

HOUSE BILL 1335

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By: **Delegates Parrott, Glass, Malone, McComas, McConkey, Otto, Rey, and Wivell**
Introduced and read first time: February 9, 2018
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Health – Abortions Sought by Minors – Parent or Guardian Consent**

3 FOR the purpose of prohibiting a physician, except under certain circumstances, from
4 performing an abortion on an unmarried minor unless the physician obtains certain
5 consent from the parent or guardian of the minor; authorizing a physician to perform
6 an abortion on a minor without the consent of the minor's parent or guardian under
7 certain circumstances; authorizing a minor to file a certain petition with a certain
8 court for a certain waiver; requiring the court to advise the minor of certain rights
9 regarding legal counsel and to appoint counsel under certain circumstances;
10 authorizing the court to allow the minor to represent herself; prohibiting the court
11 from imposing certain fees and costs; requiring a certain proceeding to be
12 confidential and to take precedence over other pending matters for a certain purpose;
13 requiring the court to issue a certain order within a certain period of time except
14 under certain circumstances; requiring that a certain petition be granted and that a
15 certain consent requirement be waived if the court fails to make a certain ruling
16 within a certain period of time; requiring the court to issue an order waiving a certain
17 consent requirement if the court makes a certain finding; requiring the court to
18 include a certain requirement in a certain order except under certain circumstances;
19 authorizing a certain appeal under certain circumstances; requiring a court to hear
20 and decide a certain appeal within a certain time period; requiring that the decision
21 of a certain court be reversed and that a certain consent requirement be waived if
22 the court fails to rule on the appeal within a certain period of time; prohibiting an
23 order authorizing an abortion without consent of the minor's parent or guardian from
24 being subject to appeal; repealing certain provisions of law prohibiting a physician
25 from performing an abortion on an unmarried minor unless the physician gives
26 certain notice to a parent or guardian, except under certain circumstances; repealing
27 certain provisions of law authorizing a physician to perform an abortion without
28 notice to a minor's parent or guardian under certain circumstances; repealing a
29 certain provision of law providing that a certain postal receipt shall be considered
30 certain notice; repealing a certain provision of law prohibiting a physician from
31 providing certain notice under certain circumstances; defining certain terms; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 generally relating to the requirement for parent or guardian consent when an
2 unmarried minor seeks an abortion.

3 BY repealing and reenacting, with amendments,
4 Article – Health – General
5 Section 20–103
6 Annotated Code of Maryland
7 (2015 Replacement Volume and 2017 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
9 That the Laws of Maryland read as follows:

10 **Article – Health – General**

11 20–103.

12 (a) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
13 INDICATED.

14 (2) “CONSENT” MEANS:

15 (I) A WRITTEN STATEMENT FROM THE MINOR’S PARENT OR
16 GUARDIAN THAT WAS NOTARIZED WITHIN 30 DAYS BEFORE RECEIPT BY THE
17 PHYSICIAN STATING THAT THE PARENT OR GUARDIAN AUTHORIZES THE ABORTION;
18 OR

19 (II) WRITTEN AUTHORIZATION FOR THE ABORTION PROVIDED
20 TO THE PHYSICIAN DURING A CONSULTATION BY THE MINOR’S PARENT OR
21 GUARDIAN WHO ACCOMPANIED THE MINOR TO THE CONSULTATION WITH THE
22 PHYSICIAN.

23 (3) “MEDICAL EMERGENCY” MEANS A CONDITION THAT, ON THE
24 BASIS OF THE PHYSICIAN’S GOOD FAITH CLINICAL JUDGMENT, COMPLICATES THE
25 MEDICAL CONDITION OF A PREGNANT MINOR AS TO NECESSITATE THE IMMEDIATE
26 ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR FOR WHICH A DELAY WILL
27 CREATE A SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A
28 MAJOR BODILY FUNCTION.

