

Oklahoma

Oklahoma Call for Reproductive Justice v. State, No. 2023 OK 60, Sup. Ct. of Oklahoma, May 31, 2023, (holding that S.B. 1503 and H.B. 4327 are in violation of the Oklahoma Constitution, thus striking down both bills, which required a ‘medical emergency’ before a doctor could perform an abortion)

Oklahoma Call for Reproductive Justice v. Drummond, No. 2023 OK 24, Sup. Ct. of Oklahoma, March 21, 2023, (holding the Oklahoma Constitution protects the right to pregnancy termination in order to preserve a woman’s life. The court provided declaratory relief as to 63 O.S. Supp. 2022, sec. 1-731.4 (abortion allowable only in a medical emergency to preserve the life of the pregnant person) finding it void and unenforceable under the Oklahoma Constitution but denied declaratory relief as to 21 O.S. Supp. 2021, sec. 861 (“...provides a narrow exception if it is necessary to ‘preserve’ the life of the woman). Available at:

<https://s3.documentcloud.org/documents/23719070/ok-abortion-opinions.pdf>

§ 861. Procuring an Abortion

Every person who administers to any woman, or who prescribes for any woman, or advises or procures any woman to take any medicine, drug or substance, or uses or employs any instrument, or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than two (2) years nor more than five (5) years.

21 Okl. St. § 861

63 Okl. St. Ann. § 1-729.1. Physician presence for abortion inducing drugs

When RU-486 (mifepristone) or any other drug or chemical is used for the purpose of performing or inducing an abortion, the physician who is prescribing, dispensing, or otherwise providing the drug or chemical shall be physically present, in person, in the same room as the patient when the drug or chemical is first provided to the patient.

63 Okl. St. Ann. § 1-729.2. Violation of act--Penalties

Any person who knowingly or recklessly violates this act shall be guilty of a felony. No penalty may be assessed against the female upon whom the abortion is performed or induced or attempted to be performed or induced.

63 Okl. St. Ann § 1-729.5. Persons Not Subject to Civil Actions

No pregnant female who obtains or possesses RU-486 (mifepristone) or any other drug or chemical for the purpose of performing or inducing an abortion to terminate her own pregnancy shall be subject to any action brought under Section 3 of this act.

63 Okl. St. Ann. § 1-730. Definitions

A. As used in this article:

1. “Abortion” means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy, or

to remove a dead unborn child who died as the result of a spontaneous miscarriage, accidental trauma, or a criminal assault on the pregnant female or her unborn child;

2. “Attempt to perform an abortion” means an act, or an omission of a statutorily required act, that under the circumstances as the actor believes them to be constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion;

3. “Certified technician” means a Registered Diagnostic Medical Sonographer who is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical Sonography (ARDMS) or a Nurse Midwife or Advance Practice Nurse Practitioner in Obstetrics with certification in obstetrical ultrasonography;

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

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

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

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

8. “Health” means physical or mental health;

9. “Department” means the State Department of Health; and

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

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

63 Okl. St. Ann. § 1-731. Persons who may perform abortions--Violations--Penalty

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

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

63 Okl. St. Ann. § 1-731.2. Definitions--Performance or attempted performance of abortion solely due to sex of unborn child--Damages--Injunctions--License revocation or suspension--Public disclosure

A. As used in this section:

1. “Attempt to perform an abortion” means an act, or an omission of a statutorily required act, that under the circumstances as the actor believes them to be constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion; and

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

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

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

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

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

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

3. Any person who knowingly violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt and shall be fined Ten Thousand Dollars (\$10,000.00) for the first violation, Fifty Thousand Dollars (\$50,000.00) for the second violation, and One Hundred Thousand Dollars (\$100,000.00) for the third violation and for each succeeding violation. The fines shall be the exclusive penalties for civil contempt pursuant to this paragraph. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. These fines shall be cumulative. No fine shall be assessed against the female upon whom an abortion is performed or attempted.

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

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

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

been performed or attempted, anyone who brings an action under subsection B of this section shall do so under a pseudonym.

