

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 2369

By: Dank

COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending Section 12, Chapter 200, O.S.L. 2005, Section 13, Chapter 200, O.S.L. 2005 and Section 14, Chapter 200, O.S.L. 2005 (63 O.S. Supp. 2005, Sections 1-740.2, 1-740.3 and 1-740.4), which relate to notification of parent or guardian and judicial authorization of abortion performed upon unemancipated minor and illegal abortion on unemancipated minor a misdemeanor; requiring written informed consent of parent; modifying delivery requirements; modifying exceptions; requiring certain entity to adopt consent form; requiring retention of consent form for certain time period; expanding scope of judicial bypass of notice requirement and appeals procedure; updating statutory reference; modifying scope of criminal penalty and civil remedies; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 12, Chapter 200, O.S.L. 2005 (63 O.S. Supp. 2005, Section 1-740.2), is amended to read as follows:

Section 1-740.2 A. 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, until at least forty-eight (48) hours after written notice of the pending abortion has been delivered in the manner specified in this subsection and the attending physician has secured the written informed consent of one parent.

1. The notice and 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 notice and 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 next day on which regular mail delivery takes place, subsequent to mailing; or

3. The ~~person~~ parent entitled to notice and consent certifies in a notarized statement that he or she has been notified and consents to the abortion.

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

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

2. The attending physician certifies that a medical emergency exists and that a delay will create serious risk of substantial and irreversible impairment of a major bodily function; or

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

C. The State Board of Health shall adopt the forms necessary for physicians to obtain the consent of one parent required for an

abortion to be performed on an unemancipated minor pursuant to subsection A of this section. The form executed to obtain consent must be retained by the physician for a period of not less than five (5) years.

SECTION 2. AMENDATORY Section 13, Chapter 200, O.S.L. 2005 (63 O.S. Supp. 2005, Section 1-740.3), is amended to read as follows:

Section 1-740.3 A. If a pregnant unemancipated minor elects not to allow the notification and request for written informed consent of her parent, any judge of a court of competent jurisdiction shall, upon petition or motion, and after an appropriate hearing, authorize a physician to perform the abortion if the judge determines that the pregnant unemancipated minor is mature and capable of giving informed consent to the proposed abortion. 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 whether the performance of an abortion upon her without notification and written informed consent of her parent would be in her best interest and shall authorize a physician to perform the abortion without notification and written informed consent if the judge concludes that the ~~pregnant unemancipated minor's~~ best interests of the pregnant unemancipated minor would be served thereby.

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 notification and written informed consent of one parent. An order authorizing an abortion without notification and 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.

SECTION 3. AMENDATORY Section 14, Chapter 200, O.S.L. 2005 (63 O.S. Supp. 2005, Section 1-740.4), is amended to read as follows:

Section 1-740.4 Performance of an abortion in knowing or reckless violation of Sections ~~11~~ 1-740.1 through ~~15~~ 1-740.5 of this ~~act~~ title shall be a misdemeanor and shall be grounds for actual and punitive damages in a civil action by a person wrongfully denied notification and request for written informed consent. A person shall not be held liable under this act if the person establishes by written evidence that the person relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant unemancipated minor regarding information necessary to comply with this section are bona fide and true, or if the person has attempted with reasonable diligence to deliver the notice and request for written informed consent, but has been unable to do so.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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