how was it secured?

In person: _____

Other (specify): _____

34. If no notice was provided nor consent obtained, indicate which of the following apply:

Minor was emancipated: _____

Abortion was necessary to prevent the death of the minor: _____

Medical emergency, as defined in Section 1-738.1A of Title 63 of the Oklahoma Statutes, existed: _____

Minor received judicial authorization to obtain abortion without parental notice or consent: _____

35. If no notice was provided nor consent obtained because a medical emergency existed, indicate:

Whether parent was subsequently notified (state period of time elapsed before notice was given): _____

Whether judicial waiver of notice requirement was obtained: _____

36. If the minor received judicial authorization to obtain an abortion without parental notice or consent, indicate which of the following applies:

Judge ruled that minor was mature enough to give informed consent on her own: _____

Judge ruled that abortion was in the best interest of the minor:

37. If the female was a minor at the time of conception, indicate the age of the father of the unborn child at the time of conception: _____

38. If at the time of conception the ages of the mother and father were such that a violation of Section 1111, 1112, 1114 or 1123 of Title 21 or Section 843.5 of Title 21 of the Oklahoma Statutes occurred, was the rape or abuse reported to the proper authorities? _____

39. Were the remains of the fetus after the abortion examined to ensure that all such remains were evacuated from the mother's body?

If the remains of the fetus were examined after the abortion, what was the sex of the child, as determined from such examination?

Was the sex of the child determined prior to the abortion? _____

If so, by whom? _____

If so, by what method? _____

If the sex of the child was determined prior to the abortion, was the mother given information of the child's sex prior to the abortion? _____

40. If the abortion was performed without surgery but rather as the result of the administration of chemicals, was the physician present in the same room as the woman to whom the chemicals were administered at the time any such chemicals were first administered?

41. Prior to the pregnant woman giving informed consent to having any part of the abortion performed or induced, if the pregnancy was at least eight (8) weeks after fertilization, was the pregnant woman told that it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear? _____

Was the pregnant woman asked if she would like to hear the heartbeat? _____

Was the embryonic or fetal heartbeat of the unborn child made audible for the pregnant woman to hear, using a Doppler fetal heart rate monitor? _____

If the response to any of the questions in this paragraph was anything other than an unqualified YES, how was the abortion performed in compliance with Sections 1-745.12 through 1-745.19 of Title 63 of the Oklahoma Statutes? _____

Filed this ___ day of _____, _____, by:

(Name of physician)

(Physician's license number)

NOTICE: In accordance with subsection F of Section 1-738m of Title 63 of the Oklahoma Statutes, public reports based on this form will not contain the name, address, hometown, county of residence, or any other identifying information of any individual female. The State Department of Health shall take care to ensure that none of the information included in its public reports could reasonably lead to the identification of any individual female about whom information is reported or of any physician providing information in accordance with the Statistical Abortion Reporting Act. Such information is not subject to the Oklahoma Open Records Act.

Be advised that any complication(s) shall be detailed in a "Complications of Induced Abortion Report" and submitted to the Department as soon as is practicable after the encounter with the induced-abortion-related illness or injury, but in no case more than sixty (60) days after such an encounter.

Added by Laws 2010, HB 3284, c. 276, § 3, eff. November 1, 2010;
Amended by Laws 2013, HB 2015, c. 303, § 1, eff. November 1, 2013.

63 § 1-738l Complications of Induced Abortion Report

A. Complications of Induced Abortion Report. By March 1, 2012, the State Department of Health shall prepare and make available, on its stable Internet website, a **Complications of Induced Abortion Report** for all physicians licensed and practicing in the State of Oklahoma.

B. Subsection C of this section shall become operative on the later of:

1. April 1, 2012; or
2. Thirty (30) calendar days following the date on which the State Department of Health posts on its stable Internet website the Individual Abortion Form and instructions concerning its electronic submission referenced in Section 3 of this act.

C. Any physician practicing in Oklahoma who encounters an illness or injury that a reasonably knowledgeable physician would judge is related to an induced abortion shall complete and submit, electronically or by regular mail, a Complications of Induced Abortion Report to the Department as soon as is practicable after the encounter with the induced-abortion-related illness or injury, but in no case more than sixty (60) days after such an encounter. Nothing in the Complications of Induced Abortion Report shall contain the name, address, hometown, county of residence, or any other information specifically identifying any patient. Knowing or reckless unreasonable delay or failure to submit a Complications of Induced Abortion Report shall be sanctioned according to the provisions of the Statistical Abortion Reporting Act.

D. The Complications of Induced Abortion Report shall contain a notice containing an assurance that in accordance with subsection F of Section 5 of this act, public reports based on the form submitted will not contain the name, address, hometown, county of residence, or any other identifying information of any individual female, that the State Department of Health will take care to ensure that none of the information included in its public reports could reasonably lead to the identification of any individual female about whom information is reported in accordance with the Statistical Abortion Reporting Act, or of any physician providing information in accordance with the Statistical Abortion Reporting Act, and that such information is not subject to the Oklahoma Open Records Act.

E. Complication(s) of Induced Abortion Report. The Complications of Induced Abortion Report shall be substantially similar to, but need not be in the specific format of, the following form:

Complications of Induced Abortion Report

1. Name and specialty field of medical practice of the physician filing the report: _____
2. Did the physician filing the report perform or induce the abortion?

3. Name, address, and telephone number of the health care facility where the induced abortion complication was discovered or treated:

4. Date on which the complication was discovered: _____

5. Date on which, and location of the facility where, the abortion was performed, if known: _____

6. Age of the patient experiencing the complication: _____

7. Describe the complication(s) resulting from the induced abortion:

8. Circle all that apply:

- a. Death
- b. Cervical laceration requiring suture or repair
- c. Heavy bleeding/hemorrhage with estimated blood loss of greater than or equal to 500cc
- d. Uterine Perforation
- e. Infection
- f. Failed termination of pregnancy (continued viable pregnancy)
- g. Incomplete termination of pregnancy (Retained parts of fetus requiring re-evacuation)
- h. Other (May include psychological complications, future reproductive complications, or other illnesses or injuries that in the physician's medical judgment occurred as a result of an induced abortion. Specify diagnosis.): _____

9. Type of follow-up care, if any, recommended: _____

10. Will the physician filing the Complications of Induced Abortion Report be providing such follow-up care (if not, the name of the medical professional who will, if known)? _____

11. Name and license number of physician filing the Complications of Induced Abortion Report: _____

Added by Laws 2010, HB 3284, c. 276, § 4, eff. November 1, 2010.

63 § 1-738m Annual Abortion Report – Annual Judicial Bypass of Abortion parental Consent Summary

A. Beginning in 2013, by June 1 of each year, the Department shall issue, on its stable Internet website, a public **Annual Abortion Report** providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with the Statistical Abortion Reporting Act.

B. The Department's public report shall also provide statistics for all previous calendar years for which abortion-reporting requirements have been in effect, adjusted to reflect any additional information from late or corrected reports.

C. The Annual Abortion Report shall include, but not be limited to, the following information:

1. The number of induced abortions performed in the previous calendar year, broken down by month and county in which the abortion was performed;
2. The number of abortions classified by:
 - a. the state or foreign country of residence of the mother,

- b. the age, marital status, and race of the mother, and
 - c. the number of years of education of the mother;
3. The number of abortions classified by:
- a. the number of previous pregnancies of the mother,
 - b. previous live births to the mother,
 - c. previous miscarriages, and
 - d. previous induced abortions;
4. The number of abortions by week of gestational age;
5. The number of abortions performed by each reported method;
6. The number of abortions resulting in an infant born alive; of these, the number of cases in which life-sustaining measures were taken; and a statistical summary of the length of survival of such infants;
7. The number of cases in which anesthesia was administered to the mother and the number of each type of anesthesia;
8. The number of cases in which anesthesia was administered to the unborn child, and the number of each type of anesthesia and of each method of administration;
9. The number of each reported method of fetal disposal;
10. The reasons reported for the abortions, and the number of times each reported reason was cited;
11. The number of abortions paid for by:
- a. private insurance,
 - b. public health plan,
 - c. Medicaid,
 - d. private pay, or
 - e. other;
12. The number of abortions in which medical health insurance coverage was under:
- a. a fee-for-service insurance company,
 - b. a managed care company, or
 - c. other;
13. A statistical summary of the fees collected;
14. Specialty area of medicine of the physician;
15. The number of abortions in which ultrasound equipment was used before, during, or after the abortion, and the number of times vaginal ultrasound, abdominal ultrasound, or both were used in each of the three circumstances;
16. The number of abortions before which an ultrasound was performed by:
- a. the physician performing the abortion,
 - b. a physician other than the physician performing the abortion, or
 - c. other;
17. The number of abortions resulting in reported complications, and of those, how many were reported by the physician who performed the abortion, and how many were reported by another physician, the types of reported complications, and the number of each type based on data which shall be compiled and transmitted to the State Department of Health by the State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners;
18. The number of abortions resulting in the reported death of the mother;
19. The number of females to whom the physician provided the information in subparagraph a of paragraph 1 of subsection B of Section 1-738.2 of this title; of that number, the number provided by telephone and the number provided in person; and of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion;
20. The number of females to whom physicians or agents of physicians provided the information in paragraph 2 of subsection B of Section 1-738.2 of this title; of that number, the number provided by telephone and the number provided in person; of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion; and of each of those numbers, the number provided by the physician and the number provided by an agent of the physician;
21. The number of females who availed themselves of the opportunity to have a copy of the printed information described in Section 1-738.3 of this title mailed to them; and of that number, the number who, based on the submitted reports, did and did not obtain an abortion;
22. The number of abortions performed by the physician in which information otherwise required to be provided at least twenty-four (24) hours before the abortion was not so provided because an immediate abortion was necessary to avert the death of the female, and the number of abortions in which such information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function;
23. The number of females to whom physicians or their agents provided the information described in subsection A of Section 1-738.8 of this title; of that number:
- a. the number provided by telephone and the number provided in person; and of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion, or by the agent of such physician, and

b. the number of females who availed themselves of the opportunity to be given or mailed the materials described in Section 1-738.10 of this title, and the number who did not; and of each of those numbers, the number who, to the best of the information and belief of the reporting physician, went on to obtain the abortion;

24. The number of females to whom the information described in subsection A of Section 1-738.8 of this title would have had to be provided but for a medical emergency determination; of that number, the number for whom an immediate abortion was necessary to avert the death of the female, and the number for whom a delay would have created serious risk of substantial and irreversible impairment of a major bodily function;

25. The number of abortions performed within the scope of employment of Oklahoma state employees and employees of an agency or political subdivision of the state, the number of abortions performed with the use of public institutions, facilities, equipment, or other physical assets owned, leased, or controlled by this state, its agencies, or political subdivisions, and for each category:

a. the number of abortions reported as necessary to save the life of the mother, the life-endangering conditions identified, and the number of each such condition reported,

b. the number of abortions reported from pregnancies resulting from forcible rape, the number of such rapes reported to law enforcement authorities, general categories of law enforcement authorities to whom reports were made and the number made to each category, and a statistical summary of the length of time between the dates of reporting to law enforcement authorities and the dates of the abortions, and

c. the number of abortions reported from pregnancies resulting from incest committed against a minor, the number of perpetrators of incest in such cases reported to law enforcement authorities, general categories of law enforcement authorities to whom reports were made and the number made to each category, and a statistical summary of the length of time between the dates of reporting to law enforcement authorities and the dates of the abortions;

26. The number of females to a parent of whom the physician provided notice as required by Section 1-740.2 of this title; of that number, the number provided personally as described in that section, and the number provided by mail as described in that section, and of each of those numbers, the number of females who, to the best of the information and belief of the reporting physician, went on to obtain the abortion;

