

SENATE BILL 164

Introduced by Rasmussen, et al.

1/17	Introduced
1/17	Referred to Judiciary
1/23	Hearing
1/28	Fiscal Note Requested
1/30	Committee Report--Bill Passed as Amended
2/02	Fiscal Note Received
2/03	Fiscal Note Printed
2/06	2nd Reading Passed
2/08	3rd Reading Passed

Transmitted to House

2/21	Referred to Judiciary
3/15	Hearing
3/15	Tabled in Committee
3/20	Motion Failed To Take From Committee (Required Three-fifths Vote of Approval) Died in Committee

1 *State* BILL NO. *164*  
 2 INTRODUCED BY *Rasmussen Harold*  
 3 *Spokane* *Lee* *Wayne* *Clark* *Stacy* *Ram*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PARENTAL  
 5 NOTICE BY A PHYSICIAN BEFORE HE PERFORMS AN ABORTION ON A  
 6 MINOR; PROVIDING PROCEDURES FOR CONSENT AND JUDICIAL BYPASS;  
 7 PROVIDING THAT VIOLATION OF NOTIFICATION PROCEDURES  
 8 CONSTITUTES A FELONY; CLARIFYING THAT SPOUSAL NOTICE IS NOT  
 9 REQUIRED; AMENDING SECTIONS 41-1-405, 50-20-108, AND  
 10 50-20-109, MCA; AND REPEALING SECTION 50-20-107, MCA."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Minors -- notice  
 14 requirements. No physician may knowingly perform an abortion  
 15 upon a woman under 18 years of age unless:

16 (1) the physician first gives 48 hours actual notice  
 17 of his intent to perform the abortion to each parent, the  
 18 guardian, or, if the minor's parents are deceased and no  
 19 guardian has been appointed, any other person standing in  
 20 loco parentis. If the physician cannot reach such person  
 21 after reasonable effort, he shall give constructive notice  
 22 by certified mail, return receipt requested, to the person's  
 23 last-known address.

24 (2) the minor is emancipated and the attending  
 25 physician has received the informed written consent of the

1 minor. The term "emancipated" has the meaning provided in  
 2 41-1-402 (1)(a) and (1)(b).

3 (3) the minor has been granted the right to  
 4 self-consent to the abortion by court order pursuant to  
 5 [section 5] and the attending physician has received the  
 6 informed written consent of the minor; or

7 (4) the minor has been granted judicial consent to the  
 8 abortion by written court order in accordance with [section  
 9 5], and the minor is having the abortion in compliance with  
 10 [section 8].

11 NEW SECTION. Section 2. Procedure. The right of a  
 12 minor to self-consent to an abortion by court order under  
 13 [section 1(3)] or by court consent under [section 1(4)] may  
 14 be granted by a court pursuant to the procedures set forth  
 15 in [sections 3 through 7].

16 NEW SECTION. Section 3. Petition for majority rights.  
 17 (1) The minor or her guardian shall make an application to  
 18 the youth court, which shall assist the minor or guardian in  
 19 preparing the petition required for the hearing pursuant to  
 20 [section 4] and the notice of appeal required pursuant to  
 21 [section 6]. The minor or the guardian of the minor shall  
 22 file the petition, setting forth:

- 23 (a) the initials of the minor;  
 24 (b) the age of the minor;  
 25 (c) the name and address of each:

1 (i) parent;  
 2 (ii) guardian; or  
 3 (iii) if the parents are deceased and no guardian has  
 4 been appointed, any other person standing in loco parentis  
 5 of the minor;  
 6 (d) a statement that the minor has been fully informed  
 7 of the risks and consequences of the abortion;  
 8 (e) a statement that the minor is of sound mind and  
 9 has sufficient intellectual capacity to consent to the  
 10 abortion;  
 11 (f) a statement that if the court does not grant the  
 12 minor majority rights for the purpose of consent to the  
 13 abortion, the court should find that the abortion is in the  
 14 best interests of the minor and give judicial consent to the  
 15 abortion;  
 16 (g) a request that the court appoint a guardian ad  
 17 litem of the minor; and  
 18 (h) a request that if the minor does not have private  
 19 counsel, the court should appoint counsel.  
 20 (2) The petition must be signed by the minor or her  
 21 guardian.

22 **NEW SECTION. Section 4. Hearing on petition.** A  
 23 hearing on the merits of the petition filed pursuant to  
 24 [section 3] must be held on the record as soon as possible  
 25 or within 5 days of the filing of the petition. The minor is

1 not required to pay a filing fee for the hearing. If any  
 2 party is unable to afford counsel, the court shall appoint  
 3 counsel at least 24 hours before the time of the hearing. At  
 4 the hearing, the court shall hear evidence relating to:

5 (1) the emotional development, maturity, intellect,  
 6 and understanding of the minor;  
 7 (2) the nature and possible consequences of and  
 8 alternatives to the abortion; and  
 9 (3) any other matter that the court may find useful in  
 10 determining whether the minor should be granted majority  
 11 rights for the purpose of consenting to the abortion or  
 12 whether the abortion is in the best interests of the minor.

