STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1543 By: Calvey

AS INTRODUCED

An Act relating to public health and safety; enacting the Women's Right to Know Act; providing short title; defining terms; requiring voluntary and informed consent for an abortion; specifying requirements for a voluntary and informed consent; requiring the State Department of Health to publish certain printed materials; requiring development of an Internet website for certain purpose; providing for medical emergencies; requiring the State Department of Health to prepare certain reporting forms; providing procedure for use of report forms; specifying penalties; authorizing actual and punitive damages under certain circumstances; providing for injunctions and attorney fees under certain circumstances; providing procedure for anonymity of certain persons; providing for severability; enacting the Family Protection Act; providing short title; defining terms; prohibiting abortions on certain persons without certain notice; providing procedures related to the notice; specifying penalties; authorizing actual and punitive damages; requiring the State Department of Health to prepare certain reporting form; providing procedure for use of report form; requiring the State Department of Health to issue certain report; providing remedy for failure to issue certain report; providing for severability; providing for codification; and providing an effective date.

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

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

Sections 1 through 11 of this act shall be known and may be cited as the "Women's Right to Know Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Women’s Right to Know 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, or to remove a dead unborn child who died as a result of a spontaneous abortion;

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 Women’s Right to Know Act;

3. "Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant unemancipated minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;

4. "Physician" means a person licensed to practice medicine in this state pursuant to Chapter 11 and Chapter 14 of Title 59 of the Oklahoma Statutes;

5. "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; and

6. “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.

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

No abortion shall be performed in this state except with the voluntary and informed consent of the female upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if the following requirements are completed:

1. The female is told the following, by telephone or in person, by the physician who is to perform the abortion or by a referring physician, at least twenty-four (24) hours before the abortion:

a. the name of the physician who will perform the abortion,

b. the particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, breast cancer, danger to subsequent pregnancies, and infertility,

c. the probable gestational age of the unborn child at the time the abortion is to be performed, and

d. the medical risks associated with carrying her child to term.

The information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied the physician by the female and whatever other relevant information is reasonably available to the physician. It may not be provided by a tape recording, but must be provided during a consultation in which the physician is able to ask questions of the female and the female is able to ask questions of the physician. If a physical examination, tests, or the availability of other information to the physician subsequently

indicate, in the medical judgment of the physician, a revision of the information previously supplied to the patient, that revised information may be communicated to the patient at any time prior to the performance of the abortion. Nothing in this paragraph may be construed to preclude provision of required information in a language understood by the patient through a translator;

2. The female 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 at least twenty-four (24) hours before the abortion:

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, and

c. that she has the right to review the printed materials described in Section 4 of the Women's Right to Know Act, that these materials are available on a state-sponsored website, and the address of the website. 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 they describe the unborn child and list agencies which offer alternatives to abortion. If the female chooses to view the materials other than on the website, they shall either be given to her at least twenty-four (24) hours before the abortion, mailed to her at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee.

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 female does or does not choose to have the printed materials given or mailed to her;

3. The female certifies in writing, prior to the abortion, that the information described in paragraphs 1 and 2 of this section has been furnished to her, and that she has been informed of her opportunity to review the information referred to in subparagraph c of paragraph 2 of this section; and

4. Prior to the performance of 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 section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days after the effective date of the Women's Right to Know Act, the State Department of Health 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 this state, and shall cause to be available on the state website provided for in Section 5 of this act, the following printed materials in such a way as to ensure that the information is easily comprehensible:

1. Geographically indexed materials designed to inform the female of public and private agencies and services available to assist a female through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers, in which they might be contacted or, at the option of the Department, printed materials including a toll-free,

twenty-four-hour-a-day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer; and

2. Materials designed to inform the female of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a female can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival and pictures or drawings representing the development of unborn children at two-week gestational increments. Any such pictures or drawings must contain the dimensions of the fetus and must be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion and the medical risks commonly associated with each such procedure, and the medical risks commonly associated with carrying a child to term.

