

1                    HOUSE    BILL NO. 22  
2    INTRODUCED BY KVAALEN

3  
4    A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION  
5    69-6104 TO EXTEND VALIDITY OF CONSENT OF MINORS TO ABORTION  
6    IN CONFORMANCE WITH THE MONTANA ABORTION CONTROL ACT."

7  
8    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
9            Section 1. Section 69-6104, R.C.M. 1947, is amended to  
10    read as follows:

11            \*69-6104. Emergencies and special situations when  
12    consent requirements differ. (1) Any health professional may  
13    render or attempt to render emergency service or first aid,  
14    medical, surgical, dental, or psychiatric treatment without  
15    compensation to any injured person or any person regardless  
16    of age who is in need of immediate health care when, in good  
17    faith, the professional believes that the giving of aid is  
18    the only alternative to probable death or serious physical  
19    or mental damage.

20            (2) Any health professional may render nonemergency  
21    services to minors for conditions which will endanger the  
22    health or life of the minor if services would be delayed by  
23    obtaining consent from spouse, parent, parents, or legal  
24    guardian.

25            (3) No consent ~~shall~~ may be required of any minor who

1    does not possess the mental capacity or who has a physical  
2    disability which renders him incapable of giving his consent  
3    and who has no known relatives or legal guardians if a  
4    physician determines the health service should be given.

5            (4) ~~Self-consent~~ Consent of minors ~~shall~~ does not  
6    apply to sterilization ~~or-abortion.~~"

-End-

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LC 0037

1977 Legislature  
Code Commissioner Bill - Summary

House Bill No. 22

TO AMEND SECTION 69-6104, R.C.M. 1947, TO MAKE IT CONFORM TO SECTION 94-5-616, R.C.M. 1947, AND TO RECENT SUPREME COURT CASES GIVING MINORS THE RIGHT TO HAVE AN ABORTION WITHOUT PARENTAL CONSENT.

(This summary does not include discussion of routine form or grammatical changes.)

69-6104(4). Subsection (4), which precludes consent of minors for abortion or sterilization, is in conflict with 94-5-616, which allows minors to have abortions, provided they give "informed consent" and written notice of the abortion is given to the parents. No parental consent is required.

There is some thought among staff attorneys that the two statutes are not in conflict. This theory contemplates consent of both the parents and the minor being required, with 69-6104(4) merely precluding the consent of the minor alone from being a valid consent. Thus 94-5-616 would require more than mere notice to the parents, it requires consent as well. It is argued that the purpose of the notice is to give the parents opportunity to consent or not consent. The statute is of course silent in the case that no parental consent is given.

This argument certainly strains the natural construction of these two statutes, as well as the imagination. The definition of "informed consent", as found in 94-5-615(3), is ". . . voluntary consent to abortion by the woman upon whom the abortion is to be performed only after full disclosure . . ." (emphasis supplied). Thus the "informed consent" cannot be

Approved by Committee  
on Judiciary

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21 (2) Any health professional may render nonemergency  
22 services to minors for conditions which will endanger the  
23 health or life of the minor if services would be delayed by  
24 obtaining consent from spouse, parent, parents, or legal  
25 guardian.

1 (3) No consent ~~shall~~ may be required of any minor who  
2 does not possess the mental capacity or who has a physical  
3 disability which renders him incapable of giving his consent  
4 and who has no known relatives or legal guardians if a  
5 physician determines the health service should be given.

6 (4) ~~Self-consent~~ Consent ~~of minors shall~~ does not  
7 ~~apply to sterilization or abortion.~~ IN CASE OF STERILIZATION  
8 OF MINORS, THE CONSENT OF THE PARENTS OR GUARDIAN OF THE  
9 MINOR IS REQUIRED."

-End-

SECOND READING

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(4) ~~Self-consent~~ Consent ~~of minors shall ~~also~~ not~~  
~~apply to sterilization or abortion.~~ IN CASE OF STERILIZATION  
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-End-