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Introduced and read first time: February 7, 2003
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Health - Abortion - Parental Notice**

3 FOR the purpose of prohibiting a physician from performing an abortion on an
4 unmarried minor unless the physician gave certain notice to a parent of the
5 minor; authorizing a physician to perform an abortion on a minor under certain
6 circumstances; providing that a minor may not be coerced to have an abortion;
7 providing that a minor shall be deemed emancipated if the minor is denied
8 financial support from a parent for a certain reason; authorizing a minor to file
9 a certain petition with a certain court for a certain waiver; requiring the petition
10 to include a certain statement about the minor; requiring the court to assign the
11 petition to a certain division under certain circumstances; requiring the court to
12 advise the minor of certain rights regarding legal counsel; authorizing the court
13 to permit the minor to represent herself; prohibiting the court from imposing
14 certain fees and costs; requiring a certain proceeding to be confidential to ensure
15 the anonymity of a certain minor and to take precedence over other pending
16 matters; requiring the court to issue a decision within a certain period of time;
17 authorizing the minor to request an extension of this period of time; providing
18 that the petition is granted if the court fails to rule within a certain period of
19 time; requiring the court to order that a certain record be maintained; requiring
20 the court to authorize a waiver of a certain notification requirement if there is a
21 pattern of certain abuse of the minor; dismissing the petition under certain
22 circumstances; authorizing a certain appeal; requiring the Department of
23 Health and Mental Hygiene to prepare a certain fact sheet; requiring that the
24 fact sheet be written in terms generally understood by a certain minor and
25 explain a certain parental notification requirement; requiring that the fact sheet
26 include certain information; requiring the Department to distribute the fact
27 sheet to certain entities; requiring a physician to provide the fact sheet to a
28 certain minor; making it a misdemeanor to violate this Act; providing certain
29 penalties; exempting a certain physician from certain liability under certain
30 circumstances; defining certain terms; and generally relating to the

1 requirement for parental notice when an unmarried minor seeks an abortion.

2 BY repealing and reenacting, with amendments,

3 Article - Health - General

4 Section 20-103

5 Annotated Code of Maryland

6 (2000 Replacement Volume and 2002 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Health - General**

10 20-103.

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

13 (2) "ACTUAL NOTICE" MEANS A PARENT HAS ACCOMPANIED THE MINOR
14 TO A CONSULTATION WITH A PHYSICIAN DURING WHICH THE ABORTION DECISION IS
15 CONSIDERED AND NOTICE IS GIVEN DIRECTLY TO THE PARENT FROM THE
16 PHYSICIAN.

17 (3) "CONSTRUCTIVE NOTICE" MEANS NOTICE HAS BEEN SENT BY
18 CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF A PARENT WITH RETURN
19 RECEIPT REQUESTED AND RESTRICTED DELIVERY TO THE ADDRESSEE.

20 (4) "MEDICAL EMERGENCY" MEANS A CONDITION THAT, ON THE BASIS
21 OF THE PHYSICIAN'S GOOD FAITH CLINICAL JUDGMENT, SO COMPLICATES THE
22 MEDICAL CONDITION OF A PREGNANT MINOR AS TO NECESSITATE THE IMMEDIATE
23 ABORTION OF HER PREGNANCY TO AVERT HER DEATH OR FOR WHICH A DELAY WILL
24 CREATE A SERIOUS RISK OF SUBSTANTIAL AND IRREVERSIBLE IMPAIRMENT OF A
25 MAJOR BODILY FUNCTION.

26 (5) "PARENT" MEANS:

27 (I) A NATURAL OR ADOPTIVE PARENT WHOSE RIGHTS HAVE NOT
28 BEEN TERMINATED; OR

29 (II) A LEGAL GUARDIAN.

30 (B) (1) Except as provided in [subsections (b) and] SUBSECTION (c) of this
31 section, a physician may not perform an abortion on an unmarried minor unless:

32 (I) [the] THE physician [first gives] GAVE ACTUAL notice OF THE
33 PENDING PROCEDURE to a parent [or guardian] of the minor; OR

34 (II) 48 HOURS HAVE ELAPSED SINCE THE PHYSICIAN GAVE
35 CONSTRUCTIVE NOTICE OF THE PENDING PROCEDURE TO A PARENT OF THE MINOR.

