

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1588 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Rebecca Hamilton

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 1588

By: Hamilton

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to public health and safety; creating the Parental Notification for Abortion Act; amending 63 O.S. 2011, Sections 1-740.2, 1-740.3 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 act 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:

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:

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

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

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

8 1. Obtained proof of age demonstrating that the female is not a
9 minor;

10 2. Obtained proof that the female, although a minor, is
11 emancipated; or

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

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

23 1. The ~~notice and~~ request for written informed consent of one
24 parent shall be addressed to the parent at the usual place of abode

1 of the parent and delivered personally to the parent by the
2 physician or an agent.

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

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

1 knowingly makes a fraudulent statement in this regard
2 commits a felony."

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

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

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

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

1 and of the circumstances that warranted invocation of this
2 ~~paragraph; or~~

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

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

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

1 ~~jurisdiction with a copy filed in that court, the court shall direct~~
2 ~~that the court clerk provide the notice to a parent.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 2. In lieu of the delivery required by paragraph 1 of this
23 section, notice shall be made by certified mail addressed to the
24 parent at the usual place of abode of the parent with return receipt

1 requested and restricted delivery to the addressee, which means a
2 postal employee can deliver the mail only to the authorized
3 addressee. Time of delivery shall be deemed to occur at noon on the
4 third day on which regular mail delivery takes place, subsequent to
5 mailing. The information concerning the address of the parent shall
6 be that which a reasonable and prudent person, under similar
7 circumstances, would have relied upon as sufficient evidence that
8 the parent resides at that address.

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

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

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

6 No notice shall be required under this act if:

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

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

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

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

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

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

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

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