

SENATE BILL 758

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2000 Regular Session  
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By: **Senators Hooper, Haines, Jacobs, Dyson, Stone, and Harris**  
Introduced and read first time: February 4, 2000  
Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Abortion - Minors - Parental Notification**

3 FOR the purpose of prohibiting a physician from performing abortions on certain  
4 minors until 48 hours after the physician gives written notice to the minor's  
5 parent or guardian; authorizing a physician to perform abortions on minors  
6 under certain circumstances without giving notice to the minor's parent or  
7 guardian; authorizing minors to seek a waiver of the parental notification  
8 requirement from a judge in the Family Law Division of a circuit court;  
9 prohibiting a circuit court from imposing any filing fees on minors; requiring the  
10 Department of Health and Mental Hygiene to create fact sheets for distribution  
11 to certain minors seeking abortion services; requiring the Department to  
12 distribute fact sheets to certain hospitals, facilities, agencies, and physicians;  
13 making provisions of this Act severable; requiring the Board of Physician  
14 Quality Assurance to maintain a record of physicians who violate this Act;  
15 authorizing the Board to refer matters to the Attorney General; and generally  
16 relating to parental notification prior to performing abortions on minors.

17 BY repealing  
18 Article - Health - General  
19 Section 20-103  
20 Annotated Code of Maryland  
21 (1996 Replacement Volume and 1999 Supplement)

22 BY adding to  
23 Article - Health - General  
24 Section 20-103  
25 Annotated Code of Maryland  
26 (1996 Replacement Volume and 1999 Supplement)

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

1 **Article - Health - General**

2 [20-103.

3 (a) Except as provided in subsections (b) and (c) of this section, a physician  
4 may not perform an abortion on an unmarried minor unless the physician first gives  
5 notice to a parent or guardian of the minor.

6 (b) The physician may perform the abortion without notice to a parent or  
7 guardian if:

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

9 (2) A reasonable effort to give notice to a parent or guardian is  
10 unsuccessful.

11 (c) (1) The physician may perform the abortion, without notice to a parent  
12 or guardian of a minor if, in the professional judgment of the physician:

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

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

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

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

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

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

27 20-103.

28 (A) (1) A PHYSICIAN MAY NOT PERFORM AN ABORTION ON AN UNMARRIED  
29 MINOR UNTIL 48 HOURS AFTER THE PHYSICIAN GIVES WRITTEN NOTICE OF THE  
30 PENDING OPERATION TO THE MINOR'S PARENT OR GUARDIAN.

31 (2) THE 48-HOUR PERIOD FOR NOTICE REQUIRED UNDER THIS  
32 SUBSECTION SHALL BEGIN AT NOON ON THE NEXT DAY ON WHICH REGULAR MAIL  
33 DELIVERY TAKES PLACE AFTER THE DAY THE NOTICE HAS A POSTMARK FROM THE  
34 UNITED STATES POSTAL SERVICE.

35 (B) NOTICE SHALL BE:

1 (1) DELIVERED PERSONALLY TO THE PARENT BY THE PHYSICIAN,  
2 ADDRESSED TO THE PARENT AT THE PARENT'S LAST KNOWN ADDRESS; OR

3 (2) MAILED BY CERTIFIED MAIL TO THE PARENT AT THE PARENT'S LAST  
4 KNOWN ADDRESS WITH RETURN RECEIPT REQUESTED AND RESTRICTED DELIVERY  
5 TO THE ADDRESSEE.

6 (C) A PHYSICIAN MAY PERFORM AN ABORTION ON A MINOR WITHOUT GIVING  
7 NOTICE TO A PARENT OR GUARDIAN IF:

8 (1) THE PARENT WHO IS ENTITLED TO NOTICE STATES IN A NOTARIZED  
9 WRITING THAT NOTICE WAS RECEIVED; OR

10 (2) THE ATTENDING PHYSICIAN CERTIFIES IN THE MINOR'S MEDICAL  
11 RECORDS THAT THE ABORTION IS NECESSARY TO PREVENT THE DEATH OF THE  
12 MINOR.

