

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 1652

6 By: Peterson (Pam)

7 COMMITTEE SUBSTITUTE

8 (public health and safety - State Department of
9 Health - reporting forms - notification and consent
10 of parent - codification -
11 effective date)

12
13
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY Section 6, Chapter 200, O.S.L.
16 2005 (63 O.S. Supp. 2006, Section 1-738.1), is amended to read as
17 follows:

18 Section 1-738.1 As used in Sections ~~6~~ 1-738.1 through ~~to~~ 1-
19 738.5 of this ~~act~~ title:

20 1. "Abortion" means the term as is defined in Section 1-730 of
21 ~~Title 63 of the Oklahoma Statutes~~ this title;

22 2. "Attempt to perform an abortion" means an act, or an
23 omission of a statutorily required act, that, under the
24 circumstances as the actor believes them to be, constitutes a

1 substantial step in a course of conduct planned to culminate in the
2 performance of an abortion in this state in violation of this act;

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

5 4. "Medical emergency" means any physical condition, not
6 including any emotional, psychological, or mental condition, because
7 of which, on the basis of the physician's good faith clinical
8 judgment, a reasonably prudent physician, with knowledge of the case
9 and treatment possibilities with respect to the medical conditions
10 involved, would determine exists that would so ~~complicates~~
11 complicate the medical condition of a pregnant ~~woman~~ female as to
12 necessitate the immediate abortion of her pregnancy to avert her
13 death or for which a delay ~~will create serious risk of~~ would cause
14 substantial and irreversible impairment of a major bodily function
15 arising from continued pregnancy;

16 5. "Physician" means a person licensed to practice medicine in
17 this state pursuant to ~~Chapters 11 and 14~~ Sections 495 and 633 of
18 Title 59 of the Oklahoma Statutes;

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

23 7. "Stable Internet web site" means a web site that, to the
24 extent reasonably practicable, is safeguarded from having its

1 content altered other than by the State Board of Medical Licensure
2 and Supervision; and

3 8. "Unborn child" means the term as is defined in Section 1-730
4 of Title 63 of the Oklahoma Statutes.

5 SECTION 2. AMENDATORY Section 7, Chapter 185, O.S.L.
6 2006 (63 O.S. Supp. 2006, Section 1-738.7), is amended to read as
7 follows:

8 Section 1-738.7 As used in the Unborn Child Pain
9 Awareness/Prevention Act:

10 1. "Abortion" means the use or prescription of any instrument,
11 medicine, drug, or any other substance or device intentionally to
12 terminate the pregnancy of a female known to be pregnant with an
13 intention other than to increase the probability of a live birth to
14 preserve the life or health of the child after live birth, or to
15 remove a dead fetus who dies as the result of a spontaneous
16 miscarriage;

17 2. "Attempt to perform an abortion" means an act, or an
18 omission of a statutorily required act that, under the circumstances
19 as the actor believes them to be, constitutes a substantial step in
20 a course of conduct planned to culminate in the performance of an
21 abortion in Oklahoma in violation of the Unborn Child Pain
22 Awareness/Prevention Act;

23 3. "Unborn child" means a member of the species homo sapiens
24 from fertilization until birth;

1 4. "Medical emergency" means any physical condition, not
2 including any emotional, psychological, or mental condition, because
3 of which, on the basis of the good faith clinical judgment of a
4 reasonably prudent physician, with knowledge of the case and
5 treatment possibilities with respect to the medical conditions
6 involved, would determine exists that would so ~~complicates~~
7 complicate the medical condition of a pregnant female as to
8 necessitate the immediate abortion of ~~the~~ her pregnancy to avert ~~the~~
9 her death ~~of the pregnant female~~ or for which a delay ~~will create~~
10 ~~serious risk~~ would cause of substantial and irreversible impairment
11 of a major bodily function arising from continued pregnancy;

12 5. "Physician" means a person licensed to practice medicine in
13 this state pursuant to ~~Chapters 11 and 14~~ Sections 495 and 633 of
14 Title 59 of the Oklahoma Statutes; and

15 6. "Probable gestational age" means the gestational age of the
16 unborn child at the time the abortion is planned to be performed, as
17 determined by the physician using reasonable probability.

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

21 A. By February 1, 2008, the State Department of Health shall
22 prepare and make available on its stable Internet web site the form
23 described in subsection B of this section. A copy of this act shall
24 be posted on the web site. Physicians performing abortions shall

1 complete and electronically submit the required forms to the
2 Department no later than April 1 for the previous calendar year.
3 Nothing in the report shall contain the name, address, or any other
4 identifying information of any patient.

