

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend House Bill No. 1361, by striking the title, enacting clause and entire body of the bill and substituting the attached floor substitute.

Submitted by:

Senator Treat

Treat-JAM-FS-Req#1727
4/4/2013 11:31 AM

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

FLOOR SUBSTITUTE
FOR ENGROSSED

HOUSE BILL NO. 1361

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

and

Treat of the Senate

FLOOR SUBSTITUTE

An Act relating to public health and safety; amending
63 O.S. 2011, Section 1-740.2, which relates to
notification and consent of a parent prior to
performance of abortion; adding certain requirements
to parental notice and consent; requiring certain
notice to be filed with certain district court;
permitting court to require evaluation and counseling
session prior to judicial waiver hearing; stating
purpose; amending 63 O.S. 2011, Section 1-740.3,
which relates to judicial authorization prior to
abortion; providing certain factors the court may and
may not consider in assessing certain minor;
providing certain sections be enforced in certain
circumstances; providing for codification; and
providing an effective date.

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

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

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

4 1. Obtained proof of age demonstrating that the female is not a
5 minor;

6 2. Obtained proof that the female, although a minor, is
7 emancipated; or

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

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

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

22 2. In lieu of the delivery required by paragraph 1 of this
23 subsection, the notice and request for written informed consent of
24 one parent shall be made by certified mail addressed to the parent

1 at the usual place of abode of the parent with return-receipt
2 requested and restricted delivery to the addressee, which means a
3 postal employee can only deliver the mail to the authorized
4 addressee. Time of delivery shall be deemed to occur at 12 noon on
5 the next day on which regular mail delivery takes place, subsequent
6 to mailing. The information concerning the address of the parent
7 shall be that which a reasonable and prudent person, under similar
8 circumstances, would have relied upon as sufficient evidence that
9 the parent resides at that address.

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

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 attending physician certifies in the medical records of
18 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.

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 attending physician, or the agent of the physician, shall
9 verbally inform the parent of the minor within twenty-four (24)
10 hours after the performance of a medical emergency abortion or an
11 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.
24

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 of competent jurisdiction 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, ~~either in that court or in another court of~~

1 ~~competent jurisdiction with a copy filed in that court,~~ the court
2 shall direct 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 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-740.2A of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

9 A. Prior to the court hearing for judicial waiver pursuant to
10 Section 1-740.3 of Title 63 of the Oklahoma Statutes, the court may
11 require the pregnant unemancipated minor to participate in an
12 evaluation and counseling session with a mental health professional
13 from the State Department of Health. Such evaluation shall be
14 confidential and scheduled expeditiously.

15 B. Such evaluation and counseling session shall be for the
16 purpose of developing trustworthy and reliable expert opinion
17 concerning the pregnant unemancipated minor's sufficiency of
18 knowledge, insight, judgment, and maturity with regard to her
19 abortion decision in order to aid the court in its decision and to
20 make the resources of the state available to the court for this
21 purpose. Persons conducting such sessions may employ the
22 information and printed materials referred to in Sections 1-738.2
23 and 1-738.3 of Title 63 of the Oklahoma Statutes in examining how
24 well the pregnant unemancipated minor is informed about pregnancy,

1 fetal development, abortion risks and consequences, and abortion
2 alternatives, and should also endeavor to verify that the pregnant
3 unemancipated minor is seeking an abortion of her own free will and
4 is not acting under coercion, intimidation, threats, abuse, undue
5 pressure, or extortion by any other persons.

6 C. The results of such evaluation and counseling shall be
7 reported to the court by the most expeditious means, commensurate
8 with security and confidentiality, to assure receipt by the court
9 prior to a hearing on the petition of the pregnant unemancipated
10 minor.

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

13 Section 1-740.3. A. If a pregnant unemancipated minor elects
14 not to allow the notification and request for written informed
15 consent of her parent, any judge of a district court ~~of competent~~
16 ~~jurisdiction~~ in the county in which the pregnant unemancipated minor
17 resides shall, upon petition or motion, and after an appropriate
18 hearing, authorize a physician to perform the abortion if the judge
19 determines, by clear and convincing evidence, that the pregnant
20 unemancipated minor is mature and capable of giving informed consent
21 to the proposed abortion based upon her experience level,
22 perspective, and judgment. If the judge determines that the
23 pregnant unemancipated minor is not mature, or if the pregnant
24 unemancipated minor does not claim to be mature, the judge shall

1 determine, by clear and convincing evidence, whether the performance
2 of an abortion upon her without notification and written informed
3 consent of her parent would be in her best interest and shall
4 authorize a physician to perform the abortion without notification
5 and written informed consent if the judge concludes that the best
6 interests of the pregnant unemancipated minor would be served
7 thereby.

8 In assessing the experience level of the pregnant unemancipated
9 minor, the court may consider, among other relevant factors, the age
10 of the pregnant unemancipated minor and experiences working outside
11 the home, living away from home, traveling on her own, handling
12 personal finances, and making other significant decisions. In
13 assessing the perspective of the pregnant unemancipated minor, the
14 court may consider, among other relevant factors, what steps the
15 pregnant unemancipated minor took to explore her options and the
16 extent to which she considered and weighed the potential
17 consequences of each option. In assessing the judgment of the
18 pregnant unemancipated minor, the court may consider, among other
19 relevant factors, the conduct of the pregnant unemancipated minor
20 since learning of her pregnancy and her intellectual ability to
21 understand her options and to make an informed decision. In
22 assessing whether, by clear and convincing evidence, obtaining the
23 notification and written informed consent of the parent of the
24 pregnant unemancipated minor is not in her best interest, a court

1 may not consider the potential financial impact on the pregnant
2 unemancipated minor or the family of the pregnant unemancipated
3 minor if she does not have an abortion.