27. The number of females upon whom the physician performed an abortion without the notice to or consent of the parent of the minor required by Section 1-740.2 of this title; of that number, the number who were emancipated minors and the number who suffered from a medical emergency, and of the latter, the number of cases in which a parent was notified subsequently and the number of cases in which a judicial waiver was obtained. In the case of medical emergencies in which a parent was informed subsequently, a statistical summary of the period of time elapsed before notification;

28. The number of abortions performed after receiving judicial authorization to do so without parental notice and consent;

29. The number of abortions performed on minors after judicial authorizations were granted because of a finding that the minor girl was mature and capable of giving informed consent;

30. The number of abortions performed on minors after judicial authorizations were granted because of a finding that the performance of the abortion without parental notification and consent was in the best interest of the minor;

31. The number of abortions performed after which the remains of the fetus after the abortion were examined to ensure that all such remains were evacuated from the mother's body;

32. The number of male children aborted and female children aborted, as determined from the examination of fetal remains after abortion;

33. The number of male children aborted and female children aborted, as determined by any method other than those reported in paragraph 32 of this subsection;

34. The number of instances in which the mother was informed prior to the abortion that the child to be aborted was a female;

35. The number of abortions performed without surgery but rather as the result of the administration of chemicals;

36. The number of abortions performed as reported in paragraph 35 of this subsection, in which the physician was present in the same room as the woman to whom the chemicals were administered at the time any such chemicals were first administered;

37. The number of abortions performed for each hospital at which the abortionist had hospital privileges at the time of the abortion;

38. The number of abortions performed at which ultrasound equipment was used before the abortion;

39. The number of abortions reported in paragraph 38 of this subsection, during which the mother was under the effect of anesthesia at the time of the ultrasound;

40. The number of abortions performed at which ultrasound equipment was used during the abortion;

41. The number of abortions reported in paragraph 40 of this subsection, during which the mother was under the effect of anesthesia at the time of the ultrasound;

42. The number of abortions performed at which ultrasound equipment was used after the abortion;

43. The number of abortions reported in paragraph 42 of this subsection, during which the mother was under the effect of anesthesia at the time of the ultrasound;

44. The mean gestational age of the fetus at the time of the abortion, as determined by ultrasounds reported;

45. The number of abortions for which no determination of probable postfertilization age was made as required by Section 1-745.5 of this title; and

46. The number of abortions in which the pregnant woman was told that it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear; the number of abortions in which the pregnant woman was asked if she would like to hear the heartbeat; and the number of abortions in which the

embryonic or fetal heartbeat of the unborn child was made audible for the pregnant woman to hear, using a Doppler fetal heart rate monitor.

D. Beginning in 2013, by June 1 of each year, the State Department of Health shall post, on its stable Internet website, a public **Annual Judicial Bypass of Abortion Parental Consent Summary Report** providing statistics which shall be compiled and supplied to the Department by the Administrative Office of the Courts giving the total number of petitions or motions filed under Section 1-740.3 of this title and of that number, the number in which:

1. The court appointed a guardian ad litem;
2. The court appointed counsel;
3. The judge issued an order authorizing an abortion without parental notification or consent, and of those:
 - a. the number authorized due to a determination by the judge that the minor was mature and capable of giving consent to the proposed abortion, and
 - b. the number authorized due to a determination by the judge that an abortion was in the best interest of the minor; and
4. The judge denied such an order, and of this, the number of:
 - a. denials from which an appeal was filed,
 - b. the appeals that resulted in the denial being affirmed, and
 - c. appeals that resulted in reversals of the denials.

E. Each Annual Judicial Bypass of Abortion Parental Consent Summary Report shall also provide the statistics for all previous calendar years for which the public statistical report was required to be issued, adjusted to reflect any additional information from late or corrected reports.

F. The Department's public reports shall not contain the name, address, hometown, county of residence, or any other identifying information of any individual female, and shall take care to ensure that none of the information included in its public reports could reasonably lead to the identification of any individual female about whom information is reported in accordance with the Statistical Abortion Reporting Act or of any physician providing information in accordance with the Statistical Abortion Reporting Act. Nor shall the information described in the preceding sentence be subject to the Oklahoma Open Records Act.

Added by Laws 2010, HB 3284, c. 276, § 5, eff. November 1, 2010;
Amended by Laws 2013, HB 2015, c. 303, § 2, eff. November 1, 2013.

63 § 1-738n Notice of Act Requirements – Failure to Submit Forms or Reports – Penalties – Compliance - Rules

A. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall notify, by March 1, 2012, all physicians licensed to practice in this state over whom they have licensure authority of the requirements of the Statistical Abortion Reporting Act and of the addresses of the pages on the State Department of Health's secure Internet website providing access to the forms it requires and instructions for their electronic submission. The respective Board shall also notify each physician who subsequently becomes newly

licensed to practice in this state, at the same time as an official notification to that physician, that the physician is so licensed.

B. Individual Abortion Forms or Complications of Induced Abortion Reports that are not submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period the forms or reports are overdue. Any monies collected under this **subsection shall be deposited into an account created within the Department**, which shall be used for the administration of the Statistical Abortion Reporting Act. Any physician required to report in accordance with the Statistical Abortion Reporting Act who has not completed and electronically submitted a form or report, or has submitted only an incomplete form or report, more than one (1) year following the due date shall be precluded from renewing his or her license until such fines are paid in full and outstanding forms or reports are submitted, and may, in an action brought by the State Department of Health, be directed by a court of competent jurisdiction to electronically submit completed forms or reports within a period stated by court order or be subject to sanctions for civil contempt.

C. Anyone who knowingly or recklessly fails to submit an Individual Abortion Form or Complications of Induced Abortion Report, or submits false information under the Statistical Abortion Reporting Act, shall be guilty of a misdemeanor.

D. The Department, the State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall ensure compliance with the Statistical Abortion Reporting Act and **shall verify the data provided by periodic inspections of places where the Department, the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners know or have reason to believe abortions are performed.**

E. The Department may promulgate rules in accordance with the Administrative Procedures Act to alter the dates established by the Statistical Abortion Reporting Act to achieve administrative convenience, fiscal savings, or to reduce the burden of reporting requirements, so long as the forms and reports are made available, on its stable Internet website, to all licensed physicians in this state, and the public reports described in Section 1-738m of this title are issued at least once every year.

F. If the Department fails to issue the public reports described in Section 1-738m of this title, an action pursuant to Chapter 26 of Title 12 of the Oklahoma Statutes may be initiated. If judgment is rendered in favor of the plaintiff in any action described in this subsection, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

G. If an abortion provider fails to submit any report required pursuant to Section 1-738k of this title, upon the refusal, failure or neglect of **the State Commissioner of Health, within twenty (20) days after written demand signed, verified and served upon the State Department of Health by at least ten registered voters of the state, to institute or diligently prosecute proper proceedings at law or in equity to compel an abortion provider to submit any report required pursuant to Section 1-738k of this title but not yet submitted to the State Department of Health, any resident taxpayer of the state after serving the notice aforesaid may in the name of the State of Oklahoma as plaintiff, institute and maintain any proper action which the State Department of Health might institute and maintain to compel the abortion provider to file such report.** If a court of competent jurisdiction determines the claims to be meritorious, the abortionist shall be compelled to file the report and to pay the fee(s) prescribed in subsection B of this section, with costs and reasonable

attorney fees. If all claims stated by the resident taxpayers in the written demand are determined in a court of competent jurisdiction to be frivolous and brought in bad faith, the resident taxpayers who signed such demand and who are parties to the lawsuit in which such claims are determined to be frivolous and brought in bad faith shall be jointly and severally liable for all reasonable attorney fees and court costs incurred by the abortionist.

Added by Laws 2010, HB 3284, c. 276, § 6, eff. November 1, 2010;
Amended by Laws 2013, HB 2015, c. 303, § 3, eff. November 1, 2013.

63 § 1-738o Intervention as a Matter of Right by Oklahoma Legislature in Constitutional Law Challenge to Act

The Oklahoma Legislature, by joint resolution, may appoint one or more of its members who sponsored or cosponsored this act in his or her official capacity to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

Added by Laws 2010, HB 3284, c. 276, § 5, eff. November 1, 2010.

63 § 1-738p Effect of Judicial Restraining Order or Injunction

A. Sections 1-738.3a, 1-738.13 and 1-740.4a of Title 63 of the Oklahoma Statutes shall become ineffective and of no binding force on the date specified in subsection B of this section, but if the Statistical Abortion Reporting Act is ever temporarily or permanently restrained or enjoined by judicial order, these sections shall become effective and enforceable; provided, however, that if such temporary or permanent restraining order or injunction is ever stayed or dissolved, or otherwise ceases to have effect, these sections shall again become ineffective and of no binding force until or unless an injunction or restraining order against the Statistical Abortion Reporting Act is again in effect. If and to the extent the Statistical Abortion Reporting Act is restrained or enjoined in part, then only those provisions of these sections that neither conflict with nor substantively duplicate the provisions of the Statistical Abortion Reporting Act that are not enjoined shall have effect. As promptly as feasible following the issuance of any restraining order or injunction that enjoins part but not all of the Statistical Abortion Reporting Act, the Attorney General shall issue an opinion specifically identifying those provisions of these sections that are effective and enforceable in accordance with the preceding sentence.

B. The date specified in this subsection is the later of:

1. April 1, 2012; or
2. Thirty (30) calendar days following the date on which the State Department of Health posts on its secure Internet website the Individual Abortion Form and instructions concerning its electronic submission referenced in Section 3 of this act.

Added by Laws 2010, HB 3284, c. 276, § 5, eff. November 1, 2010.

63 § 1-738p

If some or all of the provisions of Sections 1-738k, 1-738m and 1-738n of Title 63 of the Oklahoma Statutes, as amended by Sections 1, 2 and 3 of this act, are ever temporarily or permanently restrained or enjoined by judicial order, these sections shall be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

Added by Laws 2013, HB 2015, c. 303, § 4, eff. November 1, 2013.

63 § 1-738.1A Definitions

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.

Added by Laws 2010, HB 2780, c. 173, § 1.

63 § 1-738.2. No Abortion Without Voluntary and Informed Consent - Confirmation that Patient has Received Information

A. No abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.

B. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

1. a. not less than twenty-four (24) hours prior to the performance of the abortion, the woman is told the following, by telephone or in person, by the physician who is to perform the abortion, or by a referring physician, or by an agent of either physician:

- (1) the name of the physician who will perform the abortion,
- (2) the medical risks associated with the particular abortion procedure to be employed,
- (3) the probable gestational age of the unborn child at the time the abortion is to be performed,
- (4) the medical risks associated with carrying her child to term, and
- (5) that ultrasound imaging and heart tone monitoring that enable the pregnant woman to view her unborn child or listen to the heartbeat of the unborn child are available to the pregnant woman. The physician or agent of the physician shall inform the pregnant woman that the web site and printed materials described in Section

1-738.3 of this title, contain phone numbers and addresses for facilities that offer such services at no cost,

b. the information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the woman. If the information is supplied by telephone, the information shall be based on facts supplied to the physician,

c. the information required by this paragraph shall not be provided by a tape recording, but shall be provided during a consultation in which the physician is able to ask questions of the woman and the woman is able to ask questions of the physician,

d. if a physical examination, tests, or other new information subsequently indicates, in the medical judgment of the physician, the need for a revision of the information previously supplied to the woman, that revised information may be communicated to the woman at any time prior to the performance of the abortion, and

e. nothing in subparagraph a of this paragraph may be construed to preclude provision of the required information in a language understood by the woman through a translator;

2. Not less than twenty-four (24) hours prior to the abortion, the woman is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician:

a. that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care,

b. that the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion,

c. that:

(1) she has the option to review the printed materials described in Section 1-738.3 of this title,

(2) those materials have been provided by the State Board of Medical Licensure and Supervision, and

(3) they describe the unborn child and list agencies that offer alternatives to abortion, and

d. (1) if the woman chooses to exercise her option to view the materials in a printed form, they shall be mailed to her, by a method chosen by the woman, or

(2) if the woman chooses to exercise her option to view the materials via the Internet, the woman shall be informed at least twenty-four (24) hours before the abortion of the specific address of the Internet web site where the material can be accessed.

