

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

SENATE BILL 1739

By: Laughlin

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 2001, Section 1-738, which relates to abortion; creating the Statistical Reporting of Abortion Act of Oklahoma; providing short title; providing definitions; providing for the Board of Medical Licensure and Supervision to prepare reporting forms; providing for the Board to distribute reporting forms; providing content of reporting forms; providing for the Board to prepare and distribute an induced abortion complications report; providing the time in which reports are due; providing content complications reporting form; requiring public reports containing certain information; providing time in which certain reports must be filed; providing for enforcement of reporting requirements; providing for penalties; providing for confidentiality; providing for severability; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-738, is amended to read as follows:

Section 1-738. ~~A. The Department shall adopt a form which shall be completed by each attending physician who performs or induces an abortion which shall include all medical facts pertinent to the procedure and which shall allow the woman and her physician to volunteer other personal facts for statistical public health purposes. This abortion report shall also contain the following information about any consent form required by law:~~

~~1. Was the consent form signed?~~

~~2. Who signed the consent form? The patient, her parents, guardian, or a court?~~

~~3. If the consent is waived, what are the reasons? Forceible rape, incest or a medical necessity to save the life of the mother?~~

~~The Department shall be responsible for collecting all abortion reports and complication reports and collating and evaluating all data gathered therefrom.~~

~~B. The Department shall make available to all licensed physicians abortion report forms and complication report forms.~~

~~C. The report shall be confidential and shall not contain the name of the woman~~ Section 1-738 of this title and Sections 2 through 9 of this act shall be known and may be cited as the "Statistical Reporting of Abortion Act of Oklahoma".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738a of Title 63 unless there is created a duplication in numbering, reads as follows:

As used in the Statistical Reporting of Abortion Act of Oklahoma:

1. "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;

2. "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; and

3. "Abortion" includes both induced abortion and spontaneous abortion.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738b of Title 63 unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days of the effective date of this act, the State Board of Medical Licensure and Supervision shall prepare an abortion reporting form for any physician performing or treating

abortions. A copy of this 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 the 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 mother's last menstrual period, 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. it was necessary to avert the mother's death,

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 mother's emotional health 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, or

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;

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

ABORTION REPORTING FORM

PART I

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

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 _____

August _____

September _____

October _____

November _____

December _____

PART III

Please attach to this Abortion Reporting Form copies of the Abortion Report Sheets completed for each abortion. Such sheets require information to be reported by the physician in accordance with the Oklahoma Statistical Reporting of Abortion Act and shall be fully completed and submitted with this Abortion Reporting Form by the physician named above.

Signed this _____ day of _____, _____, by:
(date) (month) (year)

(Signature of physician)

ABORTION REPORT SHEET: PART III OF THE ABORTION REPORTING FORM
(TO BE COMPLETED FOR EACH ABORTION PERFORMED)

1. Date of Abortion _____
2. Age of Mother _____
3. Approximate gestational age, in weeks as measured from the mother's last menstrual period, of the unborn child subject to abortion _____
4. Method of abortion used _____
5. Reason for abortion (check all applicable)
 - ___ avert the death of the mother
 - ___ the pregnancy was a result of rape
 - ___ the pregnancy was a result of incest
 - ___ the mother cannot afford the child
 - ___ the mother doesn't want the child
 - ___ the mother's emotional health is at risk
 - ___ 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 1-738c of Title 63 unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days of the effective date of this act, the State Board of Medical Licensure and Supervision shall prepare an induced abortion complication report form for all physicians licensed and practicing in the State of Oklahoma. A copy of this act shall be attached to the induced abortion complications report.

B. The Board shall ensure that induced abortion complications report forms required by this act, together with a reprint of this act, are provided:

1. Within one hundred twenty (120) days after the effective date of this act, 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 subsection A of this section, to all physicians licensed to practice in this state.

C. Any physician practicing in Oklahoma 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 this 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.

4. Age of patient experiencing complication.

5. Description of complication.

6. Type of follow-up care recommended and whether physician filing this Abortion Complications Report will be providing such follow-up care (if not, provide name of medical professional who will, if known).

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 1-738d of Title 63 unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days of the effective date of this act, the State Board of Medical Licensure and Supervision shall prepare a reporting form for physicians containing a reprint of this act requesting the following information:

1. 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 Title 63 of 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 in paragraph 2 of subsection B of Section 1-738.2 of Title 63 of 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 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, 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 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 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 effective date of this act, 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 subsection A 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 this act 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 Oklahoma Statutes 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 they are overdue. Any physician required to report in accordance with this act 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 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 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 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 subsection 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, 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 1-738e of Title 63 unless there is created a duplication in numbering, reads as follows:

A. Within ninety (90) days after this act is enacted, the State Board of Medical Licensure and Supervision shall prepare a reporting form for physicians and requesting the following information:

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 this subsection, and the number provided by mail as described in this subsection, and of each of those numbers, the number of females who, to the best of the reporting physician's information and belief, 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 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 and capable of giving informed consent;

5. The number of judicial authorizations granted because of a finding the performance of the abortion without parental notification was in the minor's best interest; 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 subsection because of finding of incompetence.

B. The Board shall ensure that copies of the reporting form described in this subsection together with a reprint of this act, are provided:

1. Within one hundred twenty (120) days after the effective date of this act, 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 this act was in effect, each physician who provided, or whose agent provided, the notice described in this subsection and any physician who knowingly performed an abortion upon a minor 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 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 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 30th 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 Court giving the total number of petitions or motions filed under Section 1-740.3 of Title 63 of 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 such appeals that resulted in the denials being affirmed, and 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 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 rule promulgated in accordance with 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 subsection 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 such an 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's fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiffs suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney's 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 1-738f of Title 63 unless there is created a duplication in numbering, reads as follows:

A. Physicians performing abortions or treating related complications 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 this act. Each such public report shall also provide such detailed information for all previous calendar years subsequent to enactment of this 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 mother who has had an abortion.

C. The Board may, by rule, alter the dates established by subsections A and B of this section for administrative convenience or 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 its report once a year.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738g 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 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 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 this act, or fails in any way to enforce this act's provisions, any group of ten or more citizens of this state may seek an injunction in a court of competent jurisdiction against the Director 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 such an injunction shall subject the Director 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 complication report, or submits false information under this act shall be guilty of a misdemeanor.

D. The Board may take reasonable steps to ensure observance of this 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 1-738h of Title 63 unless there is created a duplication in numbering, reads as follows:

No report made under this 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 1-738i 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 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 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.

SECTION 11. This act shall become effective November 1, 2006.

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