63 Okl. St. Ann. § 1-731.3. Detectable heartbeat--Abortion prohibited

A. No person shall perform or induce an abortion upon a pregnant woman without first detecting whether or not her unborn child has a heartbeat. No person shall perform or induce an abortion upon a pregnant woman after such time as her unborn child has been determined to have a detectable heartbeat except if, in reasonable medical judgment, she has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

B. A “detectable heartbeat” shall mean embryonic or fetal cardiac activity or the steady or repetitive rhythmic contract of the heart within the gestational sac.

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

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

63 Okl. St. Ann. § 1-732. Viable fetus--Grounds to abort--Procedure

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

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

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

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

E. An abortion of a viable unborn child shall be performed or induced only when there is in attendance a physician other than the physician performing or inducing the abortion who shall take control of and provide immediate medical care for the child. During the performance or inducing of the abortion, the physician performing it, and subsequent to it, the physician required

by this section to be in attendance, shall take all reasonable steps in keeping with good medical practice, consistent with the procedure used, to preserve the life and health of the child, in the same manner as if the child had been born naturally or spontaneously. The requirement of the attendance of a second physician may be waived when in the best judgment of the attending physician a medical emergency exists and further delay would result in a serious threat to the life or physical health of the pregnant woman. Provided that, under such emergency circumstances and waiver, the attending physician shall have the duty to take all reasonable steps to preserve the life and health of the child before, during and after the abortion procedure, unless such steps shall, in the best medical judgment of the physician, present a significantly greater danger to the life or health of the pregnant woman.

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

63 Okl. St. Ann. § 1-733. Self-induced abortions

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

63 Okl. St. Ann. § 1-734. Live-born fetus--Care and treatment

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

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

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

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

§ 1-737. Hospitals Which May Perform Abortions

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

[63 Okl. St. § 1-737](#)

§ 1-737.4. Requiring Signing in Abortion Facilities

A. Any private office, freestanding outpatient clinic, or other facility or clinic in which abortions, other than abortions necessary to prevent the death of the pregnant female, are performed, induced, prescribed for, or where the means for an abortion are provided shall conspicuously post a sign in a location defined in subsection C of this section so as to be clearly visible to patients, which reads: Notice: It is against the law for anyone, regardless of his or her relationship to you, to force you to have an abortion. By law, we cannot perform, induce, prescribe for, or provide you with the means for an abortion unless we have your freely given and voluntary consent. It is against the law to perform, induce, prescribe for, or provide you with the means for an abortion against your will.

You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence.

There are public and private agencies willing and able to help you carry your child to term, have a healthy pregnancy and a healthy baby and assist you and your child after your child is born, whether you choose to keep your child or place him or her for adoption. The State of Oklahoma strongly encourages you to contact them if you are pregnant.

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

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

[63 Okl. St. § 1-737.4](#)

63 Okl. St. Ann. § 1-737.8. Definitions

For the purposes of the Oklahoma Unborn Child Protection from Dismemberment Abortion Act:

1. “Abortion” means the use or prescription of any instrument, medicine, drug, or any other substance or device:

- a.** to purposely kill the unborn child of a woman known to be pregnant, or
- b.** to purposely terminate the pregnancy of a woman known to be pregnant, with a purpose other than:
 - (1)** after viability to produce a live birth and preserve the life and health of the child born alive, or
 - (2)** to remove a dead unborn child;

2. “Attempt to perform an abortion” means to do or omit to do anything that, under the circumstances as the actor believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in the actor performing an abortion. Such substantial steps include, but are not limited to:

- a.** agreeing with an individual to perform an abortion on that individual or on some other person, whether or not the term “abortion” is used in the agreement, and whether or not the agreement is contingent on another factor such as receipt of payment or a determination of pregnancy, or
- b.** scheduling or planning a time to perform an abortion on an individual, whether or not the term “abortion” is used, and whether or not the performance is contingent on another factor such as receipt of payment or a determination of pregnancy.

