

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 1588

By: Hamilton

7 COMMITTEE SUBSTITUTE

8 An Act relating to public health and safety; creating
9 the Parental Notification for Abortion Act; amending
63 O.S. 2011, Sections 1-740.2, 1-740.3 and 1-740.4,
10 which relate to requirements prior to performance of
abortion; requiring request for informed consent by
11 parent; removing certain exception for certain
minors; removing requirement of physician to file
12 certain notice; removing ability of certain judge to
authorize certain waiver; removing liability of
13 certain individual; defining terms; requiring
parental notification prior to abortion being
14 performed; providing certain notice requirements;
providing exemptions for certain medical emergencies;
15 waiving notification requirements in certain
circumstances; providing for penalty and cause of
16 action; providing certain act to be void under
certain circumstance; providing for codification; and
17 providing an effective date.

18
19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1-744 of Title 63, unless there
is created a duplication in numbering, reads as follows:

22 This act shall be known and may be cited as the "Parental
23 Notification for Abortion Act".
24

1 SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-740.2, is
2 amended to read as follows:

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

6 1. Obtained proof of age demonstrating that the female is not a
7 minor;

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

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

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

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

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

13 3. a. The parent ~~entitled to notice and~~ who provides consent
14 shall provide to the physician a copy of proof of
15 identification, and shall certify in a signed, dated,
16 and notarized statement that he or she ~~has been~~
17 ~~notified and~~ consents to the abortion. The signed,
18 dated, and notarized statement shall include: "I
19 certify that I, (insert name of parent), am the parent
20 of (insert name of minor daughter) and give consent
21 for (insert name of physician) to perform an abortion
22 on my daughter. I understand that any person who
23 knowingly makes a fraudulent statement in this regard
24 commits a felony."

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

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

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

17 1. ~~The~~ the attending physician certifies in the medical records
18 of the pregnant unemancipated minor that a medical emergency exists;
19 provided, however, that the attending physician or an agent shall,
20 within twenty-four (24) hours after completion of the abortion,
21 notify one of the parents of the minor in the manner provided in
22 this section that an emergency abortion was performed on the minor
23 and of the circumstances that warranted invocation of this
24 ~~paragraph; or~~

1 ~~2. The unemancipated minor declares that she is the victim of~~
2 ~~sexual abuse, as defined in Section 1-1-105 of Title 10A of the~~
3 ~~Oklahoma Statutes and the attending physician has notified local law~~
4 ~~enforcement or the Department of Human Services about the alleged~~
5 ~~sexual abuse subsection.~~

6 D. 1. ~~Unless the unemancipated minor gives notice of her~~
7 ~~intent to seek a judicial waiver pursuant to Section 1-740.3 of this~~
8 ~~title, the~~ The attending physician, or the agent of the physician,
9 shall verbally inform the parent of the minor within twenty-four
10 (24) hours after the performance of a medical emergency abortion or
11 an abortion that was performed to prevent her death that an abortion
12 was performed on the unemancipated minor. The attending physician,
13 or the agent of the attending physician, shall also inform the
14 parent of the basis for the certification of the physician required
15 under ~~paragraph 1 or 2~~ of subsection C of this section. The
16 attending physician, or the agent of the attending physician, shall
17 also send a written notice of the performed abortion via the United
18 States Post Office to the last-known address of the parent,
19 restricted delivery, return receipt requested. The information
20 concerning the address of the parent shall be that which a
21 reasonable and prudent person, under similar circumstances, would
22 have relied upon as sufficient evidence that the parent resides at
23 that address.

1 ~~2. If the unemancipated minor gives notice to the attending~~
2 ~~physician, or an agent of the physician, of her intent to seek a~~
3 ~~judicial waiver pursuant to Section 1-740.3 of this title, the~~
4 ~~physician, or an agent of the physician, shall file a notice with~~
5 ~~any judge of a court of competent jurisdiction that the minor has~~
6 ~~given such notice and shall provide the information the physician,~~
7 ~~or the agent of the physician, would have been required to provide~~
8 ~~the parent under paragraph 1 of this subsection if the unemancipated~~
9 ~~minor had not given notice of her intent to seek a judicial waiver.~~
10 ~~The court shall expeditiously schedule a conference with notice to~~
11 ~~the minor and the physician. If the minor is able to participate in~~
12 ~~the proceedings, the court shall advise the minor that she has the~~
13 ~~right to court-appointed counsel and shall, upon her request,~~
14 ~~provide the minor with such counsel. If the minor is unable to~~
15 ~~participate, the court shall appoint counsel on behalf of the minor.~~
16 ~~After an appropriate hearing, the court, taking into account the~~
17 ~~medical condition of the minor, shall set a deadline by which the~~
18 ~~minor must file a petition or motion pursuant to Section 1-740.3 of~~
19 ~~this title. The court may subsequently extend the deadline in light~~
20 ~~of the medical condition of the minor or other equitable~~
21 ~~considerations. If the minor does not file a petition or motion by~~
22 ~~the deadline, either in that court or in another court of competent~~
23 ~~jurisdiction with a copy filed in that court, the court shall direct~~
24 ~~that the court clerk provide the notice to a parent.~~

