STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1376 By: Adair

AS INTRODUCED

An Act relating to public health and safety; creating the Oklahoma Parental Notification of Abortion on Minor Children Act; providing short title; providing intent; providing purpose; defining terms; providing for application of act; providing exceptions; requiring notification of certain persons prior to performance of an abortion upon a minor; requiring certain delivery and other notice; providing for in lieu of delivery; providing for judicial proceedings in certain cases; prohibiting extensions or certain further notice; providing procedures for proceedings and time periods; providing for participation; prohibiting certain fees; providing for confidentiality; providing for application; authorizing certain appeals; providing for rules; making certain actions not subject to appeal; providing for certain counseling and information; prohibiting physician from providing counseling; providing contents; providing procedures and transmissions; providing for records; requiring confidentiality; requiring preparation of certain materials; specifying content and descriptions; providing for costs; providing for updates; making certain acts

unlawful; providing for certain presumption; providing for certain proceedings and responsibilities; specifying procedures; providing for penalty; providing for support; providing for liability of certain persons; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Sections 1 through 8 of this act shall be known and may be cited as the "Oklahoma Parental Notification of Abortion on Minor Children Act".

B. Recognizing that some minors lack the ability to make fully informed choices that consider both immediate and long-range consequences and that parents who are aware that their minor daughter has had or is seeking an abortion may be able to provide comfort to such daughter and support for her decisions and to ensure that she receives adequate medical care if she chooses or has chosen to have an abortion, it is the intent of the Legislature in enacting the Oklahoma Parental Notification of Abortion on Minor Children Act to protect minors who may be immature and to protect the interests of parents with regard to children who are members of their household.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

For purposes of the Oklahoma Parental Notification of Abortion on Minor Children Act:

1. "Abortion" means the intentional interruption of a pregnancy by the application of external agents, whether chemical or physical, with an intention other than to produce a live birth or to remove a dead fetus. However, it shall not be considered an "abortion" for a licensed physician to prescribe, dispense, implant, or sell or use legal contraceptives or contraceptive devices;

2. "Minor" means a person who is seventeen (17) years of age or less; and

3. "Parent" means a natural parent, adoptive parent, or a legal guardian or other person having legal custody of a minor. A parent whose parental rights have been terminated regarding the minor shall not be considered a parent pursuant to the provisions of the Oklahoma Parental Notification of Abortion on Minor Children Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Parental Notification of Abortion on Minor Children Act shall not apply:

1. To a minor who is married or a parent herself or who has obtained rights of majority pursuant to judicial proceedings;

2. If the attending physician certifies in the medical record of the minor, on the basis of the physician's good faith clinical judgment, that if the abortion is not performed it will endanger the life of the minor;

3. If the minor is accompanied by her parent to the physician or facility in which the abortion is to take place;

4. If the court pursuant to Section 5 of this act has determined that parental notification is not necessary;

5. If the minor certifies to the physician that she is a child in need of protection by reason of the definitions included in the Oklahoma Child Abuse Reporting and Prevention Act;

6. If the parent to be notified is the parent who impregnated the minor; or

7. If the minor has not resided with her parents for at least thirty (30) days prior to the performance of an abortion on the minor and does not receive her major support from her parents.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in the Oklahoma Parental Notification of Abortion on Minor Children Act, no abortion shall be performed upon a minor until at least twenty-four (24) hours after written notice of the pending abortion has been delivered in the manner specified in this section.

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

C. In lieu of the delivery required by subsection B 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. Time of delivery of the notice shall be deemed to occur at twelve o'clock noon on the next day on which regular mail delivery takes place, subsequent to the mailing of the notice.

D. In lieu of the delivery required by subsections B or C of this section, the person who is entitled to notice may certify in person that such person is the parent of the minor and that such person has been notified.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If the minor elects not to allow the notification of her parent, any district judge of the county of the residence of the

minor or of the county in which the minor desires to have an abortion, upon petition and after a hearing, shall authorize a physician to perform the abortion if said judge determines that the minor is mature or that the performance of an abortion without notification of a parent would be in the best interests of the minor.

B. Proceedings in the court pursuant to this section shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay and in no instance longer than three (3) business days after the filing of the petition so as to serve the best interests of the minor.

1. The minor may participate in proceedings in the court on her own behalf and the court may appoint a guardian ad litem to assist her. The court shall also advise her that she has a right to court-appointed counsel and shall provide her with such counsel upon request.

2. The judge of the court who conducts proceedings pursuant to this section shall make in writing specific factual findings and legal conclusions supporting the decision made by the judge and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

C. The application to the court shall be accompanied by a written statement that the information contained therein is true and correct to the best of the applicant's knowledge, and the application shall set forth the following facts:

1. The initials of the minor;

2. The age of the minor;

3. The names and addresses of each parent, guardian or, if the minor's parents are deceased and no guardian has been appointed, any other person standing in loco parentis to the minor; and

4. The signature of the minor.

D. 1. An expedited confidential appeal shall be available to any minor for whom the court refuses to grant an order authorizing an abortion within the time specified in this section. Any court to which an appeal is taken under this section shall give prompt and confidential attention thereto and shall rule thereon within five (5) business days of the filing of the appeal. The Oklahoma Supreme Court may issue such rules as may further assure that the process provided in this section is conducted in such a manner as will ensure confidentiality and sufficient precedence over other pending matters to ensure promptness of disposition.

