

SENATE BILL 351

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SB 457/03 - EHE

2004 Regular Session  
4lr0773

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By: **Senators Jacobs, Hooper, Brinkley, Colburn, DeGrange, Dyson, Green,  
Greenip, Hafer, Haines, Harris, Jimeno, Mooney, Munson, Stoltzfus, and  
Stone**

Introduced and read first time: February 4, 2004  
Assigned to: Education, Health, and Environmental Affairs

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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 under  
21 certain circumstances; requiring the petition to be dismissed 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  
31 requirement for parental notice when an unmarried minor seeks an abortion.

32 BY repealing and reenacting, with amendments,

1 Article - Health - General  
2 Section 20-103  
3 Annotated Code of Maryland  
4 (2000 Replacement Volume and 2003 Supplement)

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

7 **Article - Health - General**

8 20-103.

9 (a) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
10 INDICATED.

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

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

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

24 (5) "PARENT" MEANS:

25 (I) A NATURAL OR ADOPTIVE PARENT WHOSE RIGHTS HAVE NOT  
26 BEEN TERMINATED; OR

27 (II) A LEGAL GUARDIAN.

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

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

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

34 (2) THE 48-HOUR PERIOD REQUIRED UNDER PARAGRAPH (1)(II) OF THIS  
35 SUBSECTION SHALL BEGIN AT NOON ON THE NEXT DAY THAT REGULAR MAIL

1 DELIVERY TAKES PLACE FOLLOWING THE DAY THAT THE NOTICE IS POSTMARKED  
2 BY THE UNITED STATES POSTAL SERVICE.

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

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

6 (2) A reasonable effort to give notice to a parent or guardian is  
7 unsuccessful.]

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

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

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

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

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

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

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

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

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

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

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

35 (6) COURT PROCEEDINGS UNDER THIS SECTION SHALL:

1 (I) BE CONFIDENTIAL;

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

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

6 (F) (1) THE COURT SHALL ISSUE A DECISION INCLUDING WRITTEN  
7 FACTUAL FINDINGS AND LEGAL CONCLUSIONS IN A PROCEEDING UNDER THIS  
8 SECTION WITHIN 48 HOURS NOT INCLUDING WEEKENDS AND HOLIDAYS FOLLOWING  
9 THE FILING OF THE PETITION UNDER SUBSECTION (E) OF THIS SECTION UNLESS  
10 THIS TIME PERIOD IS EXTENDED AT THE REQUEST OF THE MINOR.

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

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

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

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

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

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

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

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

34 (I) (1) THE DEPARTMENT SHALL PREPARE A FACT SHEET FOR  
35 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 NOT INCLUDING WEEKENDS AND HOLIDAYS FROM THE TIME THE PETITION  
15 IS FILED UNLESS THE TIME PERIOD IS 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  
2 effect October 1, 2004.