13 **NEW SECTION. Section 5. Decision by the court.** After  
 14 holding the hearing pursuant to [section 4], the court shall  
 15 issue its decree. In the decree, the court shall for good  
 16 cause:

17 (1) grant the petition for majority rights for the  
 18 purpose of consenting to the abortion;  
 19 (2) find the abortion to be in the best interests of  
 20 the minor and give judicial consent to the abortion, setting  
 21 forth the grounds for so finding; or  
 22 (3) deny the petition, setting forth the grounds on  
 23 which the petition is denied.

24 **NEW SECTION. Section 6. Appeal of decision -- notice.**  
 25 An appeal from an order issued under the provisions of

[section 5] may be taken to the supreme court by the minor or by a parent or guardian of the minor. The minor is not required to pay a filing fee for the appeal. The notice of intent to appeal must be given within 24 hours from the date of issuance of the order. The record on appeal must be completed and the appeal perfected within 5 days from the filing of the notice of appeal. Because time may be of the essence regarding the performance of the abortion, the supreme court shall, by court rule, provide for expedited appellate review of cases appealed under this section.

**NEW SECTION. Section 7. Immunity from suit.** If the petition filed pursuant to [section 3] is granted under [section 5], the informed consent of the minor, pursuant to a court grant of majority rights, or the judicial consent bars any action by a parent or guardian of the minor on the grounds of assault or personal injury of the minor by those performing the abortion. The immunity granted extends only to the performance of the abortion in accordance with [sections 1 through 8] and to any necessary accompanying services that are performed in a competent manner. The costs of the action must be borne by the parties.

**NEW SECTION. Section 8. Written consent** -- no abortion against minor's will. If a minor desires an abortion, she must be orally informed of and shall sign the written consent in the same manner as an adult. No abortion

may be performed on any minor against the will of the minor, except that an abortion may be performed against the will of a minor pursuant to a court decree, described in [section 5(2)], stating that the abortion is necessary to preserve the life of the minor.

**NEW SECTION. Section 9. Violation.** Performance of an abortion in violation of [sections 1 through 8] is a felony.

**Section 10.** Section 41-1-405, MCA, is amended to read:

**"41-1-405. Emergencies and special situations.** (1) Any health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

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

(3) No consent shall be required of any minor who does not possess the mental capacity or who has a physical disability which renders him incapable of giving his consent

1 and who has no known relatives or legal guardians, if a  
2 physician determines the health service should be given.

3 (4) Self-consent Except as provided in [sections 1  
4 through 8], self-consent of minors shall not apply to  
5 sterilization or abortion."

6 **Section 11.** Section 50-20-108, MCA, is amended to  
7 read:

8 "50-20-108. Protection of premature infants born  
9 alive. (1) A person commits an offense, as defined in  
10 45-5-102 through 45-5-104, if he purposely, knowingly, or  
11 negligently causes the death of a premature infant born  
12 alive, if such infant is viable.

13 (2) Whenever a premature infant which is the subject  
14 of abortion is born alive and is viable, it becomes a  
15 dependent and neglected child subject to the provisions of  
16 state law, unless:

17 (a) the termination of the pregnancy is necessary to  
18 preserve the life of the mother; or

19 (b) the mother and her spouse or either of them have  
20 agreed in writing in advance of the abortion or within 72  
21 hours thereafter to accept the parental rights and  
22 responsibilities of the premature infant if it survives the  
23 abortion procedure. This subsection is not intended to  
24 require prior spousal notice.

25 (3) No person may use any premature infant born alive

1 for any type of scientific research or other kind of  
2 experimentation except as necessary to protect or preserve  
3 the life and health of such premature infant born alive.

4 (4) Violation of subsection (3) of this section is a  
5 felony."

6 **Section 12.** Section 50-20-109, MCA, is amended to  
7 read:

8 "50-20-109. Control of practice of abortion. (1) No  
9 abortion may be performed within the state of Montana:

10 (a) except by a licensed physician;

11 ~~(b)--after-the-first-3-months-of-pregnancy,--except-in-a~~  
12 ~~hospital-licensed-by-the-department;~~

13 ~~(c)(b)~~ after viability of the fetus, unless in  
14 appropriate medical judgment the abortion is necessary to  
15 preserve the life or health of the mother.

16 (2) An abortion under subsection ~~(1)(c)~~ (1)(b) may  
17 only be performed if:

18 (a) the foregoing judgment of the physician who is to  
19 perform the abortion is first certified in writing by him  
20 setting forth in detail the facts upon which he relies in  
21 making such judgment; and

22 (b) two other licensed physicians have first examined  
23 the patient and concurred in writing with such judgment. The  
24 foregoing certification and concurrence is not required if a  
25 licensed physician certifies the abortion is necessary to

1 preserve the life of the mother.