This definition shall not be construed to require that an abortion procedure actually must be initiated for an attempt to occur;

3. “Dismemberment abortion” means, with the purpose of causing the death of an unborn child, purposely to dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush, and/or grasp a portion of the unborn child's body to cut or rip it off. This definition does not include an abortion which uses suction to dismember the body of the developing unborn child by sucking fetal parts into a collection container;
4. “Physician” means a person licensed to practice medicine and surgery or osteopathic medicine and surgery, or otherwise legally authorized to perform an abortion;
5. “Purposely” means the following: A person acts purposely with respect to a material element of an offense when:
 - a. if the element involves the nature of his or her conduct or a result thereof, it is his or her conscious objective to engage in conduct of that nature or to cause such a result, and
 - b. if the element involves the attendant circumstances, he or she is aware of the existence of such circumstances or he or she believes or hopes that they exist;
6. “Serious health risk to the unborn child's mother” means that in reasonable medical judgment she has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function; and
7. “Woman” means a female human being whether or not she has reached the age of majority.

§ 1-737.9. Dismemberment Abortion Prohibited—Hearing—Liability

A. Notwithstanding any other provision of law, it shall be unlawful for any person to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless necessary to prevent serious health risk to the unborn child’s mother.

B. A person accused in any proceeding of unlawful conduct under subsection A of this section may seek a hearing before the State Board of Medical Licensure and Supervision on whether the dismemberment abortion was necessary to prevent serious health risk to the unborn child’s mother. The Board’s findings are admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the person accused, the court shall delay the beginning of the trial for not more than thirty (30) days to permit such a hearing to take place.

C. No woman upon whom an abortion is performed or attempted to be performed shall be thereby liable for performing or attempting to perform a dismemberment abortion. No nurse, technician, secretary, receptionist or other employee or agent who is not a physician but who acts at the direction of a physician and no pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician shall be thereby liable for performing or attempting to perform a dismemberment abortion.

[63 Okl. St. § 1-737.9](#)

§ 1-737.10. Injunctive Relief

A. A cause of action for injunctive relief against a person who has performed or attempted to perform a dismemberment abortion in violation of Section 3 of this act may be maintained by:

1. A woman upon whom such a dismemberment abortion was performed or attempted to be performed;
 2. A person who is the spouse, parent or guardian of, or a current or former licensed health care provider of, a woman upon whom such a dismemberment abortion was performed or attempted to be performed; or
 3. A prosecuting attorney with appropriate jurisdiction.
- B.** The injunction shall prevent the defendant from performing or attempting to perform further dismemberment abortions in violation of Section 3 of this act.
- [63 Okl. St. § 1-737.10](#)

63 Okl. St. Ann. § 1-737.13. Penalties

Whoever violates Section 3 of this act shall be fined Ten Thousand Dollars (\$10,000.00) or imprisoned for not more than two (2) years or both.

63 Okl. St. Ann. § 1-738.2. Voluntary and informed consent--Compliance by physicians--Confirmation of receipt of medical risk information

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

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

1. a. not less than seventy-two (72) hours prior to the performance of the abortion, the woman is told the following, by telephone or in person, by the physician who is to perform the abortion, or by a referring physician, or by an agent of either physician:

(1) the name of the physician who will perform the abortion,

(2) the medical risks associated with the particular abortion procedure to be employed,

(3) the probable gestational age of the unborn child at the time the abortion is to be performed,

(4) the medical risks associated with carrying her child to term, and

(5) that ultrasound imaging and heart tone monitoring that enable the pregnant woman to view her unborn child or listen to the heartbeat of the unborn child are available to the pregnant woman. The physician or agent of the physician shall inform the pregnant woman that the website and printed materials described in [Section 1-738.3](#) of this title, contain phone numbers and addresses for facilities that offer such services at no cost,

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

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

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

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

2. Not less than seventy-two (72) hours prior to the abortion, the woman is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician:

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

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

c. that:

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

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

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

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

(2) if the woman chooses to exercise her option to view the materials via the Internet, the woman shall be informed at least seventy-two (72) hours before the abortion of the specific address of the Internet website where the material can be accessed.

