

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1588

By: Hamilton, Hulbert and Ritze
of the House

and

Griffin of the Senate

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10 COMMITTEE SUBSTITUTE

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

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. 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~~

~~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

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.

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.

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

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

15
16 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 02/18/2013 -
17 DO PASS, As Amended and Coauthored.