2 (3) The timing and procedure used in performing an  
3 abortion under subsection ~~(1)(c)~~ (1)(b) of this section must  
4 be such that the viability of the fetus is not intentionally  
5 or negligently endangered, as the term "negligently" is  
6 defined in 45-2-101(37). The fetus may be intentionally  
7 endangered or destroyed only if necessary to preserve the  
8 life or health of the mother.

9 (4) No physician, facility, or other person or agency  
10 shall engage in solicitation, advertising, or other form of  
11 communication having the purpose of inviting, inducing, or  
12 attracting any person to come to such physician, facility,  
13 or other person or agency to have an abortion or to purchase  
14 abortifacients.

15 (5) Violation of subsections (1), (2), and (3) of this  
16 section is a felony. Violation of subsection (4) of this  
17 section is a misdemeanor."

18 NEW SECTION. **Section 13.** Repealer. Section 50-20-107,  
19 MCA, is repealed.

20 NEW SECTION. **Section 14.** Codification instruction.  
21 [Sections 1 through 9] are intended to be codified as an  
22 integral part of Title 50, chapter 20, part 1, and the  
23 provisions of Title 50, chapter 20, part 1, apply to  
24 [sections 1 through 9].

25 NEW SECTION. **Section 15.** Severability. If a part of

1 [this act] is invalid, all valid parts that are severable  
2 from the invalid part remain in effect. If a part of [this  
3 act] is invalid in one or more of its applications, the part  
4 remains in effect in all valid applications that are  
5 severable from the invalid applications.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB164, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

SB164 requires parental notice by a physician before performing an abortion on a minor; provides procedures for consent and judicial bypass; provides that violation of notification procedures constitutes a felony and clarifies that spousal notice is not required.

ASSUMPTIONS:

1. The bill does not change the responsibility of the Department of Family Services to provide protective services to youth or services at Mountain View School.
2. There will be no increase or decrease in costs of DFS services.
3. There is no fiscal impact to the Department of Health and Environmental Sciences.
4. There is no fiscal impact to the Supreme Court or District Courts.

*Ray Shackelford*

*2/2/89*

RAY SHACKLEFORD, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE

*Tom Rasmussen*

*2 3 89*

TOM RASMUSSEN, PRIMARY SPONSOR

DATE

Fiscal Note for SB164, as introduced

**SB 164**

APPROVED BY COMMITTEE  
ON JUDICIARY

SENATE BILL NO. 164

INTRODUCED BY RASMUSSEN, HANNAH, KEATING, GIACOMETTO,  
GOOD, RICE, LEE, HAYNE, CRIPPEN, O'CONNELL, STORY,  
RAMIREZ, WALLIN, PECK, KOEHNKE, HARDING

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PARENTAL  
NOTICE BY A PHYSICIAN BEFORE HE PERFORMS AN ABORTION ON A  
MINOR; PROVIDING PROCEDURES FOR CONSENT--AND A JUDICIAL  
BYPASS EXEMPTION FROM THE NOTIFICATION REQUIREMENT;  
PROVIDING THAT VIOLATION OF NOTIFICATION PROCEDURES  
CONSTITUTES A ~~FELONY~~ MISDEMEANOR; CLARIFYING THAT SPOUSAL  
NOTICE IS NOT REQUIRED; AMENDING SECTIONS 41-1-405,  
50-20-108, AND 50-20-109, MCA; AND REPEALING SECTION  
50-20-107, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Minors -- notice  
requirements. No physician may knowingly perform an abortion  
upon a woman under 18 years of age unless:

(1) the physician OR HIS AGENT first gives 48 hours  
actual notice of his intent to perform the abortion to each  
A parent HAVING ACTUAL CARE, CUSTODY, OR CONTROL OF THE  
MINOR, the guardian, or, if the minor's parents are deceased  
and no guardian has been appointed, any other person  
standing in loco parentis. If the physician cannot reach

such person after reasonable effort, he shall give  
constructive notice by certified mail, return receipt  
requested, to the person's last-known address. THE TIME OF  
DELIVERY OF CONSTRUCTIVE NOTICE IS CONSIDERED TO OCCUR AT  
NOON ON THE NEXT DAY ON WHICH REGULAR MAIL DELIVERY TAKES  
PLACE, SUBSEQUENT TO MAILING.

(2) the minor is emancipated and--the--attending  
physician--has--received--the--informed--written--consent--of--the  
minor--The--term--"emancipated"--has--the--meaning--provided--in  
41-1-402--(1)(a)--and--(1)(b)-; OR

(3) the minor has been granted the---right---to  
self-consent---to---the---abortion AN EXEMPTION FROM THE  
NOTIFICATION REQUIREMENT OF SUBSECTION (1) by court order  
pursuant to [section 5] and--the--attending--physician--has  
received--the--informed--written--consent--of--the--minor;-or

(4)--the--minor--has--been--granted--judicial--consent--to--the  
abortion--by--written--court--order--in--accordance--with--{section  
5}-and--the--minor--is--having--the--abortion--in--compliance--with  
{section-8}.

