

1 **SENATE FLOOR VERSION**

2 April 1, 2013

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 HOUSE BILL NO. 1588

6 By: Hamilton, Hulbert, Ritze,  
7 Biggs, Christian, Vaughan,  
8 Kern and Fisher of the  
9 House

10 and

11 Griffin of the Senate  
12

13 An Act relating to public health and safety; creating  
14 the Parental Notification for Abortion Act; providing  
15 short title; amending 63 O.S. 2011, Sections 1-740.2,  
16 1-740.3 and 1-740.4, which relate to requirements  
17 prior to performance of abortion; requiring request  
18 for informed consent by parent; removing certain  
19 exception for certain minors; removing requirement of  
20 physician to file certain notice; removing ability of  
21 certain judge to authorize certain waiver; removing  
22 liability of certain individual; defining terms;  
23 requiring parental notification prior to abortion  
24 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.

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

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

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

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

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

11 1. Obtained proof of age demonstrating that the female is not a  
12 minor;

13 2. Obtained proof that the female, although a minor, is  
14 emancipated; or

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

16 B. No abortion shall be performed upon an unemancipated minor  
17 or upon a female for whom a guardian has been appointed pursuant to  
18 Section 1-113 of Title 30 of the Oklahoma Statutes because of a  
19 finding of incompetency, except in a medical emergency or where a  
20 judicial waiver was obtained pursuant to Section 1-740.3 of this  
21 title, until at least forty-eight (48) hours after ~~written notice of~~  
22 the request for written informed consent for the pending abortion  
23 has been delivered in the manner specified in this subsection and  
24

1 the attending physician has secured proof of identification and the  
2 written informed consent of one parent.

3 1. The ~~notice and~~ request for written informed consent of one  
4 parent shall be addressed to the parent at the usual place of abode  
5 of the parent and delivered personally to the parent by the  
6 physician or an agent.

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

19 3. a. The parent ~~entitled to notice and~~ who provides consent  
20 shall provide to the physician a copy of proof of  
21 identification, and shall certify in a signed, dated,  
22 and notarized statement that he or she ~~has been~~  
23 ~~notified and~~ consents to the abortion. The signed,  
24 dated, and notarized statement shall include: "I

1 certify that I, (insert name of parent), am the parent  
2 of (insert name of minor daughter) and give consent  
3 for (insert name of physician) to perform an abortion  
4 on my daughter. I understand that any person who  
5 knowingly makes a fraudulent statement in this regard  
6 commits a felony."

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

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

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

23 1. ~~The~~ the attending physician certifies in the medical records  
24 of the pregnant unemancipated minor that a medical emergency exists;

1 provided, however, that the attending physician or an agent shall,  
2 within twenty-four (24) hours after completion of the abortion,  
3 notify one of the parents of the minor in the manner provided in  
4 this section that an emergency abortion was performed on the minor  
5 and of the circumstances that warranted invocation of this  
6 ~~paragraph; or~~

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

12 D. ~~1. Unless the unemancipated minor gives notice of her~~  
13 ~~intent to seek a judicial waiver pursuant to Section 1-740.3 of this~~  
14 ~~title, the The attending physician, or the agent of the physician,~~  
15 shall verbally inform the parent of the minor within twenty-four  
16 (24) hours after the performance of a medical emergency abortion or  
17 an abortion that was performed to prevent her death that an abortion  
18 was performed on the unemancipated minor. The attending physician,  
19 or the agent of the attending physician, shall also inform the  
20 parent of the basis for the certification of the physician required  
21 under ~~paragraph 1 or 2~~ of subsection C of this section. The  
22 attending physician, or the agent of the attending physician, shall  
23 also send a written notice of the performed abortion via the United  
24 States Post Office to the last-known address of the parent,

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

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

1 ~~of the medical condition of the minor or other equitable~~  
2 ~~considerations. If the minor does not file a petition or motion by~~  
3 ~~the deadline, either in that court or in another court of competent~~  
4 ~~jurisdiction with a copy filed in that court, the court shall direct~~  
5 ~~that the court clerk provide the notice to a parent.~~

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

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

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

1 ~~notification and~~ written informed consent if the judge concludes  
2 that the best interests of the pregnant unemancipated minor would be  
3 served thereby.

4 B. ~~If the unemancipated minor, upon whom a medical emergency~~  
5 ~~abortion or an abortion to prevent her death was performed, elects~~  
6 ~~not to allow the notification of her parent, any judge of a court of~~  
7 ~~competent jurisdiction shall, upon petition or motion and after an~~  
8 ~~appropriate hearing, authorize the waiving of the required notice of~~  
9 ~~the performed abortion if the judge determines, by clear and~~  
10 ~~convincing evidence, that the unemancipated minor is mature and~~  
11 ~~capable of determining whether notification should be given, or that~~  
12 ~~the waiver would be in the best interest of the unemancipated minor.~~

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

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

1 record of the evidence to be maintained, including the findings and  
2 conclusions of the court.

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

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

17 Section 1-740.4 Performance of an abortion in knowing or  
18 reckless violation of Sections 1-740.1 through 1-740.5 of this title  
19 shall be a misdemeanor ~~and~~. Performance of an abortion in violation  
20 of Sections 1-740.1 through 1-740.5 of this title shall be grounds  
21 for actual and punitive damages in a civil action ~~by a person~~  
22 ~~wrongfully denied notification and request for written informed~~  
23 ~~consent. A person shall not be held liable under this act if the~~  
24 ~~person establishes by written evidence that the person relied upon~~

1 ~~evidence sufficient to convince a careful and prudent person that~~  
2 ~~the representations of the pregnant unemancipated minor regarding~~  
3 ~~information necessary to comply with this section are bona fide and~~  
4 ~~true, or if the person has attempted with reasonable diligence to~~  
5 ~~deliver the notice and request for written informed consent, but has~~  
6 ~~been unable to do so pursuant to Sections 1-738.3f through 1-738.3k~~  
7 of this title.

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

11 As used in the Parental Notification for Abortion Act:

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

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

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

20 4. "Medical emergency" means the existence of any physical  
21 condition, not including any emotional, psychological, or mental  
22 condition, which a reasonably prudent physician would determine  
23 necessitates the immediate abortion of the female's pregnancy to  
24

1 avert her death or to avert substantial and irreversible impairment  
2 of a major bodily function arising from continued pregnancy;

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

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

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

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

21 1. The notice shall be addressed to the parent at the usual  
22 place of abode of the parent and delivered personally to the parent  
23 by the physician or an agent.

24

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

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

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

1 (24) hours after the performance of a medical emergency abortion to  
2 the last-known address of the parent, of the performed medical  
3 emergency abortion. The written notice shall follow the  
4 requirements in paragraph 2 of Section 6 of this act.

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

8 No notice shall be required under this act if:

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

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

23  
24

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

4 Performance of an abortion in knowing or reckless violation of  
5 this act shall be a misdemeanor. Performance of an abortion in  
6 violation of this act shall be grounds for a civil action pursuant  
7 to Sections 1-738.3f through 1-738.3k of Title 63 of the Oklahoma  
8 Statutes.

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

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

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

22 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES  
23 April 1, 2013 - DO PASS AS AMENDED  
24