The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the woman does or does not choose to review the printed materials;

3. The woman certifies in writing, prior to the abortion, that she has been told the information described in subparagraph a of paragraph 1 of this subsection and in subparagraphs a, b and c of paragraph 2 of this subsection and that she has been informed of her option to review or reject the printed information described in Section 1-738.3 of this title; and

4. Prior to the abortion, the physician who is to perform the abortion or the agent of the physician receives a copy of the written certification prescribed by paragraph 3 of this subsection.

C. The State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners shall promulgate rules to ensure that physicians who perform abortions and referring physicians or agents of either physician comply with all the requirements of this section.

D. Before the abortion procedure is performed, the physician shall confirm with the patient that she has received information regarding:

1. The medical risks associated with the particular abortion procedure to be employed;

2. The probable gestational age of the unborn child at the time the abortion is to be performed; and

3. The medical risks associated with carrying the unborn child to term.

Added by Laws 2005, HB 1686, c. 200, § 7, emerg. eff. May 20, 2005;
Amended by Laws 2006, SB 1742, c. 185, § 3, eff. November 1, 2006.

63 § 1-738.3. Publication and Availability of Printed Informational Materials

A. Within one hundred twenty (120) days of the effective date of this act, the State Board of Medical Licensure and Supervision shall cause to be published, in English and in Spanish, and shall update on an annual basis, the following printed materials in such a way as to ensure that the information is easily comprehensible:

1. a. geographically indexed materials designed to inform the woman of public and private agencies, including adoption agencies and services that are available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including:

(1) a comprehensive list of the agencies available,

(2) a description of the services they offer, including which agencies offer, at no cost to the pregnant woman, ultrasound imaging that enables a pregnant woman to view the unborn child or heart tone monitoring that enables the pregnant woman to listen to the heartbeat of the unborn child, and

(3) a description of the manner, including telephone numbers, in which they might be contacted, or

b. at the option of the Board a toll-free, twenty-four-hour-a-day telephone number which may be called to obtain, in a mechanical, automated, or auditory format, a list and description of agencies in the locality of the caller and of the services they offer; and

2. a. materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including:

(1) any relevant information on the possibility of the survival of the unborn child, and

(2) pictures or drawings representing the development of unborn children at two-week gestational increments, provided that the pictures or drawings shall describe the dimensions of the unborn child and shall be realistic and appropriate for the stage of pregnancy depicted,

b. the materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages, and

c. the material shall also contain objective information describing:

(1) the methods of abortion procedures commonly employed,

(2) the medical risks commonly associated with each of those procedures,

(3) the possible detrimental psychological effects of abortion and of carrying a child to term, and

(4) the medical risks commonly associated with carrying a child to term.

B. 1. The materials referred to in subsection A of this section shall be printed in a typeface large enough to be clearly legible.

2. The materials required under this section shall be available at no cost from the State Board of Medical Licensure and Supervision and shall be distributed upon request in appropriate numbers to any person, facility, or hospital.

C. 1. The Board shall provide on its stable Internet web site the information described under subsection A of this section.

2. The web site provided for in this subsection shall be maintained at a minimum resolution of 72 PPI.

Added by Laws 2005, HB 1686, c. 200, § 8, emerg. eff. May 20, 2005;
Amended by Laws 2006, SB 1742, c. 185, § 4, eff. November 1, 2006.

63 § 1-738.3a. Department of Health Web Site - Physician Reporting Requirements - Form for Physician - Notice - Rules

A. By February 1, 2008, the State Department of Health shall prepare and make available on its stable Internet web site the form described in subsection B of this section. A copy of this act shall be posted on the web site. Physicians performing abortions shall complete and electronically submit the required forms to the Department no later than April 1 for the previous calendar year. Nothing in the report shall contain the name, address, or any other identifying information of any patient.

B. The form for physicians shall contain a listing for the following information:

1. The number of females to whom the physician, or an agent of the physician, provided the information described in Section 1-738.2 of Title 63 of the Oklahoma Statutes; of that number, the number provided the information by telephone and the number provided the information in person; and of each of those numbers, the number provided the information in the capacity of a referring physician and the number provided the information in the capacity of a physician who is to perform the abortion; and of each of those numbers, the number provided the information by the physician and the number provided the information by an agent of the physician;

2. The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Section 1-738.3 of Title 63 of the Oklahoma Statutes other than on the web site, and the number who did not; and of each of those numbers, the number who, to the best of the information and belief of the reporting physician, went on to obtain the abortion; and

3. The number of abortions performed by the physician in which information otherwise required to be provided at least twenty-four (24) hours before the abortion was not so provided because an immediate abortion was necessary to avert the death of the female, and the number of abortions in which the information was not so provided because a delay would cause substantial and irreversible impairment of a major bodily function.

C. The State Department of Health shall ensure that the reporting forms described in subsection B of this section are **posted**, on its stable Internet web site, within one hundred twenty (120) days after the effective date of this act. The State Department of Health shall **notify the following of the requirements of this act**:

1. By March 1, 2008, all physicians licensed to practice in this state;

2. Each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

3. By December 1 of each year, other than the calendar year in which forms are first made available to all physicians licensed to practice in this state.

D. By February 28 of each year following a calendar year in any part of which this section was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with Section 1-738.2 of Title 63 of the Oklahoma Statutes during the previous calendar year shall electronically submit to the State Department of Health the form described in subsection B of this section, with the requested data entered accurately and completely.

E. Reports that are not electronically submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period the reports are overdue. Any physician required to report in accordance with this section who has not completed and electronically submitted a report, or has electronically submitted only an incomplete report, more than one (1) year following the due date, may, in an action brought by the State Department of Health, be directed by a court of competent jurisdiction to electronically submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

F. By June 30 of each year, the State Department of Health shall prepare and make available on its stable Internet web site a **public report** providing statistics for the previous calendar year compiled from all items listed in subsection B of this section. Each report shall also provide statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The State Department of Health shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual providing or provided information in accordance with subsection B of this section.

G. The State Department of Health may promulgate rules in accordance with the Administrative Procedures Act to alter the dates established by this section or consolidate the form or report described in this section with other forms or reports to achieve administrative convenience, fiscal savings or to reduce the burden of reporting requirements, as long as reporting forms are made available, on its stable Internet web site to all licensed physicians in the state, and the report described in this section is issued at least once every year.

Added by Laws 2007, SB 139, c. 161, § 3, eff. November 1, 2007.

63 § 1-738.3d. Ultrasound Required Before Abortion - Written Acknowledgement - Penalties for Violation

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.

Added by Laws 2010, HB 2780, c. 173, § 2.

63 § 1-738.3e. Violations - Cause of Action - Civil Remedies

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.

Added by Laws 2010, HB 2780, c. 173, § 3.

63 § 1-738.4. Abortion Compelled by Medical Emergency

When a medical emergency compels the performance of an abortion, the physician shall inform the female, prior to the abortion if possible, of the medical indications supporting the physician's judgment that an abortion

is necessary to avert her death or that a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

Added by Laws 2005, HB 1686, c. 200, § 9, emerg. eff. May 20, 2005.

63 § 1-738.5. Performing or Attempting an Abortion in Violation of Act - No Penalty Assessed Against the Woman - Felony

A. Any physician who knowingly or recklessly performs or attempts to perform an abortion in violation of the provisions of this act shall be subject to disciplinary action by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.

B. No penalty may be assessed against the woman upon whom the abortion is performed or attempted to be performed.

C. No penalty or civil liability may be assessed for failure to comply with Section 1-738.2 of this title unless the State Board of Medical Licensure and Supervision has made the printed materials available at the time the physician or the agent of the physician is required to inform the woman of her right to review them.

D. Any person who knowingly or recklessly performs or attempts to perform an abortion in violation of this act shall be guilty of a felony.

Added by Laws 2005, HB 1686, c. 200, § 10, emerg. eff. May 20, 2005; Amended by Laws 2006, SB 1742, c. 185, § 5, eff. November 1, 2006.

Unborn Child Pain Awareness/Prevention Act 63 § 1-738.6. Short Title --

This act shall be known and may be cited as the "Unborn Child Pain Awareness/Prevention Act".

Added by Laws 2006, SB 1742, c. 185, § 6, eff. November 1, 2006.

63 § 1-738.7. Definitions

As used in the Unborn Child Pain Awareness/Prevention Act:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy, or to remove a dead fetus who dies as the result of a spontaneous miscarriage, accidental trauma or a criminal assault on the pregnant female or her unborn child;
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 Oklahoma in violation of the Unborn Child Pain Awareness/Prevention Act;
3. "Unborn child" means a member of the species homo sapiens from fertilization until birth;
4. "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;
5. "Physician" means a person licensed to practice medicine in this state pursuant to Sections 495 and 633 of Title 59 of the Oklahoma Statutes; and
6. "Probable gestational age" means the gestational age of the unborn child at the time the abortion is planned to be performed, as determined by the physician using reasonable probability.

Added by Laws 2006, SB 1742, c. 185, § 7, eff. November 1, 2006; Amended by Laws 2007, SB 139, c. 161, § 4, eff. November 1, 2007.

63 § 1-738.8. Provision of Information Prior to Abortion - Written Certification of Receipt

A. Except in the case of a medical emergency, at least twenty-four (24) hours prior to an abortion being performed on an unborn child whose probable gestational age is twenty (20) weeks or more, the physician performing the abortion or the agent of the physician shall inform the pregnant female, by telephone or in person, of the right to review the printed materials described in Section 10 of this act, that these materials are available on a state-sponsored web site, and the web address of that web site. The physician or the agent of the physician shall orally inform the female that the materials have been provided by the State of Oklahoma and that the materials contain information on pain and the unborn child. If the female chooses to view the materials other than on the web site, the materials shall either be given to the female at least twenty-four (24) hours before the abortion, or mailed to the female at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to the addressee. The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to receive the printed materials given or mailed.

B. The female shall certify in writing, prior to the abortion, that the information described in subsection A of this section has been furnished to the female and that the female has been informed of the opportunity to review the printed materials described in Section 10 of this act. Prior to the performance of the abortion, the physician who is to perform the abortion or the agent of the physician shall obtain a copy of the written certification and retain the copy on file with the medical record of the female for at least three (3) years following the date of receipt.

Added by Laws 2006, SB 1742, c. 185, § 8, eff. November 1, 2006.

63 § 1-738.9. Information About and Administration of Anesthetic or Analgesic

Except in the case of a medical emergency, before an abortion is performed on an unborn child who is twenty (20) weeks gestational age or more, the physician performing the abortion or the agent of the physician shall inform the female if an anesthetic or analgesic would eliminate or alleviate organic pain to the unborn child caused by the particular method of abortion to be employed and inform the female of the particular medical risks associated with the particular anesthetic or analgesic. With the consent of the female, the physician shall administer the anesthetic or analgesic.

Added by Laws 2006, SB 1742, c. 185, § 9, eff. November 1, 2006.