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

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

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

23 3. The number of abortions performed by the physician in which
24 information otherwise required to be provided at least twenty-four

1 (24) hours before the abortion was not so provided because an
2 immediate abortion was necessary to avert the death of the female,
3 and the number of abortions in which the information was not so
4 provided because a delay would cause substantial and irreversible
5 impairment of a major bodily function.

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

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

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

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

20 D. By February 28 of each year following a calendar year in any
21 part of which this section was in effect, each physician who
22 provided, or whose agent provided, information to one or more
23 females in accordance with Section 1-738.2 of Title 63 of the
24 Oklahoma Statutes during the previous calendar year shall

1 electronically submit to the State Department of Health the form
2 described in subsection B of this section, with the requested data
3 entered accurately and completely.

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

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

1 individual providing or provided information in accordance with
2 subsection B of this section.

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

12 SECTION 4. AMENDATORY Section 11, Chapter 200, O.S.L.
13 2005 (63 O.S. Supp. 2006, Section 1-740.1), is amended to read as
14 follows:

15 Section 1-740.1 As used in Sections ~~11~~ 1-740.1 through ~~15~~ 1-
16 740.5 of this act:

17 1. "Abortion" means the term as is defined in Section 1-730 of
18 ~~Title 63 of the Oklahoma Statutes~~ this title;

19 2. "Medical emergency" means any physical condition, not
20 including any emotional, psychological, or mental condition, because
21 of which a reasonably prudent physician, with knowledge of the case
22 and treatment possibilities with respect to the medical conditions
23 involved, would determine exists that would so complicate the
24 medical condition of a pregnant female as to necessitate the

1 immediate abortion of her pregnancy to avert her death or for which
2 would cause substantial and irreversible impairment of a major
3 bodily function of the minor arising from continued pregnancy;
4 provided, however, that the attending physician or an agent shall,
5 within twenty-four (24) hours after completion of the abortion,
6 notify one of the parents of the minor in the manner provided in
7 Section 1-740.2 of this title that an emergency abortion was
8 performed on the minor and of the circumstances that warranted
9 invocation of this paragraph;

10 3. "Parent" means one parent of the pregnant unemancipated
11 minor or guardian if the pregnant unemancipated minor has one; and

12 ~~3.~~ 4. "Unemancipated minor" means any person ~~under~~ less than
13 eighteen (18) years of age who is not or has not been married or who
14 is under the care, custody and control of the person's parent or
15 parents, guardian or juvenile court of competent jurisdiction.

16 SECTION 5. AMENDATORY Section 12, Chapter 200, O.S.L.
17 2005, as amended by Section 18, Chapter 185, O.S.L. 2006 (63 O.S.
18 Supp. 2006, Section 1-740.2), is amended to read as follows:

19 Section 1-740.2 A. Except in the case of a medical emergency,
20 a physician may not perform an abortion on a pregnant female unless
21 the physician has:

22 1. Obtained proof of age demonstrating that the female is not a
23 minor;

24

1 2. Obtained proof that the female, although a minor, is
2 emancipated; or

3 3. Complied with Section 1-740.3 of this title.

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

13 1. The notice and request for written informed consent of one
14 parent shall be addressed to the parent at the usual place of abode
15 of the parent and delivered personally to the parent by the
16 physician or an agent_†.

17 2. In lieu of the delivery required by paragraph 1 of this
18 subsection, the notice and request for written informed consent of
19 one parent shall be made by certified mail addressed to the parent
20 at the usual place of abode of the parent with return-receipt
21 requested and restricted delivery to the addressee, which means a
22 postal employee can only deliver the mail to the authorized
23 addressee. Time of delivery shall be deemed to occur at 12 noon on
24 the next day on which regular mail delivery takes place, subsequent

1 to mailing, ~~or~~. The information concerning the address of the
2 parent shall be that which a reasonable and prudent person, under
3 similar circumstances, would have relied upon as sufficient evidence
4 that the parent resides at that address.

5 3. a. The parent entitled to notice and consent ~~certifies~~
6 shall provide to the physician a copy of proof of
7 identification, and shall certify in a signed, dated,
8 and notarized statement that he or she has been
9 notified and consents to the abortion. The signed,
10 dated, and notarized statement shall include: "I
11 certify that I, (insert name of parent), am the parent
12 of (insert name of minor daughter) and give consent
13 that (insert name of physician) performs an abortion
14 on my daughter. I understand that any person who
15 knowingly makes a fraudulent statement in this regard
16 commits a felony".

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

22 c. A physician receiving parental consent under this
23 section shall execute for inclusion in the medical
24 record of the minor an affidavit stating: "I, (insert

1 name of physician), certify that according to my best
2 information and belief, a reasonable person under
3 similar circumstances would rely on the information
4 presented by both the minor and her parent as
5 sufficient evidence of identity."

