

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2650:

Reynolds

AS INTRODUCED

An Act relating to public health and safety; creating the Oklahoma Parental Notification of Abortion Procedures on Minors Act; providing legislative intent; 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; specifying time limits; providing exceptions; 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; specifying time periods; prohibiting physician from providing counseling; authorizing telephone counseling; providing for revised information; specifying details of counseling and information; providing for submission of certain information; requiring records; providing procedures; requiring the State Department of Health to prepare certain information; providing contents of certain information; providing procedures and transmissions; requiring confidentiality; requiring preparation of certain materials; specifying content and descriptions; providing for costs; providing for updates; making certain acts unlawful; prohibiting coercion; providing exception; specifying that term coercion does not include certain statements; providing for certain proceedings and responsibilities; providing for emancipation of certain minors; specifying procedures; providing for construction of section; providing for payment of child support in certain cases; providing for penalty; amending 63 O.S. 2001, Section 1-740, which relates to abortions; providing for liability of certain persons; clarifying language; 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 Procedures on Minors 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 their 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 Procedures on Minors 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 Procedures on Minors Act:

1. "Abortion" means the use of any means to terminate the pregnancy of a woman known to be pregnant with the knowledge that the termination by those means will, with reasonable likelihood, cause the death of the fetus;

2. "Fetus" means any individual human organism from fertilization until birth;

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

4. "Parent" means a biological 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 Procedures on Minors Act; and

5. "Positive proof of identification" means a government-issued photo identification card including, but not limited to, a driver license or similar state-issued or federal government-issued identification card.

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 Procedures on Minors Act shall not apply:

1. To a minor who is married 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 the abortion is a medical emergency and if the abortion is not performed it will endanger the life of the minor and there was insufficient time to obtain the required notice;

3. If the minor is accompanied by her parent who presents positive proof of identification 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; and

5. If the pregnant minor declares that she is the victim of sexual abuse, neglect, or physical abuse as defined in the Oklahoma Child Abuse Reporting and Prevention Act and the attending physician has notified local law enforcement or the Department of Human Services about the alleged sexual abuse, neglect or physical abuse.

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 Procedures on Minors Act, no abortion shall be performed upon a minor until at least:

1. Twenty-four (24) hours after written notice of the pending abortion has been personally delivered by the physician or an agent of the physician to one parent at the usual place of abode of that parent who has provided positive proof of identification and who has signed a form certifying receipt of such written notice which the physician shall keep on file; or

2. Twenty-four (24) hours after written notice of the pending abortion has been received 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.

B. In lieu of the delivery required by subsection A of this section, the person who is entitled to notice may certify in person that such person is the parent of the minor upon showing of positive proof of identification 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 the judge determines 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) judicial 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; and
3. 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) judicial 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. 1. Not less than twenty-four (24) hours prior to the performance of an abortion on a minor, the attending physician shall provide for pregnancy information and for counseling to the minor.

2. a. The pregnancy information required pursuant to this section to be provided, may be based on facts supplied to the physician by the minor and whatever other relevant information is reasonably available to the physician.

b. Pregnancy information may be provided by the attending physician in person or by telephone.

c. If a physical examination, tests, or the availability of other information available to the physician subsequently indicates in the medical judgment of the physician, a revision of the pregnancy information previously supplied the minor, the revised information may be communicated to the minor at any time prior to the abortion.

- d. The pregnancy information shall not be provided by a tape recording, but must be provided during consultation in which the physician is able to ask questions of the minor and the minor is able to ask questions of the physician. Such pregnancy information shall include information as to the risks of abortion.
 - e. Nothing in this section may be construed to preclude provisions of required pregnancy information in a language understood by the minor through a translator.
3. a. Any counselor providing counseling and any counseling information to the minor, pursuant to the provisions of this paragraph, shall not be the attending physician of the minor. Counseling shall be made in person or by telephone and shall be provided to the minor in such a manner that the counselor is able to ask questions of the minor and the minor is able to ask questions of the counselor. 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. The counselor shall inform the minor of the availability of the printed material prepared by the Oklahoma State Department of Health pursuant to subsection B of this section and that such material shall be provided by the counselor at the minor's request.
- b. After the counselor provides the information and counseling to a minor in person as specified by this subsection, the counselor shall have the minor sign and date a form stating that the minor has received counseling information and counseling required by this subsection. If the information and counseling is given by telephone, the minor shall sign the form prior to the performance of the abortion.
- c. The counselor providing the counseling 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 and 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.

B. 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 an 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,
- c. the law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care, and
- d. this does not include verbal persuasion; and

2. Realistic, objective and nonjudgmental materials designed to convey only accurate scientific information about the various gestational ages of the minor's pregnancy. The material shall also contain objective information describing, with illustrations, the development of the fetus at appropriate development intervals, 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.

C. 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. 1. 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. The term "coercion" shall not include verbal persuasion nor shall informing a minor that an abortion is immoral and is the killing of a human being be considered coercion.

2. Any minor who is threatened with such coercion may apply to the district court for relief.

3. 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 an abortion, she shall be considered emancipated for purposes of eligibility for assistance benefits.

C. If a parent, 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, 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 Procedures on Minors Act shall be a misdemeanor.

B. A person shall not be held civilly liable pursuant to the Oklahoma Parental Notification of Abortion Procedures on Minors 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 Oklahoma Parental Notification of Abortion Procedures on Minors Act are bona fide and true.

SECTION 9. AMENDATORY 63 O.S. 2001, Section 1-740, is amended to read as follows:

Section 1-740. Any person who performs an abortion on a minor without obtaining parental consent ~~or knowledge~~ as required by the Oklahoma Parental Notification of Abortion Procedures on Minors Act

shall be liable for the cost of any subsequent medical treatment such minor might require because of the abortion.

SECTION 10. This act shall become effective November 1, 2004.

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