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

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

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

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

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

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

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

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

§ 1-738.3d. Ultrasound Required Prior to Procedure—Written Certification— Medical Emergency Exception

A. Any abortion provider who knowingly performs any abortion shall comply with the requirements of this section.

B. In order for the woman to make an informed decision, at least one (1) hour prior to a woman having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the woman, the physician who is to perform or induce the abortion, or the certified technician working in conjunction with the physician, shall:

1. Perform an obstetric ultrasound on the pregnant woman, using either a vaginal transducer or an abdominal transducer, whichever would display the embryo or fetus more clearly;
2. Provide a simultaneous explanation of what the ultrasound is depicting;
3. Display the ultrasound images so that the pregnant woman may view them;
4. Provide a medical description of the ultrasound images, which shall include the dimensions of the embryo or fetus, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable; and
5. Obtain a written certification from the woman, prior to the abortion, that the requirements of this subsection have been complied with; and
6. Retain a copy of the written certification prescribed by paragraph 5 of this subsection. The certification shall be placed in the medical file of the woman and shall be kept by the abortion provider for a period of not less than seven (7) years. If the woman is a minor, then the certification shall be placed in the medical file of the minor and kept for at least seven (7) years or for five (5) years after the minor reaches the age of majority, whichever is greater.

C. Nothing in this section shall be construed to prevent a pregnant woman from averting her eyes from the ultrasound images required to be provided to and reviewed with her. Neither the physician nor the pregnant woman shall be subject to any penalty if she refuses to look at the presented ultrasound images.

D. Upon a determination by an abortion provider that a medical emergency, as defined in Section 1 of this act, exists with respect to a pregnant woman, subsection B of this section shall not apply and the provider shall certify in writing the specific medical conditions that constitute the emergency. The certification shall be placed in the medical file of the woman and shall be kept by the abortion provider for a period of not less than seven (7) years. If the woman is a minor, then the certification shall be placed in the medical file of the minor and kept for at least seven (7) years or for five (5) years after the minor reaches the age of majority, whichever is greater.

E. An abortion provider who willfully falsifies a certification under subsection D of this section shall be subject to all penalties provided for under Section 3 of this act.

[63 Okl. St. § 1-738.3d](#)

§ 1-738.3e. Violation of Ultrasound Requirement—Injunctive Relief—Action for Damages—License Suspension

A. An abortion provider who knowingly violates a provision of Section 2 of this act shall be liable for damages as provided in this section and may be enjoined from such acts in accordance with this section in an appropriate court.

B. A cause of action for injunctive relief against any person who has knowingly violated a provision of Section 2 of this act may be maintained by the woman upon whom an abortion was performed or attempted to be performed in violation of this act; any person who is the spouse, parent, sibling or guardian of, or a current or former licensed health care provider of, the female upon whom an abortion has been performed or attempted to be performed in violation of this act;

by a district attorney with appropriate jurisdiction; or by the Attorney General. The injunction shall prevent the abortion provider from performing further abortions in violation of this act in the State of Oklahoma.

C. Any person who knowingly violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt, and shall be fined Ten Thousand Dollars (\$10,000.00) for the first violation, Fifty Thousand Dollars (\$50,000.00) for the second violation, One Hundred Thousand Dollars (\$100,000.00) for the third violation, and for each succeeding violation an amount in excess of One Hundred Thousand Dollars (\$100,000.00) that is sufficient to deter future violations. The fines shall be the exclusive penalties for such contempt. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. These fines shall be cumulative. No fine shall be assessed against the woman on whom an abortion is performed or attempted.

D. A pregnant woman upon whom an abortion has been performed in violation of Section 2 of this act, or the parent or legal guardian of the woman if she is an unemancipated minor, as defined in Section 1-740.1 of Title 63 of the Oklahoma Statutes, may commence a civil action against the abortion provider for any knowing or reckless violation of this act for actual and punitive damages.

E. An abortion provider who performed an abortion in violation of Section 2 of this act shall be considered to have engaged in unprofessional conduct for which the provider's certificate or license to provide health care services in this state may be suspended or revoked by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.