6 ~~B.~~ C. No notice or request for written informed consent of one
7 parent shall be required under this section if one of the following
8 conditions is met:

9 1. The attending physician certifies in the medical records of
10 the pregnant unemancipated minor that the abortion is necessary to
11 prevent the death of the minor and there is insufficient time to
12 provide the required notice and obtain the written informed consent
13 of one parent; or

14 2. The attending physician certifies that a medical emergency
15 exists and that a delay ~~will create serious risk of~~ would cause
16 substantial and irreversible impairment of a major bodily function
17 arising from continued pregnancy; or

18 3. The unemancipated minor declares that she is the victim of
19 sexual abuse, as defined in Section 7102 of Title 10 of the Oklahoma
20 Statutes and the attending physician has notified local law
21 enforcement or the Department of Human Services about the alleged
22 sexual abuse.

23 ~~C.~~ D. 1. Unless the unemancipated minor gives notice of her
24 intent to seek a judicial waiver pursuant to Section 1-740.3 of this

1 title, the attending physician or the agent of the physician shall
2 verbally inform the parent of the minor within twenty-four (24)
3 hours after the performance of a medical emergency abortion or an
4 abortion that was performed to prevent her death that an abortion
5 was performed on the unemancipated minor. The attending physician
6 or the agent of the attending physician shall also inform the parent
7 of the basis for the certification of the physician required under
8 paragraph 1 or 2 of subsection C of this section. The attending
9 physician or the agent of the attending physician shall also send a
10 written notice of the performed abortion via the United States Post
11 Office to the last-known address of the parent, restricted delivery,
12 return receipt requested. The information concerning the address of
13 the parent shall be that which a reasonable and prudent person,
14 under similar circumstances, would have relied upon as sufficient
15 evidence that the parent resides at that address.

16 2. If the unemancipated minor gives notice to the attending
17 physician or an agent of the physician of her intent to seek a
18 judicial waiver pursuant to Section 1-740.3 of this title, the
19 physician or an agent of the physician shall file a notice with any
20 judge of a court of competent jurisdiction that the minor has given
21 such notice and shall provide the information the physician or the
22 agent of the physician would have been required to provide the
23 parent under paragraph 1 of this subsection if the unemancipated
24 minor had not given notice of her intent to seek a judicial waiver.

1 The court shall expeditiously schedule a conference with notice to
2 the minor and the physician. If the minor is able to participate in
3 the proceedings, the court shall advise the minor that she has the
4 right to court-appointed counsel and shall, upon her request,
5 provide the minor with such counsel. If the minor is unable to
6 participate, the court shall appoint counsel on behalf of the minor.
7 After an appropriate hearing, the court, taking into account the
8 medical condition of the minor, shall set a deadline by which the
9 minor must file a petition or motion pursuant to Section 1-740.3 of
10 this title. The court may subsequently extend the deadline in light
11 of the medical condition of the minor or other equitable
12 considerations. If the minor does not file a petition or motion by
13 the deadline, either in that court or in another court of competent
14 jurisdiction with a copy filed in that court, the court shall direct
15 that the court clerk provide the notice to a parent.

16 E. The State Board of Health shall adopt the forms necessary
17 for physicians to obtain the ~~consent of one parent required for an~~
18 ~~abortion to be performed on an unemancipated minor pursuant to~~
19 ~~subsection A of this section. The form executed to obtain consent~~
20 ~~must be retained by the physician for a period of not less than five~~
21 ~~(5) years~~ certifications required by this section.

22 SECTION 6. AMENDATORY Section 13, Chapter 200, O.S.L.
23 2005, as amended by Section 19, Chapter 185, O.S.L. 2006 (63 O.S.
24 Supp. 2006, Section 1-740.3), is amended to read as follows:

1 Section 1-740.3 A. If a pregnant unemancipated minor elects
2 not to allow the notification and request for written informed
3 consent of her parent, any judge of a court of competent
4 jurisdiction shall, upon petition or motion, and after an
5 appropriate hearing, authorize a physician to perform the abortion
6 if the judge determines by clear and convincing evidence that the
7 pregnant unemancipated minor is mature and capable of giving
8 informed consent to the proposed abortion. If the judge determines
9 that the pregnant unemancipated minor is not mature, or if the
10 pregnant unemancipated minor does not claim to be mature, the judge
11 shall determine by clear and convincing evidence whether the
12 performance of an abortion upon her without notification and written
13 informed consent of her parent would be in her best interest and
14 shall authorize a physician to perform the abortion without
15 notification and written informed consent if the judge concludes
16 that the best interests of the pregnant unemancipated minor would be
17 served thereby.

