

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2654

By: Winchester

AS INTRODUCED

An Act relating to public health and safety; creating the Oklahoma Statistical Reporting of Abortion Act; defining terms; requiring the Board of Medical Licensure and Supervision to prepare abortion reporting forms; providing for Board to distribute reporting forms; specifying content of reporting forms; requiring the Board to prepare an Induced Abortion Complications Report form; providing for the Board to distribute the Induced Abortion Complications Report form; providing for a form for physicians to report certain information; specifying due dates of the reports; requiring public reports; providing for enforcement of reporting requirements; providing for penalties; providing for general confidentiality; providing clause for severability; repealing 63 O.S. 2001, Section 1-738 which relates to abortion; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-741.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 10 of this act shall be known and may be cited as the "Oklahoma Statistical Reporting of Abortion Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-741.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Statistical Reporting of Abortion Act:

1. "Abortion" includes both induced abortion and spontaneous abortion;

2. "Induced abortion" means the use of any means to intentionally 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 unborn child; and

3. "Spontaneous abortion" means any termination of a pregnancy of a female known to be pregnant that is not an induced abortion and does not result in a live birth.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-741.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days of the Oklahoma Statistical Reporting of Abortion Act becoming law, the State Board of Medical Licensure and Supervision shall prepare an abortion reporting form for any physician performing or treating abortions. A copy of the Oklahoma Statistical Reporting of Abortion Act shall be attached to the reporting form.

B. Any physician performing or treating abortions shall obtain the abortion reporting form from the Board.

C. The abortion reporting form shall require the following information:

1. Whether the physician performing an induced abortion has been subject to license revocation or suspension or other professional sanction in this or any other jurisdiction;

2. The number of induced abortions performed and the number of spontaneous abortions treated in the previous calendar year, broken down by month;

3. The date the abortion is performed;

4. The age of the mother at the time of the abortion;

5. The approximate gestational age, in weeks as measured from the last menstrual period of the mother, of the unborn child subject to the abortion;

6. The method of abortion used for each induced abortion;

7. The specific reason or reasons for the induced abortion, including but not limited to the following:

- a. necessary to avert the death of the mother,
- b. the pregnancy was a result of rape,
- c. the pregnancy was a result of incest,
- d. the mother cannot afford the child,
- e. the mother does not want the child,
- f. the emotional health of the mother is at risk,
- g. the mother will suffer substantial and irreversible impairment of a major bodily function if the pregnancy continues,
- h. the mother wanted a child of a different sex, and
- i. other;

8. Whether the induced abortion was paid for by:

- a. private insurance,
- b. public health plan, or
- c. other;

9. Whether coverage was under:

- a. a fee-for-service insurance company,
- b. a managed care company, or
- c. other;

10. Complications, if any, for each abortion and for the aftermath of each abortion. Space for complication description shall be available on the form;

11. The fee collected for performing or treating the abortion;

12. The type of anesthetic, if any, used for each induced abortion;

13. The method used to dispose of fetal tissue and remains;

14. Specialty area of medicine of the physician;

15. The number of previous abortions the mother has had; and

16. Whether ultrasound equipment was used in the performance of the abortion.

D. The abortion reporting form shall be in the following form:

ABORTION REPORTING FORM

PART I

1. Name of physician performing abortions and filing this Abortion Reporting Form and the special field of medical practice of the physician.

2. Calendar year and month for which this Abortion Reporting Form is being filed.

3. Address and telephone number of abortion facility (or facilities) where physician performs abortions.

4. List of professional sanctions, if any, in this or other jurisdiction on physician performing abortion and filing this report (license revocation, suspension or other).

PART II

1. Total number of abortions performed for calendar year for which this Abortion Reporting Form is being filed.

2. Breakdown of the total number of abortions performed by month.

January	_____
February	_____
March	_____
April	_____
May	_____
June	_____
July	_____

___ the mother will suffer substantial and irreversible impairment
of a major bodily function if the pregnancy continues

___ the mother wanted a child of a different sex
___ other.

6. Method of payment (check one).

___ private insurance
___ public health plan
___ other.

7. Type of medical health coverage (check one).

___ a fee-for-service insurance company
___ a managed care company
___ other.

8. Complications.

9. Fee collected. _____

10. Type of anesthetic used. _____

11. Method of fetal tissue disposal.

12. State the specialty area of medicine of the physician.

13. State the number of previous abortions this mother has had.

14. Indicate whether ultrasound equipment was used in the
performance of this abortion. _____ If so, was the mother given an
opportunity to view the ultrasound picture of her unborn child prior
to the performance of the abortion? _____