[63 Okl. St. § 1-738.3e](#)

§ 1-738.3f. Civil Action Against Abortion Provider and Others for Negligent Violations of State Statutes

A woman upon whom an abortion has been performed in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, or the parent or legal guardian of the woman if she is an unemancipated minor, as defined in Section 1-740.1 of Title 63 of the Oklahoma Statutes, may commence a civil action against the abortion provider, against the prescriber of any drug or chemical intended to induce abortion, and against any person or entity which referred the woman to the abortion provider or prescriber and which knew or reasonably should have known that the abortion provider or prescriber had acted in violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes for actual damages and, in cases of gross negligence, for punitive damages. The measure of damages shall include damages for the mental anguish and emotional distress of the plaintiff, in addition to all damages available for the wrongful death of the child whose life was aborted in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes, notwithstanding any exception for abortion provided in Section 1053 of Title 12 of the Oklahoma Statutes. Whether the individual or entity committed an abortion in negligent violation of Section 1-738.2, 1-738.3d, 1-738.8, 1-740.2 or 1-740.4b of Title 63 of the Oklahoma Statutes shall be determined by the trier of fact in the civil action by the greater weight of the evidence. Unless the defendant can prove to the trier of fact by the greater weight of the evidence that the abortion was performed on a child who was already dead from natural causes before the abortion, and that the defendant informed the plaintiff that the child was already dead at the time of the abortion, it shall be a rebuttable presumption that if an abortion was performed, that the child whose life was aborted was alive until the abortion was performed, and was capable eventually of living a normal human lifespan had the abortion not occurred.

[63 Okl. St. § 1-738.3f](#)

63 Okl. St. Ann. § 1-738.5. Disciplinary action

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

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

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

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

§ 1-738.7. Definitions

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

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy, or to remove a dead fetus who dies as the result of a spontaneous miscarriage, accidental trauma or a criminal assault on the pregnant female or her unborn child;
2. "Attempt to perform an abortion" means an act, or an omission of a statutorily required act that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion in Oklahoma in violation of the Unborn Child Pain Awareness/Prevention Act;
3. "Unborn child" means a member of the species homo sapiens from fertilization until birth;
4. "Medical emergency" means the existence of any physical condition, not including any emotional, psychological, or mental condition, which a reasonably prudent physician, with knowledge of the case and treatment possibilities with respect to the medical conditions involved, would determine necessitates the immediate abortion of the pregnancy of the female to avert her death or to avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy;
5. "Physician" means a person licensed to practice medicine in this state pursuant to Sections 495 and 633 of Title 59 of the Oklahoma Statutes; and
6. "Probable gestational age" means the gestational age of the unborn child at the time the abortion is planned to be performed, as determined by the physician using reasonable probability.

[63 Okl. St. § 1-738.7](#)

63 Okl. St. Ann. § 1-738.8. Review of materials, notice in cases of twenty-plus weeks' gestation--Certification, furnishing of information

A. Except in the case of a medical emergency, at least seventy-two (72) hours prior to an abortion being performed on an unborn child whose probable gestational age is twenty (20) weeks or more, the physician performing the abortion or the agent of the physician shall inform the pregnant female, by telephone or in person, of the right to review the printed materials described in Section 1-738.10 of this title, that these materials are available on a state-sponsored website, and the web address of that 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 the materials contain information on pain and the unborn child. If the female chooses to view the materials other than on the website, the materials shall either be given to the female at least seventy-two (72) hours before the abortion, or received by the female at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to the addressee. The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to receive the printed materials given or mailed.

B. The female shall certify in writing, prior to the abortion, that the information described in subsection A of this section has been furnished to the female and that the female has been informed of the opportunity to review the printed materials described in Section 1-738.10 of this title. Prior to the performance of the abortion, the physician who is to perform the abortion or the agent of the physician shall obtain a copy of the written certification and retain the copy on file with the medical record of the female for at least three (3) years following the date of receipt.