B. The materials referred to in subsection A of this section shall be printed in a typeface large enough to be clearly legible. The website provided for in Section 5 of this act shall be maintained at a minimum resolution of seventy (70) DPI (dots per inch). All pictures appearing on the website shall be a minimum of 200 x 300 pixels. All letters on the website 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 Department upon request and in appropriate numbers to any person, facility, or hospital.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall develop and maintain a stable Internet website to provide the information described under Section 4 of this act. No information regarding who uses the website shall be collected or maintained. The State Department of Health shall monitor the website on a daily basis to prevent and correct tampering.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

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 twenty-four-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days after the effective date of the Women’s Right to Know Act, the State Department of Health shall prepare a reporting form for physicians containing a reprint of the Women’s Right to Know Act and listing:

1. The number of females to whom the physician provided the information described in paragraph 1 of Section 3 of the Women’s Right to Know 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;

2. The number of females to whom the physician or an agent of the physician provided the information described in paragraph 2 of Section 3 of the Women’s Right to Know Act; 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;

3. The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Section 4 of the Women’s Right to Know Act other than on the website, and the number who did not; and of each of those numbers, the number who, to the best of the reporting physician's information and belief, went on to obtain the abortion; and

4. 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 female's death, 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 State Department of Health shall ensure that copies of the reporting forms described in subsection A of this section are provided to all physicians licensed to practice in this state:

1. Within one hundred twenty (120) days after the effective date of the Women’s Right to Know Act;

2. By December 1 of each year, other than the calendar year in which forms are distributed in accordance with paragraph 1 of this subsection; and

3. 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.

C. By February 28 of each year following a calendar year in any part of which the Women's Right to Know Act was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with Section 3 of the Women's Right to Know 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 they 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 Department, 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 female, or of any female for whom a guardian has been appointed.

F. The Department may by rule alter the dates established by paragraph 3 of subsection B of this section and subsections C and 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 is issued at least once every year.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any person who knowingly or recklessly performs or attempts to perform an abortion in violation of the Women's Right to Know Act shall be guilty of a felony. Any physician who knowingly or recklessly submits a false report under subsection C of Section 7 of this act shall be guilty of a misdemeanor.

B. No penalty may be assessed against the female 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 subparagraph c of paragraph 2 of Section 3 of this act or that portion of paragraph 3 of Section 3 of this act requiring a written certification that the female has been informed of her opportunity to review the information referred to in subparagraph c of paragraph 2 of Section 3 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 her right to review the materials.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any person upon whom an abortion has been performed without complying with the Women's Right to Know Act, 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 Women’s Right to Know Act for actual and punitive damages. Any person upon whom an abortion has been attempted without complying with the Women’s Right to Know Act may maintain an action against the person who attempted to perform the abortion in knowing or reckless violation of the Women’s Right to Know Act for actual and punitive damages.

B. If the State Department of Health fails to issue the public report required by subsection E of Section 7 of this act, any group of ten or more citizens of this state may seek an injunction in a court of competent jurisdiction against the Commissioner of Health requiring that a complete report be issued within a period stated by court order. Failure to abide by such an injunction shall subject the Commissioner to sanctions for civil contempt.

C. 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.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In every civil or criminal proceeding or action brought under the Women’s Right to Know 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 she does not give her consent to such disclosure.

B. 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.

C. 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.

D. 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 9 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.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

If any one or more provision, section, subsection, sentence, clause, phrase or word of the Women's Right to Know 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 Women's Right to Know Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed the Women's Right to Know 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.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 12 through 18 of this act shall be known and may be cited as the “Family Protection Act”.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Family Protection Act:

1. "Abortion", for purposes of the Family Protection Act, is defined in paragraph 1 of Section 2 of this act, and 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, or to remove a dead unborn child who died as the result of a spontaneous abortion;

2. “Parent" means one parent of the pregnant unemancipated minor, or guardian if the pregnant unemancipated minor has one; and

3. “Unemancipated minor” means any person under eighteen (18) years of age who is not or has not been married or who is under the care, custody, and control of such person’s parent or parents, guardian, or juvenile court of competent jurisdiction.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 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, until at least forty-eight (48) hours after written notice of the pending operation has been delivered in the manner specified in this subsection.