NEW SECTION. Section 2. Procedure. The--right--of--a  
minor--to--self-consent--to--an-abortion--by--court-order-under  
{section-1(3)}--or--by--court-consent-under--{section-1(4)}--may  
be--granted--by--a THE MINOR MAY BE GRANTED AN EXEMPTION FROM  
THE NOTIFICATION REQUIREMENT OF [SECTION 1] BY THE YOUTH  
court pursuant to the procedures set forth in [sections 3



1 through 7].

2 NEW SECTION. Section 3. Petition for majority--rights  
 3 EXEMPTION FROM PARENTAL NOTIFICATION REQUIREMENT. (1) The  
 4 minor ~~or her guardian~~ shall make an application to the youth  
 5 court, which shall assist the minor ~~or guardian~~ in preparing  
 6 the petition required for the hearing pursuant to [section  
 7 4] and the notice of appeal required pursuant to [section 6  
 8 7]. The minor ~~or the guardian of the minor~~ shall file the  
 9 petition, setting forth:

10 (a) the initials of the minor;

11 (b) the age of the minor;

12 (c) the name and address of each:

13 (i) A parent HAVING ACTUAL CARE, CUSTODY, OR CONTROL  
 14 OF THE MINOR OR THE GUARDIAN OF THE MINOR; OR

15 ~~{ii}-guardian;-or~~

16 ~~{iii}{II}~~ if the parents are deceased and no guardian  
 17 has been appointed, any other person standing in loco  
 18 parentis of the minor;

19 (d) a statement that the minor has been fully informed  
 20 of the risks and consequences of the ~~abortion~~ HER DECISION;

21 (e) a statement that the minor is of sound mind and  
 22 has sufficient intellectual capacity to consent to the  
 23 abortion; AND

24 ~~{f}-a--statement--that--if--the--court--does--not--grant--the~~  
 25 ~~minor--majority--rights--for--the--purpose--of--consent--to--the~~

1 ~~abortion,--the--court--should--find--that--the--abortion--is--in--the~~  
 2 ~~best--interests--of--the--minor--and--give--judicial--consent--to--the~~  
 3 ~~abortion;~~

4 ~~{g}-a--request--that--the--court--appoint--a--guardian--ad~~  
 5 ~~litem--of--the--minor;-and~~

6 ~~{h}-a--request--that--if--the--minor--does--not--have--private~~  
 7 ~~counsel;-the--court--should--appoint--counsel;~~

8 (F) A STATEMENT THAT THE MINOR REQUESTS APPOINTMENT OF  
 9 COUNSEL OR A GUARDIAN AD LITEM.

10 (2) The petition must be signed by the minor ~~or--her~~  
 11 ~~guardian.~~

12 NEW SECTION. Section 4. Hearing on petition. A  
 13 hearing ~~on the merits of~~ the petition ~~filed--pursuant--to~~  
 14 ~~{section--3}~~ must be held on the record as soon as possible  
 15 or within 5 days of the filing of the petition. The minor is  
 16 not required to pay a filing fee ~~for--the--hearing~~. If any  
 17 party THE MINOR is unable to afford counsel, the court shall  
 18 appoint counsel ~~at--least--24--hours--before--the--time--of--the~~  
 19 ~~hearing~~ FOR THE MINOR. At the hearing, the court shall hear  
 20 evidence relating to:

21 (1) the emotional development, maturity, intellect,  
 22 and understanding of the minor;

23 (2) the ~~nature--and--possible--consequences--of--and~~  
 24 ~~alternatives--to--the--abortion~~ CIRCUMSTANCES OF THE  
 25 RELATIONSHIP BETWEEN THE MINOR AND THE PARENT, GUARDIAN, OR

PERSON STANDING IN LOCO PARENTIS TO BE NOTIFIED UNDER  
[SECTION 1]; and

(3) any other matter that the court may find useful in  
determining whether the minor should be granted majority  
rights for the purpose of consenting to the abortion or  
whether the abortion is in the best interests of the minor  
RELEVANT IN DETERMINING WHETHER THE MINOR SHALL BE GRANTED  
AN EXEMPTION FROM THE NOTIFICATION REQUIREMENT OF [SECTION  
1].

NEW SECTION. Section 5. Decision by the court. After  
holding the hearing pursuant to [section 4], the court shall  
issue its decree WITHIN 24 HOURS. In the decree, the court  
shall for good cause:

(1) grant the petition for majority rights for the  
purpose of consenting to the abortion;

(2) find the abortion to be in the best interests of  
the minor and give judicial consent to the abortion, setting  
forth the grounds for so finding AN EXEMPTION FROM THE  
NOTIFICATION REQUIREMENT OF [SECTION 1]; or

(3) (2) deny the petition, setting forth the grounds on  
which the petition is denied.