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

When a medical emergency compels the performance of an abortion, the physician shall inform the female, prior to the abortion if possible, of the medical indications supporting the judgment of the physician that an abortion is necessary to avert the death of the female or that a twenty-four-hour delay will create serious risk of substantial and irreversible impairment of a major bodily function.
[63 Okl. St. § 1-738.12](#)

63 Okl. St. Ann. § 1-738.13. Reporting forms--Submission of copies--Late fees--Public report--Alteration of dates

A. Within ninety (90) days after the Unborn Child Pain Awareness/Prevention Act¹ becomes law, the State Department of Health shall prepare a reporting form for physicians containing a reprint of the Unborn Child Pain Awareness/Prevention Act and listing:

- 1.** The number of females to whom the physician or an agent of the physician provided the information described in subsection A of Section 1-738.8 of this title; of that number, the number provided by telephone and the number provided in person; and of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion or agent of such a physician;
- 2.** The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Section 1-738.10 of this title 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 information and belief of the reporting physician, went on to obtain the abortion; and
- 3.** The number of abortions performed by the physician in which information otherwise required to be provided at least seventy-two (72) hours before the abortion was not so provided because an immediate abortion was necessary to avert the death of the female, and the number of abortions in which such information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function.

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

1. Within one hundred twenty (120) days after the Unborn Child Pain Awareness/Prevention Act becomes law, to all physicians licensed to practice in this state;
2. To each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and
3. By December 1 of each year, other than the calendar year in which forms are distributed in accordance with paragraph 1 of this subsection, to all physicians licensed to practice in this state.

C. By February 28 of each year following a calendar year in any part of which the Unborn Child Pain Awareness/Prevention Act was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with Section 1-738.8 of this title during the previous calendar year shall submit to the Department a copy of the form described in subsection A of this section, with the requested data entered accurately and completely.

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

E. By June 30 of each year, the Department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection A of this section. Each such report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The Department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual providing or provided information in accordance with subsection A or B of Section 1-738.8 of this title.

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

63 Okl. St. Ann. § 1-738.14. Violation of Act--Penalties

Any person who knowingly or recklessly performs or attempts to perform an abortion in violation of the Unborn Child Pain Awareness/Prevention Act shall be guilty of a felony. Any physician who knowingly or recklessly submits a false report under subsection C of Section 13 of this act¹ shall be guilty of a misdemeanor. No penalty may be assessed against the female upon whom the abortion is performed or attempted to be performed. No penalty or civil liability may be assessed for failure to comply with Section 8 of this act² requiring a written certification that the female has been informed of the opportunity to review the information referred to in

Section 8 of this act unless the State Department of Health has made the printed materials available at the time the physician or the agent of the physician is required to inform the female of the right to review the materials.

§ 1-738.15. Civil Actions

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

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

[63 Okl. St. § 1-738.15](#)

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

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

[63 Okl. St. § 1-738.16](#)

63 Okl. St. Ann. § 1-740.2. Consent of parent--Requirements--Exceptions--Forms

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

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

B. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian has been appointed pursuant to [Section 1-113 of Title 30 of the Oklahoma Statutes](#) because of a finding of incompetency, except in a medical emergency or where a judicial waiver was obtained pursuant to [Section 1-740.3](#) of this title, until at least forty-eight

(48) hours after the request for written informed consent for the pending abortion has been delivered in the manner specified in this subsection and the attending physician has secured proof of identification and the written informed consent of one parent.

1. The request for written informed consent of one parent shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.

2. In lieu of the delivery required by paragraph 1 of this subsection, the request for written informed consent of one parent shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return-receipt requested and restricted delivery to the addressee, which means a postal employee can only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 noon on the third day on which regular mail delivery takes place, subsequent to mailing. The information concerning the address of the parent shall be that which a reasonable and prudent person, under similar circumstances, would have relied upon as sufficient evidence that the parent resides at that address.

