

SENATE BILL 643

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SB 758/00 - JPR

2001 Regular Session
11r1753

By: **Senators Hooper, Colburn, DeGrange, Ferguson, Haines, Harris,
Jacobs, Jimeno, McCabe, Mooney, Stoltzfus, and Stone**

Introduced and read first time: February 2, 2001

Assigned to: Judicial Proceedings

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 circuit court; prohibiting a circuit court from imposing any
9 filing fees or costs on minors; requiring the Department of Health and Mental
10 Hygiene to create fact sheets for distribution to certain minors seeking abortion
11 services; requiring the Department to distribute fact sheets to certain hospitals,
12 facilities, agencies, and physicians; making provisions of this Act severable;
13 requiring the Board of Physician Quality Assurance to maintain a record of
14 physicians who violate this Act; authorizing the Board to refer matters to the
15 Attorney General; and generally relating to parental notification prior to
16 performing abortions on minors.

17 BY repealing

18 Article - Health - General
19 Section 20-103
20 Annotated Code of Maryland
21 (2000 Replacement Volume)

22 BY adding to

23 Article - Health - General
24 Section 20-103
25 Annotated Code of Maryland
26 (2000 Replacement Volume)

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 PROCEDURE 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 IS POSTMARKED BY THE
34 UNITED STATES POSTAL SERVICE.

35 (B) THE 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 CIRCUIT COURT.

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

17 (3) A PETITION FILED IN A COURT THAT HAS A FAMILY DIVISION SHALL
18 BE ASSIGNED TO THAT DIVISION.

19 (4) THE COURT MAY APPOINT AN ATTORNEY FOR THE MINOR, OR
20 PERMIT THE MINOR TO REPRESENT HERSELF.

21 (5) THE COURT MAY NOT IMPOSE A FILING FEE OR COSTS ON A MINOR
22 WHO FILES A PETITION FOR WAIVER OF PARENTAL NOTIFICATION UNDER THIS
23 SECTION.

24 (6) THE COURT SHALL ADVISE THE MINOR OF THE MINOR'S RIGHT TO
25 COURT APPOINTED COUNSEL AND SHALL, UPON THE MINOR'S REQUEST, APPOINT
26 COUNSEL.

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

31 (E) (1) THE COURT SHALL ISSUE A DECISION, WHICH SHALL INCLUDE
32 WRITTEN FACTUAL FINDINGS AND LEGAL CONCLUSIONS, IN A PROCEEDING UNDER
33 THIS SECTION WITHIN 48 HOURS AFTER THE PETITION IS FILED UNLESS THE TIME IS
34 EXTENDED AT THE REQUEST OF THE MINOR.

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

1 (II) THE COURT 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 COURT SHALL AUTHORIZE A WAIVER OF PARENTAL
5 NOTIFICATION IF THE COURT FINDS, BY CLEAR AND CONVINCING EVIDENCE, 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) NOTIFICATION OF THE PARENT IS NOT IN THE BEST INTERESTS
12 OF THE MINOR.

13 (2) IF THE COURT DOES NOT MAKE A FINDING SPECIFIED UNDER
14 PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL DISMISS THE PETITION
15 AND NOTICE SHALL BE GIVEN IN ACCORDANCE WITH SUBSECTION (B) OF THIS
16 SECTION.

17 (G) AN EXPEDITED, CONFIDENTIAL APPEAL SHALL BE AVAILABLE, IN
18 ACCORDANCE WITH THE MARYLAND RULES, TO A MINOR FOR WHOM THE COURT
19 DENIES AN ORDER WAIVING PARENTAL NOTIFICATION.

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

23 (2) THE FACT SHEET SHALL BE WRITTEN IN TERMS GENERALLY
24 UNDERSTOOD BY A TEENAGER AND SHALL EXPLAIN THE PARENTAL NOTIFICATION
25 REQUIREMENTS UNDER THIS SECTION.

26 (3) THE FACT SHEET SHALL INCLUDE, THE FOLLOWING INFORMATION:

27 (I) THAT A MINOR MAY SEEK A WAIVER OF PARENTAL
28 NOTIFICATION FROM A CIRCUIT COURT IN ANY COUNTY IN MARYLAND;

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

31 (III) THAT A MINOR HAS A RIGHT TO COURT APPOINTED COUNSEL,
32 WHICH SHALL BE PROVIDED TO THE MINOR UPON REQUEST; AND

33 (IV) THE PROCEDURE FOR PETITIONING THE COURT.

34 (I) (1) THE DEPARTMENT SHALL DISTRIBUTE THE FACT SHEET, AT NO
35 CHARGE, TO AMBULATORY CARE FACILITIES AND HOSPITALS, PUBLIC AND PRIVATE

1 AGENCIES, AND PHYSICIANS' OFFICES THAT PROVIDE FAMILY PLANNING SERVICES
2 AND PRENATAL CARE.

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

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

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

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

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

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

25 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2001.