NEW SECTION. SECTION 6. CONFIDENTIALITY OF  
PROCEEDINGS. (1) ALL HEARINGS HELD ON A PETITION UNDER  
[SECTIONS 3 THROUGH 7] ARE CONFIDENTIAL AND MUST BE HELD IN  
CLOSED COURT WITHOUT ADMITTANCE OF ANY PERSON OTHER THAN THE

MINOR, HER COUNSEL, OR HER GUARDIAN AD LITEM.

(2) ALL PAPERS AND RECORDS PERTAINING TO THE PETITION  
MUST BE KEPT AS A PERMANENT RECORD OF THE COURT AND WITHHELD  
FROM INSPECTION. NO PERSON MAY HAVE ACCESS TO SUCH RECORDS.

NEW SECTION. Section 7. Appeal of decision -- notice.

An appeal from an order issued under the provisions of  
[section 5] may be taken to the supreme court by the minor  
or by a parent or guardian of the minor. The minor is not  
required to pay a filing fee for the appeal. The notice of  
intent to appeal must be given within 24 hours from the date  
of issuance of the order. The record on appeal must be  
completed and the appeal perfected within 5 days from the  
filing of the notice of appeal. Because time may be of the  
essence regarding the performance of the abortion, the  
supreme court shall, by court rule, provide for expedited  
appellate review of cases appealed under this section.

NEW SECTION. Section 7. Immunity from suit. If the  
petition filed pursuant to [section 3] is granted under  
[section 5], the informed consent of the minor, pursuant to  
a court grant of majority rights, or the judicial consent  
bars any action by a parent or guardian of the minor on the  
grounds of assault or personal injury of the minor by those  
performing the abortion. The immunity granted extends only  
to the performance of the abortion in accordance with  
[sections 1 through 8] and to any necessary accompanying

~~services that are performed in a competent manner. The costs of the action must be borne by the parties.~~

~~NEW SECTION. Section 8. Written consent-----no abortion against minor's will. If a minor desires an abortion, she must be orally informed of and shall sign the written consent in the same manner as an adult. No abortion may be performed on any minor against the will of the minor, except that an abortion may be performed against the will of a minor pursuant to a court decree, described in {section 5(2)}, stating that the abortion is necessary to preserve the life of the minor.~~

NEW SECTION. Section 8. Violation. Performance of A PERSON CONVICTED OF PERFORMING an abortion in violation of ~~{sections 1 through 8}~~ is a felony [SECTION 1] SHALL BE FINED AN AMOUNT NOT TO EXCEED \$500 OR BE IMPRISONED IN THE COUNTY JAIL FOR A TERM NOT TO EXCEED 6 MONTHS, OR BOTH.

**Section 9.** Section 41-1-405, MCA, is amended to read:

**\*41-1-405. Emergencies and special situations.** (1) Any health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental

damage.

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

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

(4) Self-consent Except as provided in [sections 1 through 8], self-consent of minors shall not apply to sterilization or abortion."

**Section 10.** Section 50-20-108, MCA, is amended to read:

**\*50-20-108. Protection of premature infants born alive.** (1) A person commits an offense, as defined in 45-5-102 through 45-5-104, if he purposely, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable.

(2) Whenever a premature infant which is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

(a) the termination of the pregnancy is necessary to preserve the life of the mother; or

(b) the mother and her spouse or either of them have agreed in writing in advance of the abortion or within 72 hours thereafter to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure. This subsection is not intended to require prior spousal notice.

(3) No person may use any premature infant born alive for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of such premature infant born alive.

(4) Violation of subsection (3) of this section is a felony."

**Section 11.** Section 50-20-109, MCA, is amended to read:

"50-20-109. Control of practice of abortion. (1) No abortion may be performed within the state of Montana:

(a) except by a licensed physician;

~~(b) after the first 3 months of pregnancy, except in a hospital licensed by the department;~~

~~(c)(b)~~ after viability of the fetus, unless in appropriate medical judgment the abortion is necessary to preserve the life or health of the mother.

(2) An abortion under subsection ~~(1)(c)~~ (1)(b) may

only be performed if:

(a) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by him setting forth in detail the facts upon which he relies in making such judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with such judgment. The foregoing certification and concurrence is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection ~~(1)(c)~~ (1)(b) of this section must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101(37). The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) No physician, facility, or other person or agency shall engage in solicitation, advertising, or other form of communication having the purpose of inviting, inducing, or attracting any person to come to such physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(5) Violation of subsections (1), (2), and (3) of this section is a felony. Violation of subsection (4) of this

1 section is a misdemeanor."