18 B. If the unemancipated minor, upon whom a medical emergency
19 abortion or an abortion to prevent her death was performed, elects
20 not to allow the notification of her parent, any judge of a court of
21 competent jurisdiction shall, upon petition or motion and after an
22 appropriate hearing, authorize the waiving of the required notice of
23 the performed abortion if the judge determines by clear and
24 convincing evidence that the unemancipated minor is mature and

1 capable of determining whether notification should be given, or that
2 the waiver would be in the best interest of the unemancipated minor.

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

8 ~~C.~~ D. Proceedings in the court under this section shall be
9 confidential and shall be given precedence over other pending
10 matters so that the court may reach a decision promptly and without
11 delay so as to serve the best interests of the pregnant
12 unemancipated minor. A judge of the court who conducts proceedings
13 under this section shall make, in writing, specific factual findings
14 and legal conclusions supporting the decision and shall order a
15 record of the evidence to be maintained, including the findings and
16 conclusions of the court.

17 ~~D.~~ E. An expedited confidential appeal shall be available to
18 any pregnant unemancipated minor for whom the court denies an order
19 authorizing an abortion without notification and written informed
20 consent of one parent. An order authorizing an abortion without
21 notification and written informed consent of one parent shall not be
22 subject to appeal. No filing fees shall be required of any pregnant
23 unemancipated minor at either the trial or the appellate level.
24 Access to the trial court for the purpose of a petition or motion,

1 and access to the appellate courts for the purpose of making an
2 appeal from the denial of same, shall be afforded a pregnant
3 unemancipated minor twenty-four (24) hours a day, seven (7) days a
4 week.

5 SECTION 7. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-740.4a of Title 63, unless
7 there is created a duplication in numbering, reads as follows:

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

- 19 1. Age;
- 20 2. Educational level;
- 21 3. Number of previous pregnancies;
- 22 4. Number of previous live births;
- 23 5. Number of previous abortions;
- 24 6. Complications, if any, of the abortion being reported;

1 7. The city and county in which the abortion was performed;

2 8. Whether a parent gave consent to the physician or an agent
3 of the physician pursuant to Section 1-740.2 of Title 63 of the
4 Oklahoma Statutes; or

5 9. Whether the physician performed the abortion without first
6 obtaining the consent of the parent of the minor as described in
7 Section 1-740.2 of Title 63 of the Oklahoma Statutes; if so:

8 a. whether the minor was emancipated,

9 b. whether the abortion was performed because of a
10 medical emergency,

11 c. whether the abortion was performed to prevent the
12 death of the minor,

13 d. whether the parent was notified after the performance
14 of a medical emergency abortion, and

15 e. whether the parent was notified after the performance
16 of an abortion to prevent the death of the minor;

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

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

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

3 1. Each physician who subsequently becomes newly licensed to
4 practice in this state, simultaneously with the receipt of official
5 notification to that physician that the physician is so licensed of
6 the requirements of this act; and

7 2. By December 1 of every year, other than the calendar year in
8 which forms are made available in accordance with subsection A of
9 this section, all physicians licensed to practice in this state.

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

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

12 E. By June 30 of each year, the State Department of Health
13 shall post, on its stable Internet web site, a public report
14 providing statistics for the previous calendar year compiled from
15 all of the reports covering that year submitted in accordance with
16 this section for each of the items listed in subsection A of this
17 section. The report shall also include statistics giving the total
18 number of petitions or motions filed under Section 1-740.3 of Title
19 63 of the Oklahoma Statutes and of that number:

- 20 1. The number in which the court appointed a guardian ad litem;
- 21 2. The number in which the court appointed counsel;
- 22 3. The number in which the judge issued an order authorizing an
23 abortion without notification; and

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

- 3 a. the number of denials from which an appeal was filed,
- 4 b. the number of the appeals that resulted in the denial
5 being affirmed, and
- 6 c. the number of appeals that resulted in reversals of
7 the denials.

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

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

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

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

12 SECTION 8. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-740.4b of Title 63, unless
14 there is created a duplication in numbering, reads as follows:

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

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

22 C. 1. It is a defense to prosecution under subsection B of
23 this section if the person falsely representing himself or herself
24 as the parent or guardian of the minor displayed an apparently valid

1 governmental record of identification such that a reasonable person,
2 under similar circumstances, would have relied on the
3 representation.

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

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

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

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

17 SECTION 9. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1-740.6 of Title 63, unless
19 there is created a duplication in numbering, reads as follows:

20 If any court of law enjoins, suspends, or delays the
21 implementation of the provisions of this act, the provisions of
22 Sections 1-738.1, 1-738.7, 1-740.2 and 1-740.3 of Title 63 of the
23 Oklahoma Statutes as of December 31, 2006, are effective without
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1 these amendments during the injunction, suspension, or delayed
2 implementation.

3 SECTION 10. This act shall become effective November 1, 2007.

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5 51-1-7533 SD 03/06/07

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