63 § 1-738.10. Materials Conveying Accurate, Scientific Information About Fetus at Various Gestational Stages

A. Within ninety (90) days after the Unborn Child Pain Awareness/Prevention Act becomes law, the State Board of Medical Licensure and Supervision shall cause to be published, in English and in each language which is the primary language of two percent (2%) or more of the population of the state, and shall cause to be available on the state web site provided for in Section 11 of this act, printed materials with the following statement concerning unborn children of twenty (20) weeks gestational age: "By twenty (20) weeks gestation, the unborn child has the physical structures necessary to experience pain. There is evidence that by twenty (20) weeks gestation unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are twenty (20) weeks gestational age or older who undergo prenatal surgery."

The materials shall be objective, nonjudgmental and designed to convey only accurate scientific information about the human fetus at the various gestational ages.

B. The materials referred to in subsection A of this section shall be printed in a typeface large enough to be clearly legible. The web site provided for in Section 11 of this act shall be maintained at a minimum

resolution of 70 DPI (dots per inch). All pictures appearing on this web site shall be a minimum of 200x300 pixels. All letters on the web site shall be a minimum of 11 point font. All information and pictures shall be accessible with an industry standard browser requiring no additional plug-ins.

C. The materials required under this section shall be available at no cost from the State Board of Medical Licensure and Supervision upon request and in appropriate number to any person, facility, or hospital.

Added by Laws 2006, SB 1742, c. 185, § 10, eff. November 1, 2006.

63 § 1-738.11. Internet Web Site

The State Board of Medical Licensure and Supervision shall develop and maintain a stable Internet web site to provide the information described under Section 10 of this act. No information regarding who uses the web site shall be collected or maintained. The State Board of Medical Licensure and Supervision shall monitor the web site on a daily basis to prevent and correct tampering.

Added by Laws 2006, SB 1742, c. 185, § 11, eff. November 1, 2006.

63 § 1-738.12. Information to be Provided When Medical Emergency Compels Performance of Abortion

When a medical emergency compels the performance of an abortion, the physician shall inform the female, prior to the abortion if possible, of the medical indications supporting the judgment of the physician that an abortion is necessary to avert the death of the female or that a twenty-four-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

Added by Laws 2006, SB 1742, c. 185, § 12, eff. November 1, 2006.

63 § 1-738.13. Physicians' Reporting Form

A. Within ninety (90) days after the Unborn Child Pain Awareness/Prevention Act becomes law, the **State Department of Health shall prepare a reporting form** for physicians containing a reprint of the Unborn Child Pain Awareness/Prevention Act and listing:

1. The number of females to whom the physician or an agent of the physician provided the information described in subsection A of Section 8 of this act; of that number, the number provided by telephone and the number provided in person; and of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion or agent of such a physician;
2. The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Section 10 of this act other than on the web site, and the number who did not; and of each of those numbers, the number who, to the best of the information and belief of the reporting physician, went on to obtain the abortion; and
3. The number of abortions performed by the physician in which information otherwise required to be provided at least twenty-four (24) hours before the abortion was not so provided because an immediate abortion was necessary to avert the death of the female, and the number of abortions in which such information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function.

B. The Department shall ensure that copies of the reporting forms described in subsection A of this section are provided:

1. Within one hundred twenty days (120) days after the Unborn Child Pain Awareness/Prevention Act becomes law, to all physicians licensed to practice in this state;
2. To each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

3. By December 1 of each year, other than the calendar year in which forms are distributed in accordance with paragraph 1 of this subsection, to all physicians licensed to practice in this state.

C. By February 28 of each year following a calendar year in any part of which the Unborn Child Pain Awareness/Prevention Act was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with Section 8 of this act during the previous calendar year shall submit to the Department a copy of the form described in subsection A of this section, with the requested data entered accurately and completely.

D. Reports that are not submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period the reports are overdue. Any physician required to report in accordance with this section who has not submitted a report, or has submitted only an incomplete report, more than one (1) year following the due date may, in an action brought by the State Board of Medical Licensure and Supervision, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

E. By June 30 of each year, the Department shall issue a **public report** providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection A of this section. Each such report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The Department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual providing or provided information in accordance with subsection A or B of Section 8 of this act.

F. The Department, by rule promulgated in accordance with the Administrative Procedures Act, may alter the dates established by paragraph 3 of subsection B, subsection C, or subsection E of this section or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements, so long as reporting forms are sent to all licensed physicians in the state at least once every year and the report described in subsection E of this section is issued at least once every year.

Added by Laws 2006, SB 1742, c. 185, § 13, eff. November 1, 2006.

63 § 1-738.14. Violations - Penalties

Any person who knowingly or recklessly performs or attempts to perform an abortion in violation of the Unborn Child Pain Awareness/Prevention Act shall be guilty of a felony. Any physician who knowingly or recklessly submits a false report under subsection C of Section 13 of this act shall be guilty of a misdemeanor. No penalty may be assessed against the female upon whom the abortion is performed or attempted to be performed. No penalty or civil liability may be assessed for failure to comply with Section 8 of this act requiring a written certification that the female has been informed of the opportunity to review the information referred to in Section 8 of this act unless the State Department of Health has made the printed materials available at the time the physician or the agent of the physician is required to inform the female of the right to review the materials.

Added by Laws 2006, SB 1742, c. 185, § 14, eff. November 1, 2006.

63 § 1-738.15. Civil Actions

A. Any person upon whom an abortion has been performed without the Unborn Child Pain Awareness/Prevention Act having been complied with, the father of the unborn child who was the subject of such an abortion, or the grandparent of such an unborn child may maintain an action against the person who performed the abortion in knowing or reckless violation of the Unborn Child Pain Awareness/Prevention Act for actual and punitive damages. Any person upon whom an abortion has been attempted without the Unborn Child Pain Awareness/Prevention Act

having been complied with may maintain an action against the person who attempted to perform the abortion in knowing or reckless violation of the Unborn Child Pain Awareness/Prevention Act for actual and punitive damages.

B. If the Department fails to issue the public report required by the Statistical Reporting of Abortion Act of Oklahoma, an action pursuant to Title 12 of the Oklahoma Statutes may be initiated.

Added by Laws 2006, SB 1742, c. 185, § 15, eff. November 1, 2006.

63 § 1-738.16. Ruling Concerning Public Disclosure of Identity of Female - Order

In every civil or criminal proceeding or action brought under the Unborn Child Pain Awareness/Prevention Act, the court shall rule whether the anonymity of any female upon whom an abortion has been performed or attempted shall be preserved from public disclosure if the female does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that the anonymity of the female should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the identity of the female from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the female should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under subsection A of Section 15 of this act shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant.

Added by Laws 2006, SB 1742, c. 185, § 16, eff. November 1, 2006.

63 § 1-738.17. Severability

If any one or more provision, section, subsection, sentence, clause, phrase or word of the Unborn Child Pain Awareness/Prevention Act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of the Unborn Child Pain Awareness/Prevention Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed the Unborn Child Pain Awareness/Prevention Act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Added by Laws 2006, SB 1742, c. 185, § 17, eff. November 1, 2006.

63 § 1-739. Records

All hospitals shall keep records, including admission and discharge notes, histories, results of tests and examinations, nurses worksheets, social service records and progress notes of patients. All abortion facilities and hospitals in which abortions are performed shall also keep certifications of medical necessity, certifications of nonviability, certifications of nonavailability, abortion reports and complication reports as required in this act. Such records shall be maintained in the permanent files of the hospital for a period of not less than seven (7) years.

Laws 1978, c. 207, § 11, eff. Oct. 1, 1978.

63 § 1-740. Abortion on Minor Without Parental Consent

Any person who performs an abortion on a minor without parental consent or knowledge shall be liable for the cost of any subsequent medical treatment such minor might require because of the abortion.

Added by Laws 2001, HB 1727, c. 379, § 2, emerg. eff. June 4, 2001.

63 § 1-740.1. Definitions

As used in Sections 1-740.1 through 1-740.5 of this title:

1. "Abortion" means the term as is defined in Section 1-730 of this title;
2. "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 minor in order to avert her death or to avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy, and there is insufficient time to provide the required notice and obtain the written informed consent of one parent;
3. "Parent" means one parent of the pregnant unemancipated minor or guardian if the pregnant unemancipated minor has one; and
4. "Unemancipated minor" means any person less than eighteen (18) years of age who is not or has not been married or who is under the care, custody and control of the person's parent or parents, guardian or juvenile court of competent jurisdiction.

Added by Laws 2005, HB 1686, c. 200, § 11, emerg. eff. May 20, 2005;
Amended by Laws 2007, SB 139, c. 161, § 5, eff. November 1, 2007.

63 § 1-740.2. Parental Notification

A. Except in the case of a medical emergency, a physician may not perform an abortion on a pregnant female unless the physician has:

1. Obtained proof of age demonstrating that the female is not a minor;
2. Obtained proof that the female, although a minor, is emancipated; or
3. Complied with Section 1-740.3 of this title.

B. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian has been appointed pursuant to Section 1-113 of Title 30 of the Oklahoma Statutes because of a finding of incompetency, except in a medical emergency or where a judicial waiver was obtained pursuant to Section 1-740.3 of this title, until at least forty-eight (48) hours after the request for written informed consent for the pending abortion has been delivered in the manner specified in this subsection and the attending physician has secured proof of identification and the written informed consent of one parent.

1. The request for written informed consent of one parent shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.
2. In lieu of the delivery required by paragraph 1 of this subsection, the request for written informed consent of one parent shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return-receipt requested and restricted delivery to the addressee, which means a postal employee can only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 noon on the third day on which regular mail delivery takes place, subsequent to mailing. The information concerning the address of the parent shall be that which a reasonable and prudent person, under similar circumstances, would have relied upon as sufficient evidence that the parent resides at that address.
3. a. The parent who provides consent shall provide to the physician a copy of a government-issued proof of identification and written documentation that establishes that he or she is the lawful parent of the pregnant female. The parent shall certify in a signed, dated, notarized statement, initialed on each page, that he or she consents to the abortion. The signed, dated, and notarized statement shall

include: "I certify that I, (insert name of parent), am the parent of (insert name of minor daughter) and give consent for (insert name of physician) to perform an abortion on my daughter. I understand that any person who knowingly makes a fraudulent statement in this regard commits a felony."

b. The physician shall keep a copy of the proof of identification of the parent and the certified statement in the medical file of the minor for five (5) years past the majority of the minor, but in no event less than seven (7) years.

c. A physician receiving parental consent under this section shall execute for inclusion in the medical record of the minor an affidavit stating: "I, (insert name of physician), certify that according to my best information and belief, a reasonable person under similar circumstances would rely on the information presented by both the minor and her parent as sufficient evidence of identity."

C. No request for written informed consent of one parent shall be required under this section if the attending physician certifies in the medical records of the pregnant unemancipated minor that a medical emergency exists; provided, however, that the attending physician or an agent shall, within twenty-four (24) hours after completion of the abortion, notify one of the parents of the minor in the manner provided in this section that an emergency abortion was performed on the minor and of the circumstances that warranted invocation of this subsection.

D. The attending physician, or the agent of the physician, shall verbally inform the parent of the minor within twenty-four (24) hours after the performance of a medical emergency abortion or an abortion that was performed to prevent her death that an abortion was performed on the unemancipated minor. The attending physician, or the agent of the attending physician, shall also inform the parent of the basis for the certification of the physician required under subsection C of this section. The attending physician, or the agent of the attending physician, shall also send a written notice of the performed abortion via the United States Post Office to the last-known address of the parent, restricted delivery, return receipt requested. The information concerning the address of the parent shall be that which a reasonable and prudent person, under similar circumstances, would have relied upon as sufficient evidence that the parent resides at that address.

E. The State Board of Health shall **adopt the forms** necessary for physicians to obtain the certifications required by this section.