2. An order authorizing an abortion without notification shall not be subject to appeal.

E. The court shall act within the time periods specified by this section. No extensions or further notice or waiting periods shall be required by the court.

F. The name of the minor shall not be entered on any docket which is subject to public inspection. All persons shall be excluded from hearings under this section except the applicant and such other persons whose presence is specifically requested by the applicant or ordered by the judge.

G. No filing fees shall be required of any such minor at either the trial or the appellate level.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Not less than twenty-four (24) hours prior to the performance of an abortion on a minor, the physician shall provide for pregnancy information and counseling to the minor. Any counselor providing information and counseling to the minor pursuant to this section shall not be the attending physician of the minor. The counselor shall:

1. Explain that the information specified in this section being given to the minor is not intended to coerce, persuade or induce the minor to choose either to have an abortion or to carry the pregnancy to full term;

2. Explain that the minor may withdraw a decision to have an abortion at any time before the abortion is performed or may reconsider a decision not to have an abortion at any time within the time period during which an abortion may legally be performed;

3. Explore with the minor the alternative choices available for managing the pregnancy, including:

a. carrying the pregnancy to full term,

b. carrying the pregnancy to full term and placing the child for adoption, and

c. having an abortion;

4. Explain that public and private agencies are available to provide adoption and birth control information and adoption assistance and help and support to a minor who might want to carry the pregnancy to full term and that a list of such agencies and the services available from each shall be provided;

5. Discuss the desirability and benefit of involving the minor's parents, guardian or other adult family members in the minor's decision making concerning the pregnancy; and

6. Provide information to the minor concerning the pregnancy, abortion, financial assistance, child care and adoption. Such information shall include the printed material prepared by the Oklahoma State Department of Health pursuant to subsection C of this section.

B. 1. After the counselor provides the information and counseling to a minor as required by subsection A of this section, the counselor shall have the minor sign and date a form stating that the minor has received information required by this subsection.

2. The counselor providing the information and counseling shall also sign and date the form, and include the counselor's address and telephone number. The counselor shall keep a file copy of the form, shall transmit a copy of the form to the minor's attending physician and to the Oklahoma State Department of Health. The counselor shall give the original form to the minor. Any such information obtained pursuant to this subsection identifying the minor shall be kept confidential.

C. The Oklahoma State Department of Health shall provide, at cost, to any person providing abortion counseling, information concerning pregnancy, abortion, financial assistance, child care, adoption, and supportive services for minors who might want to carry the pregnancy to full term. Specifically, the Department shall cause to be published in English, Spanish and such other language deemed necessary by the Oklahoma State Department of Health, within sixty (60) days after the effective date of this act, and shall update on an annual basis, the following easily comprehensible printed materials:

1. Geographically indexed materials designed to inform the minor of public and private agencies and services available to assist a minor through pregnancy, upon and after childbirth, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the Department, printed materials including a toll-free twenty-four-hour-a-day telephone number, if available, which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and the services they offer. The materials shall provide information on the availability of medical assistance benefits for prenatal care, childbirth and neonatal care, and state that:

a. it is unlawful for any individual to coerce a minor to undergo abortion, to coerce the minor to carry the pregnancy to full term or to coerce the minor to place the child for adoption,

b. the father of a child is liable to assist in the support of that child, even in instances where the father has offered to pay for an abortion, and

c. the law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care;

2. All materials designed to inform the minor of the pregnancy shall be realistic, objective, nonjudgmental and designed to convey only accurate scientific information about the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, and the medical risks commonly associated with carrying the pregnancy to full term.

The materials shall be printed in a typeface large enough to be clearly legible.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Except in a medical emergency as defined in paragraph 2 of Section 3 of this act, no person shall coerce a minor to undergo an abortion, carry the pregnancy to full term or place the child for adoption. Any minor who is threatened with such coercion may apply to the district court for relief. The court shall provide the minor with counsel, give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion.

B. Should a minor be denied the financial support of her parents by reason of her refusal to undergo abortion, she shall be

considered emancipated for purposes of eligibility for assistance benefits.

C. If a parent, guardian or other person standing in loco parentis, once notified, coerces a minor in violation of the provisions of this section to carry a child to full term, the duty imposed by law of supporting the child extends to the minor, and jointly and severally to the coercing parent, legal guardian, or person standing in loco parentis until the minor reaches the age of eighteen (18) years or is emancipated. The provisions of this subsection shall not be construed to modify or limit the obligation of the natural father to support the child.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2625.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Performance of an abortion in violation of the Oklahoma Parental Notification of Abortion on Minor Children Act shall be a misdemeanor.

B. A person shall not be held civilly liable pursuant to the Oklahoma Parental Notification of Abortion on Minor Children Act if the person establishes by evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with the Procedures for Abortion on Minors Act are bona fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so.

SECTION 9. This act shall become effective November 1, 1997.

46-1-6358 KSM