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 district
7 court of competent jurisdiction in the county in which the pregnant
8 unemancipated minor resides shall, upon petition or motion and after
9 an appropriate hearing, authorize the waiving of the required notice
10 of the performed abortion if the judge determines, by clear and
11 convincing evidence, that the unemancipated minor is mature and
12 capable of determining whether notification should be given, or that
13 the waiver would be in the best interest of the unemancipated minor.

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

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

1 and legal conclusions supporting the decision and shall order a
2 record of the evidence to be maintained, including the findings and
3 conclusions of the court.

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

16 SECTION 4. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1-740.13 of Title 63, unless
18 there is created a duplication in numbering, reads as follows:

19 A. A form created by the State Department of Health shall be
20 used by physicians to obtain the consent required prior to
21 performing an abortion on a minor who is not emancipated.

22 B. A form is not valid, and therefore consent is not
23 sufficient, unless:
24

1 1. A parent or legal guardian initials each page of the form,
2 indicating that he or she has read and understands the information
3 included on that page;

4 2. A parent or legal guardian signs the last page of the form
5 in front of a person who is a notary public;

6 3. The minor initials each list of risks and hazards listed in
7 subsection C of this section;

8 4. The minor signs a consent statement described in subsection
9 C of this section; and

10 5. The physician signs the declaration described in subsection
11 C of this section.

12 C. The form shall include, but not be limited to, the
13 following:

14 1. A description of the minor's rights, including her right to
15 informed consent;

16 2. A description of the parent or legal guardian's rights
17 pursuant to Oklahoma law;

18 3. A detailed description of the surgical and medical
19 procedures that are planned to be performed on the minor;

20 4. A detailed list of the risks and hazards related to the
21 surgical and medical procedures planned for the minor, including but
22 not limited to:

- 23 a. risks and hazards that may occur in connection with
24 any surgical, medical, or diagnostic procedure,

1 including but not limited to infection, blood clots in
2 veins and lungs, hemorrhage, allergic reactions, and
3 death,

4 b. risks and hazards that may occur with surgical
5 abortion, including but not limited to hemorrhage,
6 uterine perforation, sterility, injuries to the bowel
7 and bladder, hysterectomy as a result of complication
8 or injury during the procedure, and failure to remove
9 all products of conception that may result in an
10 additional procedure,

11 c. risks and hazards that may occur with a medical or
12 nonsurgical abortion, including but not limited to
13 hemorrhage, failure to remove all products of
14 conception that may result in an additional procedure,
15 sterility, and possible continuation of pregnancy, and

16 d. risks and hazards of the particular procedure planned
17 for the minor, including but not limited to cramping
18 of the uterus, pelvic pain, infection of the uterus,
19 tubes, and ovaries, cervical laceration, incompetent
20 cervix, and emergency treatment for any of the above
21 named complications.

22 5. A description of additional information that must be
23 provided by the physician to the minor pursuant to the provisions of
24 Section 1-730 et seq. of this title;

1 6. A consent statement which must be signed by the minor. The
2 consent statement must include, but not be limited to, the following
3 requirements, which must each be individually initialed by the
4 minor:

- 5 a. that the minor understands that the doctor is going to
6 perform an abortion on her which will end her
7 pregnancy and result in the death of her unborn child,
- 8 b. that the minor is not being forced to have an abortion
9 and that she has the choice not to have the abortion
10 and may withdraw consent prior to the abortion,
- 11 c. that the minor gives permission for the procedure,
- 12 d. that the minor understands that there are risks and
13 hazards that could affect the minor if she has the
14 surgical or medical procedures planned for her,
- 15 e. that the minor has been given the opportunity to ask
16 questions about her condition, alternative forms of
17 treatment, risks of not receiving treatment, the
18 procedures to be used, and the risks and hazards
19 involved,
- 20 f. that the minor has been given information required by
21 Section 1-730 et seq. of this title, and
- 22 g. that the minor has sufficient information to give
23 informed consent.

1 7. A physician declaration, which must be signed by the
2 physician, stating that the physician or his or her assistant has
3 explained the procedure and the contents of this form to the minor
4 and her parent or legal guardian, as required, and has answered all
5 questions. Further, to the best of the physician's knowledge, the
6 patient and her parent or legal guardian have been adequately
7 informed and have consented to the procedure;

8 8. A parental consent statement stating that the signing parent
9 or legal guardian:

- 10 a. understands that the doctor signing the physician
11 declaration is going to perform an abortion on the
12 minor which will end her pregnancy and result in the
13 death of her unborn child,
14 b. that the parent or legal guardian had the opportunity
15 to read this form or have it read to him or her and
16 has initialed each page,
17 c. that the parent or legal guardian had the opportunity
18 to ask questions to the physician or the physician's
19 assistant about the information in this form and the
20 surgical and medical procedures to be performed on the
21 minor,
22 d. that the parent or legal guardian believes he or she
23 has sufficient information to give informed consent,
24 and

e. that by the parent or legal guardian's signature, the parent or legal guardian affirms that he or she is the minor's parent or legal guardian.

9. A page for the parent or legal guardian's signature that must be notarized by a notary public; and

10. Any additional information that must be provided pursuant to applicable laws of this state.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-740.14 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 and 1-740.3 of Title 63 of the Oklahoma Statutes, as amended by Sections 1 and 3 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 6. This act shall become effective November 1, 2013.

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