Added by Laws 2005, HB 1686, c. 200, § 12, emerg. eff. May 20, 2005;
Amended by Laws 2006, SB 1742, c. 185, § 18, eff. November 1, 2006
Amended by Laws 2007, SB 139, c. 161, § 6, eff. November 1, 2007;
Amended by Laws 2009, HB 2029, c. 234, § 152, emerg. eff. May 21, 2009;
Amended by Laws 2013, HB 1361, c. 268, § 1, eff. November 1, 2013;
Amended by Laws 2013, HB 1588, c. 320, § 2, eff. November 1, 2013.

63 § 1-740.2A.

A. Prior to the court hearing for judicial waiver pursuant to Section 1-740.3 of Title 63 of the Oklahoma Statutes, the court may require the pregnant unemancipated minor to participate in an **evaluation and counseling session with a mental health professional from the State Department of Health**. Such evaluation shall be confidential and scheduled expeditiously.

B. Such evaluation and counseling session shall be for the purpose of developing trustworthy and reliable expert opinion concerning the pregnant unemancipated minor's sufficiency of knowledge, insight, judgment, and maturity with regard to her abortion decision in order to aid the court in its decision and to make the resources of the state available to the court for this purpose. Persons conducting such sessions may employ the information and printed materials referred to in Sections

1-738.2 and 1-738.3 of Title 63 of the Oklahoma Statutes in examining how well the pregnant unemancipated minor is informed about pregnancy, fetal development, abortion risks and consequences, and abortion alternatives, and should also endeavor to verify that the pregnant unemancipated minor is seeking an abortion of her own free will and is not acting under coercion, intimidation, threats, abuse, undue pressure, or extortion by any other persons.

C. The results of such evaluation and counseling shall be reported to the court by the most expeditious means, commensurate with security and confidentiality, to assure receipt by the court prior to a hearing on the petition of the pregnant unemancipated minor.

Added by Laws 2013, HB 1361, c. 268, § 2, eff. November 1, 2013.

63 § 1-740.3. Judicial Authorization of Abortion Without Parental Notification - Participation by Minor in Court Proceedings - Confidentiality – Appeal

A. If a pregnant unemancipated minor elects not to allow the request for written informed consent of her parent, any judge of a district court in the county in which the pregnant unemancipated minor resides shall, upon petition or motion, and after an appropriate hearing, authorize a physician to perform the abortion if the judge determines, by clear and convincing evidence, that the pregnant unemancipated minor is mature and capable of giving informed consent to the proposed abortion based upon her experience level, perspective, and judgment. If the judge determines that the pregnant unemancipated minor is not mature, or if the pregnant unemancipated minor does not claim to be mature, the judge shall determine, by clear and convincing evidence, whether the performance of an abortion upon her without written informed consent of her parent would be in her best interest and shall authorize a physician to perform the abortion without written informed consent if the judge concludes that the best interests of the pregnant unemancipated minor would be served thereby.

In assessing the experience level of the pregnant unemancipated minor, the court may consider, among other relevant factors, the age of the pregnant unemancipated minor and experiences working outside the home, living away from home, traveling on her own, handling personal finances, and making other significant decisions. In assessing the perspective of the pregnant unemancipated minor, the court may consider, among other relevant factors, what steps the pregnant unemancipated minor took to explore her options and the extent to which she considered and weighed the potential consequences of each option. In assessing the judgment of the pregnant unemancipated minor, the court may consider, among other relevant factors, the conduct of the pregnant unemancipated minor since learning of her pregnancy and her intellectual ability to understand her options and to make an informed decision. In assessing whether, by clear and convincing evidence, obtaining the written informed consent of the parent of the pregnant unemancipated minor is not in her best interest, a court may not consider the potential financial impact on the pregnant unemancipated minor or the family of the pregnant unemancipated minor if she does not have an abortion.

B. A pregnant unemancipated minor may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall advise the pregnant unemancipated minor that she has a right to court-appointed counsel and, upon her request, shall provide her with counsel.

C. Proceedings in the court under this section shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant unemancipated minor. A judge of the court who conducts proceedings under this section shall make, in writing, specific factual findings and legal conclusions supporting the decision and shall

order a record of the evidence to be maintained, including the findings and conclusions of the court.

D. An expedited confidential appeal shall be available to any pregnant unemancipated minor for whom the court denies an order authorizing an abortion without written informed consent of one parent. An order authorizing an abortion without written informed consent of one parent shall not be subject to appeal. No filing fees shall be required of any pregnant unemancipated minor at either the trial or the appellate level. Access to the trial court for the purpose of a petition or motion, and access to the appellate courts for the purpose of making an appeal from the denial of same, shall be afforded a pregnant unemancipated minor twenty-four (24) hours a day, seven (7) days a week.

Added by Laws 2005, HB 1686, c. 200, § 13, emerg. eff. May 20, 2005; Amended by Laws 2006, SB 1742, c. 185, § 19, eff. November 1, 2006; Amended by Laws 2007, SB 139, c. 161, § 7, eff. November 1, 2007; Amended by Laws 2013, HB 1361, c. 268, § 3, eff. November 1, 2013; Amended by Laws 2013, HB 1588, c. 320, § 3, eff. November 1, 2013.

63 § 1-740.4. Violations - Misdemeanor - Civil Actions

Performance of an abortion in knowing or reckless violation of Sections 1-740.1 through 1-740.5 of this title shall be a misdemeanor.

Performance of an abortion in violation of Sections 1-740.1 through 1-740.5 of this title shall be grounds for actual and punitive damages in a civil action pursuant to Sections 1-738.3f through 1-738.3k of this title.

Added by Laws 2005, HB 1686, c. 200, § 14, emerg. eff. May 20, 2005; Amended by Laws 2006, SB 1742, c. 185, § 20, eff. November 1, 2006; Amended by Laws 2013, HB 1588, c. 320, § 4, eff. November 1, 2013.

63 § 1-740.4a. Physicians Reporting Procedures for Abortions Performed on Unemancipated Minors - Department of Health Web Site - Notice - Public Statistical Report

A. Any physician performing an abortion upon an unemancipated minor shall complete and electronically transmit to the State Department of Health a report of the procedure within thirty (30) days after having performed the abortion. Within ninety (90) days after this act becomes law, the **State Department of Health shall prepare and make available on its stable Internet web site the reporting forms** for this purpose to all physicians required to be licensed in this state and health facilities licensed in accordance with Section 1-702 of Title 63 of the Oklahoma Statutes. The reporting form regarding the minor receiving the abortion shall include, but not be limited to:

1. Age;
2. Educational level;
3. Number of previous pregnancies;
4. Number of previous live births;
5. Number of previous abortions;
6. Complications, if any, of the abortion being reported;
7. The city and county in which the abortion was performed;
8. Whether a parent gave consent to the physician, or an agent of the physician, pursuant to Section 1-740.2 of Title 63 of the Oklahoma Statutes; or
9. Whether the physician performed the abortion without first obtaining the consent of the parent of the minor as described in Section 1-740.2 of Title 63 of the Oklahoma Statutes; if so:
 - a. whether the minor was emancipated,
 - b. whether the abortion was performed because of a medical emergency,

- c. whether the abortion was performed to prevent the death of the minor,
- d. whether the parent was notified after the performance of a medical emergency abortion, and
- e. whether the parent was notified after the performance of an abortion to prevent the death of the minor;

10. Whether a judicial waiver was obtained after the performance of a medical emergency abortion; and

11. Whether a judicial waiver was obtained after the performance of an abortion to prevent the death of the minor.

B. The State Department of Health shall ensure that the reporting **forms** described in this section, together with a **reprint of this act**, are **posted** on its stable Internet web site, within one hundred twenty (120) days after the effective date of this act. The State Department of Health **shall notify**:

1. Each physician who subsequently becomes newly licensed to practice in this state, simultaneously with the receipt of official notification to that physician that the physician is so licensed, of the requirements of this act; and
2. By December 1 of every year, other than the calendar year in which forms are made available in accordance with subsection A of this section, all physicians licensed to practice in this state.

C. By February 28 of each year following a calendar year in any part of which this act was in effect, each physician, or agent of a physician, who obtained the consent described in Section 1-740.2 of Title 63 of the Oklahoma Statutes, and any physician who knowingly performed an abortion upon a pregnant minor or upon a female for whom a guardian or conservator had been appointed pursuant to applicable federal law or as provided by Section 1-113 of Title 30 of the Oklahoma Statutes because of incompetency during the previous calendar year shall complete and electronically submit to the State Department of Health the form described in subsection A of this section, with the requested data entered accurately and completely. Any such report shall not contain the name, address, or other information by which the minor receiving the abortion may be identified.

D. Reports that are not submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period the reports are overdue. Any physician required to report in accordance with this section who has not electronically submitted a report, or has electronically submitted only an incomplete report, more than one (1) year following the due date, may, in an action brought by the State Department of Health, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

E. By June 30 of each year, the State Department of Health shall post, on its stable Internet web site, a **public report** providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection A of this section. The report shall also include statistics giving the total number of petitions or motions filed under Section 1-740.3 of Title 63 of the Oklahoma Statutes and of that number:

1. The number in which the court appointed a guardian ad litem;
2. The number in which the court appointed counsel;
3. The number in which the judge issued an order authorizing an abortion without notification; and
4. The number in which the judge denied such an order, and of this:
 - a. the number of denials from which an appeal was filed,
 - b. the number of the appeals that resulted in the denial being affirmed, and
 - c. the number of appeals that resulted in reversals of the denials.

Each report shall also provide the statistics for all previous calendar years for which the public statistical report was required to be issued, adjusted to reflect any additional information from late or corrected reports. The State Department of Health shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual female.

F. The State Department of Health may promulgate rules in accordance with the Administrative Procedures Act to alter the dates established by this section or consolidate the forms or reports to achieve administrative convenience, fiscal savings, or to reduce the burden of reporting requirements, as long as reporting forms are made available on its web site, to all licensed physicians in the state at least once every year and the report described in subsection E of this section is posted at least once every year.

G. If the State Department of Health fails to post the public report required by subsection E of this section, an action may be initiated pursuant to Title 12 of the Oklahoma Statutes.

H. If judgment is rendered in favor of the plaintiff in any action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

Added by Laws 2007, SB 139, c. 161, § 8, eff. November 1, 2007.

63 § 1-740.4b. Violations - Penalties - Defenses - Cause of Action

A. A person who knowingly or recklessly uses a false governmental record or makes a fraudulent representation or statement in order to obtain an abortion for a minor in violation of this act commits a felony.

B. A physician who intentionally or knowingly performs an abortion on a pregnant unemancipated minor in violation of this act commits a felony.

C. 1. It is a defense to prosecution under subsection B of this section if the person falsely representing himself or herself as the parent or guardian of the minor displayed an apparently valid governmental record of identification such that a reasonable person, under similar circumstances, would have relied on the representation.

2. The defense does not apply if the physician, or agent of the physician, failed to use due diligence in determining the age of the minor or the identity of the person represented as the parent or guardian of the minor.

D. An unemancipated minor, or the parent of the minor, upon whom an abortion has been performed, or attempted to be performed, without complying with this act may maintain a cause of action against the person who performed, or attempted to perform, the abortion.

E. It is not a defense to a claim brought pursuant to this section that the minor gave informed and voluntary consent.

F. An unemancipated minor does not have the capacity to consent to any action that violates this act.

Added by Laws 2007, SB 139, c. 161, § 9, eff. November 1, 2007.

63 § 1-740.5. Severability - Savings Clause

If any one or more provision, section, subsection, sentence, clause, phrase or word of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.

Added by Laws 2005, HB 1686, c. 200, § 15, emerg. eff. May 20, 2005.