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

4 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-740.3, is
5 amended to read as follows:

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

23 B. ~~If the unemancipated minor, upon whom a medical emergency~~
24 ~~abortion or an abortion to prevent her death was performed, elects~~

1 ~~not to allow the notification of her parent, any judge of a court of~~
2 ~~competent jurisdiction shall, upon petition or motion and after an~~
3 ~~appropriate hearing, authorize the waiving of the required notice of~~
4 ~~the performed abortion if the judge determines, by clear and~~
5 ~~convincing evidence, that the unemancipated minor is mature and~~
6 ~~capable of determining whether notification should be given, or that~~
7 ~~the waiver would be in the best interest of the unemancipated minor.~~

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

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

22 ~~E.~~ D. An expedited confidential appeal shall be available to
23 any pregnant unemancipated minor for whom the court denies an order
24 authorizing an abortion without ~~notification and~~ written informed

1 consent of one parent. An order authorizing an abortion without
2 ~~notification and~~ written informed consent of one parent shall not be
3 subject to appeal. No filing fees shall be required of any pregnant
4 unemancipated minor at either the trial or the appellate level.
5 Access to the trial court for the purpose of a petition or motion,
6 and access to the appellate courts for the purpose of making an
7 appeal from the denial of same, shall be afforded a pregnant
8 unemancipated minor twenty-four (24) hours a day, seven (7) days a
9 week.

10 SECTION 4. AMENDATORY 63 O.S. 2011, Section 1-740.4, is
11 amended to read as follows:

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

1 ~~been unable to do so~~ pursuant to Sections 1-738.3f through 1-738.3k
2 of this title.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-744.1 of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

6 As used in the Parental Notification for Abortion Act:

7 1. "Parent" means one parent of the pregnant minor, or the
8 guardian or conservator if the pregnant female has one;

9 2. "Abortion" means the use of any means intentionally to
10 terminate the pregnancy of a female known to be pregnant with
11 knowledge that the termination with those means will, with
12 reasonable likelihood, cause the death of the fetus;

13 3. "Fetus" means any individual human organism from
14 fertilization to birth;

15 4. "Medical emergency" means the existence of any physical
16 condition, not including any emotional, psychological, or mental
17 condition, which a reasonably prudent physician would determine
18 necessitates the immediate abortion of the female's pregnancy to
19 avert her death or to avert substantial and irreversible impairment
20 of a major bodily function arising from continued pregnancy;

21 5. "Reasonable medical judgment" means a medical judgment that
22 would be made by a reasonably prudent physician, knowledgeable about
23 the case and the treatment possibilities with respect to the medical
24 conditions involved; and

1 6. "Physician" means any person licensed to practice medicine
2 and surgery or osteopathic medicine and surgery in this state.

3 SECTION 6. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-744.2 of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

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

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

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

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

5 SECTION 7. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-744.3 of Title 63, unless
7 there is created a duplication in numbering, reads as follows:

8 Immediate notice shall not be required if the attending
9 physician certifies in the pregnant female's record that, in
10 reasonable medical judgment, a medical emergency exists and there is
11 insufficient time to provide the prior notification required by
12 Section 6 of this act. The attending physician or the physician's
13 agent shall verbally inform the parent within twenty-four (24) hours
14 after the performance of a medical emergency abortion, that a
15 medical emergency abortion was performed on the unemancipated minor
16 or on the female for whom a guardian or conservator has been
17 appointed and shall also send a written notice within twenty-four
18 (24) hours after the performance of a medical emergency abortion to
19 the last known address of the parent, of the performed medical
20 emergency abortion. The written notice shall follow the
21 requirements in paragraph 2 of Section 6 of this act.

22 SECTION 8. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1-744.4 of Title 63, unless
24 there is created a duplication in numbering, reads as follows:

1 No notice shall be required under this act if:

2 1. The person who is entitled to notice states in notarized
3 writing that he or she has been notified and the statement is placed
4 in the female's medical record; or

5 2. The pregnant female declares that she is a victim of sexual
6 or physical abuse by her parent as defined in Section 1111 et seq.
7 of Title 21 of the Oklahoma Statutes and the attending physician has
8 notified child abuse authorities about the alleged parental sexual
9 or physical abuse. In such circumstances, the physician shall
10 notify child abuse authorities of the name and address of the
11 abusing parent so that they can investigate. The child abuse
12 authorities shall maintain the confidentiality of the fact that the
13 minor has sought or obtained an abortion and shall take all
14 necessary steps to ensure that this information is not revealed to
15 the female's parents or guardians.

16 SECTION 9. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1-744.5 of Title 63, unless
18 there is created a duplication in numbering, reads as follows:

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

1 SECTION 10. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-744.6 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 If any portion of the Parental Notification for Abortion Act is
5 finally adjudicated invalid, the entire act is void.

6 SECTION 11. This act shall become effective November 1, 2013.

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