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Introduced and read first time: February 9, 2005
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

1 penalties; exempting a certain physician from certain liability under certain
2 circumstances; defining certain terms; and generally relating to the
3 requirement for parental notice when an unmarried minor seeks an abortion.

4 BY repealing and reenacting, with amendments,
5 Article - Health - General
6 Section 20-103
7 Annotated Code of Maryland
8 (2000 Replacement Volume and 2004 Supplement)

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

11 **Article - Health - General**

12 20-103.

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

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

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

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

28 (5) "PARENT" MEANS:

29 (I) A NATURAL OR ADOPTIVE PARENT WHOSE RIGHTS HAVE NOT
30 BEEN TERMINATED; OR

31 (II) A LEGAL GUARDIAN.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (4) (I) THE COURT SHALL ADVISE THE MINOR OF THE MINOR'S RIGHT
33 TO COURT APPOINTED COUNSEL AND SHALL, ON THE MINOR'S REQUEST, APPOINT
34 COUNSEL.

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

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

4 (6) COURT PROCEEDINGS UNDER THIS SECTION SHALL:

5 (I) BE CONFIDENTIAL;

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (3) THE FACT SHEET SHALL INCLUDE:

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

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

12 (III) THAT A MINOR HAS A RIGHT TO COURT APPOINTED COUNSEL,
13 WHICH SHALL BE PROVIDED TO THE MINOR ON REQUEST;

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

15 (V) THAT THE COURT'S DECISION MUST BE REACHED WITHIN 48
16 HOURS NOT INCLUDING WEEKENDS AND HOLIDAYS OF THE TIME THE PETITION IS
17 FILED UNLESS THE TIME PERIOD IS EXTENDED AT THE REQUEST OF THE MINOR.

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

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

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

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

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

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

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
4 effect October 1, 2005.