63 § 1-740.6. Effect of Court Injunction, Suspension, or Delays of Implementation of Act

If any court of law enjoins, suspends, or delays the implementation of the provisions of this act, the provisions of Sections 1-730, 1-738.1, 1-738.7, 1-740.1, 1-740.2 and 1-740.3 of Title 63 of the Oklahoma Statutes, as of December 31, 2006, are effective during the injunction, suspension, or delayed implementation.

Added by Laws 2007, SB 139, c. 161, § 10, eff. November 1, 2007.

63 § 1-740.11. Funding to Nongovernmental Entities That Provide Alternatives-to-Abortion Services

A. Before July 1, 2007, the State Department of Health shall establish and implement a program to facilitate funding to nongovernmental entities that provide alternatives-to-abortion services. The services must be outcome-based with positive outcome-based results.

B. During the 2006 interim, the State Department of Health shall make annual reports to the Speaker of the House of Representatives and the President Pro Tempore of the Senate regarding the status of the alternatives-to-abortion services funding, the first of which must be made by December 1, 2006.

C. The Department may contract with nongovernmental health care and special service organizations to provide services offered under the program. The services must be outcome-based with positive outcome-based results. The Department may not contract with a provider of adoption services not licensed by the state.

D. The State Department of Health shall promulgate rules necessary to implement the provisions of this act.

E. As used in this section, "alternatives-to-abortion services" means those services that promote childbirth instead of abortion by providing information, counseling, and support services that assist pregnant women or women who believe they may be pregnant to choose childbirth and to make informed decisions regarding the choice of adoption or parenting with respect to their children.

The information, counseling and services provided under this program may include, but are not limited to:

1. Medical care;
2. Nutritional services;
3. Housing assistance;
4. Adoption services;
5. Educational and employment assistance, including services that support the continuation and completion of high school;
6. Child care assistance; and
7. Parenting education and support services.

Added by Laws 2006, SB 1742, c. 185, § 21, eff. November 1, 2006.

63 § 1-740.12. Alternatives-to-Abortion Services Revolving Fund

There is hereby created in the State Treasury a revolving fund for the State Department of Health to be designated the "**Alternatives-to-Abortion Services Revolving Fund**". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies deposited to the credit of the fund by law. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the State Department of Health as provided in subsection A of Section 21 of this act. The fund shall not be available to any organization or affiliate of an organization which provides or promotes abortions or directly refers for abortion; provided, however, any nondirective counseling relating to the pregnancy shall not disqualify an organization from receiving these funds. Expenditures from the fund shall

be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

Added by Laws 2006, SB 1742, c. 185, § 22, eff. November 1, 2006.

63 § 1-740.13. Form Used to Obtain Consent of a Minor – Validity – Parental Consent Statement

A. A **form** created by the State Department of Health shall be used by physicians to obtain the consent required prior to performing an abortion on a minor who is not emancipated.

B. A form is not valid, and therefore consent is not sufficient, unless:

1. A parent or legal guardian initials each page of the form, indicating that he or she has read and understands the information included on that page;
2. A parent or legal guardian signs the last page of the form in front of a person who is a notary public;
3. The minor initials each list of risks and hazards listed in subsection C of this section;
4. The minor signs a consent statement described in subsection C of this section; and
5. The physician signs the declaration described in subsection C of this section.

C. The form shall include, but not be limited to, the following:

1. A description of the minor's rights, including her right to informed consent;
2. A description of the parent or legal guardian's rights pursuant to Oklahoma law;
3. A detailed description of the surgical and medical procedures that are planned to be performed on the minor;
4. A detailed list of the risks and hazards related to the surgical and medical procedures planned for the minor, including but not limited to:
 - a. risks and hazards that may occur in connection with any surgical, medical, or diagnostic procedure, including but not limited to infection, blood clots in veins and lungs, hemorrhage, allergic reactions, and death,
 - b. risks and hazards that may occur with surgical abortion, including but not limited to hemorrhage, uterine perforation, sterility, injuries to the bowel and bladder, hysterectomy as a result of complication or injury during the procedure, and failure to remove all products of conception that may result in an additional procedure,
 - c. risks and hazards that may occur with a medical or nonsurgical abortion, including but not limited to hemorrhage, failure to remove all products of conception that may result in an additional procedure, sterility, and possible continuation of pregnancy, and
 - d. risks and hazards of the particular procedure planned for the minor, including but not limited to cramping of the uterus, pelvic

pain, infection of the uterus, tubes, and ovaries, cervical laceration, incompetent cervix, and emergency treatment for any of the above named complications;

5. A description of additional information that must be provided by the physician to the minor pursuant to the provisions of Section 1-730 et seq. of this title;

6. A consent statement which must be signed by the minor. The consent statement must include, but not be limited to, the following requirements, which must each be individually initialed by the minor:

a. that the minor understands that the doctor is going to perform an abortion on her which will end her pregnancy and result in the death of her unborn child,

b. that the minor is not being forced to have an abortion and that she has the choice not to have the abortion and may withdraw consent prior to the abortion,

c. that the minor gives permission for the procedure,

d. that the minor understands that there are risks and hazards that could affect the minor if she has the surgical or medical procedures planned for her,

e. that the minor has been given the opportunity to ask questions about her condition, alternative forms of treatment, risks of not receiving treatment, the procedures to be used, and the risks and hazards involved,

f. that the minor has been given information required by Section 1-730 et seq. of this title, and

g. that the minor has sufficient information to give informed consent;

7. A physician declaration, which must be signed by the physician, stating that the physician or his or her assistant has explained the procedure and the contents of this form to the minor and her parent or legal guardian, as required, and has answered all questions. Further, to the best of the physician's knowledge, the patient and her parent or legal guardian have been adequately informed and have consented to the procedure;

8. A parental consent statement stating that the signing parent or legal guardian:

a. understands that the doctor signing the physician declaration is going to perform an abortion on the minor which will end her pregnancy and result in the death of her unborn child,

b. that the parent or legal guardian had the opportunity to read this form or have it read to him or her and has initialed each page,

c. that the parent or legal guardian had the opportunity to ask questions to the physician or the physician's assistant about the information in this form and the surgical and medical procedures to be performed on the minor,

d. that the parent or legal guardian believes he or she has sufficient information to give informed consent, and

e. that by the parent or legal guardian's signature, the parent or legal guardian affirms that he or she is the minor's parent or legal guardian;

9. A page for the parent or legal guardian's signature that must be notarized by a notary public; and

10. Any additional information that must be provided pursuant to applicable laws of this state.

Added by Laws 2013, HB 1361, c. 268, § 4, eff. November 1, 2013.

63 § 1-740.14. Effect of Temporary or Permanent Judicial Orders

If some or all of the provisions of Sections 1-740.2 and 1-740.3 of Title 63 of the Oklahoma Statutes, as amended by Sections 1 and 3 of this act, are ever temporarily or permanently restrained or enjoined by judicial order, these sections shall be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

Added by Laws 2013, HB 1361, c. 268, § 5, eff. November 1, 2013.

63 § 1-741. Abortions - Refusal to Perform or Participate - Exemptions

A. No private hospital, hospital director or governing board of a private hospital in Oklahoma, is required to permit abortions to be performed or induced in such hospital. Refusal to permit an abortion, in accordance with a standard policy, is not grounds for civil liability nor a basis for disciplinary or other recriminatory action.

B. No person may be required to perform, induce or participate in medical procedures which result in an abortion which are in preparation for an abortion or which involve aftercare of an abortion patient, except when the aftercare involves emergency medical procedures which are necessary to protect the life of the patient, and refusal to perform or participate in such medical procedures is not grounds for civil liability nor a basis for disciplinary or other recriminatory action.

C. The rights and immunities granted by this section shall not include medical procedures in which a woman is in the process of the spontaneous, inevitable abortion of an unborn child, the death of the child is imminent, and the procedures are necessary to prevent the death of the mother.

Laws 1978, c. 158, § 1.

63 § 1-741.1. Prohibition Against Use of State Assistance or Resources to Encourage or Perform Abortion - Exceptions

A. It shall be unlawful for any person employed by this state or any agency or political subdivision thereof, within the scope of the person's employment, to perform or assist an abortion not necessary to save the life of the mother except when the pregnancy resulted from an act of forcible rape which was reported to the proper law enforcement authorities or when the pregnancy resulted from an act of incest committed against a minor and the perpetrator has been reported to the proper law enforcement authorities. It shall be unlawful for any public institution, public facility, public equipment, or other physical asset owned, leased or controlled by this state or any agency or political subdivisions thereof to be used for the purpose of performing or assisting an abortion not necessary to save the life of the mother except when the pregnancy resulted from an act of forcible rape which was reported to the proper law enforcement authorities or when the pregnancy resulted from an act of incest committed against a minor and the perpetrator has been reported to the proper law enforcement authorities. This subsection shall not be construed to prohibit use by private entities of public utilities or the services of firefighters or police.

B. It shall be unlawful for any funds received or controlled by this state or any agency or political subdivision thereof, including, but not limited to, funds derived from federal, state or local taxes, gifts or grants, federal grants or payments, or intergovernmental transfers, to be used to encourage a woman to have an abortion not necessary to save her life, except to the extent required for continued participation in a federal program. Nothing in this subsection shall be construed to prohibit a physician from discussing options with a patient through nondirective counseling.

Added by Laws 2007, SB 139, c. 161, § 11, eff. November 1, 2007.

63 § 1-741.3. Health Plans – Coverage for Abortion – Elective Abortion Coverage - Employers

A. Pursuant to the Patient Protection and Affordable Care Act, P.L. 111-148, all qualified health plans offered through an Exchange established in the state are prohibited from including elective abortion coverage. Nothing in this section shall be construed as preventing anyone from purchasing optional supplemental coverage for elective abortions for which there must be paid a separate premium in accordance with subsection D of this section in the health insurance market outside of the Exchange.

B. No health plan, including health insurance contracts, plans or policies, offered outside of an Exchange, but within the state, shall provide coverage for elective abortions except by optional separate supplemental coverage for abortion for which there must be paid a separate premium in accordance with subsection D of this section.

C. For purposes of this section, "elective abortion" means an abortion for any reason other than to prevent the death of the mother upon whom the abortion is performed; provided, however, that an abortion may not be deemed one to prevent the death of the mother based on a claim or diagnosis that she will engage in conduct which will result in her death.

D. The issuer of any health plan providing elective abortion coverage shall:

1. Calculate the premium for such coverage so that it fully covers the estimated cost of covering elective abortions per enrollee as determined on an average actuarial basis. In calculating such premium, the issuer of the plan shall not take into account any cost reduction in any health plan covering an enrollee estimated to result from the provision of abortion coverage, including prenatal care, delivery or postnatal care;
2. If the enrollee is enrolling in a health plan providing any other coverage at the same time as the enrollee is enrolling in a plan providing elective abortion coverage, require a separate signature, distinct from that to enroll in the health plan providing other coverage, in order to enroll in the separate supplemental plan providing elective abortion coverage; and
3. Provide a notice to enrollees at the time of enrollment that:
 - a. specifically states the cost of the separate premium for coverage of elective abortions distinct and apart from the cost of the premium for any health plan providing any other coverage in any health plan covering an enrollee,
 - b. states that enrollment in elective abortion coverage is optional, and
 - c. if the enrollee is enrolling in a health plan providing any other coverage at the same time as the enrollee is enrolling in a plan providing elective abortion coverage, states that the enrollee may choose to enroll in the plan providing other coverage without enrolling in the plan providing elective abortion coverage.

E. The issuer of any health plan providing any coverage other than elective abortion shall not discount or reduce the premium for such coverage on the basis that an enrollee has elective abortion coverage.

