

An Act

ENROLLED HOUSE
BILL NO. 1588

By: Hamilton, Hulbert, Ritze,
Biggs, Christian, Vaughan,
Kern and Fisher of the
House

and

Griffin, Shortey and
Johnson (Constance) of the
Senate

An Act relating to public health and safety; creating the Parental Notification for Abortion Act; providing short title; amending 63 O.S. 2011, Sections 1-740.2, as amended by Section 1 of Enrolled House Bill No. 1361 of the 1st Session of the 54th Oklahoma Legislature, 1-740.3, as amended by Section 3 of Enrolled House Bill No. 1361 of the 1st Session of the 54th Oklahoma Legislature and 1-740.4, which relate to requirements prior to performance of abortion; requiring request for informed consent by parent; removing certain exception for certain minors; removing requirement of physician to file certain notice; removing ability of certain judge to authorize certain waiver; removing liability of certain individual; defining terms; requiring parental notification prior to abortion being performed; providing certain notice requirements; providing exemptions for certain medical emergencies; waiving notification requirements in certain circumstances; providing for penalty and cause of action; providing certain sections to be void under certain circumstance; providing for codification; and providing an effective date.

SUBJECT: Abortion

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 1-744 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-740.2, as amended by Section 1 of Enrolled House Bill No. 1361 of the 1st Session of the 54th Oklahoma Legislature, is amended to read as follows:

Section 1-740.2 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 ~~written notice of 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 ~~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~~ 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 ~~entitled to notice and~~ 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 ~~has been notified and~~ 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 ~~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~~ 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 paragraph; or

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

D. ~~1. Unless the unemancipated minor gives notice of her intent to seek a judicial waiver pursuant to Section 1-740.3 of this title, the~~ 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 ~~paragraph 1 or 2 of~~ 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.

~~2. If the unemancipated minor gives notice to the attending physician, or an agent of the physician, of her intent to seek a judicial waiver pursuant to Section 1-740.3 of this title, the physician, or an agent of the physician, shall file a notice with any judge of a district court in the county in which the pregnant unemancipated minor resides that the minor has given such notice and shall provide the information the physician, or the agent of the physician, would have been required to provide the parent under paragraph 1 of this subsection if the unemancipated minor had not given notice of her intent to seek a judicial waiver. The court shall expeditiously schedule a conference with notice to the minor and the physician. If the minor is able to participate in the proceedings, the court shall advise the minor that she has the right~~

~~to court appointed counsel and shall, upon her request, provide the minor with such counsel. If the minor is unable to participate, the court shall appoint counsel on behalf of the minor. After an appropriate hearing, the court, taking into account the medical condition of the minor, shall set a deadline by which the minor must file a petition or motion pursuant to Section 1-740.3 of this title. The court may subsequently extend the deadline in light of the medical condition of the minor or other equitable considerations. If the minor does not file a petition or motion by the deadline, the court shall direct that the court clerk provide the notice to a parent.~~

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

SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-740.3, as amended by Section 3 of Enrolled House Bill No. 1361 of the 1st Session of the 54th Oklahoma Legislature, 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 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 ~~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 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 ~~notification and~~ 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. If the unemancipated minor, upon whom a medical emergency abortion or an abortion to prevent her death was performed, elects not to allow the notification 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 the waiving of the required notice of the performed abortion if the judge determines, by clear and convincing evidence, that the unemancipated minor is mature and capable of determining whether notification should be given, or that the waiver would be in the best interest of the unemancipated minor.~~

~~C.~~ 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.

~~D.~~ 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.

~~E.~~ 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 4. AMENDATORY 63 O.S. 2011, 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 1-740.1 through 1-740.5 of this title shall be a misdemeanor ~~and~~. 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 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 pursuant to Sections 1-738.3f through 1-738.3k of this title.

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

As used in the Parental Notification for Abortion Act:

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

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

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

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

5. "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; and

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

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

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.

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

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.

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

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.

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

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.

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

If some or all of the provisions of Sections 1-740.2, 1-740.3 and 1-740.4 of Title 63 of the Oklahoma Statutes, as amended by Sections 2, 3 and 4 of this act, are ever temporarily or permanently restrained or enjoined by judicial order, these sections shall be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

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

Passed the House of Representatives the 16th day of May, 2013.

Presiding Officer of the House
of Representatives

Passed the Senate the 16th day of April, 2013.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____