2 NEW SECTION. Section 12. Repealer. Section 50-20-107,  
3 MCA, is repealed.

4 NEW SECTION. Section 13. Codification instruction.  
5 [Sections 1 through 9 8] are intended to be codified as an  
6 integral part of ~~Title-507-chapter--207--part--1~~ TITLE 41,  
7 CHAPTER 5, and the provisions of ~~Title-507-chapter-207-part~~  
8 ~~1~~ TITLE 41, CHAPTER 5, apply to [sections 1 through 9 8].

9 NEW SECTION. Section 14. Severability. If a part of  
10 [this act] is invalid, all valid parts that are severable  
11 from the invalid part remain in effect. If a part of [this  
12 act] is invalid in one or more of its applications, the part  
13 remains in effect in all valid applications that are  
14 severable from the invalid applications.

-End-

## SENATE BILL NO. 164

INTRODUCED BY RASMUSSEN, HANNAH, KEATING, GIACOMETTO,  
GOOD, RICE, LEE, HAYNE, CRIPPEN, O'CONNELL, STORY,  
RAMIREZ, WALLIN, PECK, KOEHNKE, HARDING

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PARENTAL  
NOTICE BY A PHYSICIAN BEFORE HE PERFORMS AN ABORTION ON A  
MINOR; PROVIDING PROCEDURES FOR ~~CONSENT--AND~~ A JUDICIAL  
BYPASS EXEMPTION FROM THE NOTIFICATION REQUIREMENT;  
PROVIDING THAT VIOLATION OF NOTIFICATION PROCEDURES  
CONSTITUTES A ~~FELONY~~ MISDEMEANOR; CLARIFYING THAT SPOUSAL  
NOTICE IS NOT REQUIRED; AMENDING SECTIONS 41-1-405,  
50-20-108, AND 50-20-109, MCA; AND REPEALING SECTION  
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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(1) the physician OR HIS AGENT first gives 48 hours  
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A parent HAVING ACTUAL CARE, CUSTODY, OR CONTROL OF THE  
MINOR, the guardian, or, if the minor's parents are deceased  
and no guardian has been appointed, any other person  
standing in loco parentis. If the physician cannot reach

such person after reasonable effort, he shall give  
constructive notice by certified mail, return receipt  
requested, to the person's last-known address. THE TIME OF  
DELIVERY OF CONSTRUCTIVE NOTICE IS CONSIDERED TO OCCUR AT  
NOON ON THE NEXT DAY ON WHICH REGULAR MAIL DELIVERY TAKES  
PLACE, SUBSEQUENT TO MAILING.

(2) the minor is emancipated and--the--attending  
physician--has--received--the--informed--written--consent--of--the  
minor--The--term--"emancipated"--has--the--meaning--provided--in  
41-1-402--(1)(a)--and--(1)(b); OR

(3) the minor has been granted the---right---to  
self-consent---to---the---abortion AN EXEMPTION FROM THE  
NOTIFICATION REQUIREMENT OF SUBSECTION (1) by court order  
pursuant to [section 5] and--the--attending--physician--has  
received--the--informed--written--consent--of--the--minor;--or

{4}--the--minor--has--been--granted--judicial--consent--to--the  
abortion--by--written--court--order--in--accordance--with--{section  
5},--and--the--minor--is--having--the--abortion--in--compliance--with  
{section-8}.

NEW SECTION. Section 2. Procedure. The--right--of--a  
minor--to--self-consent--to--an-abortion--by--court-order--under  
{section-1(3)}--or--by--court-consent--under--{section-1(4)}--may  
be--granted--by--a THE MINOR MAY BE GRANTED AN EXEMPTION FROM  
THE NOTIFICATION REQUIREMENT OF [SECTION 1] BY THE YOUTH  
court pursuant to the procedures set forth in [sections 3

1 through 7].

2 **NEW SECTION. Section 3.** Petition for ~~majority--rights~~  
3 **EXEMPTION FROM PARENTAL NOTIFICATION REQUIREMENT.** (1) The  
4 minor ~~or-her-guardian~~ shall make an application to the youth  
5 court, which shall assist the minor ~~or-guardian~~ in preparing  
6 the petition required for the hearing pursuant to [section  
7 4] and the notice of appeal required pursuant to [section 6  
8 7]. The minor ~~or-the-guardian-of-the-minor~~ shall file the  
9 petition, setting forth:

- 10 (a) the initials of the minor;
- 11 (b) the age of the minor;
- 12 (c) the name and address of each:
- 13 (i) A parent HAVING ACTUAL CARE, CUSTODY, OR CONTROL  
14 OF THE MINOR OR THE GUARDIAN OF THE MINOR; OR  
15 ~~{ii}-guardian;-or~~
- 16 ~~{iii}{II}~~ if the parents are deceased and no guardian  
17 has been appointed, any other person standing in loco  
18 parentis of the minor;
- 19 (d) a statement that the minor has been fully informed  
20 of the risks and consequences of the-abortion HER DECISION;
- 21 (e) a statement that the minor is of sound mind and  
22 has sufficient intellectual capacity to consent to the  
23 abortion; AND
- 24 ~~{f}--a--statement--that-if-the-court-does-not-grant-the~~  
25 ~~minor-majority-rights-for-the-purpose--of--consent--to--the~~