F. Any employer who offers employees a health plan providing elective abortion coverage shall, at the time of beginning employment and at least

once in each calendar year thereafter, provide each employee the option to choose or reject the separate supplemental elective abortion coverage.

G. Any entity offering a group health plan providing separate supplemental elective abortion coverage, other than employers offering such a plan to their employees, shall, at the time each group member begins coverage and at least once in each calendar year thereafter, provide each group member the option to choose or reject the separate supplemental elective abortion coverage.

H. Nothing in this section shall be construed to apply in circumstances in which federal law preempts state health insurance regulation.

Added by Laws 2011, SB 547, c. 92, § 1, eff. November 1, 2011.

63 § 1-741.12. Wrongful Life Action - Wrongful Birth Action - Limitation on Damages

A. It is the intent of the Legislature that the birth of a child does not constitute a legally recognizable injury and that it is contrary to public policy to award damages because of the birth of a child or for the rearing of that child.

B. For the purposes of this section:

1. "Abortion" means the term as is defined in Section 1-730 of Title 63 of the Oklahoma Statutes;
2. "Wrongful life action" means a cause of action that is brought by or on behalf of a child, which seeks economic or noneconomic damages for the child because of a condition of the child that existed at the time of the child's birth, and which is based on a claim that a person's act or omission contributed to the mother's not having obtained an abortion; and
3. "Wrongful birth action" means a cause of action that is brought by a parent or other person who is legally required to provide for the support of a child, which seeks economic or noneconomic damages because of a condition of the child that existed at the time of the child's birth, and which is based on a claim that a person's act or omission contributed to the mother's not having obtained an abortion.

C. In a wrongful life action or a wrongful birth action, no damages may be recovered for any condition that existed at the time of a child's birth if the claim is that the defendant's act or omission contributed to the mother's not having obtained an abortion.

D. This section shall not preclude causes of action based on claims that, but for a wrongful act or omission, maternal death or injury would not have occurred, or handicap, disease, or disability of an individual prior to birth would have been prevented, cured, or ameliorated in a manner that preserved the health and life of the affected individual.

Added by Laws 2010, HB 2656, c. 171, § 1.

Parental Notification for Abortion Act 63 § 1-744 Short Title

This act shall be known and may be cited as the "Parental Notification for Abortion Act".

Added by Laws 2013, HB 1588, c. 320, § 1, eff. November 1, 2013.

63 § 1-744.1. Definitions

As used in the Parental Notification for Abortion Act:

1. "Parent" means one parent of the pregnant minor, or the guardian or conservator if the pregnant female has one;
2. "Abortion" means the use of any means intentionally to terminate the pregnancy of a female known to be pregnant with knowledge that the

termination with those means will, with reasonable likelihood, cause the death of the fetus;

3. "Fetus" means any individual human organism from fertilization to birth;

4. "Medical emergency" means the existence of any physical condition, not including any emotional, psychological, or mental condition, which a reasonably prudent physician would determine necessitates the immediate abortion of the female's pregnancy to avert her death or to avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy;

5. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved; and

6. "Physician" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state.

Added by Laws 2013, HB 1588, c. 320, § 5, eff. November 1, 2013.

63 § 1-744.2. Written Notice Required for Unemancipated Minors Found to be Incompetent

No abortion shall be performed or induced upon an unemancipated minor or upon a female for whom a guardian or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act because of a finding of incompetency, until at least forty-eight (48) hours after written notice of the pending abortion has been delivered in the manner specified in Sections 7 through 9 of this act to one of the parents of the minor upon whom the abortion is contemplated or to the guardian or conservator of the female upon whom the abortion is contemplated.

1. The notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.

2. In lieu of the delivery required by paragraph 1 of this section, notice shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and restricted delivery to the addressee, which means a postal employee can deliver the mail only to the authorized addressee. Time of delivery shall be deemed to occur at noon on the third day on which regular mail delivery takes place, subsequent to mailing. The information concerning the address of the parent shall be that which a reasonable and prudent person, under similar circumstances, would have relied upon as sufficient evidence that the parent resides at that address.

Added by Laws 2013, HB 1588, c. 320, § 6, eff. November 1, 2013.

63 § 1-744.3. Exception for Medical Emergency

Immediate notice shall not be required if the attending physician certifies in the pregnant female's record that, in reasonable medical judgment, a medical emergency exists and there is insufficient time to provide the prior notification required by Section 6 of this act. The attending physician or the physician's agent shall verbally inform the parent within twenty-four (24) hours after the performance of a medical emergency abortion, that a medical emergency abortion was performed on the unemancipated minor or on the female for whom a guardian or conservator has been appointed and shall also send a written notice within twenty-four (24) hours after the performance of a medical emergency abortion to the last-known address of the parent, of the

performed medical emergency abortion. The written notice shall follow the requirements in paragraph 2 of Section 6 of this act.

Added by Laws 2013, HB 1588, c. 320, § 7, eff. November 1, 2013.

63 § 1-744.4. Exception for Victims of Sexual or Physical Abuse

No notice shall be required under this act if:

1. The person who is entitled to notice states in notarized writing that he or she has been notified and the statement is placed in the female's medical record; or

2. The pregnant female declares that she is a victim of sexual or physical abuse by her parent as defined in Section 1111 et seq. of Title 21 of the Oklahoma Statutes and the attending physician has notified child abuse authorities about the alleged parental sexual or physical abuse. In such circumstances, the physician shall notify child abuse authorities of the name and address of the abusing parent so that they can investigate. The child abuse authorities shall maintain the confidentiality of the fact that the minor has sought or obtained an abortion and shall take all necessary steps to ensure that this information is not revealed to the female's parents or guardians.

Added by Laws 2013, HB 1588, c. 320, § 8, eff. November 1, 2013.

63 § 1-744.5. Violations – Misdemeanor – Civil Actions

Performance of an abortion in knowing or reckless violation of this act shall be a misdemeanor. Performance of an abortion in violation of this act shall be grounds for a civil action pursuant to Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes.

Added by Laws 2013, HB 1588, c. 320, § 9, eff. November 1, 2013.

63 § 1-744.6. Effect of Restraining Order or Injunction

If some or all of the provisions of Sections 1-740.2, 1-740.3 and 1-740.4 of Title 63 of the Oklahoma Statutes, as amended by Sections 2, 3 and 4 of this act, are ever temporarily or permanently restrained or enjoined by judicial order, these sections shall be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

Added by Laws 2013, HB 1588, c. 320, § 10, eff. November 1, 2013.

PAIN-CAPABLE UNBORN CHILD PROTECTION ACT

63 § 1-745.1. Short Title

This act shall be known and may be cited as the "Pain-Capable Unborn Child Protection Act".

Added by Laws 2011, HB 1888, c. 89, § 1, eff. November 1, 2011.

63 § 1-745.2. Definitions

As used in the Pain-Capable Unborn Child Protection Act only:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child *after live birth*, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the

pregnant woman or her unborn child, and which causes the premature termination of the pregnancy;

2. "Attempt to perform or induce 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 or induction of an abortion in this state in violation of the Pain-Capable Unborn Child Protection Act;

3. "Postfertilization age" means the age of the unborn child as calculated from the fertilization of the human ovum;

4. "Fertilization" means the fusion of a human spermatozoon with a human ovum;

5. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the immediate abortion of her pregnancy without first determining postfertilization age to avert her death or for which the delay necessary to determine postfertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function;

6. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;

7. "Physician" means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state;

8. "Probable postfertilization age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed or induced;

9. "Unborn child" or "fetus" each means an individual organism of the species homo sapiens from fertilization until live birth; and

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

Added by Laws 2011, HB 1888, c. 89, § 2, eff. November 1, 2011.

63 § 1-745.3. Legislative Findings

The Legislature of the State of Oklahoma finds that:

1. Pain receptors (nociceptors) are present throughout the unborn child's entire body by no later than sixteen (16) weeks after fertilization and nerves link these receptors to the brain's thalamus and subcortical plate by no later than twenty (20) weeks;

2. By eight (8) weeks after fertilization, the unborn child reacts to touch. After twenty (20) weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example by recoiling;

3. In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response;

4. Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life;

5. For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without such anesthesia;

6. The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than

twenty (20) weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain;

7. Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain;

8. In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does;

9. Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing;

10. The position, asserted by some, that the unborn child remains in a coma-like sleep state that precludes the unborn child from experiencing pain is inconsistent with the documented reaction of unborn children to painful stimuli and with the experience of fetal surgeons who have found it necessary to sedate the unborn child with anesthesia to prevent the unborn child from thrashing about in reaction to invasive surgery;

11. Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by twenty (20) weeks after fertilization;

12. It is the purpose of the State of Oklahoma to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain; and

13. Oklahoma's compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain is intended to be separate from and independent of Oklahoma's compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other.

Added by Laws 2011, HB 1888, c. 89, § 3, eff. November 1, 2011.

63 § 1-745.4. Probable Postfertilization Age of Unborn Child - Unprofessional Conduct

A. Except in the case of a medical emergency, no abortion shall be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, the physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to postfertilization age.

B. Knowing or reckless failure by any physician to conform to any requirement of this section constitutes "unprofessional conduct".

Added by Laws 2011, HB 1888, c. 89, § 4, eff. November 1, 2011.

63 § 1-745.5. Prohibited Abortions - Physician Judgment

A. No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is twenty (20) or more weeks, unless, in reasonable medical judgment, she has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a

major bodily function, not including psychological or emotional conditions. No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

B. When an abortion upon a woman whose unborn child has been determined to have a probable postfertilization age of twenty (20) or more weeks is not prohibited by this section, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods. No such greater risk shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

Added by Laws 2011, HB 1888, c. 89, § 5, eff. November 1, 2011.

63 § 1-745.6. Physician Reporting Requirements - Department of Health Report - Fines

A. Any physician who performs or induces or attempts to perform or induce an abortion shall report to the State Department of Health, on a schedule and in accordance with **forms and rules and regulations adopted and promulgated by the State Board of Health that include:**

1. If a determination of probable postfertilization age was made, the probable postfertilization age determined and the method and basis of the determination;
2. If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed;
3. If the probable postfertilization age was determined to be twenty (20) or more weeks, the basis of the determination that the pregnant woman had a condition which so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions; and
4. The method used for the abortion and, in the case of an abortion performed when the probable postfertilization age was determined to be twenty (20) or more weeks:
 - a. whether the method used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive, or
 - b. if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods.

B. By June 30 of each year, the State Department of Health shall issue a **public report** providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection A of this section. Each such report shall also provide the statistics for all previous calendar years during which this section was in effect, adjusted to reflect any additional information from late or corrected reports. The State Department of Health shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed or attempted.

C. Any physician who fails to submit a report by the end of thirty (30) days following the due date shall be subject to a late fee of Five Hundred

Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period the report is overdue. Any physician required to report in accordance with this act who has not submitted a report, or had submitted only an incomplete report, more than one (1) year following the due date, may, in an action brought by the State Department of Health or by the State Board of Medical Licensure and Supervision, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to civil contempt. Knowing or reckless failure by any physician to conform to any requirement of this section, other than late filing of a report, constitutes "unprofessional conduct" pursuant to Section 509 of Title 59 of the Oklahoma Statutes. Knowing or reckless failure by any physician to submit a complete report in accordance with a court order constitutes "unprofessional conduct" pursuant to Section 509 of Title 59 of the Oklahoma Statutes. Knowing or reckless falsification of any report required under this section is a misdemeanor.

D. By February 1, 2012, the **State Board of Health shall adopt and promulgate rules and regulations** to assist in compliance with this section. Subsection A of this section shall take effect so as to require reports regarding all abortions performed or induced on and after the first day of the first calendar month following the effective date of such rules.

Added by Laws 2011, HB 1888, c. 89, § 6, eff. November 1, 2011.