Signed this ____ day of _____, ____ by:

(Signature of physician)

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-741.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days of the Oklahoma Statistical Reporting of Abortion Act becoming law, the State Board of Medical Licensure and Supervision shall prepare an Induced Abortion Complications Report form for all physicians licensed and practicing in this state. A copy of the Oklahoma Statistical Reporting of Abortion Act shall be attached to the Induced Abortion Complications Report.

B. The Board shall ensure that Induced Abortion Complications Report forms, together with a reprint of the Oklahoma Statistical Reporting of Abortion Act, are provided:

1. Within one hundred twenty (120) days after the Oklahoma Statistical Reporting of Abortion 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 the Induced Abortion Complications Report forms are distributed in accordance with paragraph 1 of this subsection, to all physicians licensed to practice in this state.

C. Any physician practicing in this state who encounters an illness or injury that is related to an induced abortion shall complete and submit an Induced Abortion Complications Report to the Board.

D. Any physician required to submit an Induced Abortion Complications Report to the Board shall do so 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. Unacceptable delay or failure to submit an Induced Abortion Complications Report shall be sanctioned according to the provisions of the Oklahoma Statistical Reporting of Abortion Act.

INDUCED ABORTION COMPLICATIONS REPORT

1. Name of physician filing this report and special field of medical practice.

2. Name, address, and telephone number of health care facility where induced abortion complication was discovered and treated.

3. Date on which complication was discovered and treated.

Signed this ____ day of _____, ____ by:

(day) (month) (year)

(Signature of physician)

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-741.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days after the Oklahoma Statistical Reporting of Abortion Act becomes law, the State Board of Medical Licensure and Supervision shall prepare a reporting form for

physicians containing a reprint of the Oklahoma Statistical Reporting of Abortion Act and listing:

1. The number of females to whom the physician provided the information required in paragraph 1 of subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes; 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 required in paragraph 2 of subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes; 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 subparagraph a of paragraph 1 of subsection A of Section 1-738.3 of Title 63 of the Oklahoma Statutes, 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, obtained 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 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 Board shall ensure that copies of the reporting forms described in subsection A of this section are provided:

1. Within one hundred twenty (120) days after the Oklahoma Statistical Reporting of Abortion 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 an 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 Oklahoma Statistical Reporting of Abortion Act was in effect, each physician who provided, or whose agent provided, information to one or more females during a previous calendar year shall submit to the Board 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 the Oklahoma Statistical Reporting of Abortion Act 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 Board, 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 Board 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 F 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 Board 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 information in accordance with subsections A, B, or C of this section.

F. The Board may by rule, promulgated in accordance with the Administrative Procedures Act, alter the dates established by paragraph 3 of subsection B, or subsections C, D, or 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.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-741.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days after the Oklahoma Statistical Reporting of Abortion Act becomes law, the State Board of Medical Licensure and Supervision shall prepare a reporting form for physicians listing:

1. The number of females to a parent of whom the physician provided notice described in subsection A of Section 1-740.2 of Title 63 of the Oklahoma Statutes; of that number, the number provided personally as described in subsection A of Section 1-740.2 of Title 63 of the Oklahoma Statutes, and the number provided by mail as described in subsection A of Section 1-740.2 of Title 63 of the Oklahoma Statutes, 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;

2. The number of females upon whom the physician performed an abortion without providing the parent of the minor the notice described in this subsection; of that number, the number who were emancipated minors, and the numbers for whom each of the subsections of this section were applicable;

3. The number of abortions performed upon a female by the physician after receiving judicial authorization to do so without parental notice;

4. The number of judicial authorizations granted because of a finding the minor girl was mature;

5. The number of judicial authorizations granted because of a finding the performance of the abortion without parental notification was in the best interest of the minor girl; and

6. The information described in paragraphs 1 through 5 of this subsection with respect to females for whom a guardian has been appointed pursuant to this section because of a finding of incompetency.