3. a. The parent who provides consent shall provide to the physician a copy of a government-issued proof of identification and written documentation that establishes that he or she is the lawful parent of the pregnant female. The parent shall certify in a signed, dated, notarized statement, initialed on each page, that he or she consents to the abortion. The signed, dated, and notarized statement shall include: "I certify that I, (insert name of parent), am the parent of (insert name of minor daughter) and give consent for (insert name of physician) to perform an abortion on my daughter. I understand that any person who knowingly makes a fraudulent statement in this regard commits a felony."

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

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

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

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

circumstances, would have relied upon as sufficient evidence that the parent resides at that address.

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

§ 1-740.2A. Court-Ordered Evaluation and Counseling Session with a Mental Health Professional—Purpose—Report to Court

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

B. Such evaluation and counseling session shall be for the purpose of developing trustworthy and reliable expert opinion concerning the pregnant unemancipated minor's sufficiency of knowledge, insight, judgment, and maturity with regard to her abortion decision in order to aid the court in its decision and to make the resources of the state available to the court for this purpose. Persons conducting such sessions may employ the information and printed materials referred to in Sections 1-738.2 and 1-738.3 of Title 63 of the Oklahoma Statutes in examining how well the pregnant unemancipated minor is informed about pregnancy, fetal development, abortion risks and consequences, and abortion alternatives, and should also endeavor to verify that the pregnant unemancipated minor is seeking an abortion of her own free will and is not acting under coercion, intimidation, threats, abuse, undue pressure, or extortion by any other persons.

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

[63 Okl. St. § 1-740.2A](#)

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

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

In assessing the experience level of the pregnant unemancipated minor, the court may consider, among other relevant factors, the age of the pregnant unemancipated minor and experiences working outside the home, living away from home, traveling on her own, handling personal finances, and making other significant decisions. In assessing the perspective of the pregnant unemancipated minor, the court may consider, among other relevant factors, what steps the pregnant unemancipated minor took to explore her options and the extent to which she considered and weighed the potential consequences of each option. In assessing the judgment of the pregnant unemancipated minor, the court may consider, among other relevant factors, the conduct of the pregnant unemancipated minor since learning of her pregnancy and her intellectual ability to

understand her options and to make an informed decision. In assessing whether, by clear and convincing evidence, obtaining the written informed consent of the parent of the pregnant unemancipated minor is not in her best interest, a court may not consider the potential financial impact on the pregnant unemancipated minor or the family of the pregnant unemancipated minor if she does not have an abortion.

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

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

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

[63 Okl. St. § 1-740.3](#)

63 Okl. St. Ann. § 1-740.4. Illegal abortion on unemancipated minor--Criminal and civil liability

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

63 Okl. St. Ann. § 1-740.4a. Report of procedure--Contents--Submission--Late fee--Public report--Rules--Failure to post public report--Attorneys fees

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

1. Age;
2. Educational level;
3. Number of previous pregnancies;
4. Number of previous live births;
5. Number of previous abortions;
6. Complications, if any, of the abortion being reported;

7. The city and county in which the abortion was performed;
8. Whether a parent gave consent to the physician, or an agent of the physician, pursuant to Section 1-740.2 of Title 63 of the Oklahoma Statutes; or
9. Whether the physician performed the abortion without first obtaining the consent of the parent of the minor as described in Section 1-740.2 of Title 63 of the Oklahoma Statutes; if so:
 - a. whether the minor was emancipated,
 - b. whether the abortion was performed because of a medical emergency,
 - c. whether the abortion was performed to prevent the death of the minor,
 - d. whether the parent was notified after the performance of a medical emergency abortion, and
 - e. whether the parent was notified after the performance of an abortion to prevent the death of the minor;
10. Whether a judicial waiver was obtained after the performance of a medical emergency abortion; and
11. Whether a judicial waiver was obtained after the performance of an abortion to prevent the death of the minor.

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

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

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

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

§ 1-740.4b. Criminal Violations—Penalties—Defenses—Civil Liability— Injunction

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

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

C.