13 (D) (1) A MINOR MAY SEEK WAIVER OF PARENTAL NOTIFICATION FROM A  
14 JUDGE IN THE FAMILY LAW DIVISION OF A CIRCUIT COURT.

15 (2) THE PETITION SHALL INCLUDE A STATEMENT THAT THE MINOR IS  
16 PREGNANT, AND NOT MARRIED.

17 (3) THE COURT MAY APPOINT A GUARDIAN AD LITEM FOR THE MINOR,  
18 OR PERMIT THE MINOR TO REPRESENT HERSELF.

19 (4) THE COURT MAY NOT IMPOSE FILING FEE CHARGES ON A MINOR  
20 WHO FILES A MOTION FOR WAIVER OF PARENTAL NOTIFICATION UNDER THIS  
21 SECTION.

22 (5) THE COURT SHALL ADVISE THE MINOR OF THE MINOR'S RIGHT TO  
23 COURT APPOINTED COUNSEL AND SHALL, UPON THE MINOR'S REQUEST, PROVIDE  
24 COUNSEL.

25 (6) COURT PROCEEDINGS UNDER THIS SECTION SHALL BE  
26 CONFIDENTIAL, ENSURE THE ANONYMITY OF THE MINOR, AND BE GIVEN  
27 PRECEDENCE OVER OTHER PENDING MATTERS SO THAT THE COURT MAY REACH A  
28 PROMPT DECISION TO SERVE THE BEST INTEREST OF THE MINOR.

29 (E) (1) THE COURT SHALL MAKE WRITTEN FACTUAL FINDINGS AND LEGAL  
30 CONCLUSIONS IN PROCEEDINGS CONDUCTED UNDER THIS SECTION WITHIN 48  
31 HOURS OF THE TIME THAT THE MOTION IS FILED UNLESS THE TIME IS EXTENDED AT  
32 THE REQUEST OF THE MINOR.

33 (2) (I) IF THE COURT FAILS TO RULE WITHIN 48 HOURS AND THE TIME  
34 IS NOT EXTENDED, THE PETITION IS GRANTED AND THE NOTICE REQUIREMENT  
35 SHALL BE WAIVED.

1 (II) THE JUDGE SHALL ORDER A RECORD OF THE EVIDENCE TO BE  
2 MAINTAINED INCLUDING THE JUDGE'S WRITTEN FACTUAL FINDINGS AND LEGAL  
3 CONCLUSIONS SUPPORTING THE DECISION.

4 (F) (1) THE JUDGE SHALL AUTHORIZE A WAIVER OF PARENTAL  
5 NOTIFICATION IF THE JUDGE, BY CLEAR AND CONVINCING EVIDENCE, FINDS THAT:

6 (I) THE MINOR IS SUFFICIENTLY MATURE TO DECIDE WHETHER  
7 TO HAVE AN ABORTION;

8 (II) THERE IS EVIDENCE OF A PATTERN OF PHYSICAL, SEXUAL, OR  
9 EMOTIONAL ABUSE OF THE MINOR BY THE PARENT, GUARDIAN, OR LEGAL  
10 CUSTODIAN; OR

11 (III) THE NOTIFICATION OF THE PARENT IS NOT IN THE BEST  
12 INTERESTS OF THE MINOR.

13 (2) THE JUDGE SHALL DISMISS THE PETITION AND NOTICE SHALL BE  
14 GIVEN AS PROVIDED FOR IN PARAGRAPH (B) OF THIS SECTION IF THE JUDGE DOES  
15 NOT MAKE A FINDING SPECIFIED IN THIS SUBSECTION.

16 (G) (1) THE COURT SHALL MAKE AN EXPEDITED CONFIDENTIAL APPEAL  
17 AVAILABLE TO A MINOR FOR WHOM THE COURT DENIES AN ORDER WAIVING  
18 NOTIFICATION.

19 (2) ACCESS TO THE TRIAL COURT FOR THE PURPOSES OF SUCH AN  
20 APPEAL AND ACCESS TO THE APPELLATE COURTS OF THE STATE FOR PURPOSES OF  
21 MAKING AN APPEAL FROM DENIAL OF AN ORDER WAIVING NOTIFICATION SHALL BE  
22 AFFORDED THE MINOR ON AN EMERGENCY BASIS IN ACCORDANCE WITH THE  
23 MARYLAND RULES.