29 (4) “NOTICE” MEANS NOTICE GIVEN TO THE MINOR’S PARENT OR
30 GUARDIAN BY THE PHYSICIAN OR THE PHYSICIAN’S AGENT:

31 (I) IN PERSON AT LEAST 24 HOURS BEFORE THE
32 PERFORMANCE OF AN ABORTION;

33 (II) BY TELEPHONE AT LEAST 24 HOURS BEFORE THE

1 **PERFORMANCE OF AN ABORTION; OR**

2 **(III) BY CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THE**
3 **PARENT OR GUARDIAN WITH RETURN RECEIPT REQUESTED AND RESTRICTED**
4 **DELIVERY TO THE ADDRESSEE, IF THE PHYSICIAN OR THE PHYSICIAN'S AGENT MADE**
5 **A REASONABLE EFFORT TO NOTIFY THE PARENTS IN PERSON OR BY TELEPHONE.**

6 **(B) (1) Except as provided in [subsections (b) and (c)] PARAGRAPHS (2) AND**
7 **(3) of this [section] SUBSECTION, a physician may not perform an abortion on an**
8 **unmarried minor unless the physician first [gives notice to a parent or guardian of the**
9 **minor] OBTAINS CONSENT FROM THE PARENT OR GUARDIAN OF THE MINOR TO**
10 **PERFORM THE ABORTION.**

11 **[(b)] (2) The physician may perform the abortion without [notice to a] THE**
12 **CONSENT OF THE MINOR'S parent or guardian if[:**

13 (1) The minor does not live with a parent or guardian; and

14 (2) A reasonable effort to give notice to a parent or guardian is
15 unsuccessful] **THE MINOR PROVIDES TO THE PHYSICIAN A COURT ORDER**
16 **AUTHORIZING A WAIVER OF PARENTAL CONSENT ISSUED IN ACCORDANCE WITH**
17 **SUBSECTION (C) OF THIS SECTION AND THE PHYSICIAN OR AN AGENT OF THE**
18 **PHYSICIAN PROVIDES ANY NOTICE REQUIRED BY THE ORDER.**

19 **(3) A PHYSICIAN MAY PERFORM AN ABORTION WITHOUT THE**
20 **CONSENT OF THE MINOR'S PARENT OR GUARDIAN OR A COURT ORDER AUTHORIZING**
21 **A WAIVER OF PARENTAL CONSENT ISSUED IN ACCORDANCE WITH SUBSECTION (C)**
22 **OF THIS SUBSECTION IF:**

23 **(I) 1. THE MINOR DECLARES THAT SHE WAS ABUSED OR**
24 **NEGLECTED;**

25 **2. THE PHYSICIAN HAS REASON TO BELIEVE THE MINOR**
26 **MAY BE AN ABUSED OR NEGLECTED CHILD; AND**

27 **3. THE PHYSICIAN REPORTS THE SUSPECTED ABUSE OR**
28 **NEGLECT IN ACCORDANCE WITH § 5-704 OF THE FAMILY LAW ARTICLE; OR**

29 **(II) 1. THERE IS A MEDICAL EMERGENCY; AND**

30 **2. THE PHYSICIAN CERTIFIES THE FACTS JUSTIFYING**
31 **THE EXCEPTION IN THE MINOR'S MEDICAL RECORD.**

32 **[(c) (1) The physician may perform the abortion, without notice to a parent or**

1 guardian of a minor if, in the professional judgment of the physician:

2 (i) Notice to the parent or guardian may lead to physical or
3 emotional abuse of the minor;

4 (ii) The minor is mature and capable of giving informed consent to
5 an abortion; or

6 (iii) Notification would not be in the best interest of the minor.

7 (2) The physician is not liable for civil damages or subject to a criminal
8 penalty for a decision under this subsection not to give notice.

9 (d) The postal receipt that shows an article of mail was sent by certified mail,
10 return receipt requested, bearing a postmark from the United States Postal Service, to the
11 last known address of a parent or guardian and that is attached to a copy of the notice letter
12 that was sent in that article of mail shall be conclusive evidence of notice or a reasonable
13 effort to give notice, as the case may be.

14 (e) A physician may not provide notice to a parent or guardian if the minor decides
15 not to have the abortion.]

16 **(C) (1) A MINOR MAY FILE A PETITION WITH THE CIRCUIT COURT FOR
17 THE COUNTY WHERE THE MINOR RESIDES OR WHERE THE PHYSICIAN'S OFFICE IS
18 LOCATED TO SEEK AN ORDER WAIVING THE REQUIREMENT THAT A PHYSICIAN
19 OBTAIN CONSENT FROM THE MINOR'S PARENT OR GUARDIAN UNDER SUBSECTION
20 (B)(1) OF THIS SECTION.**

21 **(2) (I) THE COURT SHALL ADVISE THE MINOR OF THE MINOR'S
22 RIGHT TO COURT-APPOINTED COUNSEL AND SHALL, ON THE REQUEST OF THE
23 MINOR, APPOINT COUNSEL.**