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 subsection, 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 only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

B. No notice shall be required under this section if one of the following conditions are met:

1. The attending physician certifies in the pregnant unemancipated minor's medical record that the abortion is necessary to prevent the minor's death and there is insufficient time to provide the required notice; or

2. The person who is entitled to notice certifies in writing that she or he has been notified.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If a pregnant unemancipated minor elects not to allow the notification of her parent or guardian, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate hearing, authorize a physician to perform the abortion if said judge determines that the pregnant unemancipated minor is mature and capable of giving informed consent to the proposed abortion. If said 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 whether the performance of an abortion upon her without notification of her

parent or guardian would be in her best interest and shall authorize a physician to perform the abortion without such notification if said judge concludes that the pregnant unemancipated minor's best interests would be served thereby.

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, however, advise the pregnant unemancipated minor that she has a right to court-appointed counsel, and shall, upon her request, provide her with such counsel.

C. Proceedings in the court under this section shall be confidential and shall be given such 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 judge's own findings and conclusions.

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

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

Performance of an abortion in knowing or reckless violation of the Family Protection Act shall be a misdemeanor, and shall be grounds for actual and punitive damages in a civil action by a person wrongfully denied notification. A person shall not be held liable under the Family Protection Act if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant unemancipated minor regarding information necessary to comply with this section are bona fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days after the effective date of the Family Protection Act, the State Department of Health shall prepare a reporting form for physicians for both notice provided to a parent or a guardian who has been appointed pursuant to Section 1-113 of Title 30 of the Oklahoma Statutes because of a finding of incompetency. The report shall include the following:

1. The number of unemancipated minors to whom the physician or an agent of the physician provided the notice described in Section 14 of this act; of that number, the number provided personally as described in paragraph 1 of subsection A of Section 14 of this act, and the number provided by mail as described in paragraph 2 of subsection A of Section 14 of this act; and of each of those numbers, the number of unemancipated minors who, to the best of the reporting physician's information and belief, went on to obtain the abortion;

2. The number of unemancipated minors upon whom the physician performed an abortion without providing the notice described in Section 14 of this act; and of that number, the numbers for whom

each of the paragraphs of subsection B of Section 14 of this act were applicable; and

3. The number of abortions performed upon an unemancipated minor by the physician after receiving judicial authorization to do so without parental notification.

B. The Department shall ensure that copies of the reporting forms described in subsection A of this section, together with a reprint of the Family Protection Act, are provided to all physicians licensed to practice in this state:

1. Within one hundred twenty (120) days after the effective date of the Family Protection Act;

2. By December 1 of every year, other than the calendar year in which forms are distributed in accordance with subsection A of this section; and

3. 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.

C. By February 28 of each year following a calendar year in any part of which the Family Protection Act was in effect, each physician who provided, or whose agent provided, the notice described in Section 14 of this act and any physician who knowingly performed an abortion upon an unemancipated minor female or upon a female for whom a guardian had been appointed pursuant to Section 1-113 of Title 30 of the Oklahoma Statutes because of a finding of incompetency 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 within 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 they 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 year following the due date, may, in an action brought by the Department, 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. The report shall also include statistics which shall be obtained by the Commissioner of Health giving the total number of petitions or motions filed pursuant to Section 15 of this act 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;

4. The number in which the judge denied such an order, and of the last:

a. the number of denials from which an appeal was filed,

b. the number of such appeals that resulted in the denials being affirmed, and

c. the number of such appeals that resulted in reversals of such denials.

Each report shall also provide the statistics for all previous calendar years for which such a public statistical report was required to be issued, 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 female, or of any female for whom a guardian has been appointed.

F. The Department may by rule alter the dates established by subsections B, C and E of this section or consolidate the 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.

G. If the Department fails to issue the public report required by subsection E of this section, any group of ten or more citizens of this state may seek an injunction in a court of competent jurisdiction against the Commissioner of Health requiring that a complete report be issued within a period stated by court order. Failure to abide by such an injunction shall subject the Commissioner of Health to sanctions for civil contempt.

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.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

If any one or more provision, section, subsection, sentence, clause, phrase or word of the Family 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 Family Protection Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed the Family Protection 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.

SECTION 19. This act shall become effective November 1, 2005.

50-1-5297 SB 12/06/04