24 (H) (1) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL  
25 PREPARE A FACT SHEET FOR DISTRIBUTION TO UNMARRIED PREGNANT MINORS  
26 WHO SEEK ABORTION SERVICES.

27 (2) THE DEPARTMENT SHALL WRITE THE FACT SHEET IN TERMS  
28 GENERALLY UNDERSTOOD BY A TEENAGER THAT EXPLAINS THE PARENTAL  
29 NOTIFICATION REQUIREMENTS UNDER THIS SECTION.

30 (3) THE FACT SHEET SHALL INCLUDE, BUT IS NOT LIMITED TO, THE  
31 FOLLOWING INFORMATION:

32 (I) THAT A MINOR MAY SEEK A WAIVER OF PARENTAL  
33 NOTIFICATION FROM THE FAMILY LAW DIVISION OF A CIRCUIT COURT IN ANY  
34 COUNTY IN MARYLAND;

35 (II) THAT A MINOR MAY PARTICIPATE IN PROCEEDINGS IN THE  
36 COURT ON HER OWN BEHALF;

1 (III) THAT THE COURT MAY APPOINT A GUARDIAN AD LITEM FOR  
2 THE MINOR;

3 (IV) THAT A MINOR HAS A RIGHT TO COURT APPOINTED COUNSEL,  
4 WHICH SHALL BE PROVIDED TO THE MINOR UPON REQUEST; AND

5 (V) THE PROCEDURE FOR PETITIONING BEFORE THE COURT.

6 (I) (1) THE DEPARTMENT SHALL DISTRIBUTE THE FACT SHEET, AT NO  
7 CHARGE, TO AMBULATORY CARE FACILITIES AND HOSPITALS, PUBLIC AND PRIVATE  
8 AGENCIES, AND PHYSICIANS' OFFICES THAT PROVIDE FAMILY PLANNING SERVICES  
9 AND PRENATAL CARE.

10 (2) THE PHYSICIAN WHO IS RESPONSIBLE FOR PROVIDING  
11 NOTIFICATION TO A MINOR'S PARENT OR GUARDIAN UNDER THIS SECTION SHALL  
12 PROVIDE THE MINOR WITH A COPY OF THE FACT SHEET AT THE TIME THE MINOR  
13 INITIALLY REQUESTS ABORTION SERVICES.

14 (J) A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION SHALL BE  
15 GUILTY OF A MISDEMEANOR AND UPON CONVICTION IS SUBJECT TO A FINE NOT  
16 EXCEEDING \$1,000.

17 (K) A PHYSICIAN MAY NOT BE HELD LIABLE UNDER THIS SECTION IF THE  
18 PHYSICIAN ESTABLISHES BY WRITTEN EVIDENCE THAT THE PHYSICIAN HAS MADE  
19 EVERY EFFORT TO COMPLY, WITH REASONABLE DILIGENCE, TO DELIVER NOTICE,  
20 BUT HAS BEEN UNABLE TO DO SO.

21 (L) (1) THE BOARD OF PHYSICIAN QUALITY ASSURANCE SHALL MAINTAIN A  
22 RECORD OF ANY PHYSICIAN WHO VIOLATES THE PROVISIONS OF THIS SECTION.

23 (2) IF THE BOARD DETERMINES THAT A PHYSICIAN VIOLATED THE  
24 PROVISIONS OF THIS SECTION, THE BOARD MAY REFER THE MATTER TO THE  
25 ATTORNEY GENERAL, WHO SHALL ENFORCE THIS SECTION.

26 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this  
27 Act or the application thereof to any person or circumstance is held invalid for any  
28 reason in a court of competent jurisdiction, the invalidity does not affect other  
29 provisions or any other application of this Act which can be given effect without the  
30 invalid provision or application, and for this purpose the provisions of this Act are  
31 declared severable.

32 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
33 October 1, 2000.