An Act

ENROLLED HOUSE
BILL NO. 1361

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

and

Treat, Allen and Johnson (Constance) of the Senate

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.

SUBJECT: Abortion

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:

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 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 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 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, ~~and~~ 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 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.

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

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

B. Such evaluation and counseling session shall be for the purpose of developing trustworthy and reliable expert opinion concerning the pregnant unemancipated minor's sufficiency of knowledge, insight, judgment, and maturity with regard to her abortion decision in order to aid the court in its decision and to make the resources of the state available to the court for this purpose. Persons conducting such sessions may employ the information and printed materials referred to in Sections 1-738.2 and 1-738.3 of Title 63 of the Oklahoma Statutes in examining how well the pregnant unemancipated minor is informed about pregnancy, fetal development, abortion risks and consequences, and abortion alternatives, and should also endeavor to verify that the pregnant unemancipated minor is seeking an abortion of her own free will and is not acting under coercion, intimidation, threats, abuse, undue pressure, or extortion by any other persons.

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

SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-740.3, 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 <u>district</u> court ~~of competent jurisdiction~~ <u>in the county in which the pregnant unemancipated minor resides</u> 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 <u>based upon her experience level,</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

a. risks and hazards that may occur in connection with any surgical, medical, or diagnostic procedure, including but not limited to infection, blood clots in veins and lungs, hemorrhage, allergic reactions, and death,

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

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

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

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

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

a. that the minor understands that the doctor is going to perform an abortion on her which will end her pregnancy and result in the death of her unborn child,

b. that the minor is not being forced to have an abortion and that she has the choice not to have the abortion and may withdraw consent prior to the abortion,

c. that the minor gives permission for the procedure,

d. that the minor understands that there are risks and hazards that could affect the minor if she has the surgical or medical procedures planned for her,

e. that the minor has been given the opportunity to ask questions about her condition, alternative forms of treatment, risks of not receiving treatment, the procedures to be used, and the risks and hazards involved,

f. that the minor has been given information required by Section 1-730 et seq. of this title, and

g. that the minor has sufficient information to give informed consent;

7. A physician declaration, which must be signed by the physician, stating that the physician or his or her assistant has explained the procedure and the contents of this form to the minor

and her parent or legal guardian, as required, and has answered all questions. Further, to the best of the physician's knowledge, the patient and her parent or legal guardian have been adequately informed and have consented to the procedure;

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

a. understands that the doctor signing the physician declaration is going to perform an abortion on the minor which will end her pregnancy and result in the death of her unborn child,

b. that the parent or legal guardian had the opportunity to read this form or have it read to him or her and has initialed each page,

c. that the parent or legal guardian had the opportunity to ask questions to the physician or the physician's assistant about the information in this form and the surgical and medical procedures to be performed on the minor,

d. that the parent or legal guardian believes he or she has sufficient information to give informed consent, 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.

Passed the House of Representatives the 7th 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 8th

day of May, 20 13, at 3:28 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 14th

day of May, 20 13, at 2:32 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 14th

day of May, 20 13, at 4:02 o'clock P. M.

By: Chris Morris