B. The Board shall ensure that copies of the reporting form described in this section, together with a reprint of the Oklahoma Statistical Reporting of Abortion Act, are provided:

1. Within one hundred twenty (120) days after the Oklahoma Statistical Reporting of Abortion Act is enacted, to all physicians licensed to practice in the state;

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

3. By December 1 of every 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 the state.

C. By February 28 of each year following a calendar year in any part of which the Oklahoma Statistical Reporting of Abortion Act was in effect, each physician who provided, or whose agent provided, the notice described in subsection A of this section and any physician who knowingly performed an abortion upon a female or upon a female for whom a guardian or conservator had been appointed pursuant to this subsection because of a finding of incompetency during a previous calendar year shall submit to the Board a copy of the reporting form described in this section, with the requested data entered accurately and completely.

D. Reports that are not submitted after 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 a 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 an incomplete report, more than one (1) year following the due date, may in action brought by the Board, 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 Board shall issue a public report providing statistics for the previous calendar year compiled from all other reports covering that year submitted in accordance with this section for each of the items listed in this section. The report shall also include statistics which shall be obtained by the Administrative Office of the Courts of Oklahoma 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 the number in which the court appointed a guardian ad litem, the number in which the court appointed counsel, the number in which the judge issued an order authorizing an abortion without consent, the number in which the judge denied such an order, and of the last, the number of

denials for which an appeal was filed, the number of appeals that resulted in the denials being affirmed, and the number of appeals that resulted in reversals of 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 later corrected reports. The Board 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 or conservator has been appointed.

F. The Board may by regulation, promulgated in accordance with the Administrative Procedures Act, alter the dates established in 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 this section is issued at least once every year.

G. If the Board fails to issue the public report required by this section, any group of ten or more citizens of the state may seek an injunction in a court of competent jurisdiction against the Director of the Board requiring that a complete report be issued within a period stated by court order. Failure to abide by the injunction shall subject the Director 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 suit of the plaintiff 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 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-741.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Physicians performing or treating abortions or the complications of abortion shall complete and submit the appropriate reporting form to the State Board of Medical Licensure and Supervision no later than April 1 for the previous calendar year.

B. By July 1 of each year, the Board shall issue a public report providing the same detailed information required in the Abortion Reporting Form and the Induced Abortion Complications Report. The public report shall cover the entire previous calendar year and shall be compiled from the data in all the Abortion Reporting Forms and the Induced Abortion Complications Reports submitted to the Board in accordance with the Oklahoma Statistical Reporting of Abortion Act. Each public report shall also provide detailed information for all previous calendar years subsequent to enactment of the Oklahoma Statistical Reporting of Abortion Act, adjusted to reflect any additional information from late or corrected reports. The Board shall take care to ensure that none of the information included in the public reports could reasonably lead to identification of any physician who performed or treated an abortion or any person who has had an abortion.

C. The Board may, by regulation promulgated pursuant to the Administrative Procedures Act, alter the dates established by subsections A and B of this section for administrative convenience, for fiscal savings or other valid reason provided that physicians performing induced abortions or treating complications of abortions submit the forms once a year and the Board issues the report once a year.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-741.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Physicians who fail to submit the Abortion Reporting Form or the Induced Abortion Complications Report after 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 that 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 be so fined and, 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.

B. If the Board fails to issue the public report required by the Oklahoma Statistical Reporting of Abortion Act, or fails in any way to enforce the provisions of the Oklahoma Statistical Reporting of Abortion Act, any group of ten or more citizens of this state may seek an injunction in a court of competent jurisdiction against the head of the Board requiring that a complete public report be issued within a period stated by court order, or that enforcement action be taken. Failure to abide by an injunction shall subject the head of the Board to sanctions for civil contempt.

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

D. The Board may take reasonable steps to ensure observance of the Oklahoma Statistical Reporting of Abortion Act and to verify data provided, including but not limited to inspection of places

where induced abortions are performed in accordance with relevant statutes.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-741.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

No report made under the Oklahoma Statistical Reporting of Abortion Act shall include the name of any female having an abortion.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-741.10 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 Oklahoma Statistical Reporting of Abortion 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 Oklahoma Statistical Reporting of Abortion Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed the Oklahoma Statistical Reporting of Abortion 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 11. REPEALER 63 O.S. 2001, Section 1-738, is hereby repealed.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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