1 (2) THE 48-HOUR PERIOD REQUIRED UNDER PARAGRAPH (1)(II) OF THIS
2 SUBSECTION SHALL BEGIN AT NOON ON THE NEXT DAY THAT REGULAR MAIL
3 DELIVERY TAKES PLACE FOLLOWING THE DAY THAT THE NOTICE IS POSTMARKED
4 BY THE UNITED STATES POSTAL SERVICE.

5 [(b)] (C) [The] A physician may perform [the] AN abortion ON A MINOR
6 without GIVING notice to a parent [or guardian] if:

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

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

10 (1) THE PHYSICIAN RECEIVES A WRITTEN STATEMENT FROM THE
11 PARENT THAT WAS NOTARIZED WITHIN THE LAST 30 DAYS STATING THAT THE
12 PARENT IS AWARE OF THE PENDING PROCEDURE;

13 (2) THE PHYSICIAN CERTIFIES IN THE MINOR'S MEDICAL RECORD THAT
14 A MEDICAL EMERGENCY EXISTS AND THERE IS INSUFFICIENT TIME TO PROVIDE THE
15 REQUIRED NOTICE; OR

16 (3) NOTICE IS WAIVED UNDER SUBSECTION (F) OR (G) OF THIS SECTION.

17 (D) (1) A MINOR MAY NOT BE COERCED TO HAVE AN ABORTION.

18 (2) IF A MINOR IS DENIED FINANCIAL SUPPORT BY THE MINOR'S
19 PARENT DUE TO THE MINOR'S REFUSAL TO HAVE AN ABORTION, THE MINOR SHALL
20 BE DEEMED EMANCIPATED FOR THE PURPOSES OF ELIGIBILITY FOR
21 PUBLIC-ASSISTANCE BENEFITS.

22 (E) (1) A MINOR MAY FILE A PETITION WITH THE CIRCUIT COURT FOR THE
23 COUNTY WHERE THE MINOR RESIDES OR WHERE THE PHYSICIAN'S OFFICE IS
24 LOCATED TO SEEK A WAIVER OF THE PARENTAL NOTIFICATION REQUIRED UNDER
25 SUBSECTION (B) OF THIS SECTION.

26 (2) THE PETITION SHALL INCLUDE A STATEMENT THAT THE MINOR IS
27 PREGNANT AND IS UNMARRIED.

28 (3) A PETITION FILED IN A COURT THAT HAS A FAMILY DIVISION SHALL
29 BE ASSIGNED TO THE FAMILY DIVISION.

30 (4) (I) THE COURT SHALL ADVISE THE MINOR OF THE MINOR'S RIGHT
31 TO COURT-APPOINTED COUNSEL AND SHALL, UPON THE MINOR'S REQUEST,
32 APPOINT COUNSEL.

33 (II) THE COURT MAY PERMIT THE MINOR TO REPRESENT HERSELF.

34 (5) THE COURT MAY NOT IMPOSE A FILING FEE OR COSTS ON A MINOR
35 WHO FILES A PETITION FOR WAIVER OF PARENTAL NOTIFICATION UNDER THIS
36 SUBSECTION.

1 (6) COURT PROCEEDINGS UNDER THIS SECTION SHALL:

2 (I) BE CONFIDENTIAL;

3 (II) ENSURE THE ANONYMITY OF THE MINOR; AND

4 (III) BE GIVEN PRECEDENCE OVER OTHER PENDING MATTERS SO
5 THAT THE COURT MAY REACH A PROMPT DECISION TO SERVE THE BEST INTEREST
6 OF THE MINOR.

7 (F) (1) THE COURT SHALL ISSUE A DECISION INCLUDING WRITTEN
8 FACTUAL FINDINGS AND LEGAL CONCLUSIONS IN A PROCEEDING UNDER THIS
9 SECTION WITHIN 48 HOURS FOLLOWING THE FILING OF THE PETITION UNDER
10 SUBSECTION (E) OF THIS SECTION UNLESS THIS TIME PERIOD IS EXTENDED AT THE
11 REQUEST OF THE MINOR.

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

15 (II) THE COURT SHALL ORDER A RECORD OF THE EVIDENCE TO BE
16 MAINTAINED, INCLUDING THE JUDGE'S WRITTEN FACTUAL FINDINGS AND LEGAL
17 CONCLUSIONS SUPPORTING THE DECISION.