1 ~~abortion;--the-court-should-find-that-the-abortion-is-in-the~~  
2 ~~best-interests-of-the-minor-and-give-judicial-consent-to-the~~  
3 ~~abortion;~~

4 ~~{g}--a-request-that-the-court--appoint--a-guardian--ad~~  
5 ~~litem-of-the-minor;-and~~

6 ~~{h}--a--request-that-if-the-minor-does-not-have-private~~  
7 ~~counsel;-the-court-should-appoint-counsel;~~

8 (F) A STATEMENT THAT THE MINOR REQUESTS APPOINTMENT OF  
9 COUNSEL OR A GUARDIAN AD LITEM.

10 (2) The petition must be signed by the minor ~~or--her~~  
11 guardian.

12 **NEW SECTION. Section 4.** Hearing on petition. A  
13 hearing on the-merits-of the petition filed--pursuant--to  
14 ~~{section--3}~~ must be held on the record as soon as possible  
15 or within 5 days of the filing of the petition. The minor is  
16 not required to pay a filing fee for--the--hearing. If any  
17 party THE MINOR is unable to afford counsel, the court shall  
18 appoint counsel at--least--24-hours-before-the-time-of-the  
19 hearing FOR THE MINOR. At the hearing, the court shall hear  
20 evidence relating to:

21 (1) the emotional development, maturity, intellect,  
22 and understanding of the minor;

23 (2) the nature--and--possible--consequences--of--and  
24 alternatives--to--the--abortion CIRCUMSTANCES OF THE  
25 RELATIONSHIP BETWEEN THE MINOR AND THE PARENT, GUARDIAN, OR

PERSON STANDING IN LOCO PARENTIS TO BE NOTIFIED UNDER  
[SECTION 1]; and

(3) any other matter that the court may find useful in  
 determining whether the minor should be granted majority  
 rights for the purpose of consenting to the abortion or  
 whether the abortion is in the best interests of the minor  
RELEVANT IN DETERMINING WHETHER THE MINOR SHALL BE GRANTED  
AN EXEMPTION FROM THE NOTIFICATION REQUIREMENT OF [SECTION  
1].

NEW SECTION. Section 5. Decision by the court. After  
 holding the hearing pursuant to [section 4], the court shall  
 issue its decree WITHIN 24 HOURS. In the decree, the court  
 shall for good cause:

(1) grant the petition for majority rights for the  
 purpose of consenting to the abortion;

(2) find the abortion to be in the best interests of  
 the minor and give judicial consent to the abortion, setting  
 forth the grounds for so finding AN EXEMPTION FROM THE  
NOTIFICATION REQUIREMENT OF [SECTION 1]; or

(3) (2) deny the petition, setting forth the grounds on  
 which the petition is denied.

NEW SECTION. SECTION 6. CONFIDENTIALITY OF  
PROCEEDINGS. (1) ALL HEARINGS HELD ON A PETITION UNDER  
[SECTIONS 3 THROUGH 7] ARE CONFIDENTIAL AND MUST BE HELD IN  
CLOSED COURT WITHOUT ADMITTANCE OF ANY PERSON OTHER THAN THE

MINOR, HER COUNSEL, OR HER GUARDIAN AD LITEM.

(2) ALL PAPERS AND RECORDS PERTAINING TO THE PETITION  
MUST BE KEPT AS A PERMANENT RECORD OF THE COURT AND WITHHELD  
FROM INSPECTION. NO PERSON MAY HAVE ACCESS TO SUCH RECORDS.

NEW SECTION. Section 7. Appeal of decision -- notice.  
 An appeal from an order issued under the provisions of  
 [section 5] may be taken to the supreme court by the minor  
 or by a parent or guardian of the minor. The minor is not  
 required to pay a filing fee for the appeal. The notice of  
 intent to appeal must be given within 24 hours from the date  
 of issuance of the order. The record on appeal must be  
 completed and the appeal perfected within 5 days from the  
 filing of the notice of appeal. Because time may be of the  
 essence regarding the performance of the abortion, the  
 supreme court shall, by court rule, provide for expedited  
 appellate review of cases appealed under this section.