63 § 1-745.7. Violation of Act

Any person who knowingly or recklessly performs or induces or attempts to perform or induce an abortion in violation of the Pain-Capable Unborn Child Protection Act shall be guilty of a felony. No penalty may be assessed against the woman upon whom the abortion is performed or induced or attempted to be performed or induced.

Added by Laws 2011, HB 1888, c. 89, § 7, eff. November 1, 2011.

63 § 1-745.8. Liability - Cause of Action - Judgment and Attorney Fees - Damages

A. Any woman upon whom an abortion has been performed in violation of the Pain-Capable Unborn Child Protection Act, or the father of the unborn child who was the subject of such an abortion, may maintain an action against the person who performed or induced the abortion in knowing or reckless violation of the Pain-Capable Unborn Child Protection Act for actual and punitive damages. Any woman upon whom an abortion has been attempted in violation of the Pain-Capable Unborn Child Protection Act may maintain an action against the person who attempted to perform or induce the abortion in knowing or reckless violation of the Pain-Capable Unborn Child Protection Act for actual and punitive damages.

B. A cause of action for injunctive relief against any person who has knowingly or recklessly violated the Pain-Capable Unborn Child Protection Act may be maintained by the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of the Pain-Capable Unborn Child Protection Act; by any person who is the spouse, parent, sibling or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or induced or attempted to be performed or induced in violation of the Pain-Capable Unborn Child Protection Act; by a district attorney with appropriate jurisdiction; or by the Attorney General. The injunction shall prevent the abortion provider from performing or inducing or attempting to perform or induce further abortions in violation of the Pain-Capable Unborn Child Protection Act in the State of Oklahoma.

C. If judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant.

D. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

E. No damages or attorney fee may be assessed against the woman upon whom an abortion was performed or attempted to be performed except in accordance with subsection D of this section.

Added by Laws 2011, HB 1888, c. 89, § 7, eff. November 1, 2011.

63 § 1-745.9. Civil and Criminal Proceedings Brought Under Act

In every civil or criminal proceeding or action brought under the Pain-Capable Unborn Child Protection Act, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or induced or attempted to be performed or induced shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or induced or attempted to be performed or induced, anyone, other than a public official, who brings an action under subsections A or B of Section 8 of this act shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Added by Laws 2011, HB 1888, c. 89, § 8, eff. November 1, 2011.

63 § 1-745.10. Constitutionality and Severability

A. If any one or more provisions, sections, subsections, sentences, clauses, phrases or words of the Pain-Capable Unborn Child Protection Act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of the Pain-Capable Unborn Child Protection Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed the Pain-Capable Unborn Child Protection Act, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of the Pain-Capable Unborn Child Protection Act, or the application of the Pain-Capable Unborn Child Protection Act, would be declared unconstitutional.

B. The Pain-Capable Unborn Child Protection Act shall not be construed to repeal, by implication or otherwise, Section 1-732 of Title 63 of the Oklahoma Statutes, or any otherwise applicable provision of Oklahoma's laws regulating or restricting abortion. An abortion that complies with this act but violates the provisions of Section 1-732 of Title 63 of the Oklahoma Statutes, or any otherwise applicable provision of Oklahoma's laws shall be deemed unlawful as provided in such provision. An abortion that complies with the provisions of Section 1-732 of Title 63 of the Oklahoma Statutes, or any otherwise applicable provision of Oklahoma's laws regulating or restricting abortion but violates this act shall be deemed unlawful as provided in this act.

Added by Laws 2011, HB 1888, c. 89, § 10, eff. November 1, 2011

63 § 1-745.11. No Right to Abortion by Act

Nothing in the Pain-Capable Unborn Child Protection Act shall be construed as creating or recognizing a right to abortion.

Added by Laws 2011, HB 1888, c. 89, § 11, eff. November 1, 2011.

Heartbeat Informed Consent Act 63 § 1-745.12. Short Title

This act shall be known and may be cited as the "Heartbeat Informed Consent Act".

Added by Laws 2012, SB 1274, c. 159, § 1, eff. November 1, 2012

63 § 1-745.13. Definitions

As used in the Heartbeat Informed Consent Act:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device to cause the premature termination of the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child;
2. "Abortion provider" means any person legally qualified to perform an abortion under state law;
3. "Embryonic or fetal heartbeat" means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the embryonic or fetal heart;
4. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the immediate abortion of her pregnancy to avert her death or for which the delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function;
5. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician;
6. "Unborn child" means a member of the species *Homo sapiens* from fertilization until live birth; and
7. "Woman" means a female human being, whether or not she has reached the age of majority.

Added by Laws 2012, SB 1274, c. 159, § 3, eff. November 1, 2012.

63 § 1-745.14. Duties of Abortion Providers

A. Any abortion provider who knowingly performs or induces any abortion shall comply with the requirements of the Heartbeat Informed Consent Act.

B. Prior to a woman giving informed consent to having any part of an abortion performed or induced, if the pregnancy is at least eight (8) weeks after fertilization, the abortion provider who is to perform or

induce the abortion or an agent of the abortion provider shall tell the woman that it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear and ask the woman if she would like to hear the heartbeat. If the woman would like to hear the heartbeat, the abortion provider shall, using a Doppler fetal heart rate monitor, make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear. An abortion provider or an agent of the abortion provider shall not be in violation of the requirements of this subsection if:

1. The provider or agent has attempted, consistent with standard medical practice, to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear using a Doppler fetal heart rate monitor;
2. That attempt does not result in the heartbeat being made audible; and
3. The provider has offered to attempt to make the heartbeat audible at a subsequent date.

C. Nothing in this section shall be construed to prevent the pregnant woman from not listening to the sounds detected by the Doppler fetal heart rate monitor pursuant to the requirements of subsection B of this section.

Added by Laws 2012, SB 1274, c. 159, § 4, eff. November 1, 2012.

63 § 1-745.15. Exemptions – Averting Mother’s Death – Medical Emergencies

- A. The provisions of Section 4 of this act shall not apply to an abortion provider in the case that the abortion is necessary to avert the mother’s death or in the case of a medical emergency.
- B. Upon a determination by an abortion provider under subsection A of this section that an abortion is necessary to avert the death of the mother or that there is a medical emergency, such provider shall certify the specific medical conditions that support such determination and include such certification in the medical file of the pregnant woman.
- C. An abortion provider who knowingly or recklessly falsifies a certification made pursuant to subsection B of this section shall be deemed to have knowingly or recklessly failed to comply with this act for purposes of Section 6 of this act.

Added by Laws 2012, SB 1274, c. 159, § 5, eff. November 1, 2012.

63 § 1-745.16. Intentional or Reckless Violations of Act – Misdemeanor – Civil Action – Remedies

- A. Any person who intentionally or recklessly performs or induces an abortion in violation of the Heartbeat Informed Consent Act shall be guilty of a misdemeanor. No penalty shall be assessed against the woman upon whom the abortion is performed or induced or attempted to be performed or induced.
- B. Any woman upon whom an abortion has been performed or induced in violation of this act, or the father of the unborn child who was the subject of such an abortion, may maintain an action against the person who performed or induced the abortion in intentional or reckless violation of this act for actual and punitive damages. Any woman upon whom an abortion has been attempted in violation of this act may maintain an action against the person who attempted to perform or induce the abortion in an intentional or reckless violation of this act for actual and punitive damages.

C. A cause of action for injunctive relief against any person who has intentionally or recklessly violated this act may be maintained by the woman upon whom an abortion was performed or induced in violation of this act; by any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or induced 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 or inducing further abortions in violation of this act in the state.

D. If judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant.

E. If judgment is rendered in favor of the defendant and the court finds that the plaintiff’s suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

F. No damages or attorney fee may be assessed against the woman upon whom an abortion was performed or attempted to be performed or induced except in accordance with subsection E of this section.

Added by Laws 2012, SB 1274, c. 159, § 6, eff. November 1, 2012.

63 § 1-745.17. Anonymity of Woman

In every civil or criminal proceeding or action brought under the Heartbeat Informed Consent Act, the court shall rule whether the identity of any woman upon whom an abortion has been performed or induced or attempted to be performed or induced shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her identity should be preserved from public disclosure, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Such an order shall be accompanied by specific written findings explaining why the identity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable, less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or induced or attempted to be performed or induced, anyone, other than a public official, who brings an action under Section 6 of this act shall do so under a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Added by Laws 2012, SB 1274, c. 159, § 7, eff. November 1, 2012.

63 § 1-745.18. Act Does Not Create or Recognize Right to Abortion

Nothing in the Heartbeat Informed Consent Act shall be construed as creating or recognizing a right to abortion.

Added by Laws 2012, SB 1274, c. 159, § 8, eff. November 1, 2012.

63 § 1-745.19. Severability

If any one or more provision, section, subsection, sentence, clause, phrase, or word of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Oklahoma Legislature hereby declares that it would have passed this act, and each provision,

section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Added by Laws 2012, SB 1274, c. 159, § 9, eff. November 1, 2012.

Prioritization of Public Funding in the Purchasing of Family Planning and Counseling Services Act

63 § 1-747.1. Short Title

This act shall be known as the "Prioritization of Public Funding in the Purchasing of Family Planning and Counseling Services Act".

Added by Laws 2013, SB 900, c. 385, § 1, eff. November 1, 2013.

63 § 1-747.2. Definitions

As used in the Prioritization of Public Funding in the Purchasing of Family Planning and Counseling Services Act:

1. "Public funds" means state funds from whatever source, including without limitation state general revenue funds, state special account and limited purpose grants and/or loans, and federal funds provided under Title V (42 U.S.C., Section 701 et seq.), Title X (42 U.S.C., Section 300 et seq.), Title XIX (42 U.S.C., Section 1396 et seq.), Title XX (42 U.S.C., Section 1397 et seq.) and Title X (42 U.S.C., Section 1786 et seq.);
2. "Federally qualified health center" means a health care provider that is eligible for federal funding under 42 U.S.C., Section 1396d(1)(2)(B);
3. "Rural health clinic" means a health care provider that is eligible for federal funding under 42 U.S.C., Section 1395x(aa)(2);
4. "Hospital" means a primary or tertiary care facility licensed as a hospital under the laws of this state; and
5. "Department" means the Oklahoma Health Care Authority or the State Department of Health.

Added by Laws 2013, SB 900, c. 385, § 2, eff. November 1, 2013.

63 § 1-747.3. Priority of Funding

Subject to any applicable requirements of federal statutes, rules, regulations or guidelines, any expenditures or grants of public funds for family planning or counseling services by the State of Oklahoma, by and through the Department shall be made in the following order of priority:

1. To public entities;
2. To nonpublic hospitals, federally qualified health centers, and rural health clinics; and
3. To nonpublic health providers that have as their primary purpose the provision of the primary health care services enumerated in 42 U.S.C., Section 254b(a)(1).

Added by Laws 2013, SB 900, c. 385, § 3, eff. November 1, 2013.

63 § 1-747.4. Cause of Action

A cause of action in law or equity for recoupment, declaratory or injunctive relief against any person who has intentionally violated the

Prioritization of Public Funding in the Purchasing of Family Planning and Counseling Services Act may be maintained by a district attorney with appropriate jurisdiction, or by the Attorney General.

Added by Laws 2013, SB 900, c. 385, § 4, eff. November 1, 2013.

63 § 1-747.5. Severability

If any one or more provisions, sections, subsections, sentences, clauses, phrases or words of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of the Prioritization of Public Funding in the Purchasing of Family Planning and Counseling Services Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases or words of the act, or the application of the act, would be declared unconstitutional.

Added by Laws 2013, SB 900, c. 385, § 5, eff. November 1, 2013.