18 [(c)] (G) (1) [The physician may perform the abortion, without notice to a
19 parent or guardian of a minor if, in the professional judgment of the physician] THE
20 COURT SHALL AUTHORIZE A WAIVER OF PARENTAL NOTIFICATION IF THE COURT
21 FINDS, BY CLEAR AND CONVINCING EVIDENCE, THAT:

22 (i) [Notice to the parent or guardian may lead to physical or
23 emotional abuse of the minor] THERE IS A PATTERN OF PHYSICAL, SEXUAL, OR
24 EMOTIONAL ABUSE OF THE MINOR BY THE PARENT;

25 (ii) The minor is SUFFICIENTLY mature [and capable of giving
26 informed consent to] TO DECIDE WHETHER TO HAVE an abortion; or

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

28 (2) IF THE COURT DOES NOT MAKE A FINDING SPECIFIED UNDER
29 PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL DISMISS THE PETITION
30 AND NOTICE SHALL BE REQUIRED IN ACCORDANCE WITH SUBSECTION (B) OF THIS
31 SECTION.

32 (H) AN EXPEDITED, CONFIDENTIAL APPEAL SHALL BE AVAILABLE, IN
33 ACCORDANCE WITH THE MARYLAND RULES, TO A MINOR FOR WHOM THE COURT
34 DENIES AN ORDER WAIVING PARENTAL NOTIFICATION.

35 (I) (1) THE DEPARTMENT SHALL PREPARE A FACT SHEET FOR
36 DISTRIBUTION TO UNMARRIED PREGNANT MINORS WHO SEEK AN ABORTION.

1 (2) THE FACT SHEET SHALL BE WRITTEN IN TERMS GENERALLY
2 UNDERSTOOD BY A MINOR AND SHALL EXPLAIN THE PARENTAL NOTIFICATION
3 REQUIREMENTS UNDER SUBSECTION (B) OF THIS SECTION.

4 (3) THE FACT SHEET SHALL INCLUDE:

5 (I) THAT A MINOR MAY SEEK A WAIVER OF PARENTAL
6 NOTIFICATION FROM THE CIRCUIT COURT FOR THE COUNTY WHERE THE MINOR
7 RESIDES OR WHERE THE PHYSICIAN'S OFFICE IS LOCATED;

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

10 (III) THAT A MINOR HAS A RIGHT TO COURT-APPOINTED COUNSEL,
11 WHICH SHALL BE PROVIDED TO THE MINOR UPON REQUEST;

12 (IV) THE PROCEDURE FOR PETITIONING THE COURT; AND

13 (V) THAT THE COURT'S DECISION MUST BE REACHED WITHIN 48
14 HOURS OF THE TIME THE PETITION IS FILED UNLESS THE TIME PERIOD IS
15 EXTENDED AT THE REQUEST OF THE MINOR.

16 (J) (1) THE DEPARTMENT SHALL DISTRIBUTE THE FACT SHEET, AT NO
17 CHARGE, TO AMBULATORY CARE FACILITIES, HOSPITALS, PUBLIC AND PRIVATE
18 AGENCIES, AND PHYSICIANS' OFFICES THAT PROVIDE FAMILY PLANNING SERVICES
19 AND PRENATAL CARE.

20 (2) THE PHYSICIAN WHO IS RESPONSIBLE FOR PROVIDING NOTICE
21 UNDER SUBSECTION (B) OF THIS SECTION SHALL PROVIDE THE MINOR WITH A COPY
22 OF THE FACT SHEET AT THE TIME THE MINOR INITIALLY REQUESTS AN ABORTION.

23 (K) A PERSON WHO VIOLATES A PROVISION OF THIS SECTION IS GUILTY OF A
24 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000.

25 [(2)] (L) [The] A physician [is] MAY not BE HELD liable for civil
26 damages or subject to a criminal penalty for a decision [under this subsection] not to
27 give notice UNDER SUBSECTION (B) OF THIS SECTION IF THE PHYSICIAN
28 ESTABLISHES BY WRITTEN EVIDENCE THAT THE PHYSICIAN HAS MADE EVERY
29 EFFORT, WITH REASONABLE DILIGENCE, TO DELIVER NOTICE, BUT HAS BEEN
30 UNABLE TO DO SO.

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2003.