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

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

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

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

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

[63 Okl. St. § 1-740.4b](#)

63 Okl. St. Ann. § 1-744.2. Notice--Waiting period

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

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

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

63 Okl. St. Ann. § 1-744.3. Medical emergency--Notice requirement

Immediate notice shall not be required if the attending physician certifies in the pregnant female's record that, in reasonable medical judgment, a medical emergency exists and there is insufficient time to provide the prior notification required by [Section 6](#) of this act. The attending physician or the physician's agent shall verbally inform the parent within twenty-four (24) hours

after the performance of a medical emergency abortion, that a medical emergency abortion was performed on the unemancipated minor or on the female for whom a guardian or conservator has been appointed and shall also send a written notice within twenty-four (24) hours after the performance of a medical emergency abortion to the last-known address of the parent, of the performed medical emergency abortion. The written notice shall follow the requirements in paragraph 2 of Section 6 of this act.

63 Okl. St. Ann. § 1-744.4. Exceptions to notice requirement

No notice shall be required under this act if:

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

63 Okl. St. Ann. § 1-744.5. Criminal and civil liability

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

63 Okl. St. Ann. § 1-745.4. Abortion requirements--Determination of probable postfertilization age of unborn child

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

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

63 Okl. St. Ann. § 1-745.5. Abortions prohibited when probable postfertilization age of unborn child is 20 or more weeks--Exceptions--Procedure for abortion

A. No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is twenty (20) or more weeks, unless, in reasonable medical judgment, she has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition shall be deemed to exist if it is based

on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

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

63 Okl. St. Ann. § 1-745.7. Violations of act

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

63 Okl. St. Ann. § 1-745.14. Making heartbeat audible before abortion

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

B. Prior to a woman giving informed consent to having any part of an abortion performed or induced, if the pregnancy is at least eight (8) weeks after fertilization, the abortion provider who is to perform or induce the abortion or an agent of the abortion provider shall tell the woman that it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear and ask the woman if she would like to hear the heartbeat. If the woman would like to hear the heartbeat, the abortion provider shall, using a Doppler fetal heart rate monitor, make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear. An abortion provider or an agent of the abortion provider shall not be in violation of the requirements of this subsection if:

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

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

63 Okl. St. Ann. § 1-745.15. Application of act

A. The provisions of Section 4 of this act shall not apply to an abortion provider in the case that the abortion is necessary to avert the mother's death or in the case of a medical emergency.

B. Upon a determination by an abortion provider under subsection A of this section that an abortion is necessary to avert the death of the mother or that there is a medical emergency, such provider shall certify the specific medical conditions that support such determination and include such certification in the medical file of the pregnant woman.

C. An abortion provider who knowingly or recklessly falsifies a certification made pursuant to subsection B of this section shall be deemed to have knowingly or recklessly failed to comply with this act for purposes of Section 6 of this act.

63 Okl. St. Ann. § 1-745.16. Violations of act--Penalties--Civil actions

A. Any person who intentionally or recklessly performs or induces an abortion in violation of the Heartbeat Informed Consent Act shall be guilty of a misdemeanor. No penalty shall be assessed against the woman upon whom the abortion is performed or induced or attempted to be performed or induced.

B. Any woman upon whom an abortion has been performed or induced in violation of this act, or the father of the unborn child who was the subject of such an abortion, may maintain an action against the person who performed or induced the abortion in intentional or reckless violation of this act for actual and punitive damages. Any woman upon whom an abortion has been attempted in violation of this act may maintain an action against the person who attempted to perform or induce the abortion in an intentional or reckless violation of this act for actual and punitive damages.

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

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

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

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

§ 1-746.8. Civil Action by Female, Father, or Grandparent Following Unlawful Abortion

Any person upon whom an abortion has been performed or induced without this act being complied with, the father of the unborn child who was the subject of such an abortion, or the grandparent of such an unborn child may maintain an action pursuant to Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes against any person or entity which performed or induced or attempted to perform or induce the abortion in violation of this act, or against any person or entity which made a referral as defined in Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes regarding this particular abortion. The procedure and remedy in a civil action brought pursuant to this section shall be the same as the procedure and remedy in other suits brought pursuant to Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma Statutes.

[63 Okl. St. § 1-746.8](#)