24 **(II) THE COURT MAY ALLOW THE MINOR TO REPRESENT
25 HERSELF.**

26 **(3) THE COURT MAY NOT IMPOSE FILING FEES OR COSTS ON A MINOR
27 WHO FILES A PETITION FOR WAIVER OF CONSENT UNDER THIS SUBSECTION.**

28 **(4) COURT PROCEEDINGS CONDUCTED IN ACCORDANCE WITH THIS
29 SUBSECTION SHALL:**

30 **(I) BE CONFIDENTIAL; AND**

31 **(II) BE GIVEN PRECEDENCE OVER OTHER PENDING MATTERS
32 SO THAT THE COURT MAY REACH A PROMPT DECISION TO SERVE THE BEST**

1 INTEREST OF THE MINOR.

2 (5) (I) THE COURT SHALL ISSUE AN ORDER, INCLUDING WRITTEN
3 FACTUAL FINDINGS AND LEGAL CONCLUSIONS, IN A PROCEEDING UNDER THIS
4 SUBSECTION WITHIN 4 DAYS AFTER THE FILING OF THE PETITION UNLESS THIS TIME
5 PERIOD IS EXTENDED AT THE REQUEST OF THE MINOR.

6 (II) IF THE COURT FAILS TO ISSUE AN ORDER WITHIN 4 DAYS
7 AFTER THE FILING AND THE TIME IS NOT EXTENDED, THE PETITION SHALL BE
8 GRANTED AND THE PARENTAL CONSENT REQUIREMENT SHALL BE WAIVED.

9 (6) (I) THE COURT SHALL ISSUE AN ORDER WAIVING THE
10 PARENTAL CONSENT REQUIREMENT IF THE COURT FINDS, BY CLEAR AND
11 CONVINCING EVIDENCE, THAT:

12 1. THE MINOR IS SUFFICIENTLY MATURE AND
13 INFORMED TO DECIDE, IN CONSULTATION WITH HER PHYSICIAN, WHETHER TO HAVE
14 AN ABORTION; OR

15 2. CONSENT BY A PARENT OR GUARDIAN IS NOT IN THE
16 BEST INTEREST OF THE MINOR.

17 (II) 1. EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 2 OF
18 THIS SUBPARAGRAPH, IF THE COURT ISSUES AN ORDER WAIVING THE PARENTAL
19 CONSENT REQUIREMENT BECAUSE THE COURT FINDS THAT CONSENT BY A PARENT
20 OR GUARDIAN IS NOT IN THE BEST INTEREST OF THE MINOR, THE COURT SHALL IN
21 ITS ORDER REQUIRE THE PHYSICIAN OR THE PHYSICIAN'S AGENT TO GIVE NOTICE
22 TO THE MINOR'S PARENT OR GUARDIAN OF THE PHYSICIAN'S INTENT TO PERFORM
23 THE ABORTION.

24 2. IF THE COURT FINDS THAT NOTICE IS NOT IN THE
25 BEST INTEREST OF THE MINOR, INCLUDING BY FINDING THAT THERE IS A PATTERN
26 OF PHYSICAL, SEXUAL, OR EMOTIONAL ABUSE OR NEGLECT OF THE MINOR BY THE
27 PARENT OR GUARDIAN, THE COURT MAY NOT REQUIRE THE PHYSICIAN OR THE
28 PHYSICIAN'S AGENT TO GIVE NOTICE OF THE PHYSICIAN'S INTENT TO PERFORM THE
29 ABORTION TO THE PARENT OR GUARDIAN.

30 (7) (I) AN EXPEDITED, CONFIDENTIAL APPEAL SHALL BE
31 AVAILABLE, IN ACCORDANCE WITH THE MARYLAND RULES, TO A MINOR FOR WHOM
32 THE COURT DENIES A PETITION TO WAIVE THE PARENTAL CONSENT REQUIREMENT.

33 (II) ANY APPEAL SHALL BE HEARD AND DECIDED WITHIN 5 DAYS
34 AFTER THE APPEAL IS FILED.

1 **(III) IF THE COURT FAILS TO RULE ON THE APPEAL WITHIN 5**
2 **DAYS AFTER THE APPEAL IS FILED AND THE TIME IS NOT EXTENDED, THE DECISION**
3 **OF THE LOWER COURT SHALL BE REVERSED AND THE CONSENT REQUIREMENT**
4 **SHALL BE WAIVED.**

5 **(8) AN ORDER AUTHORIZING AN ABORTION WITHOUT CONSENT OF**
6 **THE MINOR'S PARENT OR GUARDIAN MAY NOT BE APPEALED.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2018.