NEW SECTION. Section 7. Immunity from suit. If the  
petition filed pursuant to [section 3] is granted under  
[section 5], the informed consent of the minor, pursuant to  
a court grant of majority rights, or the judicial consent  
bars any action by a parent or guardian of the minor on the  
grounds of assault or personal injury of the minor by those  
performing the abortion. The immunity granted extends only  
to the performance of the abortion in accordance with  
[sections 1 through 8] and to any necessary accompanying



~~services that are performed in a competent manner. The costs of the action must be borne by the parties.~~

~~NEW SECTION. Section 8. Written consent-----no abortion against minor's will. If a minor desires an abortion, she must be orally informed of and shall sign the written consent in the same manner as an adult. No abortion may be performed on any minor against the will of the minor, except that an abortion may be performed against the will of a minor pursuant to a court decree, described in section 5(2)}, stating that the abortion is necessary to preserve the life of the minor.~~

NEW SECTION. Section 8. Violation. Performance of A PERSON CONVICTED OF PERFORMING an abortion in violation of {sections 1 through 8} is a felony [SECTION 1] SHALL BE FINED AN AMOUNT NOT TO EXCEED \$500 OR BE IMPRISONED IN THE COUNTY JAIL FOR A TERM NOT TO EXCEED 6 MONTHS, OR BOTH.

**Section 9.** Section 41-1-405, MCA, is amended to read:

**"41-1-405. Emergencies and special situations.** (1) Any health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental

damage.

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

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

(4) Self-consent Except as provided in [sections 1 through 8], self-consent of minors shall not apply to sterilization or abortion."

**Section 10.** Section 50-20-108, MCA, is amended to read:

**"50-20-108. Protection of premature infants born alive.** (1) A person commits an offense, as defined in 45-5-102 through 45-5-104, if he purposely, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable.

(2) Whenever a premature infant which is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

1 (a) the termination of the pregnancy is necessary to  
2 preserve the life of the mother; or

3 (b) the mother and her spouse or either of them have  
4 agreed in writing in advance of the abortion or within 72  
5 hours thereafter to accept the parental rights and  
6 responsibilities of the premature infant if it survives the  
7 abortion procedure. This subsection is not intended to  
8 require prior spousal notice.

9 (3) No person may use any premature infant born alive  
10 for any type of scientific research or other kind of  
11 experimentation except as necessary to protect or preserve  
12 the life and health of such premature infant born alive.

13 (4) Violation of subsection (3) of this section is a  
14 felony."

15 **Section 11.** Section 50-20-109, MCA, is amended to  
16 read:

17 "50-20-109. Control of practice of abortion. (1) No  
18 abortion may be performed within the state of Montana:

19 (a) except by a licensed physician;

20 ~~(b)--after-the-first-3-months-of-pregnancy;--except-in-a~~  
21 ~~hospital-licensed-by-the-department;~~

22 ~~(c)(b)~~ after viability of the fetus, unless in  
23 appropriate medical judgment the abortion is necessary to  
24 preserve the life or health of the mother.

25 (2) An abortion under subsection ~~(1)(c)~~ (1)(b) may

1 only be performed if:

2 (a) the foregoing judgment of the physician who is to  
3 perform the abortion is first certified in writing by him  
4 setting forth in detail the facts upon which he relies in  
5 making such judgment; and

6 (b) two other licensed physicians have first examined  
7 the patient and concurred in writing with such judgment. The  
8 foregoing certification and concurrence is not required if a  
9 licensed physician certifies the abortion is necessary to  
10 preserve the life of the mother.

11 (3) The timing and procedure used in performing an  
12 abortion under subsection ~~(1)(c)~~ (1)(b) of this section must  
13 be such that the viability of the fetus is not intentionally  
14 or negligently endangered, as the term "negligently" is  
15 defined in 45-2-101(37). The fetus may be intentionally  
16 endangered or destroyed only if necessary to preserve the  
17 life or health of the mother.

18 (4) No physician, facility, or other person or agency  
19 shall engage in solicitation, advertising, or other form of  
20 communication having the purpose of inviting, inducing, or  
21 attracting any person to come to such physician, facility,  
22 or other person or agency to have an abortion or to purchase  
23 abortifacients.

24 (5) Violation of subsections (1), (2), and (3) of this  
25 section is a felony. Violation of subsection (4) of this

1 section is a misdemeanor."

2 NEW SECTION. Section 12. Repealer. Section 50-20-107,  
3 MCA, is repealed.

4 NEW SECTION. Section 13. Codification instruction.  
5 [Sections 1 through 9 B] are intended to be codified as an  
6 integral part of ~~Title-50, chapter--20,--part--1~~ TITLE 41,  
7 CHAPTER 5, and the provisions of ~~Title-50, chapter-20,--part~~  
8 ~~1~~ TITLE 41, CHAPTER 5, apply to [sections 1 through 9 B].

9 NEW SECTION. Section 14. Severability. If a part of  
10 [this act] is invalid, all valid parts that are severable  
11 from the invalid part remain in effect. If a part of [this  
12 act] is invalid in one or more of its applications, the part  
13 remains in effect in all valid applications that are  
14 severable from the invalid applications.

-End-